

# OREGON BULLETIN

Supplements the 2012 *Oregon Administrative Rules Compilation*

**Volume 51, No. 2**  
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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.

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# EXECUTIVE ORDERS

## EXECUTIVE ORDER NO. 11 - 12

### ESTABLISHING THE OREGON SOLUTIONS NETWORK AND CONNECTING THE WORK OF THE REGIONAL SOLUTIONS CENTERS, OREGON SOLUTIONS AND THE OREGON CONSENSUS PROGRAM

Oregon has been a leader in the development of collaborative governance systems and models. The state has benefited from the work of organizations formed to bring together the public, private and civic sectors to solve problems and seize opportunities in a collaborative way.

In order to create a prosperous economy, healthy environment and equitable society, a need exists in the state to create an infrastructure to support communities of place and interest that want to take a collaborative approach to solving problems and maximizing opportunities at the state, regional and local level. A collaborative infrastructure includes resources to support collaborative decision making; dispute resolution; implementation; public engagement and interagency cooperation.

Regional Advisory Committees have been established by the Governor to identify priority issues in eleven regions of the state. These committees will also assist in leveraging resources between the public, private and civic sector resources to address these priorities.

Regional Solutions Centers have been established by the Governor in six university and community college locations throughout the state. These centers house state agency staff that are co-located to ensure an integration of state effort and investment in regional priorities.

The Oregon Solutions Steering Committee is a statewide group comprised of the public, private and civic leadership of the state. It helps chart a course for identifying issues and projects that will benefit from a multi sector approach, address problems and opportunities that have a statewide significance, and produce solutions that can be applied in other parts of the state.

The Oregon Solutions Program is housed at Portland State University and provides a neutral forum to undertake projects that address the state's Sustainable Community Objectives and utilizes conveners appointed by the Governor.

The Oregon Consensus Program is the state's dispute resolution program. It provides a neutral forum that matches public policy disputes with skilled mediators to assist stakeholders in resolving differences and producing agreements to move forward.

There is a need to coordinate these resources and programs to maximize their effectiveness and ensure that their activities address regional priorities around the state. It benefits the state to ensure that state agencies utilize these resources and programs in a way that serves the state's interest through collaborative and integrated action to address state, regional and local challenges and opportunities.

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

1. The Oregon Solutions Network ("Network") is hereby established.
2. The Network will consist of the following people, programs, organizations and centers:
  - a. The Central Oregon Solutions Center;
  - b. The Eastern Oregon Solutions Center;
  - c. The Portland Metro Solutions Center;

- d. The Southern Oregon Solutions Center;
- e. The Valley/North Coast Oregon Solutions Center;
- f. The Oregon Consensus Program;
- g. The Oregon Solutions Program;
- h. The Governor's Regional Solutions Director;
- i. The Regional Solutions Conveners and Advisory Committees; and
- j. The Governor's Regional Coordinators.

3. The Oregon Solutions Steering Committee ("Steering Committee") will provide leadership for the Network. Its members are appointed by the Governor and consist of the leadership of the public, private and civic sectors of the State of Oregon. The Steering Committee will consist of the Governor and will include but not be limited to designees of the following organizations and governments:

- a. Oregon Business Council, to be recommended by the Oregon Business Council;
- b. Association of Oregon Industries, to be recommended by the Association of Oregon Industries;
- c. Oregon Business Association, to be recommended by the Oregon Business Association;
- d. Meyer Memorial Trust, to be recommended by Meyer Memorial Trust;
- e. Ford Family Foundation, to be recommended by Ford Family Foundation;
- f. Oregon Community Foundation, to be recommended by Oregon Community Foundation;
- g. Association of Oregon Counties, to be recommended by Association of Oregon Counties;
- h. League of Oregon Cities, to be recommended by League of Oregon Cities;
- i. Metro, to be recommended by Metro; and
- j. State of Oregon, to be selected by the Governor.

4. Members of the Steering Committee appointed will serve for three year terms and will not be entitled to per diem or expenses. The steering committee will operate according to the principles of consensus.

5. The Oregon Solutions Steering Committee will provide oversight to the Network by:

- a. Assisting with the statewide coordination of efforts;
- b. Developing strategies for the integration of public, private and civic resources and investments;
- c. Reviewing the progress of Network programs, organizations and centers in creating and implementing linkages between public, private and civic partners;
- d. Advising the Governor on legislative and administrative changes necessary to remove institutional barriers to collaborative decision making and implementation; and
- e. Advising the Governor on the performance of state agencies in supporting the state's collaborative strategies.

## EXECUTIVE ORDERS

6. The Governor will chair the Steering Committee, set the agenda and work with the Steering Committee to frame issues for the Steering Committee and the Network to address.

7. The Oregon Consensus Program shall participate in Regional Solutions Centers by assisting in addressing regional priorities by providing a neutral forum to resolve disputes and assist with decision making as appropriate to achieve regional priorities.

8. The Oregon Solutions Program shall participate in Regional Solutions Centers by assisting in addressing regional priorities by providing a neutral forum to undertake multi-sector collaborative implementation projects to achieve regional priorities.

9. The Governor's Regional Coordinators shall refer projects and cases to the Oregon Solutions Program and the Oregon Consensus Program as needed to address regional and local priorities.

10. State agency Directors shall ensure that agencies participate as project team members as requested by the Governor's Regional Coordinator when projects are developed to address regional priorities identified by Regional Advisory Committees.

11. The Steering Committee will be staffed by: the Governor's Regional Solutions Director for the Network oversight functions listed in number 5 above; the Director of Oregon Solutions for Oregon Solutions projects and programs; and the Director of Oregon Consensus for Oregon Consensus cases and programs.

Done at Salem, Oregon, this 16th day of December, 2011.

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

ATTEST

/s/ Kate Brown  
Kate Brown  
SECRETARY OF STATE

### EXECUTIVE ORDER NO. 12 - 01

#### DETERMINATION OF A STATE OF EMERGENCY IN BENTON, COOS, LINCOLN AND MARION COUNTIES DUE TO SEVERE WINTER WEATHER

Pursuant to ORS 401.165, I find that severe winter weather including heavy snow, freezing rain, torrential rain, snow melt, and record flooding have resulted in a threat to life safety and property damage in **Benton, Coos, Lincoln, and Marion Counties** beginning on **January 17, 2012** and continuing. These conditions have resulted in evacuations of more than 200 residents, road closures, stranded motorists, flooded buildings and homes, power outages and many areas of inaccessibility.

In **Benton, Coos, Lincoln, and Marion Counties**, recent snow, ice, heavy rain and record flooding have made a significant number of roads inaccessible to emergency vehicles or emergency related vehicles. There are immediate life, health, and safety issues caused by this severe winter weather and requests for additional labor, supplies, and equipment.

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

1. The Oregon Military Department's Office of Emergency Management shall implement the State's Emergency Operations Plan, and coordinate with state and local agencies impacted by this severe winter weather event.

2. The Oregon National Guard shall provide the necessary manpower and equipment required to respond to requests from counties received by Oregon Emergency Management to facilitate response to this severe winter weather event.

3. The Oregon Department of Transportation shall provide the necessary manpower and equipment required to respond to requests from affected counties received by Oregon Emergency Management or in place mutual aid agreements to facilitate response to this severe winter weather event.

4. Oregon Emergency Management shall coordinate all other appropriate agencies of the State of Oregon in using personnel, supplies, and equipment required in response to this severe winter weather event;

5. All other departments are directed to coordinate and assist as needed with assessment and mitigation activities to address current and projected conditions.

This emergency is declared only for **Benton, Coos, Lincoln, and Marion Counties**. Other counties may be added to the declaration at a later time.

These findings were made verbally on January 19, 2012 at 3:36 p.m.

Done at Salem, Oregon, this 20th day of January, 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 PETITION FOR RULEMAKING LONG TERM CARE FACILITIES — TRANSFERS

**COMMENTS DUE:** February 21, 2012 at 5:00 p.m.

**REQUEST:** In accordance with ORS 183.390, the Department of Human Services (Department) is inviting public comment, including whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses, on a petition of rulemaking requesting the repeal and amendment of the language relating to resident transfers found in the following rules:

- 411-050-0444 Adult Foster Home - Operational Standards;
- 411-054-0080 Residential Care and Assisted Living Facility - Involuntary Move-Out Criteria;
- 411-088-0000 to 0080 Nursing Facility - Transfers;
- 411-325-0390 and 0400 24-Hour Residential Services for Individuals with Developmental Disabilities - Entry, Exit and Transfer; and
- 411-360-0190 Adult Foster Homes for Individuals with Developmental Disabilities - Standards for Admission, Transfers, Respite, Crisis Placements, Exit, and Closures

**BACKGROUND:** On November 30, 2011, the Department received a petition of rulemaking requesting that the Department amend the nursing facility transfer rules in OAR chapter 411, division 088 to create a uniform rule for residents' rights, voluntary and involuntary transfer, and due process so that residents faced with an involuntary transfer have the same rights regardless of the type of facility. The petition also requested that the Department update the specific facility rules to refer to the uniform rules in OAR chapter 411, division 088.

**HOW TO COMMENT:** The petition for rulemaking may be viewed at: <http://www.dhs.state.or.us/policy/spd/rules/Petition%20for%20Rulemaking%20-%20Transfers.pdf> or by contacting Christina Hartman at 503-945-6398 or at [Christina.Hartman@state.or.us](mailto:Christina.Hartman@state.or.us). Written comments may be submitted via e-mail to [Christina.Hartman@state.or.us](mailto:Christina.Hartman@state.or.us), faxed to 503-947-4245, or mailed to Rule Coordinator, Department of Human Services, Seniors and People with Disabilities, 500 Summer Street NE, E-10, Salem, Oregon, 97301-1074. Deadline for comments is February 21, 2012 at 5:00 p.m.

### REQUEST FOR COMMENTS PROPOSED CONDITIONAL NO FURTHER ACTION DETERMINATION FOR THE FORMER BOISE CASCADE SAWMILL IN JOSEPH

**COMMENTS DUE:** Friday, March 2, 2012, 4:30 pm.

**PROJECT LOCATION:** One-quarter mile west of Joseph

**PROPOSAL:** The Department of Environmental Quality proposes to issue a no further action determination for a project to clean up up petroleum-contaminated soil at the former Boise Cascade sawmill near Joseph. DEQ issues a no further action determination when a cleanup project has met regulatory standards.

**HIGHLIGHTS:** In 1994, Boise Cascade excavated approximately 10,500 cubic yards of petroleum-contaminated soil from sawmill property and placed it on six acres of plastic-lined cells in one part of the site. They turned the contaminated soil periodically to promote aeration and growth of microbes that digested the petroleum.

Sampling of the soil indicates that, although some petroleum remains in the soil, the hazardous chemicals in the petroleum have been reduced to safe levels. DEQ therefore does not require further remediation. However, DEQ did require the current property owner, OfficeMax, to record a notice of potential hazard with Wallowa County. The reason for this notice is to let people know that the petroleum-containing soil and the plastic liner remain on this property.

This site will remain on DEQ's Confirmed Release List as long as the hazard notice is in place.

**HOW TO COMMENT:** Send written comments fax, mail or email to:

Bob Schwarz, DEQ Project Manager  
400 E. Scenic Drive, Suite 307  
The Dalles, Oregon 97058  
Fax: 541-298-7330  
Email: [Schwarz.bob@deq.state.or.us](mailto:Schwarz.bob@deq.state.or.us)

Written comments should be sent by Friday, March 2, 2012. To schedule an appointment or to obtain a copy of the staff report, please contact Mr. Schwarz by email or by phone at 541-298-7255, ext. 230. **THE NEXT STEP:** DEQ will consider all comments received. A final decision concerning the proposed no further action determination will be made after consideration of public comments.

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

People with hearing impairment may call DEQ's TTY number, 711.

### REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION FOR (FORMER) SCHARFF MOTOR FREIGHT, NEWBERG

**COMMENTS DUE:** 5 pm, February 29th, 2012

**PROJECT LOCATION:** 2210 Portland Rd (99W), Newberg

**HIGHLIGHTS:** The Oregon Department of Environmental Quality is proposing no further action for the investigation and cleanup of petroleum contamination at the (former) Scharff Motor Freight site at 2210 Portland road in Newberg, Oregon.

The property was formerly a trucking business with a maintenance shop on site. The facility had three underground storage tanks to store petroleum products. A petroleum release from the underground storage tank system was reported in August of 1991. In addition to the underground tank system, other areas across the property were contaminated by surface spills of petroleum products from above ground storage tanks, and subsurface contamination from a former shop drain. Contaminated soil was removed from these locations in 1991. Soil sampling showed some contamination remaining following the removal of the petroleum contaminated soils, but at concentrations below DEQ's risk levels. Groundwater was tested in 2011 and showed petroleum contamination was present, but at concentrations below DEQ's risk levels.

Based on available data, the concentrations of contamination remaining at the site are below DEQ's Risk Based Concentrations, which are protective for commercial and industrial activities.

A Site Summary Report detailing DEQ's proposed decision, and the project file containing detailed information for the site, are available for review in DEQ's Eugene Office located in suite 100 at 165 East 7th Avenue in Eugene. Questions concerning this site should be directed to Eric Kelley or Nancy Sawka at DEQ's Salem office by calling them at (503) 378-8240.

Comments on the proposed no further action determination need to be received by the Salem Office, attn: Eric Kelley, by 5pm on February 29th, 2012. Fax or email comments are acceptable.

**THE NEXT STEP:** Upon completion of the comment period, the comments will be addressed. Once the comments have been adequately addressed, the DEQ may approve, modify, or deny the proposed no further action determination.

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

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

## OTHER NOTICES

### REQUEST FOR COMMENTS PROPOSED CONDITIONAL NO FURTHER ACTION FOR SASS HEATING OIL RELEASE

**COMMENTS DUE:** 5 p.m., March 2, 2012

**PROJECT LOCATION:** 41314 Robinette Road, Richland, Baker County

**PROPOSAL:** The Oregon Department of Environmental Quality proposes to issue a conditional no further action determination for the Environmental Cleanup Program site #5629: Sass Heating Oil Aboveground Storage Tank Release, located at 41314 Robinette Road, Richland. DEQ issues a conditional no further action determination when an environmental cleanup has met regulatory requirements with a restrictive condition.

**HIGHLIGHTS:** A release of heating oil was reported to DEQ in July 2011 from a former aboveground storage tank. Apparently a supply line to the AST leaked into the crawl space beneath the residence. The timing and quantity of the release is unknown. A notice will be filed with the deed prohibiting use of shallow groundwater for domestic purposes. DEQ has determined that the cleanup meets the requirements of Oregon Revised Statute 465.315. Pollutant levels remaining in soil and potentially in groundwater after the cleanup actions are protective of human health and the environment.

**HOW TO COMMENT:** Send comments by 5 p.m., March 2, 2012 to DEQ Project Manager Marcy Kirk by mail at 475 NE Bellevue Drive, Suite 110, Bend, OR 97701, by email at [kirk.marcy@deq.state.or.us](mailto:kirk.marcy@deq.state.or.us) or, or by fax at 541-388-8283.

To review the project file, call Marcy Kirk at 541-633-2009 for a file review appointment. To access site summary information and the staff report in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet, go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter 5629 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 5629 in the Site ID/Info column.

**THE NEXT STEP:** DEQ will consider all public comments received before making a final decision on the proposed conditional no further action determination. DEQ will provide written responses to all public comments received.

**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](mailto:deqinfo@deq.state.or.us), or 711 for people with hearing impairments.

### OPPORTUNITY TO COMMENT ANALYSIS OF BROWNFIELD CLEANUP ALTERNATIVES FORMER CONDON RADAR STATION PROPERTY CONDON, OREGON

**COMMENT DUE:** February 29, 2012

**PROJECT LOCATION:** Condon, Oregon

**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 Former Condon Radar Station Property (Site) located on Richmond Road 6 miles east of Condon, Oregon. The ABCA details the analysis and selection of protective cleanup options designed to address contamination at the Site.

The former Condon Radar Station property was occupied by the U.S. Air Force until the early 1970's after which time it underwent several ownership changes. Prominent features at the facility included a radar station dome, dormitories, control room buildings, support buildings, a firing range and an adjacent housing development. Approximately 23 buildings remain at the Site, most vacant and in disrepair. Investigations identified hazardous substances remaining at the Site including, two aboveground storage tanks (ASTs), an underground storage tank (UST), stockpiled petroleum soil, and approximately 7,500 linear feet of aboveground steam pipe insulated with asbestos containing material (ACM) which was used to convey heat between the power plant and base buildings.

The ACM piping has been identified as the primary contaminant at the Site that must be addressed before any renovation of the site. The ABCA selected the abatement of all ACM piping, as well as, removal and disposal of stockpiled petroleum soil as the preferred remedial alternatives.

The ABCA, as well as more information concerning site-specific investigations and remedial actions, is available in DEQ's Environmental Cleanup Site Information (ECSI) database located on the web at <http://www.deq.state.or.us/lq/ecsi/ecsi.htm> under Site ID 2593.

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

**HOW TO COMMENT:** The public comment period will extend from February 1 to 29, 2012. Please address all comments and/or inquiries to project manager at the following address:

David Anderson  
Department of Environmental Quality  
475 NE Bellevue Dr, Suite 110  
Bend, OR 97701  
(541) 633-2012  
[anderson.david@deq.state.or.us](mailto:anderson.david@deq.state.or.us)

Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be held to receive verbal comments.

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

# NOTICES OF PROPOSED RULEMAKING

## Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

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### Board of Nursing Chapter 851

**Rule Caption:** To synchronize with changes made to the related Board policy regarding medication aide curriculum.

**Date:** 2-16-12      **Time:** 9 a.m.      **Location:** 17938 SW Upper Boones Ferry Rd. Portland, OR 97224

**Hearing Officer:** Kay Carnegie, Board President  
**Stat. Auth.:** ORS 678.440, 678.442, 678.444, & 678.445  
**Stats. Implemented:** ORS 678.442

**Proposed Amendments:** 851-062-0090, 851-062-0110

**Last Date for Comment:** 2-14-12, 5 p.m.

**Summary:** The purpose of the proposed changes is to synchronize with changes to the medication aide curriculum policy that was approved by the Board in April, 2011.

**Rules Coordinator:** Peggy A. Lightfoot  
**Address:** Board of Nursing, 17938 SW Upper Boones Ferry Rd., Portland, OR 97224  
**Telephone:** (971) 673-0638

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

**Rule Caption:** Amends rules and exhibits governing procedures for setting prison terms for qualified aggravated murderers.

**Date:** 2-17-12      **Time:** 9 a.m.      **Location:** 2575 Center St. NE Salem, OR 97301

**Hearing Officer:** Aaron Felton, Board Chairperson  
**Stat. Auth.:** ORS 144.050, 144.110, 144.120, 144.140 & 144.780  
**Other Auth.:** Janowski/Fleming v. Board of Parole, 349 Or 432 (2010); Severy/Wilson v. Board of Parole, 349 Or 461 (2010); State ex rel Engweiler v. Felton, 350 OR 592 (2011) & OAR 255-030.  
**Stats. Implemented:** ORS 144.110, 144.120 & 163.105  
**Proposed Amendments:** 255-032-0005, 255-032-0037  
**Proposed Repeals:** 255-032-0011

**Last Date for Comment:** 3-3-12, 5:30 p.m.

**Summary:** Division 32 rules govern procedures related to persons convicted of aggravated murder under ORS 163.105. Division 35 rules and related exhibits govern procedures related to setting a prison term. Recent Oregon Supreme Court decisions necessitate changes in the Board's rules:

(1) In Janowski/Fleming v. Board of Parole, 349 Or 432 (2010), the Board was directed to apply the "matrix system" in effect at the time the crimes were committed in order to set a prison term for adults convicted of aggravated murder who had been found likely to be rehabilitated within a reasonable period of time under ORS 163.105. Exhibit A-I is amended to restore crime severity ratings to aggravated murder. Exhibit A-II is amended to restore the subcategory rationale for aggravated murder, including Category 7 and Category 8. Both of these changes are required in order to allow the Board to establish a matrix range for persons convicted of aggravated murder. OAR 255-032-0037(2) is amended to clarify the rules to be applied to aggravated murderers who have been found likely to be rehabilitated within a reasonable period of time.

(2) In State ex rel Engweiler v. Felton, 350 Or 592 (2011), the court concluded that the Board exceeded its statutory authority when it promulgated rules requiring five juvenile aggravated murderers to undergo the intermediate review process of a murder review hearing before the Board makes parole release decisions regarding them. OAR 255-032-0005 is amended and OAR 255-032-0011 is repealed to comply with this decision.

**Rules Coordinator:** Shawna Harnden

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

**Telephone:** (503) 945-0913

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### Construction Contractors Board Chapter 812

**Rule Caption:** Housekeeping, emergency suspension authority, petition to reduce larger bond requirement, and LBPR emergency renovation operations.

**Date:** 2-28-12      **Time:** 11 a.m.      **Location:** West Salem Roth's IGA Santiam Rm. 425 Glen Creek Rd. Salem, OR

**Hearing Officer:** Rob Yorke  
**Stat. Auth.:** ORS 183.310-183.500, 670.310, 701.068, 701.085 (2005), 701.088, 701.235, 701.515, 701.992 & 701.995

**Stats. Implemented:** ORS 87.093, 279C.590, 701.005, 701.021, 701.026, 701.042, 701.046, 701.068, 701.073, 701.085 (2005), 701.088, 701.091, 701.098, 701.102, 701.106, 701.109, 701.227, 701.305, 701.315, 701.330, 701.345, 701.480, 701.485, 701.505-701.520, 701.510, 701.515, 701.992 & 701.995

**Proposed Amendments:** 812-002-0443, 812-005-0140, 812-005-0250, 812-005-0800, 812-007-0020, 812-007-0302, 812-007-0350

**Proposed Repeals:** 812-005-0140(T)

**Last Date for Comment:** 2-28-12, Close of Hearing

**Summary:** • 812-002-0443 is amended to correct a cite reference.

• 812-005-0140 is amended to make the rule consistent with ORS 701.098(4) and make the rule retroactive and effective on the date the statute was changed (1/1/08).

• 812-005-0250 is amended to:

- Section (1): Remove references to 2005 statutes. There should no longer be any licensees or applicants affected by those statutes. Consolidate old sections (1) and (2) into one section for simplicity and clarity. Refer to "agency" rather than "Board." This is consistent with the remainder of the rule. Extend minimum period to operate under increased bond from two to three years.

- Section (2): Change petition requirement from an explanation why there is no longer an "increased risk to the public" to describing the factors for consideration in Section (3).



## NOTICES OF PROPOSED RULEMAKING

- Section (3): Change basis for review to clearly articulated standards for approval or denial.

- Section (3)(a): Expand the class of agency "orders" to recognize DRS arbitration awards and (new) determinations.

- Section (4): Explain that if petitioner fails to satisfy all of the requirements in Section (3), the agency will not allow the reduced bond for an additional three years. After that time, the applicant or licensee may again petition the agency.

- Section (5): Clarify that agency will notify petitioner of its decision within 30 days of receiving the petition.

- Section (6): Change procedure from contested case review (Office of Administrative Hearings) to an order in other than a contested case (Circuit Court).

- 812-005-0800 is amended to clarify that sanction in section (16) is not subject to authorization in ORS 701.106 and to correct cross-reference in section (22).

- 812-007-0020 is amended to provide an exemption for emergency renovation operations, as the Oregon Health Authority (OHA) rules do. Definitions are amended to make CCB's rules consistent with the OHA rules.

- 812-007-0302 is amended to provide an exemption for emergency renovation operations, as the Oregon Health Authority (OHA) rules do. Exemption rules are amended to make CCB's rules consistent with OHA's rules.

- 812-007-0350 is amended (1)(d) adds a missing word "refer" between the words "Authority" and "to the board."

**Rules Coordinator:** Catherine Dixon

**Address:** Construction Contractors Board, 700 Summer St. NE, Suite 300, Salem, OR 97310

**Telephone:** (503) 934-2185

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**Rule Caption:** Residential Continuing Education – Housekeeping, increase work experience of providers, active/inactive status.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-28-12	11 a.m.	West Salem Roth's IGA Santiam Rm. 425 Glen Creek Rd. Salem, OR

**Hearing Officer:** Rob Yorke

**Stat. Auth.:** ORS 370.310, 701.126 & 701.235

**Stats. Implemented:** ORS 670.310, 701.126 & 701.235

**Proposed Amendments:** 812-021-0015, 812-021-0019, 812-021-0025, 812-021-0040

**Proposed Repeals:** 812-021-0015(T)

**Last Date for Comment:** 2-28-12, Close of Hearing

**Summary:** • OAR 812-021-0015 section (4) is amended to delete the word "core" and to allow contractors that took the initiative and earned continuing education (CE) before it was required to include the CE hours for their first renewal, which satisfies the goals of the CE program. CCB wants to reward, not punish, contractors that took the initiative to earn CE before it was required. The rule is retroactive to October 1, 2011. The rule is also being amended to correct cite reference in 812-0021-0015(2)(b)(A).

- OAR 812-021-0019 is amended to change the word "attending" to "completing" because contractors earn continuing education credits by completing courses. Some courses are taken online and are completed, they are not attended

- OAR 812-021-0025 is amended increase work experience or education requirements for education providers. The current amount of required work experience and education is two years; it increases to four years.

- OAR 812-021-0040 is amended to incorporate a policy governing active contractors renewing as inactive. The rule also applies where the inactive contractor (recently renewed) seeks to return to active status.

**Rules Coordinator:** Catherine Dixon

**Address:** Construction Contractors Board, 700 Summer St. NE, Suite 300, Salem, OR 97310

**Telephone:** (503) 934-2185

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### **Department of Agriculture Chapter 603**

**Rule Caption:** Changes standards for examination of somatic cells in milk.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-2-12	10 a.m.	Dept. of Agriculture, Basement Hearings Rm. 635 Capitol St. NE Salem, OR 97301

**Hearing Officer:** Eric Edmunds

**Stat. Auth.:** ORS 561 & 621

**Stats. Implemented:** ORS 621.060 & 621.261

**Proposed Amendments:** 603-024-0592

**Last Date for Comment:** 3-2-12, 5 p.m.

**Summary:** The amendment reduces the somatic cell count standard for milk from 750,000 parts per mL to 500,000 parts per mL while simultaneously raising the somatic cell count for goat's milk from one million parts per mL to 1,500,000 parts per mL.

**Rules Coordinator:** Sue Gooch

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

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

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### **Department of Consumer and Business Services, Insurance Division Chapter 836**

**Rule Caption:** Repeal of rule for physician credentialing and recredentialing in connection with health care service contractors.

**Stat. Auth.:** ORS 731.244 & 442.807

**Other Auth.:** 2009 OL Ch. 595 (Enrolled HB 2009)

**Stats. Implemented:** ORS 742.800–442.807

**Proposed Repeals:** 836-052-0900

**Last Date for Comment:** 3-15-12, Close of Business

**Summary:** This rulemaking repeals a rule adopted by the Department of Consumer and Business Services (DCBS) related to physician credentialing and recredentialing by health care service contractors. During the 2009 Legislative Session, the statutory authority for adopting this rule was transferred from DCBS to the Oregon Health Authority. Because the Oregon Health Authority has adopted temporary rules to replace this rule and is now proposing to adopt permanent rules to replace this rule, it is necessary for DCBS to repeal the obsolete DCBS rule.

**Rules Coordinator:** Sue Munson

**Address:** Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Rm. 440, Salem, OR 97301

**Telephone:** (503) 947-7272

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

**Rule Caption:** Propose to adopt federal corrections and technical amendments to general industry, construction, and shipyard employment.

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

**Stats. Implemented:** ORS 654.001–654.295

**Proposed Amendments:** 437-002-0080, 437-002-0100, 437-002-0120, 437-002-0140, 437-002-0161, 437-002-0180, 437-002-0182, 437-002-0220, 437-002-0240, 437-002-0280, 437-002-0300, 437-002-0312, 437-002-0340, 437-002-0360, 437-002-0373, 437-003-0001, 437-003-0875, 437-005-0001

**Last Date for Comment:** 2-24-12

**Summary:** This rulemaking is to keep Oregon OSHA in harmony with recent changes to Federal OSHA's standards.

# NOTICES OF PROPOSED RULEMAKING

Federal OSHA published in the December 27, 2011 Federal Register corrections of typographical errors and non-substantive technical amendments to a number of standards in general industry, construction, and shipyard employment. The technical amendments include updating or revising cross-references. These revisions do not affect the substantive requirements or coverage of those standards, do not modify or revoke existing rights or obligations, and do not establish new rights or obligations.

Oregon OSHA proposes to make these corrections and amendments to the standards Oregon has adopted previously to reflect federal OSHA's changes. We are also making rule reference changes in a number of standards to reflect the newly adopted OAR 437-002-0134 Personal Protective Equipment.

Please visit our web site [www.orosha.org](http://www.orosha.org)

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

**Rules Coordinator:** Sue C. Joye

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

**Telephone:** (503) 947-7449

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## Department of Corrections Chapter 291

**Rule Caption:** Interstate Compact – Retaken Offenders.

**Stat. Auth.:** ORS 144.600, 179.040, 423.020, 423.030 & 423.075

**Stats. Implemented:** ORS 144.600, 179.040, 423.020, 423.030 & 423.075

**Proposed Amendments:** 291-180-0275

**Last Date for Comment:** 3-22-12, Close of Business

**Summary:** This rulemaking is necessary in order for the Department of Corrections to require that an offender who was previously retaken and returned to this state from another state at cost to the State of Oregon, whether by formal or informal means, repay those costs to the State of Oregon before the offender may be approved by the Department for an interstate compact supervision transfer. Limited exceptions may be granted by the Compact Administrator or designee based on individual circumstances.

**Rules Coordinator:** Janet R. Worley

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

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

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## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Corrections to 2012 Oregon Sport Fishing Regulations.

Date:	Time:	Location:
3-9-12	8 a.m.	Comfort Suites 1730 NW 9th St. Corvallis, OR 97330

**Hearing Officer:** Fish & Wildlife Commission

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

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

**Proposed Adoptions:** Rules in 635-017, 635-018

**Proposed Amendments:** Rules in 635-017, 635-018

**Proposed Repeals:** Rules in 635-017, 635-018

**Last Date for Comment:** 3-9-12, Close of Hearing

**Summary:** Amended rules correct unintended errors in the 2012 Oregon Sport Fishing Regulations booklet. 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:** Amend Wildlife Control Operator Rules.

Date:	Time:	Location:
3-9-12	8 a.m.	Comfort Suites 1730 NW 9th St. Corvallis, OR 97330

**Hearing Officer:** Fish & Wildlife Commission

**Stat. Auth.:** ORS 496.012, 496.138, 496.146, 496.162 & 498.012

**Stats. Implemented:** ORS 496.012, 496.138, 496.146, 496.162 & 498.012

**Proposed Amendments:** Rules in 635-435

**Last Date for Comment:** 3-9-12

**Summary:** Review, update and amend rules relating to wildlife control operators. Specific rule changes include but are not limited to: definitions, criteria for reinstatement after revocation and amendment that will make the rules consistent with the Wildlife Rehabilitation Rules which were adopted by the Commission on June 2, 2011.

**Rules Coordinator:** Therese Kucera

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

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

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**Rule Caption:** Amend rules to delist the Bald Eagle from State List of Threatened and Endangered Species.

Date:	Time:	Location:
3-9-12	8 a.m.	Comfort Suites 1730 NW 9th St. Corvallis, OR 97330

**Hearing Officer:** Fish & Wildlife Commission

**Stat. Auth.:** ORS 496.004, 496.171, 496.172, 496.176, 496.182, 496.192 & 498.026

**Stats. Implemented:** ORS 496.004, 496.171, 496.172, 496.176, 496.182, 496.192 & 498.026

**Proposed Amendments:** 635-100-0125

**Last Date for Comment:** 3-9-12

**Summary:** This rule amendment would remove the Bald eagle (*Haliaeetus leucocephalus*) from the State List of Threatened and Endangered Species.

**Rules Coordinator:** Therese Kucera

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

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

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

**Rule Caption:** Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
2-28-12	8:30 a.m.	500 Summer St. NE, Rm. 254 Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 418.005

**Stats. Implemented:** ORS 418.005

**Proposed Amendments:** 413-010-0700, 413-010-0705, 413-010-0710, 413-010-0714, 413-010-0715, 413-010-0716, 413-010-0717, 413-010-0718, 413-010-0720, 413-010-0721, 413-010-0722, 413-010-0723, 413-010-0732, 413-010-0735, 413-010-0738, 413-010-0740, 413-010-0743, 413-010-0745, 413-010-0746, 413-010-0748, 413-010-0750

**Proposed Repeals:** 413-010-0712

**Last Date for Comment:** 3-1-12, 5 p.m.

**Summary:** The Department is amending these rules about notice and review of founded dispositions in child protective services to make permanent changes adopted as temporary rules on October 6, 2011, and change the founded disposition review process which currently exists at the local office level and central office level. These amendments do not change the rights of an individual to have a founded disposition reviewed nor do they change the process by which the

# NOTICES OF PROPOSED RULEMAKING

individual requests the review. Under these amendments, the Local Office and Central Office CPS Founded Disposition Review Committees make a recommendation (no longer a decision); and the decision making authority that used to be with the committees is now with the Child Welfare program manager or designee at the local office level and the Child Protective Services Program Manager or designee at the central office level. These rules are also being amended to assure their accuracy, integrity, internal consistency, remove outdated language, and identify defined terms.

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 March 1, 2012 at 5:00 p.m. Written comments may be submitted via e-mail to [Annette.Tesch@state.or.us](mailto:Annette.Tesch@state.or.us), faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS - Children, Adults, and Families Division, 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:	Time:	Location:
2-28-12	10 a.m.	500 Summer St. NE, Rm. 254 Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 181.537, 409.050, 409.610, 411.060, 411.070, 411.087, 411.122, 411.404, 411.704, 411.706, 411.707, 411.816, 412.006, 412.009, 412.014, 412.024, 412.049, 412.079, 412.124, 414.025, 414.115, 414.231, 414.826, 414.831, 657A.340, 657A.450, HB 2049 (2011)

**Other Auth.:** 42 U.S.C. 602(a); 42 U.S.C. 1396d(p) (Section 1905(p) of the Social Security Act); 42 U.S.C. 1396e; 7 CFR 273.2(b)(1)(iii); 42 CFR 435.403; 42 CFR 435.407; 45 CFR 98.1(a)(1); 45 CFR 98.45; 45 CFR 233.39; 45 CFR 260; 45 CFR 260.52; 45 CFR 260.54; 45 CFR 263.2; 45 CFR 273.3; 45 CFR 400; U.S. Department of Health & Human Services, Centers for Medicare & Medicaid Services, State Medicaid Manual section 3230.2; Social Security Administration Program Operations Manual System section SI 00820.010

**Stats. Implemented:** ORS 181.537, 409.010, 409.050, 409.610, 411.060, 411.070, 411.087, 411.117, 411.122, 411.400, 411.404, 411.704, 411.706, 411.707, 411.816, 412.006, 412.009, 412.014, 412.024, 412.049, 412.079, 412.124, 414.025, 414.042, 414.115, 414.231, 414.428, 414.826, 414.831, 414.839, 657A.340, 657A.450, HB 2049 (2011)

**Proposed Adoptions:** 461-135-1260

**Proposed Amendments:** 461-101-0010, 461-115-0705, 461-120-0010, 461-120-0030, 461-120-0050, 461-120-0110, 461-120-0125, 461-120-0130, 461-120-0210, 461-120-0315, 461-120-0330, 461-120-0340, 461-120-0350, 461-120-0510, 461-120-0630, 461-135-0075, 461-135-1100, 461-145-0080, 461-145-0410, 461-155-0030, 461-155-0290, 461-155-0291, 461-155-0295, 461-155-0500, 461-165-0180, 461-170-0011, 461-180-0130, 461-190-0211

**Proposed Repeals:** 461-115-0705(T), 461-120-0120, 461-120-0340(T), 461-120-0530, 461-135-0075(T), 461-135-1100(T), 461-135-1110, 461-135-1210, 461-145-0080(T), 461-145-0410(T), 461-180-0130(T), 461-190-0211(T)

**Last Date for Comment:** 3-1-12, 5 p.m.

**Summary:** OAR 461-101-0010 about program acronyms and overview is being amended to add JPI as the acronym for the Job Participation Incentive program, an additional \$10 food benefit to help increase the ability of single parents with small children – who meet federal TANF participation requirements – to provide for the nutritional needs of their families.

OAR 461-115-0705 is being amended to make permanent a temporary rule change effective January 1, 2012 and reflect the elimination of OHP-OPU Student Status eligibility criteria. The rule as amended no longer refers to the higher education student requirements provided in OAR 461-135-1110, which is being repealed.

OAR 461-120-0010 about residency requirements is being amended to include exceptions that have been set out in other rules.

OAR 461-120-0030 about the state of residence for an individual in a medical facility is being amended to indicate that the rule only applies to medical programs and to follow federal regulations that apply individuals placed in a medical facility in Oregon by a state agency in another state to indicate that they are still considered residents of the placing state.

OAR 461-120-0050 setting out which individuals are considered incapable for forming an intent to reside is being amended to indicate that the rule applies to the Healthy Kids Connect (HKC) program and state in the rule how the Department interprets some of its policies.

OAR 461-120-0110 about residency requirements is being amended to clarify the rule by citing exceptions to its policies that are set out in other rules and by using standard terminology.

OAR 461-120-0120 about the alien status requirements for the Refugee Assistance (REF) and Refugee Assistance Medical (REFM) programs is being repealed and its policy will be set out in OAR 461-120-0125.

OAR 461-120-0125 about the alien status requirements for programs other than the Refugee Assistance (REF) and Refugee Assistance Medical (REFM) programs is being amended to include REF and REFM. This rule is also being amended to clarify how it applies to the Temporary Assistance for Domestic Violence Survivors (TADVS) program and to update its terminology.

OAR 461-120-0130 about declaring citizenship or alien status is being amended to align policy for all programs. The rule change will allow one adult member of the filing group or an authorized representative to sign the statement attesting to citizenship for everyone in the filing group.

OAR 461-120-0210 about the requirement to provide Social Security Numbers (SSN) is being amended to clarify the programs covered some of the requirements of the rule. No changes in policy are being made.

OAR 461-120-0315 about medical assignment is being amended to clarify in various medical programs to whom the requirement applies to turn over to the Department reimbursements for medical costs.

OAR 461-120-0330 about the requirement to pursue assets is being amended to clarify the rule by updating terminology, adding cross-references, and specifying programs more precisely.

OAR 461-120-0340 about the requirement to obtain child support from a non-custodial parent is being amended to state that a caretaker relative is excused from the requirement to pursue support if the filing group is a two-parent family for whom deprivation is based on the unemployment or underemployment of the primary wage earner. This rule is also being amended to make permanent the temporary rule changes adopted October 5, 2011.

OAR 461-120-0350 about clients excused for good cause from compliance with the requirements to pursue child support, medical support, and health care coverage is being amended to clarify the rule by making its title more descriptive, adding cross-references, and removing inapplicable cross-references.

OAR 461-120-0510 about age requirements for clients to receive benefits is being amended and OAR 461-120-0530 about regular

## NOTICES OF PROPOSED RULEMAKING

school attendance is being repealed to include the policy about regular school attendance (for 18-year olds to be eligible for certain programs) within OAR 461-120-0510.

OAR 461-120-0630 about the requirement to live with a caretaker or a caretaker relative is being amended to clarify how it applies to the Temporary Assistance for Domestic Violence Survivors (TA-DVS) program, update its terminology and to remove an exemption that applied to the Refugee Assistance Medical (REFM) program for eligible children in the custody of a public or private agency.

OAR 461-135-0075 about the limitation on the eligibility period for Temporary Assistance for Needy Families (TANF) is being amended to state that months beginning October 1, 2011 in which a filing group is a two-parent family eligible for cash assistance based on the unemployment or underemployment of the primary wage earner do not count towards the 60-month limitation on the TANF eligibility period. This rule is also being amended to make permanent temporary rule changes adopted on November 1, 2011.

OAR 461-135-1100 is being amended to make permanent temporary rule changes effective January 1, 2012 and reflect the elimination of OHP-OPU Student Status eligibility criteria and no longer refer to the higher education student requirements that were in OAR 461-135-1110, which is being repealed. OAR 461-135-1100 is also being amended to align it with revisions of OAR 410-120-1960, 461-135-0990 and 461-155-0360 that centralize the Health Insurance Premium Payment (HIPP) program. This amendment clarifies what constitutes major medical insurance by eliminating the \$10,000 coverage minimum and stating what types of benefits an insurance policy must have to be considered major medical.

OAR 461-135-1110 about eligible and ineligible students in the Oregon Health Plan OPU program (coverage for adults who qualify under an income standard based on 100 percent of the federal poverty level) is being repealed to make permanent the suspension of this rule that was effective January 1, 2010. Applicants and recipients will no longer be required to meet the income requirements for a Pell grant (having an estimated family contribution of \$0), or be a student in a program serving displaced workers under section 236 of the Trade Act of 1974 (19 USC 2296).

OAR 461-135-1210 which aligns TA-DVS definitions with TANF definitions is being repealed. The rule is not used because OAR 461-135-1225 already aligns TA-DVS policy with TANF.

OAR 461-135-1260 is being adopted to set out the specific requirements of the Job Participation Incentive (JPI) program, which is part of the strategy to meet federal requirements related to TANF participation and help increase the ability of single parents with small children provide better nutrition to their families. This rule is also being adopted to make permanent the temporary rule adopted on October 1, 2011.

OAR 461-145-0080 about the treatment of child support and cash medical support in the Department's public assistance, medical, and SNAP programs is being amended to state that, for on-going eligibility and benefit determination for TANF clients for whom deprivation is based on the unemployment or underemployment of the primary wage earner (PWE) in a two-parent household, except for the amount disregarded, child support is considered countable unearned income. This rule is also being amended to make permanent the temporary rule changes adopted October 5, 2011.

OAR 461-145-0410 about how program benefits are treated in the eligibility process is being amended to provide specifics regarding description of the Job Participation Incentive (JPI) program benefits and how those benefits will be treated when determining eligibility for other programs. This rule is also being adopted to make permanent the temporary rule adopted on October 1, 2011.

OAR 461-155-0030 about income and payment standards is being amended to change how the rule describes income limits for benefits in the JOBS and TANF programs. This amendment cross-references another rule that displays income limits representing 185 percent of the federal poverty level instead of duplicating the tables.

OAR 461-155-0290, 461-155-0291, and 461-155-0295 about the income standards for the QMB-BAS, QMB-DW, and QMB-SMB programs (Qualified Medicare Beneficiaries - Basic, Disabled Worker, Special Medicare Beneficiaries) are being amended to base their income standards on the 2012 federal poverty level. Currently, these rules are based on the 2011 federal poverty level.

OAR 461-155-0500 sets out the general eligibility requirements for specific special needs addressed in other rules (OAR 461-155-0510 to 461-155-0710). OAR 461-155-0500 is being amended to remove an obsolete reference to a repealed rule (OAR 461-155-0693), and to add a reference to a current special needs rule (OAR 461-155-0575). This amendment does not change any of the eligibility requirements for specific special needs.

OAR 461-165-0180 about eligibility of child care providers is being amended 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 15 calendar days from the date the department issues the listing form.

OAR 461-170-0011 is being amended to set out the reporting requirements for clients in the Job Participation Incentive (JPI) program, aligning these requirements with SNAP cases in SRS. This rule is also being adopted to make permanent the temporary rule adopted on October 1, 2011.

OAR 461-180-0130 is being amended to make permanent temporary changes initially adopted on October 1, 2011 that to limit the restoration of benefits period for the Job Participation Incentive (JPI) program to four months.

OAR 461-190-0211 about 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 make permanent temporary rule changes adopted November 1, 2011 that modify program restrictions implemented July 1, 2011 as a result of budget reductions from the 2011 legislative session. The changes include stating the policies that apply to the Pre-TANF program; allowing individuals exempt from JOBS participation because of a child under two to volunteer for the JOBS program as slots are available; extending the length of unpaid work-site agreements from 60 days to four months in order to increase the period of time individuals may participate in work experience and supported work (the extended period could increase the number of employers interested in offering work-site slots, expanding the variety of work experience opportunities available to participants); removing the monthly transportation support services limit of \$50 per month which will allow flexibility to address family needs within the monthly maximum support services limit; increasing the monthly maximum support services limit per family by \$50 which will offset the impact the removal of the \$50 monthly transportation limit will have against child care and other support services within the monthly maximum; allowing Department-approved support services exceptions to be implemented; and aligning changes to meet requirements in ORS 412.124 and clarifying that Post-TANF clients may have a case plan even if otherwise exempt from JOBS if they need additional participation hours to maintain eligibility.

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 March 1, 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 - Children, Adults, and Families Division, 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

# NOTICES OF PROPOSED RULEMAKING

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

**Rule Caption:** Developmental Disability Services Health Care Representative.

**Date:** 2-15-12      **Time:** 1:30 p.m.      **Location:** 500 Summer St. NE  
Rms. 137AB  
Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050, 410.070, & 430.640

**Other Auth.:** HB 2375 (2011), Ch. 149 (2011 OL) & HB 2652 (2011), Ch.194 (2011 OL)

**Stats. Implemented:** ORS 183.415, 427.005, 427.007, & 430.610–430.670

**Proposed Amendments:** 411-365-0100, 411-365-0120, 411-365-0140, 411-365-0160, 411-365-0180, 411-365-0200, 411-365-0220, 411-365-0240, 411-365-0260, 411-365-0280, 411-365-0300, 411-365-0320

**Last Date for Comment:** 2-21-12, 5 p.m.

**Summary:** To implement House Bill 2375 and House Bill 2652 from the 2011 legislative session, the Department of Human Services (Department) is proposing to amend the health care representative rules for individuals with developmental disabilities in OAR chapter 411, division 365 that prescribe standards by which a health care representative may be appointed for adult individuals with developmental disabilities who reside in many 24 hour residential services sites. Specifically, the proposed rules:

- Include the appointment of a health care representative for adult individuals residing in licensed adult foster homes for individuals with developmental disabilities under OAR chapter 411, division 360, previously only allowed through a variance process;
- Clearly define who may or may not be appointed as a health care representative;
- Further describe the expanded membership of an ISP team used to appoint a health care representative; and
- Clean up old, obsolete language to reflect current Department standards.

**Rules Coordinator:** Christina Hartman

**Address:** Department of Human Services, Seniors and People with Disabilities Division, 500 Summer St. NE, E-10, Salem, OR 97301  
**Telephone:** (503) 945-6398

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

**Rule Caption:** Clarifies processes for Self Alleged Father cases.

**Stat. Auth.:** ORS 180.345

**Stats. Implemented:** ORS 25.080

**Proposed Amendments:** 137-055-3080

**Last Date for Comment:** 3-2-12, 5 p.m.

**Summary:** OAR 137-055-3080 is being amended to clarify the process in good cause and Self Alleged Father cases.

**Rules Coordinator:** Carol Riches

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

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

.....  
**Department of Transportation**  
**Chapter 731**

**Rule Caption:** Rule for legislative intent regarding ODOT's relationship with the Department of Aviation.

**Stat. Auth.:** 184.616, 184.619, & 2011 OL Ch. 630

**Stats. Implemented:** 2011 OL Ch. 630

**Proposed Adoptions:** 731-003-0005

**Proposed Repeals:** 731-003-0005(T)

**Last Date for Comment:** 2-21-12, 4 p.m.

**Summary:** Enacted legislation stated that ODOT would need to adopt rules for the business processes identified. Adoption of rules for policies and procedures already in place in ODOT would be extensive for each business process related to financial transactions. ODOT uses a process where all divisions, which will include ODA, assist in development and review of these policies and procedures contained in the Financial Administration and Standards Manual (FASM).

ODOT needs a rule to provide Aviation and the public with guidance on what information Aviation must comply with. The rule also requires that ODOT's relationship with Aviation be guided by an intergovernmental agreement. This information is necessary for ODOT and Aviation to have a clear understanding of their working relationship and to enhance Aviation's ability to provide services to Oregonians. This rule replaces a temporary rule that became effective on September 30, 2011.

**Rules Coordinator:** Lauri Kunze

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

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

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

**Rule Caption:** Increases manufacturing fee collected for a pair of registration plates. Supersedes notice published November 2011.

**Stat. Auth.:** ORS 184.616, 184.619, 802.010 & 803.570

**Stats. Implemented:** ORS 803.570

**Proposed Amendments:** 735-032-0010

**Last Date for Comment:** 2-21-12, 4 p.m.

**Summary:** This Notice supersedes the same as published in the November 1, 2011 Oregon Bulletin. The rule amendment is needed to bring OAR 735-032-0010 into compliance with ORS 803.570. Failure to amend the rule will result in an inconsistency between the statute and rule and result in a loss of revenues collected for the State Highway Fund.

ORS 803.570 requires DMV to establish, by rule, the registration plate manufacturing cost for a registration plate or pair of registration plates. The cost established by DMV is calculated by taking the cost to manufacture a single plate or pair of plates, and rounding the amount(s) charged DMV customers to the next higher half-dollar. DMV has adopted OAR 735-032-0010 to set the registration plate manufacturing cost amounts. (Currently, the plate manufacturing cost amount is \$2 for a single plate and \$3 for a pair of plates.) The plate manufacturing cost amount is then added to the statutory fee set forth in ORS 803.570 which is \$10 for a single plate and \$20 for a pair of plates. The total, which is also established in OAR 735-032-0010, is the registration plate fee that must be paid when a registration plate or pair of registration plates is issued to a customer.

In January 2011, DMV renewed a 10-year agreement (Agreement) with Irwin-Hodson Group (Contractor) to manufacture registration plates for DMV. Under the Agreement, DMV's cost for a pair of plates increased from \$3 to \$3.43, which when rounded to the next higher half-dollar is \$3.50. DMV delayed immediately raising the registration plate fee due to a large inventory of plates on hand at the time of the Agreement.

In October 2011, DMV filed notice to amend OAR 735-032-0010 to increase from \$3 to \$3.50, the manufacturing cost amount charged for each pair of plates issued [emphasis]. The increase was scheduled to become effective January 1, 2012.

Shortly after the rule was noticed, but before the effective date, DMV entered into a 12-month price agreement with the Contractor. Under the new price agreement, DMV's cost for a pair of plates increased from \$3.43 to \$3.52, which when rounded to the nearest half-dollar is \$4. The increase is needed to cover an increase in the Contractor's cost to manufacture a pair of plates.

DMV is now re-noticing the proposed amendment of OAR 735-032-0010 to increase from \$3 to \$4, the manufacturing cost amount

# NOTICES OF PROPOSED RULEMAKING

charged for each pair of registration plates issued. As a result, the registration plate fee for a pair of plates will rise from \$23.00 to \$24.00. The proposed effective date of the rule and fee increase is April 1, 2012.

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

**Rules Coordinator:** Lauri Kunze

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

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

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

**Rule Caption:** Outdoor advertising sign application process.

**Stat. Auth.:** ORS 184.616, 184.619, 377.710, 377.715, 377.725, 377.729, 377.753, & 2011 OL Ch. 562

**Stats. Implemented:** ORS 377.710, 377.715, 377.720, 377.725, 377.750 & 377.767

**Proposed Adoptions:** 734-060-0007

**Proposed Amendments:** 734-060-0000, 734-060-0010, 734-065-0015, 734-065-0020, 734-065-0025

**Proposed Repeals:** 734-060-0000(T), 734-060-0007(T)

**Last Date for Comment:** 2-21-12, 4 p.m.

**Summary:** OAR 734-060-0000 outlines the process for filing an application for an outdoor advertising sign. OAR 734-060-0007 outlines the process for filing an application for a digital billboard, which is a subset of outdoor advertising signs specifically authorized in SB 639. Temporary rules were filed in July 2011 implementing SB 639. These amendments revise the language of the temporary rules and permanently implement SB 639 provisions.

OAR 734-060-0010 outlines the process for requesting an outdoor advertising sign permit for a sign on a transit shelter. OAR 734-065-0015, 734-065-0020 and 734-065-0025 outline the process for requesting an outdoor advertising sign permit for a sign on a transit shelter. These amendments allow an easier process for applicants to request the permit and change the size to the industry standard for such signs.

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

**Rules Coordinator:** Lauri Kunze

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

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

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

**Rule Caption:** Update statutory reference and add description to similar violations.

**Stat. Auth.:** ORS 184.616, 184.619, 823.011, 825.232

**Stats. Implemented:** ORS 825.250, 825.410, 825.950, 825.955

**Proposed Amendments:** 740-300-0060

**Last Date for Comment:** 2-21-12, 4 p.m.

**Summary:** These rules describe the general penalties for violations of statutes and rules related to motor carrier safety and describe the progressive levels of penalties. The level of penalties assessed is based on the motor carrier's compliance history. A motor carrier that repeats similar violations is subject to a suspension of operating authority, in addition to any authorized monetary penalties. The current rule describes "similar violations;" however the list is not complete. The proposed amendment adds violations of drug and alcohol testing or use to the classifications for which similar violations are determined. Currently, a violation related to drug and alcohol testing or use is described as a similar violation under the description of: "Records and reports not included in subsections (a), (b) or (c) of this

section." In order to clarify the rule, the amendment proposes that drug and alcohol testing or use be given its own "similar violation" description. In addition, the proposed amendment updates a statutory change made to ORS 825.955.

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

**Rules Coordinator:** Lauri Kunze

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

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

.....  
**Department of Veterans' Affairs  
Chapter 274**

**Rule Caption:** Conservatorship Fees and Services.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-15-12	1:30-3 p.m.	Veterans' Bldg. Auditorium 700 Summer St. NE Salem, OR

**Hearing Officer:** Bruce Craig

**Stat. Auth.:** ORS 113.085, 406.030, 406.040, 406.050(5), (6) & 406.100

**Other Auth.:** 38 USCS 5502 and CFR Ch. 61 Sec. 5506

**Stats. Implemented:** ORS 406.050, 406.100 & 406.120

**Proposed Adoptions:** 274-015-0020

**Proposed Amendments:** 274-015-0010

**Last Date for Comment:** 2-15-12, 5 p.m.

**Summary:** The amendment to 274-015-0010 is proposed in order to relieve the agency's Loan Program from subsidizing the Conservatorship Program. ODVA is proposing to raise the fee amounts in three areas as follows: Property Management, Appraisal, and Inspection.

The adoption of 274-015-0020 provides for the agency to act as Representative Payee. The fee rate for this service is the amount which is federally allowed.

**Rules Coordinator:** Bruce Craig

**Address:** Department of Veterans' Affairs, 700 Summer St. NE, Salem, OR 97301-1285

**Telephone:** (503) 373-2327

.....  
**Employment Department  
Chapter 471**

**Rule Caption:** Updates due to legislative changes; clarifies eligibility for individuals in training.

**Stat. Auth.:** ORS 657.610

**Stats. Implemented:** ORS 657

**Proposed Amendments:** 471-030-0080

**Last Date for Comment:** 2-24-12, Close of Business

**Summary:** The proposed amendments to OAR 471-030-0080 make the following changes:

- Revise "Professional Technical Training" to "Career and Technical Training" as a result of changes in HB 2109, which passed in the 2009 Legislative Session.

- Defines when the Director may waive the requirement that an individual be a full time student to be approved for training. This change removes the reference to ORS 657.337, which was repealed by HB 2203 in the 2009 Legislative Session.

- Clarify eligibility requirements for unemployment benefits to individuals who are in approved training. Individuals who do not attend their approved training during the week are required to meet regular unemployment insurance eligibility requirements for those weeks.

**Rules Coordinator:** Courtney Brooks

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

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

# NOTICES OF PROPOSED RULEMAKING

## Land Conservation and Development Department Chapter 660

**Rule Caption:** Amend rules governing Oregon's implementation of Federal Coastal Zone Management Act consistency requirements.

**Date:** 3-15-12  
**Time:** 9 a.m.  
**Location:** Newport City Hall  
Council Chambers  
169 SW Coast Hwy.  
Newport, OR 97365

**Hearing Officer:** LCDC

**Stat. Auth.:** ORS 197.040 & 183.332

**Other Auth.:** 15 CFR Part 930

**Stats. Implemented:** ORS 196.435

**Proposed Amendments:** 660-035-0000, 660-035-0010, 660-035-0020, 660-035-0030, 660-035-0040, 660-035-0050, 660-035-0060, 660-035-0070, 660-035-0080

**Last Date for Comment:** 3-15-12, 9 a.m.

**Summary:** The federal Coastal Zone Management Act of 1972, as amended, contains a "federal consistency" provision that allows states with an approved coastal management program to review federal activities affecting coastal uses or resources. The Department of Land Conservation and Development (department) is Oregon's designated coastal zone management agency, and administers Oregon's federal consistency program. The department administers federal consistency reviews according to the federal requirements outlined in 15 CFR Part 930, and the corollary state rules in OAR chapter 660, division 35. The proposed amendments update division 35 to reflect changes in federal requirements since the rule was last updated, and to clarify that the department will follow the requirements of 15 CFR Part 930 when performing consistency reviews. Housekeeping and technical corrections to the rules may be proposed to ensure rule consistency.

**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

## Oregon Department of Education Chapter 581

**Rule Caption:** Student physical restraint and seclusion requirements for public education programs.

**Stat. Auth.:** ORS 326.051

**Stats. Implemented:** 2011 OL Ch. 665 (Enrolled HB 2939)

**Proposed Repeals:** 581-021-0062

**Last Date for Comment:** 2-22-12, 5 p.m.

**Summary:** HB 2939 was enacted in 2011. To implement this legislation the state board drafted 6 new rules to replace this existing rule which is being repealed. These new rules relate to physical restraint and seclusion in public education programs and implement HB 2939 enacted by the 2011

Legislature. The rules:

- (1) Specify when restraint methods may be used and what types of restraint may be used on students.
- (2) Procedures regarding restraint and seclusion.
- (3) Reporting requirements for public education programs.
- (4) Approval of training programs on restraint and seclusion.
- (5) Use of training programs by public education programs.

**Rules Coordinator:** Cindy Hunt

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

**Telephone:** (503) 947-5651

## Oregon Health Authority, Division of Medical Assistance Programs Chapter 410

**Rule Caption:** FCHP Non-contracted Hospital reimbursement rate methodology change.

**Date:** 3-19-12  
**Time:** 10:30 a.m.  
**Location:** DHS Bldg., HR 137C  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 413.042

**Other Auth.:** SB 101 (2011 Oregon Legislative Assembly)

**Stats. Implemented:** ORS 414.025, 414.065, 414.705 & 414.743

**Proposed Amendments:** 410-120-1295

**Last Date for Comment:** 3-20-12, Close of Business

**Summary:** Having Temporarily amended 410-120-1295 effective October 1, 2011, DMAP will permanently amend this rule, to allow providers to be reimbursed at the correct rate for services rendered on or after Oct. 1. The formula established by the reimbursement methodology in ORS 414.743 gives correct and appropriate information to hospitals and managed care organizations when applying the formula to claims for reimbursement for services rendered to medical assistance clients. The statute is based on the budget period that coordinates with the managed care and Division contracts.

**Rules Coordinator:** Darlene Nelson

**Address:** Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301

**Telephone:** (503) 945-6927

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**Rule Caption:** Hospital Provider Tax Rate Decrease.

**Stat. Auth.:** ORS 413.042

**Stats. Implemented:** 2009 OL Ch. 867 §17, 2007 OL Ch. 780 § 1 & 2003 OL Ch. 736 § 2 & 3

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

**Proposed Repeals:** 410-050-0861(T)

**Last Date for Comment:** 2-22-12, 5 p.m.

**Summary:** This proposed hospital provider tax rule decreases the hospital provider tax rate from 5.08% to 4.32% effective January 1, 2012. Upon adoption of this rule, the temporary rule, effective January 1, 2012, will be repealed.

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

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

**Rules Coordinator:** Darlene Nelson

**Address:** Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301

**Telephone:** (503) 945-6927

\*\*\*\*\*

**Rule Caption:** Amendment of Oregon Prescription Drug Program rules.

**Stat. Auth.:** ORS 413.042

**Stats. Implemented:** ORS 414.312-414.320

**Proposed Amendments:** 410-121-2000, 410-121-2005, 410-121-2010, 410-121-2020, 410-121-2030, 410-121-2050, 410-121-0265

**Last Date for Comment:** 2-24-12, 5 p.m.

**Summary:** The Oregon Prescription Drug Program is amending these rules to update definitions, add a definition for mail order pharmacy, update terminology and make grammatical corrections.

Please send comments or questions to Evonne Alderete 500 Summer St. NE, Salem, Oregon 97301 (503-932-9663)

**Rules Coordinator:** Darlene Nelson

**Address:** Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301

**Telephone:** (503) 945-6927

\*\*\*\*\*

## Oregon Health Authority, Office for Oregon Health Policy and Research Chapter 409

**Rule Caption:** Amendments to Patient-Centered Primary Care Home Program Rules.

# NOTICES OF PROPOSED RULEMAKING

**Date:** 2-15-12  
**Time:** 3 p.m.  
**Location:** 1225 Ferry St SE  
Mt. Neahkanie Rm. (1st floor)  
Salem, OR

**Hearing Officer:** Zarie Haverkate  
**Stat. Auth.:** ORS 413.042, 414.655 & 442.210  
**Other Auth.:** 2011 OL Ch. 602 (HB 3650)  
**Stats. Implemented:** ORS 413.042, 414.655 & 442.210  
**Proposed Adoptions:** 409-055-0090  
**Proposed Amendments:** 409-055-0000, 409-055-0010, 409-055-0020, 409-055-0030, 409-055-0040, 409-055-0050, 409-055-0060, 409-055-0070, & 409-055-0080  
**Proposed Repeals:** 409-055-0000(T), 409-055-0010(T), 409-055-0020(T), 409-055-0030(T), 409-055-0040(T), 409-055-0050(T), 409-055-0060(T), 409-055-0070(T), 409-055-0080(T)  
**Last Date for Comment:** 2-17-12, 5 p.m.

**Summary:** The Oregon Health Authority (OHA), Office for Oregon Health Policy and Research (OHPR) is adopting administrative rules for the Patient-Centered Primary Care Home (PCPCH) Program. The rules implement PCPCH standards, reporting, and recognition process and other applicable mandates of ORS 442.210, enacted by the 74th Legislative Assembly and ORS 414.655, enacted by the 75th Legislative Assembly. These proposed rules are intended to fulfill the mandates by prescribing the standards used for practices to qualify as PCPCHs, the reporting requirements for PCPCHs, and the process used to recognize PCPCHs.

**Rules Coordinator:** Zarie Haverkate  
**Address:** Oregon Health Authority, Office for Oregon Health Policy and Research, 1225 Ferry St. SE, Salem, OR 97301  
**Telephone:** (503) 373-1574

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**Rule Caption:** Amendments to Physician Credentialing and Recredentialing rules.  
**Stat. Auth.:** ORS 442.807  
**Stats. Implemented:** ORS 442.800–442.807  
**Proposed Amendments:** 409-045-0000  
**Proposed Repeals:** 409-045-0000(T)  
**Last Date for Comment:** 4-30-12, 5 p.m.

**Summary:** The Oregon Health Authority, Office for Oregon Health Policy and Research is implementing amendments to the Physician Credentialing and Recredentialing forms for 2012 as approved by the Advisory Committee on Physician Credentialing Information on September 28, 2011.

These proposed rules are available on the OHPR Website: <http://www.oregon.gov/OHA/OHPR/rulemaking/index.shtml>

For hardcopy requests, call: (503) 373-1574.

**Rules Coordinator:** Zarie Haverkate  
**Address:** Oregon Health Authority, Office for Oregon Health Policy and Research, 1225 Ferry St. SE, Salem, OR 97301  
**Telephone:** (503) 373-1574

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## Oregon Health Authority, Public Health Division Chapter 333

**Rule Caption:** Implements changes to temporary restaurant licensing standards due to passage of House Bill 2868 (2011).

**Date:** 2-16-12  
**Time:** 2:30 p.m.  
**Location:** Portland State Office Bldg.  
800 NE Oregon St., Rm. 1B  
Portland, OR 97232

**Hearing Officer:** Jana Fussell  
**Stat. Auth.:** ORS 446.425, 448.100, 624.041 & 624.510  
**Stats. Implemented:** ORS 446.425, 448.100, 624.041, 624.510 & HB 2868 (OL 2011 Ch. 664)  
**Proposed Adoptions:** 333-157-0073, 333-157-0077  
**Proposed Amendments:** 333-012-0053, 333-012-0055  
**Last Date for Comment:** 2-22-12, 5 p.m.

**Summary:** The Oregon Health Authority, Public Health Division is proposing to permanently adopt and amend administrative rules in chapter 333, divisions 12 and 157. The proposed rules implement the provisions of House Bill 2868, passed during the 2011 Oregon Legislative Session, which changes the licensing model for temporary restaurant facilities. House Bill 2868 was a collaborative effort of the temporary restaurant industry and state and local regulatory officials to improve the licensing model by reducing the costs of operating temporary restaurants by industry but still allowing regulatory officials to assure adequate public health protection. House Bill 2868 created new licensing categories that extend the period of time that licenses are valid and allows local health departments to conduct a comprehensive review of the operation's food safety practices.

**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:** Registry of emergency health care services volunteers to include previously licensed health professionals.

**Date:** 2-16-12  
**Time:** 1:15 p.m.  
**Location:** Portland State Office Bldg.  
800 NE Oregon St., Rm. 1C  
Portland, OR 97232

**Hearing Officer:** Jana Fussell  
**Stat. Auth.:** ORS 401.651–401.670 & 2011 OL Ch. 89  
**Stats. Implemented:** ORS 401.651–401.670 & 2011 OL Ch. 89  
**Proposed Adoptions:** 333-003-0117, 333-003-0119  
**Proposed Amendments:** 333-003-0105, 333-003-0110, 333-003-0115, 333-003-0118, 333-003-0125, 333-003-0140, 333-003-0210  
**Last Date for Comment:** 2-22-12, 5 p.m.

**Summary:** The Oregon Health Authority, Public Health Division is proposing to permanently adopt and amend Oregon Administrative Rules relating to the registration and activation of emergency health care services volunteers in response to the passage of SB 563 during the 2011 legislative session.

These rules address the registration, training, background check process, activation and extended liability protection and workers' compensation protection to qualified emergency service volunteers. The rules also help to build more programmatic structure and streamline processes to strengthen the registration process of emergency health care services volunteers to include previously licensed health professionals.

**Rules Coordinator:** Brittany Sande  
**Address:** Oregon Health Authority, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232  
**Telephone:** (971) 673-1291

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## Oregon Health Insurance Exchange Chapter 945

**Rule Caption:** To adopt Employee Criminal Records Check and Fitness Determination for ORHIX.

**Stat. Auth.:** SB 99 (2011)  
**Stats. Implemented:**  
**Proposed Adoptions:** 945-010-0000, 945-010-0005, 945-010-0010, 945-010-0020, 945-010-0030, 945-010-0040, 945-010-0050, 945-010-0060, 945-010-0070, 945-010-0080, 945-010-0090, 945-010-0090, 945-010-0100  
**Last Date for Comment:** 3-1-12, Close of Business

**Summary:** The Oregon Health Insurance Exchange Corporation is temporarily adopting new rules to address the need for criminal background and fitness determination checks for persons employed or applying for employment to the corporation. This rule is developed in compliance with statutory requirement included in SB 99 (2011) Section 20.

**Rules Coordinator:** Claudia Grimm



# NOTICES OF PROPOSED RULEMAKING

**Address:** Oregon Health Insurance Exchange, 3414 Cherry Ave. NE, Suite 190, Salem, OR 97303  
**Telephone:** (503) 373-9404

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**Rule Caption:** To adopt Model Rules of Procedure for ORHIX.  
**Stat. Auth.:** SB 99 (2011)  
**Stats. Implemented:**  
**Proposed Adoptions:** 945-001-0000, 945-001-0005, 945-001-0010  
**Last Date for Comment:** 3-1-12, Close of Business  
**Summary:** The Oregon Health Insurance Exchange Corporation is temporarily adopting new rules to address the need for model rules for procedure. This rule is developed in compliance with statutory requirement included in SB 99 (2011) Section 3 (15).  
**Rules Coordinator:** Claudia Grimm  
**Address:** Oregon Health Insurance Exchange, 3414 Cherry Ave. NE, Suite 190, Salem, OR 97303  
**Telephone:** (503) 373-9404

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## Oregon Housing and Community Services Department Chapter 813

**Rule Caption:** Amends rules to reflect program requirements, industry standards and ensures consistency with statutory requirements.  
**Date:** 3-6-12      **Time:** 10 a.m.      **Location:** 725 Summer St. NE, Rm. 124 Salem, OR

**Hearing Officer:** Roberto Franco  
**Stat. Auth.:** ORS 456.555  
**Stats. Implemented:** ORS 456.620, 456.625 & 456.655  
**Proposed Adoptions:** 813-044-0055  
**Proposed Amendments:** 813-044-0000, 813-044-0030, 813-044-0040, 813-044-0050  
**Proposed Repeals:** 813-044-0010, 813-044-0020, 813-044-0060, 813-044-0000(T), 813-044-0030(T), 813-044-0040(T), 813-044-0050(T), 813-044-0055(T)  
**Last Date for Comment:** 3-15-12, 5 p.m.  
**Summary:** These rules have been reviewed for statutory compliance and are intended to reflect the operation of the program. In many cases, rules have been renumbered for ease of understanding and to ensure clarity.  
813-044-0000 Clarifies the purpose and objectives of the rules.  
813-044-0010 The definitions for the rules will be centralized in the department's general and procedural rules. This rule has been repealed.  
813-044-0020 This rule is repealed as this information is procedural and is contained within the Program's Procedural Guide.  
813-044-0030 Amendments provide clarification on how funds in the program will be distributed.  
813-044-0040 Amendments provide clarification on the application procedure and requirements for an organization applying for a grant from the program. Language has been included to reflect that supplemental application charges shall be paid by an organization that requests additional resources.  
813-044-0050 Provides clarification regarding the department's consideration of individual proposals and the use of competitive funds.  
813-044-0055 This new rule sets out the requirements for an organization that receives a grant under the program.  
813-044-0060 These rules will be repealed. The rules clarify when a loan is eligible for purchase under the program.  
**Rules Coordinator:** Sandy McDonnell  
**Address:** Oregon Housing and Community Services Department, 725 Summer St. NE, Suite B, Salem, OR 97301  
**Telephone:** (503) 986-2012

**Rule Caption:** Amends rules to reflect program requirements, industry standards and ensures consistency with statutory requirements.  
**Date:** 3-6-12      **Time:** 10 a.m.      **Location:** 725 Summer St. NE, Rm. 124 Salem OR 97301

**Hearing Officer:** Roberto Franco  
**Stat. Auth.:** ORS 456.555  
**Stats. Implemented:** ORS 456.620, 456.635 & 456.650  
**Proposed Amendments:** 813-020-0005, 813-020-0020, 813-020-0025, 813-020-0035, 813-020-0045, 813-020-0060, 813-020-0070  
**Proposed Repeals:** 813-020-0010, 813-020-0015, 813-020-0016, 813-020-0033, 813-020-0005(T), 813-020-0020(T), 813-020-0025(T), 813-020-0035(T), 813-020-0045(T), 813-020-0060(T), 813-020-0070(T)  
**Proposed Ren. & Amends:** 813-020-0017 to 813-020-0021, 813-020-0030 to 813-020-0022, 813-020-0040 to 813-020-0046, 813-020-0041 to 813-020-0047, 813-020-0042 to 813-020-0048, 813-020-0032 to 813-020-0049, 813-020-0024 to 813-020-0054, 813-020-0050 to 813-020-0056, 813-020-0051 to 813-020-0057  
**Last Date for Comment:** 3-15-12, Close of Business  
**Summary:** These rules have been reviewed for statutory compliance and are intended to reflect the operation of the program. In several cases, rules have been renumbered for ease and clarity of the rules.  
813-020-0005 Clarifies the purpose and objectives of the rules.  
813-020-0010 The definitions for the rules will be centralized in the department's general ad procedural rules. This rule has been repealed.  
813-020-0015 This rule is repealed as this information is procedural and is contained within the Program's Procedural Guide.  
813-020-0017 (Renumbered to 813-020-0021) - Amendments clarify the purpose and objective of the rules.  
813-020-0020 Amendments clarify the purpose and objective of the rules. Repealed language is procedural and is contained within the Program's Procedural Guide.  
813-020-0024 (Renumbered to 813-020-0054) Amendments clarify when, and the requirements for, a borrower to transfer ownership in a property financed by program funds  
813-020-0025 Clarifies when a loan is eligible for purchase under the program.  
813-020-0030 (Renumbered to 813-020-0022) - Amendments are intended for clarification of the program requirements.  
813-020-0032 (Renumbered to 813-020-0040) Provides clarification for the permission use and requirements for property financed by the program.  
813-020-0033 This rule will be repealed. The information is procedural and is contained within the Program's Procedural  
813-020-0035 Amendments are intended to clarify the eligibility criteria for residences to participate in the program.  
813-020-0040 (Renumbered to 813-020-0046) Amendments include an adjustment of the loan amount requiring mortgage insurance.  
813-020-0041 (Renumbered for 813-020-0047) Clarifies the requirement for title insurance for loans under the program.  
813-020-0042 (Renumbered to 813-020-0048) Clarifies the requirement for hazard insurance for loans under the program.  
813-020-0045 Amendments are intended to clarify lender action on a loan application for the program.  
813-020-0050 (Renumbered to 813-020-0056) Amendments to these rules clarify approved servicers that may participate under the program.  
813-020-0051 (Renumbered to 813-020-0057) Amendments are generally administrative in nature and are intended for clarification only.  
813-020-0060 Amendments serve to provide clarification and reference to specific regulations that are applicable for qualifications as a 'Special Purpose Credit Program.'

# NOTICES OF PROPOSED RULEMAKING

813-020-0070 Amendments to this rule are intended to clarify any federal eligibility requirements pertinent to participation in the program.

**Rules Coordinator:** Sandy McDonnell

**Address:** Oregon Housing and Community Services Department, 725 Summer St. NE, Suite B, Salem, OR 97301

**Telephone:** (503) 986-2012

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

**Rule Caption:** Amendments clarifying where minors are allowed on a licensed premises and a minor employee's duties.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-23-12	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Jennifer Huntsman

**Stat. Auth.:** ORS 471, 471.030, 471.040, 471.430, 471.482 & 471.730

**Stats. Implemented:** ORS 471.130, 471.410, 471.430, 471.480 & 471.482

**Proposed Amendments:** 845-006-0335

**Last Date for Comment:** 3-8-12, 5 p.m.

**Summary:** This rule describes the requirements and responsibilities of licensees and permittees to prevent minors from purchasing and consuming alcohol on their premises or from being in an area that is prohibited to minors. In section (6) regarding minor entertainers, staff recommends minor amendments to clarify our expectation that if a minor entertainer is not performing and a Commission approved area has not been designated on the licensed premises (on the floor plan) where the minor stays when not performing, then the minor entertainer must be off of the licenses premises. Our regulatory staff is seeing more licensees choosing not to designate an approved area on their licensed premises, but rather utilizing options such as trailers in parking lots, and our public safety interest is to clearly know where minors will be so that we can help ensure that no minors are in possession of alcoholic beverages. Staff also recommends amending section (4) regarding minor employees and service permittees in order to reflect recent minor posting changes made in the Minor Posting rule. A complete rewrite and reorganization of the language regarding the allowance of these minors in various posted areas, as well as what duties they are allowed to perform, is proposed to improve clarity. And finally, staff recommends deletion of language in sections (3)(a) and (2)(b)) to clarify that this rule section should only be used to charge allowing a minor to drink. Selling or serving minors would instead be charged under the applicable statute (ORS 471.410(2)), or as we typically do instead, charged under section (1) of this rule for failure to verify age. The statute has a knowingly or "with knowledge" element required for selling and serving to a minor, but there is no such limitation for allowing a minor to drink.

**Rules Coordinator:** Jennifer Huntsman

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

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

.....  
**Rule Caption:** Add additional same-day delivery option to accommodate alcohol deliveries with evening meal orders.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-22-12	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Jennifer Huntsman

**Stat. Auth.:** ORS 471, 471.030, 471.040, 471.186 & 471.730(1) & (5)

**Stats. Implemented:** ORS 471.186, 471.282, 471.305 & 473

**Proposed Amendments:** 845-006-0392, 845-006-0396

**Last Date for Comment:** 3-7-12, 5 p.m.

**Summary:** The Commission accepted a petition from Nathaniel Paschal (Restaurant Retrievers LLC) requesting amendment of OAR 845-006-0396 which describes the requirements for same-day deliv-

ery of malt beverages to a resident of Oregon. Because it contains parallel language, rulemaking was also initiated for OAR 845-006-0392 which describes same-day delivery requirements for wine or cider. The proposed amendments would allow the delivery of malt beverages and wine with evening meal orders from restaurants with an Off-Premises license privilege. The proposed amendments would allow the additional option of delivering up to 1.25 gallons (two 6-packs) of malt beverage and 2 (standard) bottles of wine to an Oregon residence per day, to be delivered until 9:00 p.m., and with an order placement deadline of 7:00 p.m. The proposed amendments also include in both OAR 845-006-0392 (8) and OAR 845-006-0396 (5) leaving both (b) & (c) options, which include unlimited amounts of alcohol being delivered, the same, and amending (a) & (d), that contain specific quantity limits, so that daily delivery amounts are per "residence".

**Rules Coordinator:** Jennifer Huntsman

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

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

.....  
**Oregon Public Employees Retirement System**  
**Chapter 459**

**Rule Caption:** Address allocation of administrative expenses based on Court of Appeals ruling in Murray contested case.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-28-12	3 p.m.	PERS Boardroom 11410 SW 68th Pkwy. Tigard, OR 97223

**Hearing Officer:** Daniel Rivas

**Stat. Auth.:** ORS 238.260, 238.650 & 238A.450

**Stats. Implemented:** ORS 238 & 238A.350

**Proposed Amendments:** 459-007-0005

**Last Date for Comment:** 3-1-12, Close of Business

**Summary:** In a recent contested case, Murray v. Public Employees Retirement Bd., 235 Or App 262, 230 P3d 993 (2010), the Court of Appeals held that the PERS Board "erred in concluding that the Variable Account was required in 2001 and 2002 to pay a pro rata share of PERS administrative expenses from principal rather than from interest."

The Court of Appeals decision requires the Board to change the way administrative expenses of Variable are paid in years in which the earnings in that account are insufficient to cover its expenses. To the extent the earnings are sufficient to cover all or a portion of the expenses, the expenses will continue to be charged to each participant on a pro rata basis. Following the Court of Appeals decision, any shortfall must be paid from a different source. That source does not need to be determined until the next year in which Variable earnings are less than the expenses of that account.

The amendments to OAR 459-007-0005, Annual Earnings Crediting, reflect the changes to the allocation of administrative expenses resulting from the Murray case.

**Rules Coordinator:** Daniel Rivas

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

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

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**Rule Caption:** Minor updates to definitions in disability rules.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-28-12	3 p.m.	PERS Boardroom 11410 SW 68th Pkwy. Tigard, OR 97223

**Hearing Officer:** Daniel Rivas

**Stat. Auth.:** ORS 238.650 & 238A.450

**Stats. Implemented:** ORS 238.320-238.345, 238A.235

**Proposed Amendments:** 459-015-0020, 459-076-0020

**Last Date for Comment:** 3-1-12, Close of Business

**Summary:** This update to OARs 459-015-0020 and 459-076-0020 is a housekeeping edit to correctly use the term "date of separation"

## NOTICES OF PROPOSED RULEMAKING

for when PERS may begin paying disability benefits to a disability recipient. The definitions "date of termination" and "date of separation" were amended during the recent disability rulemaking and this change to the rules was overlooked.

**Rules Coordinator:** Daniel Rivas

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

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

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**Rule Caption:** Clarify requirements included in petitions for reconsideration.

Date:	Time:	Location:
2-28-12	3 p.m.	PERS Boardroom 11410 SW 68th Pkwy. Tigard, OR 97223

**Hearing Officer:** Daniel Rivas

**Stat. Auth.:** ORS 238.650

**Stats. Implemented:** ORS 183.413–183.470 & 183.482

**Proposed Amendments:** 459-001-0025, 459-001-0040

**Last Date for Comment:** 3-1-12, Close of Business

**Summary:** In 2008, PERS adopted changes to OAR 459-001-0040 relating to reviews of petitions for reconsideration of a final order in a contested case. Those modifications conformed to the Department of Justice (DOJ) Model Rules of Procedure. During that rulemaking, section (2) of 459-001-0040 was deleted, which clarified specific information to be included in a petition for reconsideration. That rule-making, however, did not modify OAR 459-001-0025, which references the now-deleted section (2) of OAR 459-001-0040.

These proposed modifications delete the outdated citation. Instead, adopting these modifications would delegate from the PERS Board to the Director the authority to deny any petition that does not set forth the specific grounds for reconsideration. This is an admittedly subjective standard and, in practice, staff has broadly accepted petitions for reconsideration even if they do not fit within the criteria referenced. Staff would appreciate any public comment about the appropriate standard by which the function of denying the petition should be delegated.

**Rules Coordinator:** Daniel Rivas

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

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

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### Oregon State Lottery Chapter 177

**Rule Caption:** Increases amount available from set prize reserve amount from \$25,000,000 to \$40,000,000.

Date:	Time:	Location:
3-9-12	2–2:30 p.m.	Oregon Lottery 500 Airport Rd. SE Salem, OR

**Hearing Officer:** Larry Trott

**Stat. Auth.:** ORS 461

**Other Auth.:** OR Const. Art. XV, Sec. 4(4)

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

**Proposed Amendments:** 177-085-0025, 177-085-0065

**Last Date for Comment:** 3-9-12, 2:30 p.m.

**Summary:** The Oregon Lottery has filed a Notice of Permanent Rulemaking Hearing and has filed temporary rules to amend the above referenced administrative rules for the Powerball® game.

The proposed rulemaking and the temporary rules, increases the set prize reserve account from \$25,000,000 to \$40,000,000. The set prize reserve account is only used when the total of the set prizes awarded in a drawing exceeds the percentage of the prize pool allocated to the set prizes, and any amount allocated to the set prizes that was carried forward from previous draws.

These changes are necessary to implement changes to the Powerball® game rules made by the national organization that administers the multi-state Powerball® game, and will be effective January 15, 2012.

**Rules Coordinator:** Mark W. Hohlt

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

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

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**Rule Caption:** Clarifies amount of Match 5+0 prize with Megaplier® option and conduct of Megaplier® drawing.

Date:	Time:	Location:
4-16-12	2–2:30 p.m.	Oregon Lottery 500 Airport Rd. SE Salem, OR

**Hearing Officer:** Larry Trott

**Stat. Auth.:** ORS 461

**Other Auth.:** OR CONstit. Art. XV, Sec. 4(4)

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

**Proposed Amendments:** 177-098-0110

**Proposed Repeals:** 177-098-0110(T)

**Last Date for Comment:** 4-16-12, 2:30 p.m.

**Summary:** The Oregon Lottery® has adopted temporary rules, and has initiated permanent rulemaking to clarify when the Match 5+0 prize option with the Megaplier® option, which normally pays \$1 million, will be reduced by the same percentage as the Match 5+0 \$250,000 prize is reduced.

The rulemaking also clarifies that in the event the multiplier drawing does not occur prior to the Mega Millions® drawing, the multiplier number will be a 4.

These changes are necessary to implement changes to the Mega Millions® game rules made by the national organization that administers the multi-state Mega Millions® game, and are effective immediately. When the permanent rule is adopted, the temporary rule will be repealed.

**Rules Coordinator:** Mark W. Hohlt

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

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

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### Oregon State Marine Board Chapter 250

**Rule Caption:** Clarification to rule language for BUII Qualification and Training.

**Stat. Auth.:** ORS 830.110 & 830.505–830.550

**Stats. Implemented:** ORS 830.535

**Proposed Amendments:** 250-010-0440

**Proposed Repeals:** 250-010-0440(T)

**Last Date for Comment:** 2-29-12, 5 p.m.

**Summary:** This action will remove the reference of the Director's authority in the Qualification and Training of Breath Test Equipment Operators rule. The authority remains with the Board.

**Rules Coordinator:** June LeTarte

**Address:** Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309-5065

**Telephone:** (503) 378-2617

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### Parks and Recreation Department Chapter 736

**Rule Caption:** Amend rules governing non-traditional park use and special use permits.

Date:	Time:	Location:
2-21-12	6 p.m.	Champoeg State Heritage Area Visitor Center 8239 Champoeg Rd. NE Aurora, OR
2-22-12	6 p.m.	City Hall City Council Chambers 801 SW Hwy. 101 Lincoln City, OR
2-23-12	6 p.m.	Bend Park & Recreation Office Riverbend Community Rm. 799 SW Columbia St. Bend, OR

# NOTICES OF PROPOSED RULEMAKING

**Hearing Officer:** Richard Walkoski, Chris Havel  
**Stat. Auth.:** ORS 390.124  
**Stats. Implemented:** ORS 390.111, 390.121 & 390.124  
**Proposed Adoptions:** 736-016-0012  
**Proposed Amendments:** 736-016-0005, 736-016-0010, 736-016-0015, 736-016-0020, 736-016-0023, 736-016-0025  
**Last Date for Comment:** 2-29-12, 4 p.m.

**Summary:** Amends rules governing non-traditional use of state parks and ocean shores: adds a "definitions" section to the rule; clarifies when a special use permit is required; updates criteria that are used to evaluate applications; updates requirements placed on applicants; clarifies application procedure; aligns fees with legislatively approved fee structure. The rules have been revised after an initial public comment period in October 2011 which resulted in substantial changes. A rules advisory committee advised the department on the revisions. Public comments and additional public hearings have been scheduled.

Persons attending these hearings must sign up to make oral comments within 30 minutes of the meeting start time. Written comments must be received by February 29, 2012.

**Rules Coordinator:** Vanessa DeMoe  
**Address:** Parks and Recreation Department, 725 Summer St. NE, Suite C, Salem, OR 97301  
**Telephone:** (503) 986-0719

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

**Rule Caption:** In the Matter of Adopting the 2012 Edition of the National Electrical Safety Code.

**Stat. Auth.:** ORS CH. 183, 756, 757 & 759

**Stats. Implemented:** ORS 757.035

**Proposed Amendments:** 860-024-0010

**Last Date for Comment:** 2-22-12, 5 p.m.

**Summary:** The proposed amendments to this rule adopt the latest edition of the National Electrical Safety Code (NESC) to stay up to date with current national standards and practices used in the construction, operation, and maintenance of electric supply lines and communications lines. Staying current with the national standards and practices is especially critical for electric and communications utilities and operators as well as contractors and consultants who work in more than one state. The American National Standards Institute approved the 2012 edition of the NESC on June 3, 2011. This 2012 edition becomes the new American National Standard across the nation for the construction, operation, and maintenance of electric supply lines and communication lines. Per ORS 183.332, state agencies should seek to retain and promote federal requirements and equivalent standards.

The Commission encourages participants to file written comments as early as practicable in the proceedings so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 563 on comments and file them by e-mail to the Commission's Filing Center at [PUC.FilingCenter@apps.puc.state.or.us/edockets/center.htm](mailto:PUC.FilingCenter@apps.puc.state.or.us/edockets/center.htm). Interested persons may review all filings online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=17259>

**Rules Coordinator:** Diane Davis

**Address:** Public Utility Commission of Oregon, PO Box 2148, Salem, OR 97308  
**Telephone:** (503) 378-4372

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**Secretary of State,**  
**Corporation Division**  
**Chapter 160**

**Rule Caption:** Adjusts the dollar limit on joint and several liability of professional corporations due to inflation.

**Stat. Auth.:** ORS 58.187

**Stats. Implemented:** ORS 58.185 & 58.187

**Proposed Amendments:** 160-010-0400

**Last Date for Comment:** 2-21-12, Close of Business

**Summary:** As directed by ORS 58.187, this rule adjusts the dollar amount on joint and several liability of professional corporations due to inflation.

**Rules Coordinator:** Ginger Spotts

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

**Telephone:** (503) 986-2333

.....  
**Rule Caption:** Changes to Farm Product and Agricultural Lien forms.

**Stat. Auth.:** ORS 80.106, 80.115 & 87.246.

**Stats. Implemented:** ORS 80.115 & 87.242

**Proposed Adoptions:** 160-050-0115

**Proposed Amendments:** 160-050-0200, 160-050-0210

**Last Date for Comment:** 2-21-12, Close of Business

**Summary:** These rules state the content required for EFS filings and includes a statement of lien attestation.

**Rules Coordinator:** Ginger Spotts

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

**Telephone:** (503) 986-2333

.....  
**Rule Caption:** ABN amendment signature requirement, waiver of reinstatement limit for entities, and jurisdiction requirement for Conversions.

**Stat. Auth.:** ORS 648.125 & 56.022

**Stats. Implemented:** ORS 648.025, 60.654, 63.654, 65.654, 67.665, 70.440, 128.599, 554.307, 60.472, 62.607, 63.470, 67.342 & 70.505

**Proposed Adoptions:** 160-010-0030, 160-010-0450

**Proposed Amendments:** 160-010-0310

**Last Date for Comment:** 2-21-12, Close of Business

**Summary:** These rules update the signature requirement for filing the assumed business name amendment. These rules allow for a waiver of the 5 year limit for reinstatement on corporations, limited liability companies, and business trusts. In addition, these rules now require jurisdiction to be included when a domestic entity converts to a foreign business entity.

**Rules Coordinator:** Ginger Spotts

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

**Telephone:** (503) 986-2333

# ADMINISTRATIVE RULES

## Appraiser Certification and Licensure Board Chapter 161

**Rule Caption:** Temporary rule adopting 2012–2013 Edition of Uniform Standards of Professional Appraisal Practice (USPAP).

**Adm. Order No.:** ACLB 4-2011(Temp)

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 1-1-12 thru 6-27-12

**Notice Publication Date:**

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

**Subject:** Amend Oregon Administrative Rules 161, division 002, 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 161-001-0005 to 161-050-0050, the following terms (whether capitalized or not) shall have the following meanings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(35) “Subdivision” means either an act of subdividing land or 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:

# ADMINISTRATIVE RULES

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

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

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

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

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

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

## 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 in all valuation activity, unless such valuation activity qualifies as an exclusion to real estate appraisal activity under ORS 674.100(2)(h).

(10) Notwithstanding any other provision of these rules, a licensee acting in one of the following capacities is not subject to the requirements

of Standard 3 of USPAP when examining an appraisal report and workfile as part of an official investigation being conducted by the Board:

(a) Board member;

(b) Employee; or

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

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

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

Stats. Implemented: ORS 674

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

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**Rule Caption:** Temporary rules implementing 2011 Or Laws Chapter 447 regarding appraisal management companies.

**Adm. Order No.:** ACLB 5-2011(Temp)

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 1-1-12 thru 6-27-12

**Notice Publication Date:**

**Rules Adopted:** 161-500-0000, 161-510-0010, 161-510-0030, 161-520-0010, 161-520-0020, 161-520-0030, 161-520-0040, 161-530-0010, 161-530-0020, 161-530-0030, 161-530-0040, 161-540-0010, 161-550-0010, 161-560-0010, 161-560-0020, 161-570-0010  
**Subject:** Temporarily 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, rules 0010 regarding registration requirements, rule 0020 regarding system to verify competency, rule 0030 regarding renewal or reactivation of registration, and rule 0040 regarding change or addition of subject individual; division 530, rule 0010 regarding criminal records check, rule 0020 regarding information requested from subject individuals, rule 0030 regarding potentially disqualifying crimes, and rule 0040 regarding termination or cancellation of surety bond or letter of credit; division 540, rule 0010 regarding training; division 550, rule 0010 regarding annual reports; division 560, rule 0010 regarding audits, and rule 0020 regarding audit standards; and division 570, rule 0010 regarding duty to cooperate.

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

## 161-500-0000

### Definitions

In addition to the definitions in 2011 Or Laws Ch. 447, § 8, and as used in OAR 161-500-0000 to 161-560-0020, 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.

(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 2011 Or Laws Ch. 447, § 8 through 19.

(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) "Subject Individual" means:

(a) A person designated as the controlling person as defined in 2011 Or Laws Ch. 447, § 8;

# ADMINISTRATIVE RULES

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

(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.

(7) "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

## 161-510-0010

### Application and Registration Fees

(1) A business entity that has not previously conducted business in Oregon, a business entity performing appraisal management services for under 250 instances of real estate appraisal activity in Oregon in the previous calendar year, or a business entity otherwise serving as a third-party broker of real estate appraisal activity for under 250 instances of real estate appraisal activity in Oregon in the previous calendar year, shall pay to the Board:

(a) A nonrefundable application fee of \$250;

(b) A nonrefundable registration fee of \$500.

(2) A business entity performing appraisal management services for 250 or more, but less than 1,000 instances of real estate appraisal activity in Oregon in the previous calendar year, or a business entity otherwise serving as a third-party broker of real estate appraisal activity for 250 or more, but less than 1,000 instances of real estate appraisal activity in Oregon in the previous calendar year, shall pay to the Board:

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

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

(3) A business entity performing appraisal management services for 1,000 or more, but less than 5,000 instances of real estate appraisal activity in Oregon in the previous calendar year, or a business entity otherwise serving as a third-party broker of real estate appraisal activity for 1,000 or more, but less than 5,000 instances of real estate appraisal activity in Oregon in the previous calendar year, shall pay to the Board:

(a) A nonrefundable application fee of \$1,500;

(b) A nonrefundable registration fee of \$3,500.

(4) A business entity performing appraisal management services for 5,000 or more instances of real estate appraisal activity in Oregon in the previous calendar year, or a business entity otherwise serving as a third-party broker of real estate appraisal activity for 5,000 or more instances of real estate appraisal activity in Oregon in the previous calendar year, shall pay to the Board:

(a) A nonrefundable application fee of \$2,000;

(b) A nonrefundable registration fee of \$6,000.

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

## 161-510-0030

### Miscellaneous Fees

(1) Duplicate Registration — \$10.

(2) Changing Active Registration to Inactive — \$100.

(3) Reactivation of Inactive Registration — \$100.

(4) Late Renewal Fee — \$100.

(5) Annual Registry Fee — Actual Fee.

(6) Fingerprint and Background Checks — Actual Fee.

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

(8) Registration history — \$40.

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

## 161-520-0010

### Registration Requirements

(1) A business entity applying for registration as an appraisal management company shall submit to the Board all of the following information:

(a) A completed application form listing the information required by 2011 Or Laws Ch. 447, § 9, paragraph (2) as follows:

(A) The name, address, website address, phone and fax numbers of the entity;

(B) The name, address, email and phone contact information of a controlling person of the entity;

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

(D) The name, address, email and phone contact information of any person that owns 10 percent or more of the entity.

(b) For the persons named in paragraph (a) above, the license, certificate or registration numbers issued by any state to do business as an appraiser or an appraisal management company;

(c) Disclosure of any administrative action taken by any state to refuse, deny, cancel or revoke a license, certificate or registration as an appraiser or appraisal management company, if any; and

(d) If the business entity conducts appraisal reviews, the review appraiser's name and license or certification number issued by the Board.

(2) A business entity applying for registration as an appraisal management company shall attach to the application for registration the following:

(a) Applicable fees established in OAR 161, Division 510;

(b) A copy of the surety bond required by 2011 Or Laws Ch. 447, § 10, in a form and format approved by the Board;

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

(A) That the business entity established a system to verify the competency of appraisers on the business entity's appraiser panel meeting the minimum requirements in OAR 161-520-0020.

(B) A short description of the business entity's system to verify competency as required in paragraph (2)(c) above.

(d) A signed certification on a form prescribed by the Board that the business entity maintains and retains a detailed record of each appraisal management services request the entity receives and the appraiser who performs the real estate appraisal activity contained in the request for:

(A) Not less than five years after the date of completion of the appraisal 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 was given, whichever period expires later.

(e) A signed certification on a form prescribed by the Board that the business entity maintains and retains a detailed record of each complaint received by the business entity from a person with an interest in a real estate transaction for which an appraisal was arranged by the business entity, along with the name of the client that requested the appraisal and the date the complaint was forwarded to the client.

(f) A signed certification on a form prescribed by the Board that the business entity provides training to employees of the business entity who:

(A) Select appraisers for an appraiser panel;

(B) Select appraisers to perform real estate appraisal activity; or

(C) Perform quality control examinations.

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

(3) A business entity applying for registration as an appraisal management company shall attach to the application for registration as an appraisal management company evidence in the form of written policies and procedures demonstrating compliance with 2011 Or Laws Ch. 447, § 12.

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

## 161-520-0020

### System To Verify Competency

(1) A system to verify competency of an appraiser under 2011 Or Laws Ch. 447, § 9, 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 certification renewal;

(c) An appraisal management company shall require each independent contractor appraiser represent in writing the appraiser's qualifications and competency, which may include but not be limited to:

(A) The metropolitan statistical areas, metropolitan divisions, areas outside of a metropolitan statistical area, counties, postal codes or other

# ADMINISTRATIVE RULES

geographic information signifying where the appraiser represents he or she is competent to appraise;

(B) The types of real property the appraiser represents she or he is competent to appraise within the scope of their license or certification; and

(C) Other information relevant to the business activities of the business entity and necessary to demonstrate the competency of an appraiser.

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

(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) An assignment meeting the minimum requirements under paragraph (1) of this rule does not relieve an appraiser from meeting any legal obligations related to the appraiser's license or certification under ORS Chapter 674 and OAR chapter 161.

(3) 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

## 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) Renewal fees established in OAR 161-510-0020;

(b) A copy of the surety bond required by 2011 Or Laws Ch. 447, § 10, in a form and format approved by the Board;

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

(A) That the appraisal management company continues to maintain a system, as stated on the appraisal management company's initial application for registration, to verify the competency of appraisers on the business entity's appraiser panel meeting the minimum requirements in OAR 161-520-0020

(B) A short description of the business entity's system to verify competency.

(d) A signed certification on a form prescribed by the Board that the business entity maintains and retains a detailed record of each appraisal management company services request the entity receives and the appraiser who performs the real estate appraisal activity contained in the request for:

(A) Not less than five years after the date of completion of the appraisal 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 was given, whichever period expires later.

(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) 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 business entity must reapply pursuant to OAR 161-520-0010 and pay all applicable fees.

(4) A business entity whose registration as an appraisal management company has expired shall cease operating as an appraisal management company or providing appraisal management services until the business entity's registration is reactivated.

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

## 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 along with the appropriate fee. Such notification shall be in writing on a form prescribed by the Board.

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

## 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 Board may require additional information from the subject individual as necessary to complete the criminal records check and fitness determination, such as, but not limited to, proof of identity; or additional criminal, judicial, or other background information.

(3) The Board may request or conduct a Law Enforcement Data System (LEDS) criminal records check, an Oregon Criminal Records Check, a Nationwide Criminal Records Check, or any combination thereof to meet the requirements of this rule.

(4) 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

## 161-530-0020

### Information Requested From Subject Individuals

For purposes of conducting a criminal records check, a subject individual shall submit to the Board the following information:

(1) A complete, signed copy of a criminal records request form supplied by the Board. The criminal records request form shall require the following information:

(a) Name;

(b) Birth date;

(c) Social Security Number;

(d) Driver's license or identification card number;

(e) Prior residency in other states;

(f) Any other identifying information deemed necessary by the Board.

(2) An FD-258 standard fingerprint card published by the Federal Bureau of Investigation and completed by a law enforcement agency or a commercial fingerprinting entity.

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

## 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 business entity may not obtain a registration as an appraisal management company unless the subject individual divests all or part of the individual's ownership interest in the business entity or the business entity 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



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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

## 161-530-0040

### Termination Or Cancellation Of Surety Bond Or Letter Of Credit

(1) If the surety bond or letter of credit an appraisal management company maintains 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, 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

## 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) 2011 Or Laws Ch. 447, § 12, 13 and 14; 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 26, Readdressing (Transferring) a Report to Another Party; and

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

(3) Appraisal management companies must maintain the training records for each employee, 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; and
- (b) The date training was completed.

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

## 161-550-0010

### Annual Reports

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:

(1) The number of appraisals in the preceding year for which the appraisal management company performed appraisal management services in Oregon or otherwise served as a third-party broker of real estate appraisal activity in Oregon;

(2) Any action taken by a state to refuse to issue, deny, cancel or revoke a license, certification or registration to act as an appraiser or as an appraisal management company.

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

## 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 reasonable time or times and may require the production of such records at the office of the Board as often as is reasonably 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

## 161-560-0020

### Audit Standards

An audit under OAR 161-560-0010 will examine the appraisal management company's compliance with 2011 Or Laws Ch. 447, § 9 to 17, including, but not limited to, examination of the following:

(1) The appraisal management company's system to verify the competency of appraisers on the business entity's panel meeting the minimum requirements in OAR 161-520-0020.

(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 2011 Or Laws Ch. 447 and these administrative rules.

(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 2011 Or Laws Ch. 447, § 12.

(b) The appraisal management company substantively altered in any way a completed appraisal report submitted by an appraiser, consistent with the prohibition established in 2011 Or Laws Ch. 447, § 12.

(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 2011 Or Laws Ch. 447, § 13.

(d) The appraisal management company violated any other provision established in 2011 Or Laws Ch. 447, § 9 to 17 or these administrative rules.

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

## 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

## Board of Accountancy Chapter 801

**Rule Caption:** Adopt rules for confidentiality of investigation files and update the professional standards effective date.

**Adm. Order No.:** BOA 1-2011

**Filed with Sec. of State:** 12-28-2011

# ADMINISTRATIVE RULES

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 801-001-0045

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

**Rules Ren. & Amend:** 801-010-0190 to 801-001-0040

**Subject:** The 2011 Legislative Assembly passed HB 2067 allowing the Board to hold pending investigations confidential until a preliminary finding or dismissal on the matter is made.

The professional standards as used throughout OAR chapter 801 are those that are in effect as of January 1, 2012.

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

## 801-001-0035

### Professional Standards

The professional standards, interpretations, rulings and rules designated and adopted by the Board in OAR chapter 801 are those in effect as of January 1, 2012.

Stat. Auth.: ORS 183.332 & 673.410

Stats. Implemented: ORS 183.337 & 673.410

Hist.: BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2005, f. 2-24-05 cert. ef. 3-1-05; BOA 5-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 1-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 1-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 1-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 1-2009, f. 12-15-09 cert. ef. 1-1-2010; BOA 1-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 1-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-001-0040

### Procedure for Complaints

Pursuant to ORS 673.185, the Board is authorized to investigate complaints alleging violations of ORS 673.010 through 673.455 and OAR chapter 801. The following procedures govern complaints received by the Board:

(1) The Board must investigate all complaints that describe activities that are subject to the jurisdiction of the Board and that provide information in support of the complaint.

(2) Anonymous or unsigned complaints will be investigated only if they meet the criteria of (1).

(3) The Board may also investigate other information of which the Board has knowledge, such as media stories and information provided by law enforcement or other regulatory agencies, which indicates that a violation of the statutes or rules enforced by the Board may have occurred.

(4) Any person submitting a complaint may be asked to support the complaint by personal appearance before the Board.

(5) The Board may employ private investigators or contract investigators to provide assistance in determining the facts of any case being investigated.

(6) A licensee who is the subject of a complaint may meet with the Complaints Committee to discuss the complaint.

(7) In accordance with ORS 673.415 the Board may obtain a copy of the signature block, including the name, address and signature of the tax preparer, for any tax return or report permitted or required to be filed with the Oregon Department of Revenue, if the Board has reasonable grounds to believe that a licensee who prepared such tax return or report may have violated any provision of ORS 673.010 to 673.455 or rules promulgated by the Board.

(8) If the Board determines that the available evidence is insufficient to indicate that a violation may have occurred, the Board shall dismiss the complaint.

(9) If the Board determines that the available evidence is sufficient to indicate that a violation may have occurred, the Board shall make a preliminary finding of a violation(s) and offer the subject of the complaint a contested case hearing.

(10) A person under investigation and the Board's Executive Director may negotiate a proposed Stipulated Final Order to conclude a matter at any time after the Complaints Committee has considered it.

(11) A negotiated settlement as described in paragraph (10) shall not be binding on either party until approved by the Board and signed by the Chairperson of the Board or the Executive Director.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.170 & 673.185

Hist.: IAB 9, f. 6-24-60; IAB 24, f. 9-15-72, ef. 10-1-72; IAB 5-1978, f. & ef. 5-16-78; IAB 3-1982, f. & ef. 4-20-82; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; Renumbered from 801-010-0190 by BOA 1-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-001-0045

### Confidentiality of Complaints Received

(1) All complaints received by the Board office shall be considered confidential.

(2) All documents received will be marked confidential until the Board issues a Notice of Intent or the matter is otherwise resolved.

(3) The Complaints Committee review and deliberations concerning a pending investigation shall occur only in executive session, pursuant to ORS 192.660(2)(f), to consider information that is exempt by law from public inspection.

(4) The Board of Accountancy's review and deliberations concerning a pending investigation shall also occur only in executive session, pursuant to ORS 192.660(2)(f), to consider information that is exempt by law from public inspection.

(5) Any action by the Board to approve a final order, make a preliminary finding of violation or dismiss a matter shall take place in a public meeting.

Stat. Auth.: ORS 183.332 & 673.410

Stats. Implemented: ORS 183.337 & 673.410

Hist.: BOA 1-2011, f. 12-28-11, cert. ef. 1-1-12

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**Rule Caption:** Adds a definition for active status, retired status and expired status. Modifies inactive status.

**Adm. Order No.:** BOA 2-2011

**Filed with Sec. of State:** 12-28-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 801-005-0010, 801-005-0300

**Subject:** The 2011 Legislative Assembly passed HB 3181 which amends the time a license can be lapsed. In addition, the bill modified what can cannot be performed by a licensee who has an inactive license.

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

## 801-005-0010

### Definitions

As used in OAR Chapter 801, the following terms or abbreviations have the following meanings, unless otherwise defined therein:

(1) **Active** means a license issued by the Oregon Board of Accountancy to an individual who has met the requirements to hold a CPA or PA license, maintains the license and is in good standing.

(2) **AICPA** means American Institute of Certified Public Accountants.

(3) **Applicant** means a person applying for a license to practice public accountancy.

(4) **Attestation Services** means the following financial statement services must be performed under the following standards means:

(a) An audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS);

(b) A review of a financial statement to be performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS);

(c) Any engagement to be performed in accordance with the statements on Standards for Attest Engagements (SSAE);

(d) An engagement to be performed in accordance with the standards of the Public Company Accounting Oversight Board in the United States (PCAOB)

(e) The statements on standards specified in subsections (a) through (c) of this definition are those developed by the AICPA.

(5) **Business organization** means any form of business organization authorized by law, including but not limited to a proprietorship, partnership, corporation, limited liability company, limited liability partnership or professional corporation.

(6) **CPA or Certified Public Accountant** means a person who has a certificate of certified public accountant issued under ORS 673.040.

(7) **CPA Exam** means the Uniform Certified Public Accountant Examination.

(8) **CPE** means continuing professional education.

(9) **Candidate** means a person applying for the CPA Exam.

(10) **Censure** means an official written expression of reprimand, by Board action, to a licensee for specified conduct.

(11) **Certificate** means a certificate of certified public accountant issued under ORS 673.040.

(12) **Client** means a person or entity who agrees with a licensee to receive any professional service from the licensee.

(13) **Commission** means a fee calculated as a percentage of the total value of the sale of a product or service that is paid or received in the form of money or other valuable consideration.

## ADMINISTRATIVE RULES

(14) **Compilation Services** means a professional service performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS) that is presenting, in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

(15) **Contingent fee** means a fee established for the performance of any professional service and directly or indirectly paid to a licensee pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. A fee is not contingent if the fee:

(a) Is fixed by courts or other public authorities; or

(b) In tax matters, is determined based on the results of judicial proceedings or the findings of governmental agencies.

(16) **Enterprise** means any person or entity, whether organized for profit or not, for which a licensee provides public accounting services.

(17) **Expired** means a license that has not been renewed after six years from the close of the last license period for which the license was active, inactive or retired.

(a) An expired license may be restored only if the Board determines that there is good cause to do so.

(18) **Fees** include commissions, contingent fees and referral fees.

(19) **Financial statements** means the presentation of financial data, including accompanying notes, that is derived from accounting records and intended to communicate an entity's economic resources or obligations or the changes therein, at a specific point in time, and/or the results of operations for a specific period of time, presented in accordance with generally accepted accounting principles or a comprehensive basis of accounting other than generally accepted accounting principles. Financial presentations included in tax returns are not financial statements. Incidental financial data included in management advisory services reports to support recommendations to a client are not financial statements. The method of preparation (for example, manual or computer preparation) is not relevant to the definition of a financial statement.

(20) **Firm** means a business organization as defined in ORS 673.010 that is engaged in the practice of public accountancy and is required to be registered with the Board.

(21) **First time candidate** means a candidate for the CPA exam who is sitting for the exam for the first time in Oregon.

(22) **Generally Accepted Accounting Principles** means accounting principles or standards generally accepted in the United States, including but not limited to Statements of Financial Accounting Standards and interpretations thereof, as published by the Financial Accounting Standards Board, and Statements of Governmental Accounting Standards and interpretations thereof, as published by the Government Accounting Standards Board.

(23) **Generally Accepted Auditing Standards** means the Generally Accepted Auditing Standards adopted by the American Institute of Certified Public Accountants, together with interpretations thereof, as set forth in Statements on Auditing Standards issued by the AICPA, and for federal audits, the Single Audit Act and related U.S. Office of Management and Budget Circulars published by the Government Accountability Office.

(24) **Holding out as a CPA or PA** means to assume or use by oral or written communication the titles or designations "certified public accountant" or "public accountant" or the abbreviations "CPA" or "PA", or any number or other title, sign, card, device or use of any internet domain or e-mail name, tending to indicate that the person holds a certificate or license in good standing issued under the authority of ORS 673 as a certified public accountant or a public accountant.

(24) **Inactive** means a license status granted by the Board to a licensee:

(a) Whose license is not suspended or revoked;

(b) Who is not:

(A) Performing or offering to perform, for a client, services involving the use of accounting or auditing skills, including but not limited to issuance of reports on financial statements, management advisory, financial advisory or consulting services, preparation of tax returns or the furnishing of advice on tax matters; and

(B) Practicing public accountancy in a business organization that is required to be registered in Oregon with the Board under ORS 673.160; or

(B) A sole practitioner.

(c) Licensees who are granted inactive status shall not use the CPA or PA designation unless the word "inactive" is used in conjunction with the designation, such as "CPA Inactive" and is listed in the same size font as the designation.

(25) **In good standing** means the status of a holder of a license or registration issued by any jurisdiction, that is not suspended, revoked, expired, resigned, retired or lapsed.

(26) **Jurisdiction** means the licensing authority for the practice of public accountancy in any state, U.S. Territory or foreign country.

(27) **Lapsed** means a license status that is not renewed within 60-days of the close of a license period.

(a) A person in lapsed status may not:

(A) Practice public accounting in a business organization required to be registered with the Board under ORS 673.160;

(B) Practice as a sole practitioner; or

(C) Perform or offer to perform for a client services involving the use of accounting or auditing skills, including but not limited to issuance of reports on financial statements, management advisory, financial advisory or consulting services, preparation of tax returns or the furnishing of advice on tax matters.

(b) A person in lapsed status must not hold out in any form or manner that they are a CPA or PA.

(c) A lapsed license may be reinstated to active status only prior to becoming expired.

(28) **License** means:

(a) A certificate or permit issued under ORS 673.150 or a license issued under ORS 673.100, enabling the holder thereof to practice public accountancy in this state; or

(b) A certificate, permit, registration or other authorization issued by a jurisdiction outside this state enabling the holder thereof to practice public accountancy in that jurisdiction.

(29) **Licensee** means the holder of a license as defined in these rules.

(30) **Material participation** means participation that is regular, continuous and substantial.

(31) **Manager** means a manager of a limited liability company.

(32) **Member** means a member of a limited liability company.

(33) **NASBA** means National Association of State Boards of Accountancy.

(34) **Non-licensee owner** means a person who does not hold a certificate, license or permit as a certified public accountant or public accountant in Oregon or in any other jurisdiction.

(35) **PA or Public Accountant** means a person who is the holder of a license issued under ORS 673.100.

(36) **Peer Review** means a study, appraisal or review of one or more aspects of the public accountancy work of a holder of a license under ORS 673.150 or of a registered business organization that performs attestation or compilation services that is conducted by a CPA who holds an active license issued by any state or a public accountant licensed under ORS 673.100 who was required to pass the audit section of the Uniform CPA Exam as a requirement for licensing. The peer reviewer must also be independent of the license holder or registered business organization being reviewed.

(37) **Permit** means a license to practice public accountancy issued under ORS 673.150.

(38) **Practice of public accountancy** means performance of or any offer to perform one or more services for a client or potential client, including the performance of such services while in the employ of another person by a licensee, professional services of accounting, tax, personal financial planning, litigation support services, and those professional services for which standards are promulgated. These standards include Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC), Statements of Financial Accounting Standards, Statements on Auditing Standards, Statements on Standards for Accounting and Review Services, Statements on Standards for Consulting Services, Statements of Governmental Accounting Standards, International Financial Reporting Standards, International Accounting Standards, Statements on Standards for Attestation Engagements, and Statements on Standards for Valuation Services.

(39) **Principal Place of Business** means the office location designated by a person for purposes of substantial equivalency and reciprocity.

(40) **Professional** means arising out of or related to the specialized knowledge or skills associated with certified public accountants and public accountants.

(41) **Professional services** means any services performed or offered to be performed by a licensee for a client or potential client in the course of the practice of public accountancy.

(42) **Regional Accreditation** means the college or university is accredited by one of the six regional accrediting associations or by another accrediting body that is recognized by the Board.

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(43) **Referral fee** means a referral fee that includes, but is not limited to, a rebate, preference, discount or any item of value, whether in the form of money or otherwise, given or received by a certified public accountant, public accountant or firm, to or from any third party, directly or indirectly, in exchange for the purchase of any product or service, unless made in the ordinary course of business.

(44) **Registration** means the authority issued under ORS 673.160 to a business organization to practice public accountancy in that state.

(45) **Report** see OAR 801-005-0200 and 801-005-0300

(46) **Retired** means a license status conferred by the Board upon a licensee who:

(a) At any age, has held an active license in good standing, to practice public accounting in Oregon for a combined period of not less than 20 years, or

(b) Has reached 65 years of age,

(A) A licensee in retired status may not perform any attest services nor sign any tax returns as a preparer.

(B) A licensee in retired status may not perform public accounting services for direct or indirect compensation.

(C) A licensee in retired status may sign any documents related to non-compensated services as a "CPA Retired" or "PA Retired". The word "Retired" must be in the same size font as the designation.

(c) A licensee in retired status, may be restored to active status at the Board's discretion of showing good cause.

(47) **Returning candidate** means a person who has received grades for any section of the Uniform CPA exam who applies to sit for any part of the CPA exam in Oregon.

(48) **Single Audit Act** means the Single Audit Act with the Single Audit Act Amendments of 1996, as published by the United States Government Accountability Office, Office of Management and Budget.

(49) **Standards for Accounting and Review Services** means the *Statements on Standards for Accounting and Review Services* published by the AICPA.

(50) **Standards for board approved peer review programs** means the *Standards for Performing and Reporting on Peer Reviews* published by the AICPA.

(51) **Statements on Standards for Attestation Engagements** means the statements by that name issued by the AICPA.

(52) **State** means any state, territory or insular possession of the United States, and the District of Columbia.

(53) **Substantial equivalency** means:

(a) An individual holds a valid license as a certified public accountant from another state that requires an individual, as a condition of licensure as a certified public accountant to:

(A) Complete at least 150 semester hours of college education and obtain a baccalaureate or higher degree conferred by a college or university;

(B) Achieve a passing grade on the Uniform Certified Public Accountant Examination; and

(C) Possess at least one year of experience, verified by a licensee, providing any type of service or advice involving the use of accounting, attestation, compilation, management advisory, financial advisory, tax or related consulting skills, obtained through public practice or government, industry or academic work; or

(b) An individual has the qualifications specified in paragraph (a) of this subsection and holds a valid license as a certified public accountant from another state that does not require an individual to have the qualifications specified in paragraph (1) of this subsection as a condition of licensure as a certified public accountant.

(54) **Uniform Accountancy Act (UAA)** is a model bill and set of regulations designed by the AICPA and NASBA to provide a uniform approach to regulation of the accounting profession, provisions of which may or may not be adopted by state boards of accountancy.

(55) **Valid** means a certified public accountant or a public accountant license, municipal roster authority, firm registration or chartered accountant certificate that is in active status and in good standing with the appropriate licensing authority. A license in active status is one that is not revoked, suspended, subject to probation, lapsed, inactive, retired or expired.

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

Stat. Auth.: ORS 670.310

Stats. Implemented: ORS 670.310

Hist.: 1AB 2-1982, f. & ef. 10-15-86 AB 1-1989, f. & cert. ef. 1-25-89; AB 2-1990, f. & cert. ef. 4-9-90; AB 1-1992, f. & cert. ef. 2-18-92; AB 1-1993, f. 1-14-93, cert. ef. 1-15-93; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1994, f. & cert. ef. 11-10-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 3-1995, f. & cert. ef. 5-19-95; AB 4-1995, f. & cert. ef. 8-8-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 2-1996, f. & cert. ef. 9-25-96; AB 2-1997, f. & cert. ef. 3-10-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-

1-00; BOA 3-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 2-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 3-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 3-2005, f. 2-24-05 cert. ef. 3-1-05; BOA 6-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 5-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 2-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 2-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-005-0300

### Language Not Constituting a Report

The following statement, signed by a person who does not hold a license issued under ORS 673.150, shall not constitute a report under ORS 673.320 so long as the statement is not accompanied by any wording indicating the person is an accountant or auditor or other language prohibited by ORS 673.020, 673.030, 673.310 or 673.320:

"The accompanying balance sheet (or . . .) of XYZ Company as of (date) and the related statements of income (or retained earnings or cash flows) for the year then ended have been prepared by me (us). The information presented in these financial statements is the representation of management (owners)."

Stat. Auth.: ORS 670.310

Stats. Implemented: ORS 673.325

Hist.: 1AB 2-1986, f. & ef. 10-15-86; AB 3-1990, f. 5-22-90, cert. ef. 5-23-90; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 3-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 2-2011, f. 12-28-11, cert. ef. 1-1-12

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**Rule Caption:** Increase late fees, modify supervisor licensee requirements, modify status requirements and CPA firm ownership amendments.

**Adm. Order No.:** BOA 3-2011

**Filed with Sec. of State:** 12-28-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 801-010-0010, 801-010-0040, 801-010-0050, 801-010-0065, 801-010-0073, 801-010-0075, 801-010-0079, 801-010-0080, 801-010-0085, 801-010-0110, 801-010-0115, 801-010-0120, 801-010-0125, 801-010-0130, 801-010-0340, 801-010-0345

**Subject:** Late filing of renewals for all license types has been increased to match the dollar amount of the license. Inactive status is amended to reflect new legislation brought forth from the passage of HB 3181. New limitations of six years 93 renewal cycles) for lapsed licenses is outlined in rules as well as reinstatement requirements for lapsed and inactive statuses. Retired status is now available for qualified licensees.

CPE will be required to maintain an Inactive license.

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

## 801-010-0010

### Fees, Civil Penalties and Cost Recovery

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

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

(a) CPA Examination:

(A) Initial Examination — \$100.

(B) Re-Examination — \$50.

(b) CPA or PA License — \$150.

(c) Municipal Auditor Roster Application — \$100.

(d) Reinstatement application fee — \$150.

(2) Initial license and registration fees:

(a) Initial CPA or PA License — \$160.

(b) Municipal Auditor — \$100.

(c) Firm Registration — \$175.

(3) Biennial renewal application fees:

(a) Active CPA or PA License — \$160.

(b) Inactive CPA or PA — \$50.

(c) Municipal Auditor — \$100.

(d) Firm Registration — \$175.

(e) Retired License — \$25.

(4) Late renewal penalty fees:

(a) Active CPA or PA License — \$160.

(b) Inactive CPA and PA — 50.

(c) Municipal Auditor Late Fee — \$100.

(d) Firm Registration — \$175.

(e) Retired License — \$25.

(5) Miscellaneous fees:

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

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

(c) Copies of records made on a standard office copy machine shall be charged a minimum fee of \$2.50 for five pages or less, and 25 cents per page thereafter. If certified copies of records are requested, there will be a \$2.50 fee for each document certified in addition to the copy cost.

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

(A) Staff time, \$23 per hour, in quarter hour increments at \$5.75 per quarter hour.

(6) Civil Penalties assessed for Specific Violations.

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

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

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

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

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

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

(7) Cost Recovery.

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

(A) Attorney General Fees.

(B) Administrative Hearing Costs.

(C) Contract Investigator Fees.

(D) Expert Witness Fees.

(E) Costs of Appeal.

(8) Form of Payment:

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

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

Stat. Auth.: ORS 670.310, 673.040, 673.060, 673.100, 673.150, 673.160, 197.720 & 673.153  
Stats. Implemented: ORS 673, 297 & 192.440

Hist.: 1AB 10, f. 2-7-63; 1AB 14, f. 8-15-68; 1AB 20, f. 10-22-71, ef. 11-15-71; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 41, f. & ef. 12-2-76; 1AB 44, f. & ef. 3-31-77; 1AB 48, f. & ef. 7-21-77; 1AB 6-1978, f. & ef. 6-22-78; 1AB 7-1981, f. & ef. 7-27-81; 1AB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-010-0040

### CPA and PALicenses Remain Property of the Board

Every license of Certified Public Accountant or Public Accountant, while it is in the possession of the holder, shall be preserved by the holder, but such license shall nevertheless remain the property of the Board. In the event that the license is revoked in the manner prescribed by law, the holder is required to deliver the license to the Board immediately upon demand.

Stat. Auth.: ORS 670.310

Stat. Implemented: ORS 673.410

Hist.: 1AB 9, f. 6-24-60; 1AB 41, f. & ef. 12-2-76; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-010-0050

### Application for Uniform CPA Examination

(1) Definitions

(a) **Authorization to Test (ATT):** Issued by the Board of Accountancy to eligible exam candidates to authorize the candidate to test for specified sections of the CPA exam. The ATT may be issued for one or more CPA exam sections. Each ATT authorizes the candidate to take each CPA exam section designated in the ATT one time only. The ATT may become expired as to one exam section named in the ATT, and remain valid as to other specified exam sections. The candidate must submit an application and re-examination fee to the Board of Accountancy for any exam section

that is expired under the ATT or to retake any section of the CPA Exam not passed.

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

(c) **Testing Center:** Board approved computer testing facilities, at which candidates may take the CPA examination, are listed on the Board website. Testing centers are located throughout the United States and in Guam, Puerto Rico the Virgin Islands, Japan, United Arab Emirates, Kuwait, Lebanon and Bahrain.

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

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

(2) **Applications.**

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

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

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

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

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

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

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

(h) The Board or its designee will forward authorization to test (ATT) for the computer-based CPA exam to the candidate and to the NASBA National Candidate Database once eligibility is determined.

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

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

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

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

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

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

# ADMINISTRATIVE RULES

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

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

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

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

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

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

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

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

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

(D) Colleges or universities, which are accredited by one of the six regional accrediting associations and listed as accredited in the *Directory of Post Secondary Institutions*, published by the National Center for Education Statistics, are recognized by the Board.

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

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

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

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

## (5) Authorization to Test and Notice to Schedule

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Testing.

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

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

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

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

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

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

Stat. Auth.: ORS 670.310, 673.050 & 673.100

Stats. Implemented: ORS 673.050, 673.100 & 673.410

Hist.: IAB 10, f. 2-7-63; IAB 14, f. 8-15-68; IAB 20, f. 10-22-71, ef. 11-15-71; IAB 34, f. 1-29-74, ef. 2-25-74; IAB 41, f. & ef. 12-2-76; IAB 44, f. & ef. 3-31-77; IAB 48, f. & ef. 7-21-77; IAB 6-1978, f. & ef. 6-22-78; IAB 7-1981, f. & ef. 7-27-81; IAB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 1-2004(Temp), f. & cert. ef. 3-15-04 thru 7-1-04; BOA 2-2004(Temp), f. & cert. ef. 7-2-04 thru 12-29-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 7-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-010-0065

### Qualifications for Licensure

(1) **Requirements.** Applicants for the license of Certified Public Accountant must meet the following requirements:

(a) Complete and pass all sections of the CPA exam;

(b) Complete and pass an ethics exam that has been adopted by the Board; and

(c) Meet the experience requirements stated in ORS 673.040 as follows:

(A) Applicants who qualified for the CPA exam by meeting CPA exam requirements under provisions of ORS 673.040 in effect prior to January 1, 2000 are required to have two years of experience and competency in the seven core areas described in this rule, which means at least 24 months of full-time employment, or a total of 4,160 hours of part-time employment. One hundred seventy-three (173) hours of part-time employment is equivalent to one month. Qualifying part-time employment must be at least 20 hours per week.

(B) Applicants who qualified for the CPA exam by meeting the CPA exam requirements under ORS 673.040 (1999 Edition), otherwise known as the "150-hour rule", that is effective after January 1, 2000, must have at least 12 months of full-time employment, or a total of 2,080 hours of part-time employment. One hundred seventy-three (173) hours of part-time

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employment is equivalent to one month. Qualifying part-time employment must be at least 20 hours per week and must apply under one of the following paths:

(i) **Attest Experience**, applicants who gained experience under the attest function are required to have at least one year of experience and competency in the seven core areas described in this rule.

(ii) **Other Professional Standards**: applicants who gained experience in other professional standards are required to have at least one year experience and competency in the seven core areas described in this rule.

(iii) **Industry, Government and Other**: applicants who gained experience in industry, government or other area not described above are required to have at least one-year of experience and competency in the seven core areas as described in this rule.

(C) Applicants who sat and received grades at the CPA exam prior to January 1, 2000, without the completion of 150 semester hours or 225 quarter hours, may choose to complete the 150 hour requirement under ORS 673.050(1)(a) and meet the experience requirement by completing the required hours of experience as described in paragraph (1)(c)(B)(i) through (iii) of this rule.

(d) The experience and examination requirements must be obtained and completed within eight years immediately preceding the date of application for a license.

## (2) Experience Requirements:

(a) "Supervisor licensee" is a person who qualifies under this rule as a supervisor for the purpose of verifying the experience requirement of an applicant for a CPA license under OAR 801-010-0065 or the experience requirement of an applicant for a public accountant license under OAR 801-010-0100

(b) To qualify as a supervisor licensee the person providing supervision must have held an active CPA license issued by any state or a PA license issued under ORS 673.100 or a chartered accountant license recognized by the Board under OAR 801-010-0085 for at least five consecutive years immediately prior to such supervision and during the period of supervision.

(c) A licensee who provides direct supervision over an applicant must act as supervisor licensee and shall certify to the Board whether or not the applicant has gained qualifying experience under this rule.

(d) "Direct supervision" as used in this rule means that there is a regular and meaningful interaction between the supervisor licensee and the person being supervised in terms of planning, coordinating, guiding, inspecting, controlling, and evaluating activities, and having authority to influence the decision to discharge the employee being supervised.

(A) A licensee who acts as a consultant or independent contractor to the applicant's employer will not meet the requirement of direct supervision.

(e) The experience required under ORS 673.040 must consist solely of experience within activities generally performed by certified public accountants and public accountants licensed in Oregon, including (but not limited to) financial statement audits, financial statement reviews, financial statement compilations, attestation engagements, financial forecasts and projections, pro forma financial information, compliance attestations, management advisory services, tax advisory services, tax return preparation, personal financial planning or reporting on an entity's internal controls.

(f) Overtime hours worked are not credited toward the experience requirement.

(3) **Experience portfolio**. The applicant must develop a portfolio of experience that demonstrates to the satisfaction of the Board that the applicant has achieved experience in all of the following competencies:

(a) Understanding of the Code of Professional Conduct promulgated and adopted by the Board;

(b) Ability to assess the achievement of a client's objectives by demonstrating knowledge of various business organizations, understanding of the objectives and goals of business entities, ability to develop and analyze performance measures and critical success factors, and understanding of the economic and regulatory trends that affect the environment of a business entity.

(c) Experience in preparing working papers that include sufficient relevant data to support the analysis and conclusions required by the applicant's work.

(d) Understanding transaction streams and information systems, including the ability to understand how individual transactions aggregate at the organizational level, to infer how transactions impact the organization as a whole, and to evaluate the integrity and reliability of various client information systems, including relevant computer aspects.

(e) Skills in risk assessment and verification demonstrated by a sufficient understanding of accounting and other information systems to:

(A) Assess the risk of misstatement in an information system;

(B) Obtain sufficient relevant data based on the risk of misstatement and the nature of the engagement to determine the appropriateness of underlying data in terms of its completeness, existence and occurrence, valuation and allocation, rights and obligations, presentation and disclosures.

(f) Skills in decision making, problem solving, critical analytical thinking including the ability to evaluate and interpret sufficient relevant data in a variety of engagements and settings. For example, the candidate must evaluate a client's cash flow, profitability, liquidity, solvency, operating cycle, achievement of management's plans, accomplishment of service efforts and systems reliability.

(g) Ability to express scope of work, findings and conclusions including the ability to determine the appropriateness of reports on financial statements, system reliability, or reports expressing scope of work, findings and conclusions.

(4) **Qualifying experience**. An applicant must demonstrate to the satisfaction of the Board that the portfolio of experience submitted is of sufficient quality and diversity to meet the requirements of this rule. Qualifying experience may be obtained in the following categories:

(a) Experience based on attest or assurance. Experience that demonstrates the competencies prescribed in section (3) of this rule must be obtained while the applicant is:

(A) Employed in public practice on the staff of a public accountant, a certified public accountant or a firm of public accountants or certified public accountants;

(B) Engaged in employment that is equivalent to that described in paragraph (4)(a)(A) of this rule including internal audit employment; or

(C) Employed in an organization where employment is equivalent to that described in paragraph (4)(a)(A) of this rule if a peer review is conducted or if such employment is with audit agencies, internal audit departments or other organizations where a peer review is conducted. Experience under this subsection must include:

(i) Conducting attest-oriented functions where third party reliance is an objective of the report;

(ii) Preparing opinions in accordance with professional standards;

(iii) Preparing financial statements with footnotes to generally accepted accounting principles or other comprehensive bases of accounting;

(iv) The audit agency, internal audit department, or other organization is independent of the entity, and

(v) Accounting and review services.

(D) "Third party reliance" as used in this rule means:

(i) Actual third party reliance, such as takes place with respect to the reader of financial statements upon which an audit opinion has been rendered by a public accountant licensed in Oregon or a certified public accountant;

(ii) Audits performed by government agencies, including tax authorities, on organizations which are not subject to management control by the auditing agency; or

(iii) Financial audits performed by independent working groups where the purpose of the audit is reliance by the board of directors on the fairness of the presentation of internally generated financial statements in accordance with generally accepted accounting principles or other comprehensive bases of accounting.

(b) Experience based on other professional standards. Any other experience that demonstrates the competencies prescribed in section (3) of this rule must be obtained while the applicant is:

(A) Employed in public practice on the staff of a public accountant, a certified public accountant or a firm of public accountants or certified public accountants; or

(B) Experience described in paragraph (4)(b) of this rule must be performed in accordance with the standards of the profession. For example, other experience may be

performed in accordance with the established standards for:

(i) Consulting services,

(ii) Tax practice,

(iii) Personal financial planning,

(iv) Internal audits,

(v) Regulatory agencies.

(C) Experience obtained in accordance with other professional standards must meet guidelines established by the Board.

(c) Experience based on industry, government, and other. Qualifying experience that demonstrates the competencies described in section (3) of this rule may also be obtained while the applicant is employed in industry,

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government, or other settings under the direct supervision of a public accountant or certified public accountant as provided under this rule.

(A) Industry, government or other experience related to subsection (3)(b) of this rule, assessing the achievement of an entity's objectives, will include obtaining an understanding of the industry in which the entity operates, including the employer's competition (or other similar service providers in the case of government) and key competitiveness factors that affect the industry.

(B) Industry, government or other experience related to subsection (3)(d) of this rule, understanding transaction streams and information systems, will include assessing the adequacy of an entity's internal controls.

(C) Experience, other than experience described in subsections (4)(a) and (b) of this rule will be evaluated by the Board on a case-by-case basis to ensure that experience is equivalent to subsection (4)(a) or (b) of this rule.

## (5) Submitting applications to the Board.

(a) An applicant's file must be complete in every particular within three months of the date of application or the file will be closed and the license fee will be refunded. The application fee is not refundable.

(b) An applicant's file may be included on the agenda of any meeting of the Board if the file is complete in every particular no less than seven days prior to the date of a scheduled Board meeting.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.040

Hist.: 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 2-1988, f. 3-31-88, cert. ef. 3-30-88; AB 7-1989, f. & cert. ef. 9-11-89; AB 1-1991, f. & cert. ef. 1-2-91; AB 4-1991, f. & cert. ef. 7-1-91; AB 2-1993, f. 1-14-93, cert. ef. 1-15-93; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 3-1997, f. & cert. ef. 6-5-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 3-1998, f. & cert. ef. 6-16-98; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 3-1999, f. & cert. ef. 3-26-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2000, f. 8-30-00, cert. ef. 9-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-010-0073

### Certification of Applicant's Experience

#### (1) Requirement to provide verification of experience.

(a) A supervisor licensee who is requested by an applicant to submit evidence of the applicant's experience to the Board or to the licensing agency of another jurisdiction must complete and submit a certificate of experience for such applicant within 21 days of the request.

(b) The certificate of experience must be made on forms provided by the Board. A supervisor licensee who completes and submits a certificate of experience must certify in writing that the experience obtained under the licensee's supervision is sufficient to fulfill the requirements of OAR 801-010-0065.

(c) A supervisor licensee who submits a certification of experience must maintain the Competency Evaluation worksheet for a period of three years after the applicant's license is issued.

(d) A supervisor licensee must not commit any act, which unjustly jeopardizes an applicant's ability to obtain a license in this or any jurisdiction.

(2) **Cooperation of supervisor licensee.** A supervisor licensee who has furnished evidence of an applicant's experience to the Board must provide full cooperation with any Board inquiry pertaining to such certification.

(a) The supervisor licensee must respond in writing to any request for further information from the Board including, but not limited to, the following:

(A) Description of any disagreement between an applicant and the supervisor licensee as to dates, quality, and/or type of work performed;

(B) Explanation regarding a certificate of experience submitted to the Board for which the period of experience appears to be unduly short for achievement of the competencies;

(C) Verification, on a sample basis, of information submitted by an applicant or attested thereto on a certificate of experience;

(D) Explanation regarding questions based on the Board's reasonable belief that the information in the certificate of experience may be false or incorrect; or

(E) Explanation regarding the basis of refusal, if any, for which the supervisor licensee declines to submit evidence of an applicant's experience to the Board or to the licensing agency of another jurisdiction.

(b) The supervisor licensee must cooperate with any inspection, by the Board or by its representative, of documentation relating to an applicant's claimed experience. The inspection may, at the option of the Board, be made at the Board's offices or such other places as the Board may des-

ignate. A licensee or audit agency or group who has custody of the documentation must produce the required documentation upon request.

Stat. Auth.: ORS 670.310 & 673.040

Stats. Implemented: ORS 673.040

Hist.: 1AB 3-1984, f. 12-19-84, ef. 1-1-85; 1AB 3-1986, f. & ef. 11-17-86; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1997, f. & cert. ef. 1-28-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 2-2000, f. & cert. ef. 5-31-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-010-0075

### Public Accountants Applying for Certificate of Public Accountancy

A public accountant licensed in Oregon who is applying for a certified public accountant license must:

(1) Hold an active public accountant license issued under ORS 673.100 that is not revoked, suspended, on probation or lapsed;

(2) Present satisfactory evidence that the candidate has successfully completed 150 semester hours or 225 quarter hours, including:

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

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

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

(3) Successfully complete all sections of the CPA exam. Credit may be received for sections of the CPA exam previously completed if the requirements of OAR 801-010-0060 are satisfied; and

(4) Satisfy the experience requirements under ORS 673.040 and OAR 801-010-0065.

(5) The experience and examination requirements must be obtained and completed within eight years immediately preceding the date of application

(6) Licensee must surrender the Public Accountant license issued before the CPA license will be issued.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.040

Hist.: BOA 4-1998, f. & cert. ef. 6-16-98; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-010-0079

### Experience Obtained in Foreign Countries

Experience obtained by an applicant outside the United States that is claimed to be equivalent to public accountancy experience obtained in the United States may be acceptable under ORS 673.040 provided that the experience meets all of the requirements of OAR 801-010-0065. The applicant's experience must be directly supervised by:

(1) A licensed public accountant or a certified public accountant whose license is active and in good standing, and who held an active license during the period of supervision and for a period of no less than five years prior to the period of supervision, or

(2) A chartered accountant licensed by a jurisdiction that is eligible for reciprocal licensing under agreement with the International Qualifications Appraisal Board (IQAB) as described in OAR 801-010-0085, who also meets the following requirements:

(a) The chartered accountant license is active and in good standing;

(b) The chartered accountant held an active chartered accountant license during the period of supervision and for no less than five years prior to the period of supervision, and

(3) The person who directly supervises the applicant's experience must certify to the Board that the applicant's experience is obtained under professional standards approved by the Board of Accountancy, including but not limited to the Statements on Auditing Standards (SAS) for audits or other engagements, the Statement of Standards for Accounting and Review Services (SSARS) for the review of financial statements and the Statements on Standards of Attestation Engagements (SSAE) for examinations of prospective financial information, or

(4) That the applicant's experience is obtained under professional standards deemed by the Board of Accountancy to be equivalent to experience obtained in the practice of public accountancy in this state.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.040

Hist.: 1AB 14, f. 8-15-68; 1AB 22, f. 3-2-72, ef. 3-15-72; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 3-1982, f. & ef. 4-20-82; 1AB 1-1986, f. & ef. 10-1-86; AB 5-1990, f. & cert. ef. 8-16-90; AB 5-1993, f. & cert. ef. 8-16-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1997, f. & cert. ef. 1-28-97; AB 4-1997, f. & cert. ef. 7-25-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 6-1999, f. 12-21-99,



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cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-010-0080

### Holders of Certificates or License in Other States, US Territories or Foreign Countries

(1) **Substantial equivalency.** An individual whose principal place of business is not in this state, who has an active license in good standing as a certified public accountant issued by another jurisdiction, and who meets the standards of substantial equivalency as defined in ORS 673.010(21) and OAR 801-005-0010(48), may practice public accountancy in this state.

(2) **Applications by reciprocity.** Individuals who wish to establish a principal place of business in this state are required to obtain a CPA license under this section prior to practicing as a CPA in this state.

(a) The applicant must complete an application and certify that:

(A) The applicant holds an active license in good standing as a certified public accountant issued by another jurisdiction whose requirements are substantially equivalent to Oregon as defined in Section 23 of the Uniform Accountancy Act.

(b) Applications based on an active CPA license that is in good standing, but that do not meet the requirements of subsections (2)(A) of this rule, are eligible under this subsection if the applicant demonstrates to the satisfaction of the Board that the applicant:

(A) Held an active CPA license issued by another jurisdiction that is in good standing at the time of application;

(B) Has four years of public accounting experience or the equivalent thereof, after completing the CPA exam and during the ten year period immediately preceding the application. Four years means 48 months (8,320 hours) of full-time employment. One hundred seventy-three (173) hours of part-time employment is equivalent to one full-time month. Qualifying part-time employment must be at least 20 hours per week; and

(3) **Reciprocity application requirements.** Applicants under section (2) of this rule must:

(a) Submit an application on a form provided by the Board;

(b) Pay the fees specified in OAR 801-010-0010;

(c) Provide a written statement from the jurisdiction on which the application is based confirming that the applicant:

(A) Is in good standing in that jurisdiction;

(B) Has not been disciplined for violations of that jurisdiction's standards of conduct or practice;

(C) Has no pending actions alleging violations of that jurisdiction's standards of conduct of practice; and

(D) Is in compliance with continuing education requirements and peer review requirements of the licensing jurisdiction.

(4) **Verification of National Qualification Appraisal Service** comparable licensing standards. The Board reviews the licensing requirements of other jurisdictions on an annual basis to verify substantial equivalency eligibility. The Board may use information developed by NASBA to make this determination.

Stat. Auth.: ORS 670.310, 673.410 & 673.153

Stats. Implemented: ORS 673.040 & 673.153

Hist.: 1AB 14, f. 8-15-68; 1AB 22, f. 3-2-72, ef. 3-15-72; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 3-1982, f. & ef. 4-20-82; 1AB 1-1986, f. & ef. 10-1-86; AB 5-1990, f. & cert. ef. 8-16-90; AB 5-1993, f. & cert. ef. 8-16-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1997, f. & cert. ef. 1-28-97; AB 4-1997, f. & cert. ef. 7-25-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 7-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-010-0085

### Holders of Foreign Licenses, Certificates, Credentials or Degrees

(1) The Board recognizes the International Qualifications Appraisal Board (IQAB), a joint body of NASBA and AICPA. IQAB is charged with:

(a) Evaluating the professional credentialing process of certified public accountants or their equivalents in countries other than the United States; and

(b) Negotiating principles of reciprocity agreements with the appropriate professional and/or governmental bodies of other countries seeking recognition as having requirements substantially equivalent to requirements in the United States to qualify for and receive the license of certified public accountant.

(2) The Board shall honor the principles of reciprocity agreements issued by IQAB.

(3) An applicant for a certified public accountant license in Oregon who holds a license, credential or degree issued by a foreign country that is claimed to be comparable to a license issued by the Board, or an applicant who holds a certificate or license issued by the licensing body of any state

or US Territory that is based upon the certificate, credential or degree granted by a foreign country that is not recognized under any IQAB Reciprocity Agreement is required to meet the following requirements:

(a) Satisfy the educational requirement under ORS 673.050 for admission to the CPA exam. The applicant's academic credentials shall be evaluated by a credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc. (NACES);

(b) Pass all sections of the CPA exam required by ORS 673.060; and

(c) Complete the experience requirement under ORS 673.040, 673.100 and OAR 801-010-0065.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.040 & 673.060

Hist.: 1AB 2-1986, f. & ef. 10-15-86; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1995, f. & cert. ef. 8-22-95; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-010-0110

### Renewal of License

(1) Unless properly renewed, licenses issued under ORS 673.150 that end in even numbers expire on June 30 of even-numbered years and licenses that end in odd numbers expire on June 30 of odd-numbered years. To renew an active, inactive or retired license, the license holder must:

(a) Submit the current renewal form provided by the Board, fully completed and postmarked by the US Post Office or other delivery service no later than June 30 of the year in which the license expires;

(b) Pay the renewal fee specified in OAR 801-010-0010, and

(c) If applying for renewal of an active or inactive license, provide evidence that the applicant has satisfied continuing education and peer review requirements.

(d) Submit the late fee described in OAR 801-010-0010, if the renewal application is postmarked by the US Post Office or other delivery service after June 30.

(2) A licensee that does not renew by June 30 shall not hold out as a CPA or PA and practice public accounting until the license is renewed.

(3) The Board will pro-rate a licensee's first renewal fee in six month increments, depending on the date of issuance.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.150

Hist.: 1AB 4-1981, f. & ef. 6-17-81; AB 3-1991, f. & cert. ef. 4-10-91; AB 4-1991, f. & cert. ef. 7-1-91; AB 5-1993, f. & cert. ef. 8-16-93; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

## 801-010-0115

### Resignation of Licensee

(1) Resigning licenses that are not the subject of pending complaints or Board investigations. A certified public accountant or public accountant may resign and surrender a license issued under ORS 673.040, 673.100 and 673.150, by submitting a written resignation, together with the original certificate or license issued by the Board. All resignations are effective upon acceptance by the Board.

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

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

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

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

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

# ADMINISTRATIVE RULES

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

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

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

- (a) Surrender the CPA certificate or PA license to the Board;
- (b) Take all reasonable steps to avoid foreseeable harm to any client;
- (c) Maintain client records for a period of at least six years, or return such records to the client; and

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

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.410

Hist.: AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-010-0120

### Inactive Status

#### (1) Inactive:

(a) An application for inactive license status must be made on a form provided by the Board and must be accompanied by a fee prescribed by OAR 801-010-0010.

(b) The licensee applying for inactive status must certify to the Board that:

(A) The licensee holds a license issued under ORS 673.150 which is not lapsed, expired, revoked or suspended;

(B) The licensee is not employed in a public accounting firm that is required to be registered in Oregon with the Board;

(C) The licensee is not a sole practitioner; and

(D) The licensee does not perform or offer to perform for a client services involving the use of accounting or auditing skills, including but not limited to issuance of reports on financial statements, management advisory, financial advisory or consulting services, preparation of tax returns or the furnishing of advice on tax matters.

(2) **CPE and Peer Review Requirements.** A licensee who is granted inactive status must:

(a) Obtain 32 hours of qualified continuing professional education during a two-year renewal period;

(A) A maximum of 8 hours may be in non-technical subjects

(b) Is not subject to Peer Review requirements under ORS 673.455 during the period in which inactive status is approved.

(3) **Inactive Licensees' Use of CPA or PA Designation.** A licensee who is granted inactive status shall not use the CPA or PA designation unless the word "Inactive" is used in conjunction with the designation, such as "CPA Inactive" and is listed in the same font size.

(a) Licensees who are granted inactive status will not receive a license card from the Board office upon renewal.

(b) Does not otherwise violate the provisions of OAR 801-030-0005(5).

(4) Except as provided in this rule, a licensee who is granted inactive status shall not hold out as a CPA or PA and the licensee shall be subject to disciplinary action under ORS Chapter 673 for violations of this provision.

Stat. Auth.: ORS 670.310 & 673.220

Stats. Implemented: ORS 673.220

Hist.: 1AB 2-1986, f. & ef. 10-15-86; AB 5-1989, f. & cert. ef. 8-2-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

## 801-010-0125

### Renewal of Inactive Status

(1) Inactive status granted to a licensee under ORS 673.220 expires on June 30 of each expiration year under the provisions of OAR 801-010-0110.

(2) To renew inactive status, the holder must, before the time at which the inactive license would otherwise expire, apply to renew such license on a form provided by the Board.

(3) The application must be accompanied by the appropriate renewal fee prescribed by OAR 801-010-0010.

(4) Submit a minimum of 32 hours of continuing professional education.

(5) Applications that are postmarked by the US Postal Service or other delivery service after June 30 must include a late fee described in OAR 801-010-0010.

Stat. Auth.: ORS 670.310 & 673.220

Stats. Implemented: ORS 673.220

Hist.: 1AB 2-1986, f. & ef. 10-15-86; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1995, f. & cert. ef. 3-22-95; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-010-0130

### Restoration to Active Status

A person who is granted inactive status under ORS 673.220 and who subsequently applies to renew such permit to active status must submit an application on a form provided by the Board. The applicant must:

(1) Pay the license fee for the renewal period in which the application is submitted;

(2) Meet the CPE requirements for reinstatement described in OAR 801-040-0090;

(3) Meet the peer review requirements described in OAR 801, division 050; and

(4) The applicant must not perform any public accountancy services until after the applicant receives an active license.

Stat. Auth.: ORS 670.310 & 673.220

Stat. Implemented: ORS 673.220

Hist.: 1AB 2-1986, f. & ef. 10-15-86; AB 3-1994, f. & cert. ef. 8-10-94; AB 2-1995, f. & cert. ef. 3-22-95; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-010-0340

### Non-CPA and Non-PA Ownership of Business Organizations

(1) **Requirements of non-CPA or non-PA ownership.** The ownership of a business organization, defined in ORS 673.010 and registered as a firm under ORS 673.160 and OAR 801-010-0345, that is lawfully engaged in the practice of public accountancy in this state, may include owners who are not licensed as certified public accountants or public accountants if the following conditions are met:

(a) Licensed certified public accountants and public accountants shall, in the aggregate, directly or beneficially, hold ownership of more than half of the equity capital and a majority of voting rights;

(b) If the business organization has its principal place of business in this state and performs public accountancy services in this state, licensees under the provisions of ORS 673.150 or 673.100 shall, in the aggregate, directly or beneficially, hold ownership of more than half of the equity capital and a majority of voting rights;

(c) The business organization shall designate in writing a license holder under ORS 673.150 who shall be responsible for the management and registration of the business organization in this state;

(d) A license holder under ORS 673.150 shall have ultimate responsibility for each financial statement attest service engagement performed in this state;

(e) Non-licensee owners shall be material participants in the business of the firm or an entity affiliated with the firm;

(f) Non-licensee owners may be natural persons or legal entities provided that each ultimate beneficial owner of an equity interest in such entity shall be a natural person who materially participates in the business conducted by the firm.

(g) Non-licensee owners must not hold themselves out as certified public accountants or public accountants and must not have a license in Oregon or any other jurisdiction, which has been suspended or revoked for disciplinary reasons.

(h) Business organizations with non-CPA or non-PA ownership that are registered under OAR 801-010-0345 must comply with the requirements for peer review as provided in ORS 673.455 if such business organization performs attestation or compilation services.

(i) For purposes of this rule, "material participation" means an activity that is regular, continuous and substantial.

(2) **Registration.** A business organization with non-licensee ownership that is registered in this state under OAR 801-010-0345 must certify at the time of registration and at each renewal that the business organization is in compliance with the provisions of this rule.

(3) **Request for extension.** If the licensee ownership of a registered business organization whose principal place of business is in this state does not meet the requirements of section (1) of this rule because of a death or other unforeseen circumstance, the business organization may request an extension of 180 days, or until the next renewal period, whichever is longer, for the business organization to meet such requirement.

# ADMINISTRATIVE RULES

(4) **CPA designation.** A business organization, of which the majority ownership is held by individuals licensed as public accountants under ORS 673.100, must not use the term “CPA firm” or any similar name that would indicate that a majority of the owners of the firm hold CPA certificates issued under ORS 673.040.

Stat. Auth.: ORS 670.310, 673.410 & 673.160

Stats. Implemented: ORS 673.160

Hist.: IAB 18, f. 11-25-70, ef. 12-25-70; IAB 29, f. 4-25-73, ef. 5-15-73; IAB 3-1982, f. & ef. 4-20-82; AB 5-1990, f. & cert. ef. 8-16-90; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 2-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-010-0345

### Registration of Business Organizations

(1) **Requirement to register as a firm.** A business organization organized for the practice of public accountancy must register with the Board as a firm if the business organization:

(a) Is located in Oregon and

(A) Uses the terms “certified public accountant”, “CPA”, “public accountant” or “PA”, or any derivation of such terms;

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

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

(b) Is not located in Oregon and

(A) Uses the terms “certified public accountants”, “CPA”, “public accountants” or “PA”, or any derivation of such terms;

(B) Holds out to clients or to the public that the business organization is in any way engaged in the practice of public accountancy and performs any of the following services:

(i) An audit or other engagement for which performance standards are included in Statements on Auditing Standard (SAS)

(ii) Examination of prospective financial information for which performance standards are included in the Statement on Standards for Attestation Engagements (SSAE)

(iii) Engagements for which performance standards are included in the auditing standards of the Public Company Accounting Oversight Board (PCAOB)

(C) Has a person, who is a license holder under ORS 673.150 or meets the substantial equivalency requirements of ORS 673.153, that is responsible for supervising attestation services and signs or authorizes someone to sign the accountant’s report on the financial statements on behalf of the business organization.

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

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

(b) Performs attestation or compilation services.

(3) **Application requirements.**

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

(A) Name of the firm;

(B) Identification by name and by certificate or license number of each CPA and PA in this state who is associated with or employed by the business organization;

(C) The physical address of every office and branch office in this state;

(D) Notice of every denial, revocation, lapse or suspension of authority to perform public accountancy services that is or has been issued by any jurisdiction against any licensee associated with the business organization;

(E) Notice of the filing of any lawsuit relating to the professional services of the business organization, if an essential element of such lawsuit involves fraud, dishonesty or misrepresentation; and

(F) Notice of any criminal action filed against the business organization or against any owner or manager and notice of any conviction against any owner or manager of the business organization. Notice of a conviction under this rule includes the initial plea, verdict or finding of guilt, pleas of no contest or pronouncement of sentence by a trial court even though that

conviction may not be final and sentence may not be actually imposed until appeals are exhausted. The notice provided shall be signed by the person to whom the conviction or criminal action applies, and shall state the facts that constitute the reportable event and identify the event by the name of the agency or court, the title of the matter, the docket number and the date of occurrence of the event.

(G) Provide a letter of completion of the firm’s most recent peer review if the firm intends to perform attest or compilation services in this state.

(b) Firms not located in Oregon

(A) Name of the firm

(B) Identification by name and by active certificate or license number, indicating the state in which the certificate or license is issued of each CPA who is associated with or employed by the business organization and is authorized to practice in Oregon under substantial equivalency pursuant to ORS 673.153 who will practice public accounting in Oregon.

(C) Provide a letter of completion of the firm’s most recent peer review if the firm intends to perform attest or compilation services in this state.

(D) Any out of state firm that is required to register in Oregon and subsequently opens an office in Oregon shall notify the Board of the existence of the new office within 30 days of opening the office.

(4) **Application requirements for firms with non-CPA and non-PA ownership.** In addition to the information required under section (3) of this rule for firm registrations, business organizations with non-CPA or non-PA owners that are required to register as a firm must provide the following information with the application for initial registration and with each registration renewal.

(a) The name of the firm and a list of the states in which the business organization has applied, or is currently authorized to practice public accountancy;

(b) Evidence to the satisfaction of the Board that the business organization satisfies the requirements of OAR 801-010-0340;

(c) The identities of all owners or managers of the business organization who work regularly in this state;

(d) The physical address of every office maintained in this state;

(e) The identity of every person with management responsibility for each office in this state;

(f) Notice of every denial, revocation, lapse, or suspension of authority to perform accounting services or other services issued against any owner or manager of the business organization in any jurisdiction;

(5) **Issuance of firm registration.** The Board shall, upon receipt of an application that satisfies all the requirements of these rules and payment of the registration fee, issue a certificate of registration, which shall remain in effect until December 31 of the odd-numbered year following the date of such registration. The business organization shall:

(a) Renew the firm registration on or before December 31 of each odd-numbered year by submitting the renewal form provided by the Board, together with the appropriate registration renewal fee. The Board may waive the renewal fee if an initial firm registration is issued in November or December of the year in which the registration is due for renewal.

(b) Business organizations that fail to renew a registration within 60-days of the close of the renewal period will be terminated and required to pay the renewal fee plus a late fee and submit a reinstatement form to the Board office;

(c) Notify the Board in writing of any change in the firm name within 30 days of such change;

(d) In addition to the notice that is required upon application and for each renewal of the firm registration under section (3) of this rule, business organizations are required to provide written notice to the Board within 45 days of the filing of any lawsuit, settlement or arbitration relating to the professional services of the business organization if an essential element of such lawsuit involves fraud, dishonesty or misrepresentation;

(e) Display the letter of registration issued by the Board in a conspicuous place at the principal office of the firm.

(6) **Form of practice.** A licensee may practice public accountancy in a business organization as defined in ORS 673.010 that is organized in accordance with statutory provisions.

(a) Non-CPA or non-PA ownership. A licensee may form a business organization with a non-licensee for the purpose of engaging in the practice of public accountancy in accordance with the provisions of ORS 673.160 and OAR 801-010-0340.

(A) Notwithstanding subsection (6)(a) of this rule, any certified public accountant or public accountant whose license to practice public accountancy has been suspended or revoked for disciplinary reasons in any

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jurisdiction, may not participate as a non-licensee owner in a business organization required to be registered under ORS 673.160.

(b) Branch offices.

(A) Every branch office located in this state shall be managed by a licensee holding a license issued under ORS 673.150 who shall be in residence at the branch office, on a full-time basis, during the time the branch office is open to the public. A licensee operating a branch office is responsible for managing the office, staff and services rendered to the public.

(B) The Board may, at its discretion, approve the operation of a branch office that does not meet the supervision requirements of paragraph A of this subsection. Licensees seeking approval under this paragraph shall submit in advance a written proposal describing how the licensee will provide adequate supervision of the branch office. The proposal shall specify the minimum number of hours each week that a named licensee will provide physical supervision at the branch office.

(C) Any licensee operating a branch office under approval authorized by paragraph (B) of this subsection shall notify the Board in writing of any deviation from an approved plan within 30 days of the deviation.

(D) The location of each branch office in Oregon shall be reported to the Board at the time of application for registration as a firm and with each renewal application, together with a statement that each branch office meets the requirements of OAR 801-010-0345(6)(b)

(c) Internet Practice. Licensees using the CPA or PA title to perform or solicit services via a website, are required to include information on the website naming the state(s) in which each CPA or PA is licensed to perform public accounting services, or provide a name and contact information for an individual who will respond within seven business days to inquiries regarding individual licensee information. Information required to be posted by this rule must be clearly visible and prominently displayed.

Stat. Auth.: ORS 670.310, 673.410 & 673.160

Stats. Implemented: ; ORS 673.160

Hist.: AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; BOA 2-1998, f. & cert. ef. 3-30-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12

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**Rule Caption:** Establish CPE requirements for inactive licensees and modify reinstatement requirements; housekeeping.

**Adm. Order No.:** BOA 4-2011

**Filed with Sec. of State:** 12-28-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 801-040-0010, 801-040-0020, 801-040-0090, 801-040-0100, 801-040-0160

**Subject:** Rules were amended to establish CPE requirements for inactive license holders. In addition, reinstatement requirements were modified to require a licensee in lapsed status to renew to active status only.

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

## 801-040-0010

### Basic Requirements

(1) **Biennial CPE requirement for Active licensees.** Each biennial renewal period, certified public accountants and public accountants must report satisfactory evidence of having completed 80 hours of continuing professional education (CPE) unless such requirement is waived by the Board under ORS 673.165 and OAR 801-040-0150. The 80-hour CPE requirement must be completed as follows:

(a) At least 24 of the required 80 CPE hours must be completed in each year of the renewal period. Hours carried forward from the previous reporting period (carry-forward hours) may not be used to meet the minimum annual requirement.

(b) CPE hours must be completed during the two-year period immediately preceding the renewal date, except for carry-forward hours described in subsection (c) of this rule.

(c) A maximum of 20 CPE hours in technical subjects may be carried forward from one reporting period to the next and may be used in partial fulfillment of the 80 hour requirement.

(2) **Ethics CPE requirement.** CPE hours in professional conduct and ethics are included in the 80 hour requirement for each renewal period.

(a) All active licensees who are applying for the first license renewal in Oregon are required to complete and report at least four hours of CPE in a professional conduct and ethics program that meets the requirements of section three (3) of this rule.

(b) Licensees who are not renewing for the first time and whose principal place of business is located in another jurisdiction may meet the ethics requirement of this rule by demonstrating compliance with the other jurisdiction's professional conduct and ethics CPE requirement. The number of CPE Ethics hours that meets the Ethics requirement of such other jurisdiction will be accepted in Oregon, so long as the other jurisdiction requires the licensee to complete an ethics program as a condition of renewal.

(c) An active licensee who is not renewing for the first time and whose principal place of business is in another jurisdiction that does not have a professional conduct and ethics CPE requirement must complete the ethics requirement described in subsection (2)(d) of this rule.

(d) All other active licensees are required to complete and report four hours of CPE in professional conduct and ethics with each biennial renewal application, which may be satisfied by any ethics program that meets the general CPE requirements described in OAR 801-040-0030.

(3) **CPE ethics programs.** CPE programs in professional conduct and ethics required by subsection (2)(a) of this rule are eligible for CPE credit if the program is offered by a sponsor registered with the Board and includes information pertaining to each of the following topics:

(a) Oregon Administrative Rules and Oregon Revised Statutes pertaining to the practice of public accountancy;

(b) Examples of issues or situations that require an understanding of statutes, rules and case law relevant to all licensees.

(c) The Code of Professional Conduct adopted by the Board and set forth in OAR chapter 801, division 030; and

(d) Review of recent case law pertaining to ethics and professional responsibilities for the accounting profession.

(4) **Biennial CPE Requirements for Inactive Licensees.** A licensee who is granted inactive status must:

(a) Obtain 32 hours of qualified continuing professional education during a two-year renewal period;

(b) A maximum of 8 hours may be in non-technical subjects;

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 10-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 4-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 4-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 6-2009, f. 12-15-09 cert. ef. 1-1-10; BOA 4-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 4-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-040-0020

### Controls and Reporting

(1) **Reporting requirement.** As a requirement for renewal of an active license, licensees are required to certify that the licensee has fulfilled the CPE requirement by signing the certification section on the renewal form. Licensees are required to report the following information for each CPE program listed on the renewal form:

(2) **CPE programs.**

(a) Name of program sponsor;

(b) Program title or description of content;

(c) Type of CPE program, using designations provided on renewal form;

(d) For self-study programs, the program sponsor's QAS number;

(e) Date(s) attended or date of completion; and

(f) Number of hours claimed.

(3) **Published articles and books.** The CPE report must include the following information for publications to be eligible for CPE credit:

(a) Name and address of the publisher;

(b) Title of publication;

(c) Description of content;

(d) Dates of publication; and

(e) Number of hours claimed.

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 6-1992, f. & cert. ef. 8-10-92; AB 4-1994, f. & cert. ef. 9-27-94; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 4-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-040-0090

### Reinstatement Requirements: Lapsed, Suspended or Inactive to Active Status

(1) **Lapsed licenses.** Licensees that are not properly renewed shall lapse. Lapsed licenses may be reinstated only to active status. To reinstate to active status an individual must:

(a) Provide a detailed written description of the business and professional activities of the individual during the period of lapse, and indicate

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whether the individual was holding out as a CPA or PA during the period of lapse;

(b) Submit an application for reinstatement on a form provided by the Board;

(c) Submit payment of the application fee and the active renewal fee for each renewal period that the license was lapsed, and

(d) Complete and report the appropriate CPE hours described in this rule, plus a penalty of an additional 16 CPE hours.

(e) CPE hours submitted for reinstatement must meet the requirements for CPE credit under these rules.

**(2) Holders of licenses that are lapsed less than two years must:**

(a) Complete and report 80 CPE hours, which shall be completed within the 12 month period immediately preceding the date of application for reinstatement; and

(b) Complete and report four CPE hours in professional conduct and ethics.

**(3) Holders of licenses that are lapsed more than two and less than six years must:**

(a) Complete and report 160 CPE hours which shall be completed within the 12 month period immediately preceding the date of application for reinstatement;

(b) Comply with CPE requirements under these rules for the period following reinstatement until the next renewal date on a pro rata basis, to be calculated at the rate of 3-1/3 hours per month, including the month of reinstatement, from the date of reinstatement to the end of the renewal period in which reinstatement occurs; and

(c) Complete and report four CPE hours in professional conduct and ethics.

(d) In lieu of meeting the CPE requirements described in this section, the holder of a lapsed license may elect to take and pass the CPA exam within the five years immediately preceding the date of application for reinstatement. A person who elects this option must meet the requirements of OAR 801-010-0060.

**(4) Lapsed more than six years or three renewal periods:**

(a) A license that is lapsed for more than three renewal periods will expire.

(b) An expired license may be restored only upon the Board's determination that there is good cause.

(5) **Inactive licenses.** To reinstate a license from inactive to active status, the holder of such license shall meet the requirements for reinstatement of lapsed licenses described in section (1) of this rule, with the following exceptions:

(a) **Credit for CPE** taken while on inactive status will be given for the first two bienniums only (maximum of 64 hours)

(6) **Suspended licenses.** To reinstate a license that is suspended under ORS 673.170, the holder of such license shall:

(a) Provide evidence of satisfaction or completion of all terms and conditions stated in the Order of Suspension; and

(b) Meet the requirements for reinstatement of a lapsed license as stated in this rule.

(7) **License holders in other jurisdictions.** Licensees who hold an active license to practice public accountancy issued under the laws of another jurisdiction, whose principal place of business is in such other jurisdiction, and who wish to reinstate an Oregon license that has been lapsed for less than six years or inactive for more than two years shall:

(a) Submit evidence that the applicant holds an active license to practice public accountancy, in good standing, issued by another jurisdiction; and

(b) Submit payment of the initial license fee stated in OAR 801-010-0010(2)(a) plus the biennial renewal application fee stated in OAR 801-010-0010(3)(a).

(c) Upon reinstatement, licensee shall complete CPE requirements described in these rules on a pro rata basis, calculated at 3-1/3 hours per month, including the month of reinstatement until the end of the renewal period in which reinstatement occurs.

(8) **24 Hour Minimum annual CPE requirement.** Licensees whose licenses are reinstated under this rule are required to meet the 24 hour minimum annual CPE requirement at the pro-rated calculation of two (2) CPE hours for each month, including the month of reinstatement, until June 30 of the year in which the licensee is reinstated.

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410

Stats. Implemented: ORS 673.165 & 673.210

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1996, f. & cert. ef. 9-25-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01,

cert. ef. 1-1-02; BOA 7-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 10-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 4-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 4-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-040-0100

### New Licenses

**(1) CPE Requirement for new licensees.**

(a) Licensees who receive an initial license to practice public accountancy shall comply with the CPE requirements from the date of issuance of the license on a prorated basis calculated at 3-1/3 CPE hours per month, including the month of issuance, until June 30 of the renewal period in which the license is issued.

(b) The 24 hour annual CPE requirement shall also be prorated at two (2) CPE hours per month, including the month of issuance, until June 30 of the renewal period in which the license was issued.

(c) CPE hours earned during any month of the two-year renewal cycle during which the initial license was issued shall be eligible to meet the initial CPE requirement.

(2) **Requirement for licensed public accountants** who become licensed as certified public accountants. Licensees who hold a license to practice public accountancy as a licensed public accountant under ORS 673.100, and who receive an initial certificate and license to practice public accountancy as a certified public accountant shall, in addition to the requirement under section (1) of this rule, complete and report 3-1/3 CPE hours for each month of the renewal period during which the person held a license as a public accountant. CPE hours earned during any month of the two year renewal cycle during which the initial license was issued shall be eligible for credit to meet this requirement.

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 4-1989, f. & cert. ef. 3-13-89; AB 4-1994, f. & cert. ef. 9-27-94; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 7-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 4-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-040-0160

### Failure to Comply

(1) **16-hour CPE penalty.** Licensees who submit an application for renewal of a license and who have not complied with the CPE requirements described in OAR 801-040-0010 are required to complete and report an additional 16 hours of qualifying CPE.

(2) **Failure to comply** with CPE requirements. Licensees who do not meet the CPE requirements are subject to disciplinary action under ORS 673.170 (L), unless CPE requirements have been waived under OAR 801-040-0150.

Stat. Auth.: ORS 670.310 & 673.410

Stat. Implemented: ORS 673.165 & 673.170

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 7-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 4-2011, f. 12-28-11, cert. ef. 1-1-12

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**Rule Caption:** General housekeeping and authority to grant extensions for peer review deadline.

**Adm. Order No.:** BOA 5-2011

**Filed with Sec. of State:** 12-28-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 801-050-0010, 801-050-0020, 801-050-0040

**Subject:** General housekeeping items to reflect correct references to rules and revision to allow the Board to grant an extension on deadlines relating to peer review.

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

## 801-050-0010

### Definitions

As used in OAR 801-050 the following terms have the following meanings:

(1) **Acceptance of Engagement:** The date the engagement letter is signed by the client.

(2) **Peer Review Board:** The Peer Review Board is responsible for maintaining, promoting and governing the activities of the American Institute of Certified Public Accountants Peer Review Program, including the issuance of Peer Review Standards, and peer review guidance

(3) **Board:** Oregon Board of Accountancy.

(4) **Client records:** Supporting documents relating to financial statements that are the subject of peer review and that may contain confidential financial or personal information about a client of the firm.

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(5) **Firm:** A registered public accounting firm or a CPA or PA doing business as a sole proprietor, if such firm or sole proprietor performs attest or compilation services in Oregon or for Oregon clients and is subject to the peer review requirement.

(6) **Minimum standards for performing and reporting on peer reviews:** Standards described in OAR 801-050-0080 that are required for approved peer review programs.

(7) **PCAOB:** Public Company Accounting Oversight Board that conducts firm inspections of public accounting firms that perform audits for publicly-held companies.

(8) **Peer Review:** A study, appraisal or review conducted in accordance with Peer Review Standards of one or more aspects of the public accountancy work of a firm or a license holder under ORS 673.150 who performs attest or compilation services.

(a) **Systems Review:** Required of firms that perform engagements under the auditing and examination attest professional standards. It is a professional service intended to provide the reviewer with a reasonable basis for expressing an opinion on whether, during the year under review:

(A) The reviewed firm's system of quality control for its accounting and auditing practice has been designed in accordance with quality control standards established by the American Institute of Certified Public Accountants.

(B) The reviewed firm's quality control policies and procedures were being complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects.

(b) **Engagement Review:** Required of firms that only perform engagements under the compilation, review, non-examination attestation and agreed upon procedures professional standards. It is a professional service intended to evaluate whether engagements submitted for review are performed and reported in conformity with applicable professional standards in all material aspects.

(9) **Peer Review Standards:** Standards issued by the Peer Review Board and used by peer review program sponsors for performing and reporting on peer reviews of public accounting firms that provide attest and compilation services.

(10) **Peer Reviewer:** A qualified public accountant as defined in this rule, or a certified public accountant licensed in any state, who is trained and qualified to perform peer review for an approved peer review program and who is independent of the firm under review.

(11) **Qualified Public Accountant:** A public accountant licensed under ORS 673.100 who was required to pass the audit section of the Uniform CPA Exam as a requirement for licensing.

(12) **Report Acceptance Body (RAB):** An independent report acceptance body associated with an approved peer review program. The purpose of the RAB is to consider and accept the results of each peer review and to require corrective actions of firms who receive a pass with deficiencies or a fail report as identified in the peer review process.

(13) **Sponsor:** An organization that administers a Board-approved peer review program.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12

Stats. Implemented: ORS 673.455

Hist.: AB 7-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 2-1994, f. & cert. ef. 4-28-94; BOA 6-1998 f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05; BOA 7-2009, f. 12-15-09 cert. ef. 1-1-10; BOA 5-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-050-0020

### Peer Review Enrollment and Participation in Peer Review Program

(1) **Enrollment Requirement.** Every firm that performs attest as defined by OAR 801-005-0010(3) or compilation as defined by 801-005-0010(13) services in Oregon or for Oregon clients, is required to participate in an approved peer review program as a condition of registration under ORS 673.160 and for each renewal thereof.

(2) Public accounting services subject to peer review. Attest and compilation services as defined in OAR 801-005-0010(3) and (13) that require participation in a peer review program.

(a) Firms that prepare financial statements which do not require reports under Statements on Standards for Accounting and Review Services and that perform no other attest or compilation services, are not required to participate in a peer review program; however, such engagements conducted by a firm that is otherwise required to participate in a peer review program shall be included in the selection of engagements subject to peer review.

(b) Individual licensees may participate in a peer review program through their firms. If the licensee has an individual practice apart from the

firm in which the licensee performs attest or compilation services, the individual practice is also subject to the requirement to participate in a peer review program.

(c) Each firm that is required to participate in a peer review program under this rule shall enroll in an approved program before issuing a report on attest and compilation services as defined by OAR 801-005-0010(3) and (13). The firm must send proof of enrollment and the date for initial review to the Board before the report is issued. The schedule for the firm's peer review shall be established according to the program standards.

(d) Firms that do not have a physical location in this state, but nevertheless perform attest or compilation services in this state, are required to participate in a peer review program that is performed in accordance with the minimum standards for performing and reporting on peer reviews described in OAR 801-050-0080, and may be required to demonstrate that the out-of-state office(s) through which the services are being provided follows the same quality control policies and procedures established by the firm that has been subjected to peer review in the other state.

(3) **Exemption from Enrollment Requirement.** Firms that do not perform attest or compilation services as defined in OAR 801-005-0010(3) and (13) are not required to participate in a peer review program, and shall notify the Board of such exemption on the initial firm registration application and on each firm renewal application.

(4) **Peer Review Participation.** Every firm that is required to participate in a peer review program shall have a peer review in accordance with the peer review program standards.

(a) It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review date.

(b) Any firm that is rejected or terminated by a sponsor for any reason shall have 21 days to provide written notice to the Board of such termination or rejection, and to receive authorization from the Board to enroll in the program of another sponsor.

(c) In the event a firm is merged, otherwise combined, dissolved or separated, the sponsor shall determine which firm is considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

(d) A firm choosing to change to another sponsor may do so only if there is not an open active peer review and if the peer review is performed in accordance with the minimum standards for performing and reporting on peer reviews described in OAR 801-050-0080.

(e) With respect to firms that perform attest or compilation services in more than one state, the Board may accept a peer review based solely on work conducted outside this state if the peer review is performed in accordance with the minimum standards for performing and reporting on peer reviews described in OAR 801-050-0080.

(f) On request of the firm, the Board may specify that a peer review program that is administered by another state board of accountancy satisfies the requirements of OAR 801-050 if the Board determines that the program substantially meets or exceeds the minimum standards described in this rule.

(g) Exceptions. The Board may grant an extension of time for submission of the peer review report to the Board office. Extensions will be determined by the Board on a case-by-case basis. Firms that are granted any extension by the peer review program administrator, must submit a copy of such extension to the Board office within 14-days.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12

Stats. Implemented: ORS 673.455

Hist.: AB 2-1994, f. & cert. ef. 4-28-94; BOA 6-1998 f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05; BOA 7-2009, f. 12-15-09 cert. ef. 1-1-10; BOA 5-2011, f. 12-28-11, cert. ef. 1-1-12

## 801-050-0040

### Reporting Requirements

(1) **Reporting Enrollment in Peer Review Program.** Every firm is required to provide the following information in writing with every application for registration and renewal of registration:

(a) Certify whether the firm is or is not required to participate in a peer review program;

(b) If the firm is subject to the peer review requirement, provide the name of the sponsor of the approved peer review program in which the firm is enrolled, and the period covered by the firm's most recent peer review. If there is a change in the peer review program utilized as compared to the sponsor of the prior peer review program, provide the name of the sponsor of the approved peer review program in which the firm is currently enrolled, and the period covered by the firm's most recent peer review.

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(c) A firm that has previously reported to the Board that it is not subject to the peer review requirement, and that subsequently engages in the performance of attestation or compilation services as defined by OAR 801-005-0010(3) and (13), shall provide written notice of such change in status to the Board before issuing a report.

(2) **Notice to Board** Firms are required to submit a copy of the most recent Systems Review Acceptance letter(s) or Engagement Review Acceptance letter(s) from the Peer Review Program Sponsor to the Board office within 45 days of receipt or with submission of firm renewal application, whichever occurs first. Completion letters must also be submitted to the Board office within 45 days or receipt.

(3) **Documents required.** A firm that has opted out of participating in the AICPA Facilitated State Board Access (FSBA) program, shall provide to the Board copies of the following documents related to the review report:

- (a) Peer review report issued;
- (b) Letter, if any, from the RAB prescribing corrective actions;
- (c) Firm's response letter, if any;
- (d) A letter from the firm to the Board describing corrective actions taken by the firm that relate to requirements of the RAB; and
- (e) Other information the firm deems important to the Board's understanding of the information submitted.
- (f) Other information the Board deems important for the understanding of the information submitted.

(4) **Certification.** Firms shall certify on the initial firm registration application and on each renewal application the result of the firm's most recent Peer Review.

(5) **Verification.** The Board may verify the certifications of peer review reports that firms provide on initial registration and renewal applications.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12  
Stats. Implemented: ORS 673.455  
Hist.: AB 2-1994, f. & cert. ef. 4-28-94; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05; BOA 7-2009, f. 12-15-09 cert. ef. 1-1-10; BOA 5-2011, f. 12-28-11, cert. ef. 1-1-12

## Board of Architect Examiners Chapter 806

**Rule Caption:** Adds digital stamps and signatures to architect document stamping methods authorized by the Board.

**Adm. Order No.:** BAE 1-2012

**Filed with Sec. of State:** 1-4-2012

**Certified to be Effective:** 1-4-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 806-010-0045

**Subject:** The revisions of 806-010-0045 will allow for the use of digital stamps and signatures by architects when submitting construction documents to building departments. This rule change is necessary to facilitate the increasing use of electronic means to create, use and submit building construction documents.

**Rules Coordinator:** Jim Denno—(503) 763-0662

### 806-010-0045

#### Stamps and Signatures

(1) Every registered architect must have a stamp bearing the name of the registrant, only, together with the city and state in which the architect's principal office is located. The stamp may, but need not, include the architect's license number issued by the Oregon Board. A facsimile of the design and the lettering of the stamp appears herewith: [Image not included. See. ED. NOTE.]

(2)(a) The stamp authorized by the Board must be one of crimp type, rubber stamp type, or computer generated type.

(b) Computer generated type allows for the arrangement, organization, configuration, structure, style or method of delivery of the information contained in the stamp, but does not mean altering the substance of information or the addition, omission or misuse of information.

(3) The stamp with the registrant's manual or digital signature must appear on the original title page of specifications and on every sheet of the drawings intended for permit and construction, whether or not the project is exempt under ORS 671.030, and must be the stamp of a registered, legally responsible member or employee of the firm. The originals may be reproduced for permit and construction purposes.

(a) A manual signature is the handwritten name of the registrant applied to a document that identifies the person, serves as a means of authentication of the contents of the document, provides responsibility for

the creation of the document, and provides for accountability for the contents of the document.

(b) A digital signature is an electronic document with a digital authentication process attached. Such a digital signature will carry the same weight, authority, and effects as a manual signature. The digital signature, which can be generated by using either a public key infrastructure or signature dynamics technology, must include the phrase "digital signature" in place of the handwritten signature or in conjunction with a graphic reproduction of the signature and be as follows:

(A) Unique to the person using it; and

(B) Capable of verification; and

(C) Under the sole control of the person using it; and

(D) Linked to a document in such a manner that provides significant security, authentication, and/or encryption; such as when the electronic signature is invalidated if any data in the document is changed.

(4) An architect may not stamp and sign, or countersign, or allow his or her stamp to be affixed to any architectural plans, drawings, documents, specifications or reports not prepared by him or her or under his or her direct control and supervision.

(5) "Direct control and supervision" as used in ORS 671.020(5) and 671.090(6) shall be considered to mean that the documents bearing the architect's stamp and signature were prepared under the responsible direction of the architect, that the architect has exercised directing, guiding and restraining power over the preparation of the documents and that the architect has exercised his or her professional judgment in all architectural matters embodied within the documents. This rule is not intended to preclude the use of current technology or the use of standard details and product specifications in accomplishing the above objectives.

(a) Reviewing, or reviewing and editing, specifications and documents intended for permit and construction after they have been prepared by others does not constitute the exercise of responsible control and supervision because the reviewer has neither control over nor detailed knowledge of the content of such submissions throughout their preparation.

(b) Any architect signing or sealing technical submissions not prepared by that architect, but prepared under the architect's responsible control by persons not regularly employed in the office where the architect is resident, will maintain and make available to the Board, upon request, adequate records to demonstrate the nature and extent of the architect's control over, and detailed knowledge of, such technical submissions throughout their preparation.

(6) Notwithstanding other sections of this rule, a successor registered architect may complete a deceased or disabled architect's drawings and specifications intended for permitting and construction as though they were the successor's original, but must perform a thorough review and will become fully responsible for the content. The successor registered successor architect must use his or her own title block, stamp, and signature, and must remove the title block, stamp, and signature of the deceased or disabled architect.

[ED. NOTE: Images referenced are available from the agency.]

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.020

Hist.: AE 5, f. 12-22-64; AE 11, f. 2-15-74, ef. 3-11-74; AE 2-1978, f. & ef. 3-6-78; AE 1-1979, f. 5-31-79, ef. 6-1-79; AE 3-1979, f. & ef. 11-29-79; AE 1-1996, f. 1-23-96, cert. ef. 2-1-96; AE 2-1997, f. & cert. ef. 9-24-97; BAE 1-1999, f. & cert. ef. 3-25-99; BAE 3-2000, f. & cert. ef. 7-24-00; BAE 4-2004, f. & cert. ef. 5-5-04; BAE 1-2012, f. & cert. ef. 1-4-12

## Board of Licensed Social Workers Chapter 877

**Rule Caption:** Clarifies licensure and continuing education requirements, duties of Board Chair. Implements House Bill 2314 (2011).

**Adm. Order No.:** BLSW 2-2011

**Filed with Sec. of State:** 12-29-2011

**Certified to be Effective:** 12-29-11

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 877-001-0020, 877-010-0015, 877-010-0020, 877-015-0105, 877-015-0108, 877-015-0136, 877-020-0005, 877-020-0008, 877-020-0010, 877-020-0016, 877-020-0036, 877-025-0006, 877-025-0011, 877-040-0050

**Subject:** Limits applicability of LCSW late renewal fee increase to \$200 adopted by the Board effective January 1, 2011 (legislatively ratified in HB 5009, 2011) to LCSWs renewing on active status; provides Board authority to waive fees for licensees on active military duty and deployed outside of Oregon for 90 days or more; clarifies authority of Board Chair including administrative approvals between

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Board meetings related to licensure; removes requirement that applicant for LCSW licensure must hold LMSW license (implementing House Bill 2314, 2011); clarifies process and requirements for out-of-state applicants for LCSW who intend to practice prior to issuance of LCSW; specifies types of continuing education that will meet the requirements for licensure or certification renewal for LCSWs, LMSWs, and RBSWs; makes other housekeeping and technical changes.

**Rules Coordinator:** Martin Pittioni—(503) 373-1163

## 877-001-0020

### Fees for Certification and Licensing

Following are the fees due, without pro ration, as a condition of obtaining and retaining a certificate or license under this division of rules:

(1) With an application for an initial certificate or license:

- (a) For Registered Baccalaureate Social Worker — \$50;
- (b) For Licensed Master's Social Worker — \$50;
- (c) For Clinical Social Work Associate — \$150;
- (d) For Licensed Clinical Social Worker — \$150.

(2) For the initial issuance of a certificate or license:

- (a) For Registered Baccalaureate Social Worker — \$50;
- (b) For Licensed Master's Social Worker — \$100;
- (c) For Clinical Social Work Associate — \$60;
- (d) For Licensed Clinical Social Worker — \$130.

(3) For the renewal of a certificate or license:

(a) For Registered Baccalaureate Social Worker:

(A) Active — \$100;

(B) Inactive — \$40.

(b) For Licensed Master's Social Worker:

(A) Active — \$200;

(B) Inactive — \$80.

(c) For Clinical Social Work Associate — \$60.

(d) For Licensed Clinical Social Worker:

(A) Active — \$130;

(B) Inactive — \$48.

(4) For a request for renewal of a certificate or license received by the board after the renewal date of the certificate or license:

(a) For Registered Baccalaureate Social Worker — \$50;

(b) For Licensed Master's Social Worker — \$50;

(c) For Clinical Social Work Associate — \$50;

(d) For Licensed Clinical Social Worker on active status — \$200;

(e) For Licensed Clinical Social Workers on inactive status or

Licensed Clinical Social Workers renewing a license under the provisions of OAR 877-020-0060 — \$50.

(5) The fees in 877-001-0020 (1)(b) and (2)(b) are waived for any Clinical Social Work Associate who applies for Licensed Master's Social Worker licensure after having completed 75 hours of supervision required in OAR 877-020-0013(3)(b)(A).

(6) The Board may waive any fees in sections (1) through (4) of this rule, upon written request, for any active duty military personnel deployed for 90 days or more outside the State of Oregon.

Stat. Auth.: ORS 675.510-675.600, 675.532-675.533, SB 177(2009) & HB 2345(2009)

Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990-675.994 & 675.150

Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11

## 877-010-0015

### Chair's Responsibilities

(1) The Board Chair shall be responsible to carry out the duties of the Chair, including but not limited to the following:

(a) Develop a draft agenda for each board meeting.

(b) Act as Chair during the meetings of the Board.

(c) Call Board meetings as necessary.

(d) Appoint Board members to Board committees.

(e) Supervise the Executive Director and act as Chair of the Personnel Committee.

(f) Conduct business with the Governor's Office and the Department of Administrative Services as necessary.

(g) Execute documents as necessary to conduct Board business.

(h) Carry out administrative actions which meet applicable Board rules and guidelines in the interim between Board meetings, which shall be presented to the full Board for ratification or approval on the Consent Agenda of the Board meeting immediately following the Chair administrative action. For purposes of this section of rules, administrative actions by the Board Chair include, but are not limited to:

(A) Approval of CSWA supervision plans, plan changes and plan completions.

(B) Approval of applications for licensure or certification.

(C) Approval of license or certification re-activations.

(D) Approval of extensions of time for investigations under ORS 676.165(4).

(i) The Chair is further authorized to take action in-between Board meetings on matters that require policy decisions by the Board, subject to ratification by the Board at the Board's next meeting immediately following the Chair's action. Any such actions shall be noted on the agenda for the next meeting of the Board and shall become the first order of new business at that next meeting.

(2) The Vice-Chair shall act in lieu of the Chair when the Chair is unable to perform the required duties. If the Chair is aware in advance of any time periods where the Chair is unable to perform the duties of Chair, the Chair shall inform the Vice Chair and the Board's Executive Director in writing.

Stat. Auth.: ORS 675

Stats. Implemented: ORS 675.590

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11

## 877-010-0020

### Board Communications

All correspondence in support of Board activities shall be prepared by the Board Executive Director or designee. When deemed necessary or appropriate, the Executive Director will review correspondence with the Board Chair or the Board's legal counsel. The full Board should approve in advance any correspondence which may materially affect Board policies and procedures. When a delay might render the Board's functioning ineffective, the Chair may be required to take immediate action which shall be reviewed at the next meeting of the Board.

Stat. Auth.: ORS 675.510 - 675.600

Stats. Implemented: ORS 675.590

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-2001, f. & cert. ef. 5-4-01; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11

## 877-015-0105

### Rules Applicable to Registration and Licensure

This division of rules describes the procedures and requirements to obtain and renew a certificate of registration as a baccalaureate social worker and a license as a master's social worker and the requirements regarding surrender and reapplication for a certificate or license. The board may issue a certificate of registration as a baccalaureate social worker or a license as a master's social worker commencing January 1, 2011.

Stat. Auth.: ORS 675.510-675.600, 675.532-675.533, SB 177(2009) & HB 2345(2009)

Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990-675.994 & 675.150

Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11

## 877-015-0108

### Eligibility Requirements

To be eligible for initial certificate of registration or license, a person must meet the requirements in sections (1) through (6) of this rule:

(1) The person must submit a complete and accurate application on a form provided by the board.

(2)(a) The person must hold the degree described in sub-section (b) of this section from a college or university accredited by a credentialing body recognized by the board. For an initial certificate of registration only, the person may hold the degree described in sub-section (b)(A) of this section from a college or university accredited by or considered in candidacy status by a credentialing body recognized by the board. The Council on Social Work Education and the Canadian Association for Social Work Education are recognized by the Board. The Board accepts determinations of equivalency of foreign degrees by the Council on Social Work Education's International Social Work Degree Recognition and Evaluation Service. Submission of proof of foreign degree equivalency and cost of the foreign degree equivalency determination are the responsibility of the applicant.

(b)(A) The degree required for initial registration is a baccalaureate degree in social work.

(B) The degree required for initial licensure is a master's degree in social work.

(3) The person must be fit to practice social work in Oregon. The board uses the following standard and procedure to make a fitness determination:

(a) To be fit to practice social work in Oregon, the person must have demonstrated and must currently have:



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(A) Good moral character. For purposes of this rule, lack of “good moral character” may be established by reference to acts 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. The conduct or acts in question should be rationally connected to the applicant’s fitness to practice social work; and

(B) A personal history of conduct that is consistent with the standards contained in division 30 of this chapter of rules.

(b) In the event the person’s history includes conduct that may call into question the person’s fitness, the board will consider, if made available by the person, the amount of time elapsed since the conduct and the person’s relevant conduct since the questioned conduct, including remedial or compensatory actions taken by the person, if appropriate.

(4) The person must be fit to practice social work in Oregon. In making this fitness determination, the board will consider whether the person is subject of an investigation or disciplinary action by a licensing board and the reasons for the action.

(5) The person must pass the following examination administered by the Association of Social Work Boards:

(a) For registration as a baccalaureate social worker, the bachelor’s level examination.

(b) For licensure as a master’s social worker, the master’s level examination.

(6) The person must achieve a score of 90 percent on the examination on the Oregon statutes and rules prepared by the board on:

(a) The contents of ORS 675.510 to 675.600 and OAR chapter 877, which are the Oregon statutes and administrative rules governing regulated social work.

(b) Oregon Revised Statutes relating to mental health practice that may be relevant to regulated social work.

(7) In the case of an application submitted to the board prior to January 1, 2013, the requirement in section (5) of this rule to pass a test is not applicable. An application mailed to the board is considered submitted on the date the application is postmarked if it is subsequently received by the board.

(8) In the case of an application submitted to the board by a Clinical Social Work Associate who applies for Licensed Master’s Social Worker licensure after having completed 75 hours of supervision required in OAR 877-020-0010(3)(b)(A), the requirement in section (5)(b) of this rule to pass a test is not applicable.

Stat. Auth.: ORS 675.510-675.600, 675.532-675.533, SB 177(2009) & HB 2345(2009)  
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990-675.994, 675.150  
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11

## 877-015-0136

### Reissuance of Certificate of Registration

(1) Following a voluntary surrender under OAR 877-015-0131, the board may issue a new certificate of registration or license if:

(a) The applicant submits a letter to the board explaining the reasons for returning to practice as a regulated social worker;

(b) The board approves the applicant’s proposal to demonstrate competence to hold the certificate of registration. The plan may involve participation in continuing education programs; and

(c) The applicant takes and passes the examination described in OAR 877-015-0108(6) on Oregon statutes and rules.

(2) If the board accepts a voluntary surrender after a complaint was filed with the board against the holder while the complaint is pending, the board may issue the certificate of registration or license under conditions that take into account the circumstances of the surrender and may attach conditions to the registration or licensure, including conditions contained in a final order if one was served in connection with the surrender. The board will not reinstate a certificate of registration or license that has been surrendered. A person who surrenders a certificate of registration or license may apply for a new certificate of registration three years after the date the surrender was accepted by the board.

(3) If the board revokes or refuses to renew a certificate of registration or license, other than for the holder’s failure to timely apply for renewal, the former holder may reapply for a new license at the expiration of three years from the time it was revoked. The board may issue a new certificate of registration or license upon finding the applicant is fit to practice social work and otherwise meets the requirements for registration or licensure and may attach conditions to the registration or licensure, including conditions contained in a final order if one was served in connection with the revocation.

Stat. Auth.: ORS 675.510-675.600, 675.532-675.533, SB 177(2009), HB 2345(2009)  
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990-675.994, 675.150

Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11

## 877-020-0005

### Rules Applicable to Certification and Licensing

This division of rules contains:

(1) The requirements to obtain and renew a certificate of social work associate.

(2) The requirements to obtain and renew a clinical social work license.

(3) The rules regarding the surrender and reapplication for a new license.

(4) The rules regarding the surrender and reapplication for a new certificate.

(5) The process of de-activating and re-activating a clinical social work license.

Stat. Auth.: ORS 675.510 - 675.600

Stats. Implemented: ORS 675.537

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11

## 877-020-0008

### Licensing Requirements

To be eligible for an initial clinical social work license, except when the provisions of OAR 877-020-0016 apply, a person must meet the requirements in sections (1) through (7) of this rule:

(1) The person must complete the requirements in OAR 877-020-0009 to receive a certificate of social work associate and must hold a current certificate in good standing, or must have completed the equivalent of this requirement in another state.

(2) The person must be fit to practice social work in Oregon. In making this fitness determination, the board will consider whether the person is subject of an investigation or disciplinary action by a licensing board and the reasons for the action. The board uses the following additional standard and procedure to make a fitness determination:

(a) To be fit to practice social work in Oregon, the person must have demonstrated and must currently have:

(A) Good moral character. For purposes of this rule, lack of “good moral character” may be established by reference to acts or conduct which would cause a reasonable person to have substantial doubt about the individual’s honesty, fairness, or respect for the rights of others or for the laws of the state or nation. The conduct or acts in question should be rationally connected to the applicant’s fitness to practice clinical social work; and

(B) A personal history of conduct that is consistent with the standards contained in division 30 of this chapter of rules.

(b) In the event the person’s history includes conduct that may call into question the person’s fitness, the board will consider, if made available by the person, the amount of time elapsed since the conduct and the person’s relevant conduct since the questioned conduct, including remedial or compensatory actions taken by the person, if appropriate.

(3) The person must complete the requirements of an approved plan of practice and supervision in accordance with the rules in this division of rules.

(4) The person must pass both the examination administered by the board on the subjects listed in section (6)(a) of this rule with a score of not less than 90 per cent and a national examination for clinical social workers administered by an organization approved by the board on the subjects listed in section (6)(b) of this rule. The person may take the national exam any time after having completed 75 hours of supervision required in OAR 877-020-0013 (3)(b)(A).

(5) The subjects tested on the exam are:

(a) For the examination on the Oregon statutes and rules:

(A) The contents of ORS 675.510 to 675.600 and OAR chapter 877, which are the Oregon statutes and administrative rules governing the practice standards and responsibilities of a licensed clinical social worker.

(B) Oregon Revised Statutes relating to mental health practice that may be relevant to clinical social work practice.

(b) For the national examination:

(A) Human Development, Diversity and Behavior in the Environment.

(B) Assessment, Diagnosis and Treatment Planning.

(C) Psychotherapy, Clinical Interventions and Case Management

(D) Professional Ethics and Values.

Stat. Auth.: ORS 675.510 - 675.600 & 675.990

Stats. Implemented: ORS 675.535

# ADMINISTRATIVE RULES

Hist.: BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 3-1990(Temp), f. & cert. ef. 10-15-90; BCSW 1-1991, f. & cert. ef. 3-15-91; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11

## 877-020-0010

### Plan of Practice and Supervision

(1) After a person submits an application described in OAR 877-020-0009, the board will inform the person whether the application, including the plan of practice and supervision, is approved.

(2) After an application has been approved, an associate may request a change to a plan of practice and supervision by submitting a request to the board that provides a justification for the change and ensures that the plan, as modified, will meet the requirements of this division of rules.

(3) For the associate to satisfactorily complete a plan of practice and supervision, the following requirements must be met while the associate is working under an approved plan of practice and supervision:

(a) The contact with clients described in OAR 877-020-0009(3)(b) must be direct contact during which the associate practices clinical social work, which is defined in ORS 675.510(2).

(b) The associate must meet with a supervisor identified in the plan, as required in OAR 877-020-0009(3)(d):

(A) For a total of 100 hours over a period of not less than 24 consecutive months nor more than 60 consecutive months, of which a minimum of 50 hours must be individual supervision. The associate must meet at least twice each month with a plan supervisor for a minimum of one hour. If there is a second supervisor for group supervision, the requirement in this paragraph (A) is met by a single one-hour meeting with each supervisor.

(B) After the associate has completed the plan requirements contained in paragraph (A) of this sub-section, the associate must continue to meet at least once each month with a plan supervisor for a minimum of one hour.

(c) All supervision must be accomplished directly, in a professional setting.

(d) The associate must submit to the board, on a form provided by the board, each evaluation by the supervisor (or supervisors in the event two are authorized) required by OAR 877-020-0012(2)(e)(A) of the progress by the associate toward completion of the plan.

(e) The associate must pass the national examination required by OAR 877-020-0008.

(f) The associate must work with each supervisor identified in an approved plan for not less than six months unless

(A) A change in supervision is required by a reason outside the control of the associate and the board approves the change; or

(B) The associate has completed the requirements of the plan.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.537

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1987, f. & ef. 12-29-87; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11

## 877-020-0016

### Licensing of People Qualified in Another Jurisdiction

A person licensed, certified, or registered as a social worker in another jurisdiction is eligible to be licensed or certified in Oregon if:

(1) The person meets the education requirement in OAR 877-020-0009(2) and 877-015-0108(2);

(2) The person is fit to practice regulated social work in Oregon. In making this fitness determination, the board will consider whether the person is the subject of an investigation or disciplinary action by a licensing board and the reasons for the action;

(3) As a condition of licensure, certification, or registration in the other jurisdiction, the person was required to meet requirements substantially equivalent to those set out in division 20 and division 15 of these rules; as applicable and

(4) The person successfully completes the exam on Oregon statutes and rules and the national exam for regulated social workers described in and subject to the limitation in 877-020-0008 and 877-015-0108(5)(a)(b).

(5) Applicants for LCSW licensure who intend to practice clinical social work in Oregon as defined in ORS 675.510(2) and OAR 877-001-0006 prior to issuance of an Oregon LCSW license, must first, prior to starting practice, qualify for and be issued a clinical social work associate certificate until all requirements for issuance of an Oregon LCSW are met

(6) Applicants for Oregon LCSW licensure who qualify for issuance of a CSWA certification as required in subsection (5) of this rule must com-

ply with the supervision requirement in 877-020-0010(3)(b)(B).

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.535(4)

Hist.: BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-1998, f. & cert. ef. 9-14-98; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11

## 877-020-0036

### Reapplication for Certificate or License

(1) Following the voluntary surrender of a certificate or license under OAR 877-020-0031(2), the board may issue a new certificate or license if:

(a) The applicant submits a letter to the board explaining the reasons for returning to practice;

(b) The board approves the applicant's proposal to demonstrate competence to hold the certificate or license. The plan may involve participation in continuing education programs or clinical supervision; and

(c) The applicant takes and passes the examinations described in OAR 877-020-0008.

(2) If the board accepts a voluntary surrender of a certificate or license after a complaint was filed with the board against the holder while the complaint is pending, the board may issue a new certificate or license under conditions that take into account the circumstances of the surrender and may attach conditions to the certificate or license, including conditions contained in a final order if one was served in connection with the surrender. The board will not reinstate a license or certificate that has been surrendered. A person who surrenders a certificate or license may apply for a new license three years after the date the surrender was accepted by the board.

(3) If the board revokes or refuses to renew a certificate or license, other than for the holder's failure to timely apply for renewal, the former holder may reapply at the expiration of three years from the time it was revoked. The board may issue a new license upon finding the applicant is fit to practice social work and otherwise meets the requirements for licensure and may attach conditions to the certificate or license, including conditions contained in a final order if one was served in connection with the revocation.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.595

Hist.: BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11

## 877-025-0006

### Types of Continuing Education

To meet the requirements of this division of rules, continuing education must be one of the following:

(1) A conference, seminar, book, journal article or workshop that:

(a) Addresses subjects related to the regulated social worker's work practice;

(b) Is attended (or read as applicable) by the regulated social worker in person, on-line or through a web cast; and

(c) Is provided or approved by a credentialing body recognized and approved by the board. The board recognizes and approves a credentialing body based on the following practices of the body:

(A) The body uses an established process for determining which training to provide or approve.

(B) The body uses an established process for determining who will present the training.

(C) The body provides, with respect to the training, written materials that demonstrate the relevance of the training to the field of clinical social work.

(D) The body establishes an appropriate number of continuing education credits for the training.

(E) The body verifies the credentials of the presenters of the training.

(F) The body uses an established system for the evaluation of presenters.

(G) The body provides a certificate of completion to those who attend, based on actual attendance.

(2) A conference, seminar, book, journal article, or workshop that:

(a) Meets the following requirements:

(A) Is related to the field of clinical social work or, in the case of a baccalaureate social worker or master's social worker, the field of social work;

(B) Addresses subjects related to the regulated social worker's work practice;

(C) Is not provided or approved by a credentialing body recognized and approved by the board; and

# ADMINISTRATIVE RULES

(D) Is attended (or read as applicable) by the regulated social worker in person, on-line, or through a web cast.

(b) Is approved by the Board based on the regulated social worker's written application that:

(A) Contains the following information:

(i) Name or description of the event.

(ii) Date of the event.

(iii) Brief description of the training sufficient to show that the training meets the requirements of section (2)(a) of this rule.

(iv) Name and credentials of each presenter.

(v) Number of continuing education units requested.

(vi) Copy of the certificate of completion.

(B) Is received by the board not later than the time of the submission of the report required by OAR 877-025-0021 and not later than 45 days prior to the last day of the birth month of the regulated social worker.

(3) For Registered Baccalaureate Social Workers and Licensed Master's Social Workers, an in-service, agency-sponsored program that otherwise meets the requirements of subsection (2) of this rule section. CE credit form such a qualifying in-service can be used for up to half the applicable CE hours required for renewal.

(4) A course related to social work at an accredited college or university.

(5) A training video or audio recording approved by a credentialing body recognized and approved by the board using the standards provided in section (1)(c) of this rule. Successful completion is demonstrated by award to the regulated social worker by the credentialing body.

(6) Participation in a study group, subject to the following limitations:

(a) The group must contain a minimum of five and a maximum of 10 licensed mental health professionals who meet for a minimum of an hour on a scheduled basis to discuss topics directly related to the field of clinical social work.

(b) The focus of the group's meeting must be a presentation or discussion of a book or article published by a professional body.

(c) The topics of the group's discussion must be directly related to established mental health care and relevant to good practice.

(d) A maximum of two hours may be credited for a group meeting.

(e) Credit for participation in a study group must be approved in advance by the board. To apply for approval, a regulated social worker must submit the names of the group members and discussion topics to the board.

(7) Development and presentation of a conference, workshop, or seminar that would be countable for credit under section (1) or (2) of this rule.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)

Stats. Implemented: ORS 675.510 - 675.600

Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11

## 877-025-0011

### Required Hours of Continued Education

(1) Generally.

(a) A regulated social worker is required to report continuing education for all periods during which the person's registration or license is active except for the period covered by the initial certificate of registration or license, unless a waiver is granted under section (2) of this rule. An initial issuance is the first issuance of the board of a certificate of registration or license to the regulated social worker.

(b) Following the first renewal of a certificate of registration or license, except when the regulated social worker is on inactive status, the regulated social worker must complete continuing education in each reporting period at the times described in OAR 877-025-0021. The holder of an inactive certificate of registration or license is not required to submit the biennial report.

(c) A report covering a two-year period must include:

(A) For a registered baccalaureate social worker, a minimum of 20 hours of creditable continuing education.

(B) For a master's social worker, a minimum of 30 hours of creditable continuing education.

(C) For a licensed clinical social worker, a minimum of 40 hours of creditable continuing education.

(d) In a report that covers a shorter period than two years, as may happen in the case of the first report by a new regulated social worker or following the reactivation of a registration or license, the number of hours required by sub-section (c) of this section is pro-rated.

(2) Waiver of requirement.

(a) Upon timely written request of a regulated social worker, made as soon as the regulated social worker is aware of the possible need for a waiver,

the board may reduce the number of hours required by section (1) of this rule in the event the regulated social worker is unable, due to circumstances beyond the reasonable control of the [licensee] regulated social worker, to complete the number of hours of continued education required by this division of rules.

(b) A reduction authorized by the board would normally reflect the regulated social worker's ability to attend training during the time not affected by the adverse circumstances leading to the request. For instance, a regulated social worker unaffected by the adverse circumstance during the first year of a two-year reporting period would be expected to obtain 20 hours of credit.

(c) Examples of circumstances that may justify a waiver are:

(A) A circumstance beyond the reasonable control of the regulated social worker makes it impracticable to attend training for an extended time.

(B) The health of the regulated social worker or of another person makes it impracticable to attend training for an extended time.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)

Stats. Implemented: ORS 675.510 - 675.600

Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11

## 877-040-0050

### Contested Case Hearing

When the board takes disciplinary action, the board will place notice of this action in the Directory of Regulated Social Workers. The board will also provide notice of the action to the Oregon Chapter of the National Association of Social Workers (NASW), the Oregon Society of Clinical Social Workers (OSCSW), and to the Association of Social Work Boards (ASWB) Disciplinary Action Reporting System (DARS).

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

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990

Stats. Implemented: ORS 675.595

Hist.: BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1995, f. 6-26-95, cert. ef. 7-1-95; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11

## Board of Medical Imaging Chapter 337

**Rule Caption:** Corrects and updates the process for students to apply to take the limited x-ray examination.

**Adm. Order No.:** BMI 1-2012

**Filed with Sec. of State:** 1-12-2012

**Certified to be Effective:** 1-12-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 337-010-0030

**Subject:** This rules amendment completes two actions:

(1) Under current rules, the Oregon Board of Medical Imaging (OBMI) requires a student to have completed all coursework in limited x-ray machine operation, before a student is allowed to submit an application to the OBMI to take the limited x-ray machine operator examination. This amendment would allow the OBMI to approve a student to submit an application prior to completion of all coursework. In order to obtain approval, a student's examination application material would need to indicate the courses for which the student is enrolled, expected completion date, and the student's status in each course. The final approved course completion certificate is required as part of the application for a temporary permit.

(2) This amendment corrects current rules to reflect current OBMI practice to require a limited x-ray permit student to pass the examination prior to completing practical experience requirements.

**Rules Coordinator:** Ed Conlow—(971) 673-0216

## 337-010-0030

### Limited X-Ray Machine Operator (LXMO) Permits

(1) Applicants for LXMO Permits Qualifications:

(a) An applicant for a LXMO permit must be at least 18 years of age, pay an application fee, and, effective January 1, 2007, have successfully passed a course of instruction that reflects the current Core Module of the "Content Specifications for the Examination for the Limited Scope of Practice in Radiography" published by the American Registry of

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Radiologic Technologists. The curriculum must consist of not less than 52 hours of instruction approved by the Board in the following subjects:

- (A) Radiation physics;
- (B) Interaction of radiation with matter;
- (C) Radiation exposure, monitoring, and radiation units;
- (D) Principle of the radiographic equipment;
- (E) Biological effects of radiation;
- (F) Low-dose technique and minimizing patient exposure;
- (G) Applicable Federal and State radiation regulations;
- (H) Darkroom, film processing, and quality assurance;
- (I) Film and image critique;
- (J) Personnel protection;
- (K) Digital and computer-generated radiographic imaging;
- (L) Developing and using technique charts; and
- (M) Patient care.

(b) Have received a course of instruction in laboratory practice approved by the Board:

(A) Meeting the requirements stated in the Board's publication "Overview of Guidelines for Instructors of Courses in Preparation for the Limited Scope Examination in Diagnostic Radiologic Technology dated "October 1, 2008" which is incorporated by reference and made a part of this rule;

(B) Reflects the current Radiographic Procedure Module(s) of the "Content Specifications for the Examination for the Limited Scope of Practice in Radiography" published by the American Registry of Radiologic Technologists

(C) Taught by a licensed registered technologist specific to each category for which a limited permit is sought and have received the instructor's certification that the applicant has demonstrated all the positions/projections described in the Behavioral Objectives for each category. Effective January 1, 2007, the minimum hours in each category is as follows:

- (i) Skull/Sinus, 18 hours;
- (ii) Spine, 30 hours;
- (iii) Chest, 12 hours;
- (iv) Extremities, 60 hours;
- (v) Podiatric 10 hours.

(D) An individual must successfully pass a Board-approved Core Module course and successfully complete the didactic portion of a Radiographic Procedure Module (Skull/Sinus, Spine, Chest, Extremities, and Podiatric) relative to the anatomical area the student wishes to radiograph. Student status will continue for one year from the date of completion of the didactic portion of the corresponding Radiographic Procedure Module. Student status expires at the end of the one-year period specified above; or seven days after the date on which an applicant becomes eligible for a permanent LXMO permit.

(d) Radiographic procedures cannot be performed on patients without having passed the ARRT Core exam and corresponding ARRT Radiographic Procedure module. The applicant must obtain a temporary permit to successfully complete a practical experience program approved by the Board specific to each category for which the applicant seeks a LXMO permit. The practical experience component must consist of experience with live patients with a licensed RT, radiologist, or licensed physician, licensed nurse practitioner or licensed physician assistant with adequate training in radiography in accordance with RPS Rules present in the room during radiographic exposures. Processed images made by the students are evaluated and critiqued by an ARRT-registered, Oregon-licensed radiographer Practical Experience Evaluator;

(e) The student may be evaluated for imaging by using the Practical Experience Evaluation Form developed by the Board. If the Practical Experience Evaluator chooses to use a method for evaluation other than the Practical Experience Evaluation Form, that method must receive prior approval from the Board. The Practical Experience Evaluator must provide the student with a certificate of completion in the categories in which the student has successfully completed practical experience.

(2) Applicants for LXMO Permits in X-ray Bone Densitometry: Qualifications:

(a) An applicant for a limited permit in x-ray bone densitometry must be at least 18 years of age, pay an application fee set by the Board, and have successfully passed a Board approved 24 hour course of instruction which includes not less than 20 hours of radiation protection, equipment operation and quality control specific to x-ray bone densitometry, and meets the didactic and practical experience requirements stated in the Board's publication "Behavioral Objectives and Teaching Guide Bone Densitometry

Equipment Operators dated October 01, 2008 which is incorporated by reference and made a part of this rule.

(b) An individual must successfully pass a Board-approved course in x-ray bone densitometry. Student status will continue for one year from the date of completion of the "Bone Densitometry Equipment Operators Examination" given by the American Registry of Radiologic Technologists. Student status expires at the end of the one-year period specified above; or seven days after the date on which an applicant becomes eligible for a permanent LXMO permit.

(c) Bone density procedures cannot be performed on patients without having passed the ARRT Bone Densitometry Equipment Operators Examination.

(3) LXMO Permit students who wish to sit for the ARRT Limited Scope of Practice in Radiography Examination need to have a Course Completion Certificate to be eligible to sit for the ARRT "Limited Scope of Practice in Radiography" Examination from a program both approved by the board and licensed by the Oregon Department of Education, Private Career School Section or otherwise approved or accredited by the Oregon Department of Higher Education.

(4) Time Frame for Completing Requirements for a LXMO Permit: An applicant has a maximum of one year from the time of completion of a LXMO permit didactic class term to make application for a LXMO permit or add categories to an existing LXMO permanent permit. During the practical experience program after passing the ARRT exam, the applicant may only make x-ray exposures of patients under direct supervision by a licensed RT, radiologist, or licensed physician, licensed nurse practitioner or licensed physician assistant with adequate training in radiography in accordance with RPS Rules present in the room during radiographic exposures.

(5) Students are allowed 3 attempts to pass an ARRT exam.

(6) Limited Scope Examination Fees:

(a) Students can sit for the examination throughout the year. The examination fee is \$20 for each examination category for which the student is tested, combined with an administration fee set by the American Registry of Radiologic Technologists (ARRT). These fees, together with the necessary certifications and verifications that the applicant has completed Board-approved Core Module course and Radiographic Procedure Module courses, must be submitted to the Board office. On submission and acceptance of the application materials, OBMI shall register the applicant with the ARRT, after which the applicant has 90 days in which to sit for the exam. The Board, upon advance request, may approve a student to submit an application for the examination prior to completion of all course requirements, based upon school verification that the student is expected to complete all coursework. Verification must include a preliminary course completion certificate, endorsed by a responsible school official, indicating the courses for which the student is enrolled, expected completion date, and the student's status in each course. The final approved course completion certificate is required as part of the application for a temporary permit. A temporary permit will only be issued for anatomical areas for which the applicant has successfully completed coursework and obtained a passing grade on the ARRT examination.

(b) The examination shall consist of two sections:

(A) Core Section (Radiation Use and Safety, Equipment Operation, Quality Control, Image Production, Image Evaluation, and Patient Care), which all applicants are required to pass; and

(B) Specific Radiographic Procedures (positioning and techniques) in the category or categories (Skull/Sinus, Spine, Chest, Extremities, and Podiatric) for which a limited permit is desired to be obtained. At least one category must be passed to obtain a permanent LXMO Permit (ORS 688.515(h)). The LXMO Permit may be issued only in those categories that are passed.

(c) A score of 70 percent constitutes a minimum passing score for each section of the limited scope examination;

(d) Limited scope examinations will be administered at computer-based testing sites identified by ARRT. The student is subject to rules regarding test administration at the testing site;

(e) The application fee for the LXMO permit examination is non-refundable.

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

Stat. Auth.: ORS 388.555(1)

Stats. Implemented: ORS 688.515(4) & 688.515(8)

Hist.: RT 2-1978, f. & ef. 7-7-78; RT 2-1982, f. & ef. 3-11-82; RT 3-1982, f. & ef. 9-30-82; RT 2-1985, f. & ef. 7-1-85; RT 2-1986, f. 4-29-86, ef. 7-1-86; RT 1-1987, f. & ef. 1-27-87; RT 3-1987, f. & ef. 4-16-87; RT 5-1987, f. & ef. 10-19-87; RT 1-1988, f. & cert. ef. 4-13-88; RT 2-1988, f. & cert. ef. 11-9-88; RT 3-1988, f. & cert. ef. 11-9-88; RT 1-1989, f. & cert. ef. 1-24-89; RT 3-1990, f. & cert. ef. 11-7-90; RT 4-1990, f. & cert. ef. 11-7-90; RT 1-1991, f. & cert. ef. 1-30-91; RT 1-1992, f. & cert. ef. 1-15-92; BRT 4-1998, f. & cert. ef. 7-15-98; BRT

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2-2002, f. & cert. ef. 11-18-02; BRT 1-2006, f. & cert. ef. 2-6-06; BRT 2-2006, f. 12-15-06, cert. ef. 1-1-07; BRT 1-2010, f. & cert. ef. 6-15-10; BMI 1-2012, f. & cert. ef. 1-12-12

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

**Rule Caption:** Amend or adopt new Collaborative Therapy, Immunization, Intern, Pharmacy Depots and Manufacturer rules.

**Adm. Order No.:** BP 9-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 855-031-0026, 855-060-0004

**Rules Amended:** 855-019-0260, 855-019-0280, 855-019-0290, 855-031-0010, 855-031-0020, 855-031-0045, 855-041-0095

**Subject:** Division 19 rules are amended to clarify requirements for Therapeutic substitution and the Administration of Vaccines. Division 31 Intern rules are amended for clarification. Division 41 Pharmacy Depot rules are amended to allow for exceptions. Division 60 updates the Manufacturer rules to more clearly identify which entities must register as Manufacturers.

Complete text of these rules are available on the Board's website at [www.pharmacy.state.or.us](http://www.pharmacy.state.or.us).

**Rules Coordinator:** Karen MacLean—(971) 673-0001

## 855-019-0260

### Collaborative Drug Therapy Management

(1) As used in this rule "Collaborative Drug Therapy Management" (CDTM) means the participation by a practitioner and a pharmacist in the management of drug therapy pursuant to a written agreement that includes information on 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 practitioner and one pharmacist; or

(b) Is agreed to by 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, and one or more pharmacists.

(2) A pharmacist shall engage in collaborative drug therapy management with a practitioner only under a written arrangement that includes:

(a) The identification, either by name or by description, of each of the participating pharmacists;

(b) The identification, by name or description, of each of the participating practitioners or group of practitioners;

(c) The name of the principal pharmacist and practitioner who are responsible for development, training, administration, and quality assurance of the arrangement;

(d) The types of decisions that the pharmacist is allowed to make, which may include:

(A) A detailed description of the types of diseases, drugs, or drug categories involved, and the activities allowed in each case;

(B) A detailed description of the methods, procedures, decision criteria, and plan the pharmacist is to follow when conducting allowed activities;

(C) A detailed description of the activities the pharmacist is to follow including documentation of decisions made and a plan or appropriate mechanism for communication, feedback, and reporting to the practitioner concerning specific decisions made. In addition to the agreement, documentation shall occur on the prescription record, patient profile, a separate log book, or in some other appropriate system;

(D) Circumstances which will cause the pharmacist to initiate communication with the practitioner, including but not limited to the need for a new prescription order and a report of a patient's therapeutic response or any adverse effect.

(e) Training requirement for pharmacist participation and ongoing assessment of competency, if necessary;

(f) Quality assurance and periodic review by a panel of the participating pharmacists and practitioners;

(g) Authorization by the practitioner for the pharmacist to participate in collaborative drug therapy; and

(h) A requirement for the collaborative drug therapy arrangement to be reviewed and updated, or discontinued at least every two years;

(3) The collaborative drug therapy arrangement and associated records must be kept on file in the pharmacy and made available to any appropriate health licensing board upon request.

(4) Nothing in this rule shall be construed to allow therapeutic substitution outside of the CDTM agreement.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155

Hist.: Hist.: BP 4-1998, f. & cert. ef. 8-14-98; BP 1-1999(Temp), f. & cert. ef. 1-29-99 thru 7-28-99; Administrative correction 8-9-99; BP 1-2000, f. & cert. ef. 2-16-00; Renumbered from 855-041-0400, BP 2-2008, f. & cert. ef. 2-20-08; BP 9-2011, f. 12-30-11, cert. ef. 1-1-12

## 855-019-0280

### Protocols, Policies and Procedures

(1) Prior to administering a vaccine to a person who is at least 11 years of age a pharmacist must follow protocols written and approved by the Oregon Health Authority (OHA) for administration of vaccines and the treatment of severe adverse events following administration of a vaccine.

(2) The pharmacy must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.

(3) The pharmacist must give the appropriate Vaccine Information Statement (VIS) to the patient or legal representative with each dose of vaccine covered by these forms. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to them, the information provided and has had their questions answered prior to administering the vaccine.

(4) The pharmacist must report adverse events as required by the Vaccine Adverse Events Reporting System (VAERS) and to the primary care provider as identified by the patient.

(5) The pharmacist must make available the Adolescent Well Visit Referral document, provided by the OHA, to a patient aged 11 through 18 years of age or their legal representative.

(6) The pharmacist may administer or dispense an oral vaccine as established by written protocols approved by OHA.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.645

Hist.: BP 7-2000, f. & cert. ef. 6-29-00; BP 3-2006, f. & cert. ef. 6-9-06; Renumbered from 855-041-0510, BP 2-2008, f. & cert. ef. 2-20-08; BP 11-2010, f. 10-22-10, cert. ef. 1-1-11; BP 9-2011, f. 12-30-11, cert. ef. 1-1-12

## 855-019-0290

### Record Keeping and Reporting

(1) A pharmacist who administers a vaccine to a patient must fully document the administration in the patient's permanent record.

(2) A pharmacist who administers any vaccine must report the following elements to the OHA ALERT Immunization Information System in a manner prescribed by OHA within 15 days of administration. This replaces the former requirement to notify the primary health care provider. A pharmacist is not required to notify the primary health care provider.

(a) The name, address, gender and date of birth of the patient;

(b) The date of administration of the vaccine;

(c) The NDC number of the vaccine, or other acceptable standardized vaccine code set;

(d) The address of the pharmacy where vaccine was administered unless automatically embedded in the electronic report provided to the OHA ALERT Immunization System;

(e) The phone number of the patient when available;

(f) The dose amount, manufacturer, site of administration, lot number and expiration date of the vaccine when available;

(3) A pharmacist who administers any vaccine will keep documentation of current CPR training. This documentation will be kept on site and available for inspection.

(4) A pharmacist who administers any vaccine will follow storage and handling guidance from the vaccine manufacturer and the Centers for Disease Control and Prevention (CDC).

(5) For the purpose of participation in the Oregon Vaccines for Children program,

(a) The vaccine eligibility code for each dose must be reported to the ALERT Immunization Information System in the manner prescribed by OHA, and

(b) The pharmacist is recognized as a prescriber.

(6) If providing state or federal vaccines during a pandemic as determined by the CDC, the event and priority code as specified by OHA must be provided upon request in the manner prescribed by OHA.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.645

Hist.: BP 7-2000, f. & cert. ef. 6-29-00; BP 3-2006, f. & cert. ef. 6-9-06; Renumbered from 855-041-0520, BP 2-2008, f. & cert. ef. 2-20-08; BP 11-2010, f. 10-22-10, cert. ef. 1-1-11; BP 9-2011, f. 12-30-11, cert. ef. 1-1-12

# ADMINISTRATIVE RULES

## 855-031-0010

### Intern License Application

(1) Applications for licensure as an intern may be obtained from the Board office or from the Board web site at [www.pharmacy.state.or.us](http://www.pharmacy.state.or.us).

(a) Failure to completely, accurately and honestly answer all questions on the application form for licensure or renewal of licensure is grounds for discipline;

(b) Failure to disclose any arrest for a felony or misdemeanor, or any indictment for a felony may result in denial of the application.

(2) The Board may issue a license to a qualified intern after the receipt of:

(a) A completed application;

(b) Payment of the fee prescribed in OAR 855-110-0005;

(c) A current, passport regulation size photograph (full front, head to shoulders);

(d) Any fingerprint card or other documentation required by the Board to conduct a criminal background check; and

(e) Confirmation from a school of pharmacy that the applicant is enrolled in a course of study, except for foreign pharmacy graduates who must:

(A) Provide a copy of a valid visa permitting full-time employment;

(B) Provide the original certificate issued by the Foreign Pharmacy Graduate Equivalency Examination Committee; and

(C) Provide evidence that they have passed the Test of English as a Foreign Language (TOEFL) Internet-based Test (IBT) with a minimum score of 26 in Speaking, 21 in Reading, 18 in Listening and 24 in Writing, however scores will be accepted until June 30, 2010 from candidates who have already passed or are scheduled to take the TOEFL and the Test of Spoken English (TSE).

(3) The Board may issue an intern license after processing the application, however unless the applicant is a foreign graduate or an applicant for licensure by reciprocity, it is not valid until the intern has started a course of study. For licenses issued after May 1, 2010, the initial license is valid until the last day of November following the second anniversary of issue unless terminated automatically by any one of the following events. Renewed licenses are valid for two years unless terminated automatically by any one of the following events:

(a) Licensure to practice pharmacy is granted in any state; or

(b) The licensee, other than a foreign pharmacy graduate or an applicant for licensure by reciprocity, fails to maintain enrollment or active registration in a pharmacy degree program for a period greater than one year; or

(c) The licensee, other than a foreign pharmacy graduate or an applicant for licensure by reciprocity, has been graduated from a school of pharmacy for 12 months;

(d) The intern is dismissed, terminated or expelled by the school of pharmacy, or withdraws from the program.

(4) An intern must surrender their license to the Board within 30 days of one of the above events.

(5) Notwithstanding the requirements of section (3) above, upon written request the Board may waive any of the requirements of this rule if a waiver will further public health and safety. A waiver granted under this section shall only be effective when it is issued in writing.

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

Stat. Auth.: ORS 689.151 & 689.205

Stats. Implemented: ORS 689.207, 689.255 & 2009 OL Ch. 536

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 7-1990, f. & cert. ef. 12-5-90; PB 1-1994, f. & cert. ef. 2-2-94; BP 1-2001, f. & cert. ef. 3-5-01; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2007, f. & cert. ef. 6-29-07; BP 3-2010, f. 4-29-10, cert. ef. 4-30-10; BP 9-2011, f. 12-30-11, cert. ef. 1-1-12

## 855-031-0020

### Intern Requirements and Responsibilities

(1) A licensed intern may practice in any one or a combination of the following approved internship experience areas:

(a) Traditional Pharmacy-practice Internship (TPI): an intern may not work in a TPI until after satisfactorily completing the first academic year in a school of pharmacy. An intern working in a TPI must be supervised by a licensed pharmacist or pharmacist preceptor;

(b) School-based Rotational Internship (SRI): an intern must be supervised by a licensed pharmacist or other person approved by a school of pharmacy to obtain credit for SRI hours;

(c) Other Internship.

(2) An intern may not work more than 48 hours per week in SRIs and must comply with all supervision and ratio requirements.

(3) An intern must verify that their preceptor is currently licensed with the Board.

(4) An intern may not work in the practice of pharmacy unless supervised by a licensed pharmacist, except when an intern is working in a federal facility, however, to obtain credit for SRI experience in a federal facility located in Oregon, the intern must be licensed with the Board.

(5) An intern who is working in a pharmacy or other place of business must conspicuously display their intern license in the pharmacy or place of business and must be clearly identified as an intern at all times.

(6) An intern may perform only the duties listed in Division 25 of this Chapter before completion of the first academic year in a school of pharmacy.

(7) An intern may, after successful completion of their first academic year, perform the duties of an intern listed in Division 019 of this Chapter, but only after successful completion of coursework corresponding to those duties at their school of pharmacy and only with the permission of their supervising pharmacist.

(8) An intern is responsible for his or her own actions and must comply with all Board regulations.

(9) An intern must notify the Board within 15 days of any change in their academic status that might affect their eligibility to work as an intern.

(10) An intern must notify the Board in writing within 15 days of a change in permanent residence and TPI site.

(11) An intern must report to the Board within 10 days if they are:

(a) Convicted of a misdemeanor or a felony; or

(b) Arrested for a felony.

(12) An intern who has reasonable cause to believe that another licensee (of the Board or any other Health Professional Regulatory Board) has engaged in prohibited or unprofessional conduct as these terms are defined in OAR 855-006-0005, must report that conduct to the board responsible for the licensee who is believed to have engaged in the conduct. The intern shall report the conduct without undue delay, but in no event later than 10 working days after the intern learns of the conduct unless federal laws relating to confidentiality or the protection of health information prohibit disclosure.

(13) If needed by an intern for compliance with another Board's requirement, an intern must maintain written or electronic records that support the number of TPI hours claimed by an intern and have those hours certified by a preceptor.

(14) An intern may make a voluntary report to the Board on any preceptor's aptitude and professionalism in performing the duties of a preceptor. An intern must make such a report upon request by the Board.

Stat. Auth.: ORS 689.151, 689.205

Stats. Implemented: 689.255 & 2009 OL Ch. 536

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 7-1990, f. & cert. ef. 12-5-90; PB 3-1991, f. & cert. ef. 9-19-91; PB 1-1994, f. & cert. ef. 2-2-94; PB 3-1994, f. & cert. ef. 7-1-94; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2007, f. & cert. ef. 6-29-07; BP 3-2010, f. 4-29-10, cert. ef. 4-30-10; BP 9-2011, f. 12-30-11, cert. ef. 1-1-12

## 855-031-0026

### Ratio & Supervision

(1) A pharmacist may not supervise more than one intern at a time at a TPI site who performs the duties of an intern as listed in OAR 855-019-0200(3)(g). A pharmacist may supervise more than one intern if only one intern performs the duties of an intern as listed in OAR 855-019-0200(3)(g) and if other interns supervised by the pharmacist perform the duties listed in OAR 855-025-0040.

(2) A preceptor may not supervise more than two interns simultaneously during a shift at an SRI site where patient specific recommendations for care or medications are provided without prior written authorization of the Board.

(3) With the written approval of a school of pharmacy, and when in their professional judgment it is appropriate, a preceptor may supervise up to 10 interns at public-health outreach programs such as informational health fairs that provide general information but not direct patient care.

(4) For immunization clinics, an immunizing pharmacist may supervise up to two immunizing interns.

(5) A licensed preceptor may delegate the preceptor responsibilities to another licensed pharmacist or preceptor.

(6) The majority of an intern's overall experience must be with a licensed pharmacist preceptor.

Stat. Auth.: ORS 689.151, 689.205

Stats. Implemented: 689.255 & 2009 OL Ch. 536

Hist.: BP 9-2011, f. 12-30-11, cert. ef. 1-1-12

## 855-031-0045

### School and Preceptor Registration and Responsibilities

(1) A preceptor license may be issued by the Board upon receipt of a completed application.

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(2) A pharmacist preceptor must have been an actively practicing pharmacist for at least one year immediately prior to supervising an intern.

(3) A preceptor license must be renewed annually and is valid through June 30.

(4) The preceptor may report to the Board voluntarily, the progress and aptitude of an intern under the preceptor's supervision, or must do so upon request of the Board.

(5) The preceptor must be responsible for supervision of the majority of the intern's SRI hours and must provide the intern with internship experiences, which in the preceptor's judgment will increase the intern's competency in the practice of pharmacy.

(6) Before supervising an intern in an SRI program, a preceptor must complete any training program required by the school of pharmacy.

(7) A preceptor must advise each school of pharmacy when they are supervising students from more than one school at the same time. This applies to both in-state and out-of-state schools or colleges of pharmacy.

(8) A preceptor must verify that their intern is currently licensed with the Board.

(9) A pharmacist acting as a preceptor in a federal facility is not required to be licensed as a pharmacist in Oregon, but is required to be licensed as a preceptor with the Board.

(10) The school of pharmacy must maintain a record of each intern's SRIs. This record must be made available to the Board upon request.

(11) A school of pharmacy located in Oregon must submit a report on their experiential education program to the Board at the end of each academic year. This report must include the names of students who successfully completed the program and graduated from the school. The school must maintain a list of preceptors and SRI sites, in and out-of-state, approved by the school and must make this list available to the Board upon request.

(12) All records related to a student must be available for three years after the student graduates.

Stat. Auth.: ORS 689.151, 689.205  
Stats. Implemented: 689.255

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 7-1990, f. & cert. ef. 12-5-90; PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2004, f. & cert. ef. 3-12-04; BP 1-2007, f. & cert. ef. 6-29-07; BP 3-2010, f. 4-29-10, cert. ef. 4-30-10; BP 9-2011, f. 12-30-11, cert. ef. 1-1-12

## 855-041-0095

### Pharmacy Depots

(1) Except when delivering directly to a patient, licensed pharmacists may not participate in the transfer of completed prescription medication containers to or from any location that is not a licensed pharmacy, unless the transfer occurs to:

- (a) The home or office of the patient's health care practitioner;
- (b) The location of the patient; or location designated by the patient;

or

- (c) At the hospital or medical care facility in which a patient is receiving care.

(2) Upon written request, the Board may waive any of the requirements of this rule if a waiver will further public health or safety or the health and safety of a patient. A waiver granted under this section shall only be effective when it is issued by the Board in writing.

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; BP 9-2011, f. 12-30-11, cert. ef. 1-1-12

## 855-060-0004

### Registration

(1) Any person that manufactures, or contracts for the manufacture of a drug or prescription device that is intended for sale, distribution, dispensing or administration in Oregon must register with the Oregon Board of Pharmacy.

(2) Any person that holds one or more of the following registrations with the Federal Food and Drug Administration (FDA) must register as a Manufacturer.

- (a) A New Drug Application number (NDA);
- (b) An Abbreviated New Drug Application number (ANDA);
- (c) A Labeler Code number (LC) or National Drug Code number (NDC);
- (d) An FDA Central File Number (CFN);
- (e) An FDA Establishment Identifier number (FEI);
- (f) A Biologic License Application (BLA).

(3) A person that is registered with the FDA as a repackager must register as a Manufacturer.

(4) A person whose sole purpose is the marketing, brokering or arranging the initial distribution of drugs manufactured by a manufacturer, but does not take physical possession of a product must register as a Drug Distribution Agent under OAR 855-062-0005.

(5) A person who is registered with the FDA as the Agent for a foreign manufacturer must register as a Drug Distribution Agent under OAR 855-062-0005.

(6) An applicant for a new or renewal of registration must provide all information specified on the form provided by the Board, and pay the fee as specified in OAR 855-110-0007. The applicant must also provide any additional information requested by the Board. An application that does not contain all required information is incomplete and will not be processed.

(7) The registration is non-transferable. Addition or deletion of an owner shall be considered as a change of ownership except where the registrant is a publicly held corporation. A new application for registration and payment of a new registration fee is required when a registrant changes ownership or location. This new application must be submitted to the Board at least 15 days prior to the change.

(8) Notwithstanding any of the above sections, a person who compounds a drug, as a part of a Shared Pharmacy Services agreement as defined in OAR 855-006-0005, who does not otherwise qualify as a manufacturer, does not need to register with the Board as a Manufacturer.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 689.155, 689.305  
Hist.: BP 9-2011, f. 12-30-11, cert. ef. 1-1-12

## Bureau of Labor and Industries Chapter 839

**Rule Caption:** Amends the prevailing rates of wage for the period beginning July 1, 2011 and October 1, 2011 amendment.

**Adm. Order No.:** BLI 10-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**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, 2011 and October 1, 2011 amendment.

**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 January 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 January 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 January 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](http://www.oregon.gov/boli) or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060  
Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. & 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.

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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. & 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

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**Rule Caption:** Implements legislation providing civil penalties for issuance of dishonored checks in payment of wages.

**Adm. Order No.:** BLI 11-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 12-1-2011

**Rules Adopted:** 839-001-0300

**Subject:** This new rule implements the provisions of House Bill (HB) 2039 enacted by the 2011 Legislature. HB 2039, effective January 1, 2012, amends ORS chapter 652 to authorize the Commissioner of the Bureau of Labor and Industries to assess civil penalties payable to employees equal to the damages provided in ORS 30.701 relating to actions against makers of dishonored checks. ORS 30.701 provides that when an individual is issued a check for which there are insufficient funds, the person may recover from the maker of the dishonored check statutory damages in an amount equal to \$100 or triple the amount for which the check is drawn, not to exceed \$500 more than the value of the check.

This new rule provides that such amounts may be assessed as civil penalties by the Bureau of Labor and Industries pursuant to the Administrative Procedure Act (ORS 183.413 to 183.470) and the bureau's Contested Case Hearing Rules.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-001-0300

### Liability of Employer for Issuance of Dishonored Check in Payment of Wages

(1) As used in this rule:

(a) "Check" means a check, draft or order for the payment of money.

(b) "Drawee" means a person ordered in a draft to make payment pursuant to ORS 73.0103(1)(b).

(2) Pursuant to ORS 30.701, an employer that issues a dishonored check to an employee for payment of wages due is liable to the employee for damages in an amount equal to \$100 or triple the amount for which the check is drawn, whichever is greater, in addition to the amount for which the check was drawn. The amount of damages may not exceed the amount for which the check was drawn by more than \$500.

(3) Pursuant to the provisions of House Bill 2039 (2011), the Commissioner of the Bureau of Labor and Industries may assess a civil penalty payable to the employee in an amount equal to the statutory dam-

ages provided by ORS 30.701 against an employer that issues a dishonored check to an employee for payment of wages due. Such civil penalties will be assessed pursuant to the provisions of the Administrative Procedure Act (ORS 183.413 to 183.470) and the bureau's Contested Case Hearing Rules.

(4) The commissioner may not assess a civil penalty as provided in this rule if:

(a) After the employee or the employee's assignee has made written demand of the employer not less than 30 days before commencing the action, the employer pays the employee before the commencement of the action an amount of money not less than the amount for which the check was drawn and all interest that has accrued on the check under ORS 82.010 as of the date of demand; or,

(b) The employee has commenced an action under ORS 30.701 against the employer for the same dishonored check.

(5) If the commissioner determines that the failure of the employer to satisfy the dishonored check at the time demand was made under subsection (4)(a) of this rule was due to economic hardship, the commissioner may waive all or part of the statutory damages provided for in section (2) of this rule.

(6) The provisions of this rule apply only to a check that has been dishonored because of a lack of funds or credit to pay the check, because the employer has no account with the drawee, or because the employer has stopped payment on the check without good cause. An employee is entitled to the remedies provided in this rule without regard to the reasons given by the employer for dishonoring the check.

(7) An employee may not bring an action under ORS 30.701 against an employer for the same dishonored check if the commissioner has assessed or proposed to assess a civil penalty under this rule.

Stat. Auth.: ORS 30.701, 651.060 & Ch. 652

Stats. Implemented: ORS 652

Hist.: BLI 11-2011, f. 12-30-11, cert. ef. 1-1-12

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**Rule Caption:** Clarifies how employer penalty is to be computed in Wage Security Fund recovery actions.

**Adm. Order No.:** BLI 12-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 839-001-0560

**Subject:** ORS 652.414, relating to the payment of wage claims from the Wage Security Fund, provides that the Commissioner of the Bureau of Labor and Industries may initiate action to recover from employers or other persons liable for unpaid wages, amounts paid from the Wage Security Fund. In addition, the commissioner is also entitled to recover a penalty of 25 percent of the amount of wages paid from the Wage Security Fund or \$200, whichever amount is greater. This rule amendment clarifies that in cases where multiple employees of an employer are paid from the Fund, the penalty of 25 percent amount of wages paid or \$200, whichever is greater, is to be calculated based on the amount paid to each employee from the Wage Security Fund, rather than the total aggregated amount paid to the employees of the employer.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-001-0560

### Recovery from Employers

(1) The Commissioner may perfect a security interest in the personal property of the employer in the amount of the sums paid from the Fund on a wage claim and in an additional amount of the penalty provided for in ORS 652.414(3).

(2) The penalty provided in ORS 652.414(3) of 25 percent of the amount of wages paid from the Wage Security Fund or \$200, whichever amount is greater, shall be calculated based on the amount paid to each employee from the Wage Security Fund.

(3) Action to perfect a security interest shall be taken in accordance with ORS 652.414(3) and (4).

Stat. Auth.: ORS 652.414(6)

Stats. Implemented: ORS 652.414

Hist.: BL 5-1986, f. 6-20-86, ef. 7-1-86; BL 8-1989, f. & cert. ef. 10-12-89; BL 9-1996, f. & cert. ef. 10-8-96; BLI 12-2011, f. 12-30-11, cert. ef. 1-1-12

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**Rule Caption:** Amendments clarifying time during which bureau may issue subpoenas and correcting statutory cites.



# ADMINISTRATIVE RULES

**Adm. Order No.:** BLI 13-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 839-002-0001, 839-002-0002, 839-002-0005, 839-002-0015, 839-002-0020, 839-002-0025, 839-002-0030, 839-002-0035, 839-002-0040, 839-002-0045, 839-002-0050, 839-002-0055, 839-002-0060, 839-002-0065, 839-002-0070, 839-002-0075, 839-002-0080

**Subject:** The amendments clarify the time frame during which the bureau may issue subpoenas. The authorizing statute, ORS 651.0060(1), provides that the bureau may issue subpoenas “when the information sought is relevant to a lawful investigative purpose.” The amendments clarify that the bureau may issue a subpoena at any time when the information sought “is relevant to a lawful investigative purpose and deemed to be reasonable in scope,” which would include during official preliminary inquiries prior to initiating an investigation. The amendments also include corrections to statutory cites.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-002-0001

### Purpose of These Rules

The Bureau of Labor and Industries is authorized to develop administrative rules necessary for enforcement of statutes for which it is responsible. The purpose of these rules is to guide the bureau in the rule-making process.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.335

Hist.: BLI 1-2000, f. & cert. ef. 1-11-00; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-002-0002

### Proposed Rule Notice

Prior to the permanent adoption, amendment or repeal of any rule of the Bureau of Labor and Industries, the bureau will give notice of intended action:

(1) In the Secretary of State’s Bulletin, referred to in ORS 183.360, at least 21 days prior to the rule’s effective date.

(2) To persons on the bureau’s mailing list and email list established pursuant to ORS 183.335(8).

(3) To the legislature, by mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule.

(4) To the general public, by posting the notice on the bureau’s Website.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.335

Hist.: BLI 1-2000, f. & cert. ef. 1-11-00; BLI 8-2004, f. 7-26-04, cert. ef. 7-27-04; BLI 7-2006, f. 3-16-06 cert. ef. 3-20-06; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-002-0005

### Model Rules of Procedure

(1) The Attorney General’s Model Rules of Procedure under the Administrative Procedures Act, are hereby adopted to govern the operations of the Bureau of Labor and Industries.

(2) The Model Rules of Procedure will govern operations of the Hearings Unit of the Bureau of Labor and Industries except to the extent they conflict with or are modified by rules in any division of chapter 839 of the Oregon Administrative Rules. The rules for contested case proceedings are set forth in OAR chapter 839, division 50.

[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 Bureau of Labor and Industries.]

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.341

Hist.: BL 5-1980, f. & ef. 8-4-80; BL 2-1981, f. & ef. 1-8-81; BL 3-1982, f. & ef. 2-9-82; BL 4-1996, f. & cert. ef. 3-12-96; BLI 1-2000, f. & cert. ef. 1-11-00; BLI 7-2006, f. 3-16-06 cert. ef. 3-20-06; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-002-0015

### Authority

(1) ORS 651.060(1) authorizes the commissioner to conduct investigations in all matters relating to the duties required under ORS 279C.800 to 279C.870, 651.030, 651.050, 651.120 and 651.170, and Chapters 652, 653, 658, and 659A.

(2) ORS 651.060(1) gives the commissioner the authority to issue subpoenas ad testificandum and subpoenas duces tecum, administer oaths, obtain evidence and take testimony.

(3) These rules govern the commissioner’s gathering of information through subpoenas or testimony and establish procedures through which a subpoenaed party may object to answering questions or producing any document or other thing subpoenaed.

Stat. Auth.: ORS 651.060, 658.220 & 659A.800

Stats. Implemented: ORS 279C, 651, 652, 653, 658 & 659A

Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-002-0020

### Definitions

(1) “Division” means the Civil Rights Division and Wage and Hour Division in the Bureau of Labor and Industries.

(2) “Document” means any existing written, printed, typed, or recorded matter of any kind or nature, however produced or reproduced, including but not limited to all mechanical, electronic, sound or video recordings or their transcripts, photographs, electronic files and computer stored data.

(3) “Other thing” means any existing tangible object that is not a “document.”

(4) “Party” means any person who has been served by a subpoena under these rules.

(5) “Person” means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(6) “Subpoena ad testificandum” is a subpoena that requires an individual to appear and give testimony under oath.

(7) “Subpoena duces tecum” is a subpoena that requires the production of documents or other things.

Stat. Auth.: ORS 651.060, 658.220 & 659A.800

Stats. Implemented: ORS 279C, 651, 652, 653, 658 & 659A

Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-002-0025

### Who and What May Be Subpoenaed

The commissioner may issue subpoenas to persons to compel testimony and the production of documents or other things that are relevant to the commissioner’s lawful investigative purpose and reasonable in scope under matters relating to the duties required under ORS 279C.800 to 279C.870, 651.030, 651.050, 651.120 and 651.170, and chapters 652, 653, 658, and 659A.

Stat. Auth.: ORS 651.060, 658.220 & 659A.800

Stats. Implemented: ORS 279C, 651, 652, 653, 658 & 659A

Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-002-0030

### Circumstances under Which a Subpoena May be Issued

(1) The commissioner may issue a subpoena at any time when the information sought is relevant to a lawful investigative purpose and is reasonable in scope. Investigative purposes include any preliminary inquiries in determining whether to pursue a formal investigation.

(2) The commissioner may issue a subpoena ad testificandum to compel a person to testify under oath when:

(a) A Division determines that the person is a material witness in an investigation being conducted by the Division under ORS 279C.800 to 279C.870, 651.030, 651.050, 651.120 and 651.170, or chapters 652, 653, 658, and 659A; and

(b) The Division has been unable to interview the person after having made reasonable attempts to do so, or the person states that the person will only consent to an interview if first served with a subpoena.

(3) The commissioner may also issue a subpoena ad testificandum to compel a person to testify under oath about the contents of documents or other things produced in response to a subpoena duces tecum served on the same person.

(4) The commissioner may issue a subpoena duces tecum to compel a person to produce documents or other things when:

(a) A Division determines that the documents or other things are relevant to the Division’s inquiry being conducted under ORS 279C.800 to 279C.870, 651.030, 651.050, 651.120 and 651.170, or chapters 652, 653, 658, and 659A; and

(b) The Division has made a written request for production of documents or things and the person to whom the request was made has failed to comply within the time specified by the Division, unless the commissioner

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finds a subpoena is necessary to protect the documents and things from destruction.

Stat. Auth.: ORS 651.060, 658.220 & 659A.800  
Stats. Implemented: ORS 279C, 651, 652, 653, 658 & 659A  
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 5-2010(Temp), f. 2-10-10, cert. ef. 2-12-10 thru 8-6-10; BLI 14-2010, f. 5-4-10, cert. ef. 5-5-10; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-002-0035

### Who May Issue Subpoenas

The commissioner or the commissioner's designees may issue subpoenas.

Stat. Auth.: ORS 651.060, 658.220 & 659A.800  
Stats. Implemented: ORS 279C, 651, 652, 653, 658 & 659A  
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-002-0040

### Subpoena Duces Tecum

(1) A subpoena duces tecum may be issued to any person who has custody, possession, or control of documents or other things named in the subpoena duces tecum when the conditions set out in OAR 839-002-0030(4) have been met.

(2) A subpoena duces tecum issued to a corporation will be addressed to the records custodian of the corporation.

(3) A subpoena duces tecum will not require production of documents or other things less than 14 days from the date of service upon the person required to produce and permit inspection of the documents or things unless the commissioner finds a shorter period necessary to protect the documents and things from destruction or if the Division has an immediate need for the documents or things being subpoenaed.

(4) The commissioner may also command the person to whom a subpoena duces tecum is issued to produce documents and other things by mail or otherwise, at a time and place specified in the subpoena, without commanding inspection of the originals. The person to whom the subpoena is directed complies if the person produces copies of the specified items in the specified manner and certifies that the copies are true copies of all documents and other things responsive to the subpoena.

(5) The subpoenaed documents and other things must be produced at the location, time, and date required in the subpoena.

Stat. Auth.: ORS 651.060, 658.220 & 659A.800  
Stats. Implemented: ORS 279C, 651, 652, 653, 658 & 659A  
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 5-2010(Temp), f. 2-10-10, cert. ef. 2-12-10 thru 8-6-10; BLI 14-2010, f. 5-4-10, cert. ef. 5-5-10; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-002-0045

### Subpoena Ad Testificandum

(1) A subpoena ad testificandum may be issued to any person when the conditions set out in 839-002-0030(2) or 839-002-0030(3) have been met.

(2) The subpoena ad testificandum must give the person a reasonable time for preparation and travel to the place of attendance and the place of attendance must be in a suitable place in the vicinity to which testimony is applicable.

Stat. Auth.: ORS 651.060, 658.220 & 659A.800  
Stats. Implemented: ORS 279C, 651, 652, 653, 658 & 659A  
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 5-2010(Temp), f. 2-10-10, cert. ef. 2-12-10 thru 8-6-10; BLI 14-2010, f. 5-4-10, cert. ef. 5-5-10; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-002-0050

### Method of Service

(1) Except as noted in subsections (2) and (3) of this rule, subpoenas must be served in person by delivering a copy to the witness personally and, at the same time, giving or offering to the witness the fees to which the person is entitled for travel to and from the place where the witness is commanded to appear, along with one day's attendance fee. A subpoena may be served by any person 18 years of age or older.

(2) Subpoenas ad testificandum may be served by mail under the following circumstances:

(a) The Division must have, by personal or telephone contact, confirmed the witness's willingness to appear if subpoenaed and certify this on the return of service;

(b) The Division made arrangements for payment to the witness of fees and mileage satisfactory to the witness and pays those fees and mileage; and

(c) The subpoena is sent by certified mail to the witness more than 10 days before the date set for appearance or production of documents or other

things and the Division receives a return receipt signed by the witness more than three days prior to that date.

(3) A subpoena duces tecum that commands production of documents or other things but is not accompanied by a subpoena ad testificandum may be served by mailing the subpoena to the person required to produce and permit inspection of the documents or things by first class mail and by certified or registered mail, return receipt requested.

(4) A subpoena duces tecum issued to a corporation will be served in accordance with requirements for service of summons on a corporation pursuant to ORCP 7 D(3)(b).

Stat. Auth.: ORS 651.060, 658.220 & 659A.800  
Stats. Implemented: ORS 279C, 651, 652, 653, 658 & 659A; ORCP 7  
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 5-2010(Temp), f. 2-10-10, cert. ef. 2-12-10 thru 8-6-10; BLI 14-2010, f. 5-4-10, cert. ef. 5-5-10; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-002-0055

### Fees

All persons subpoenaed by the commissioner must be paid the mileage and per diem set out in ORS 44.415(2).

Stat. Auth.: ORS 651.060, 658.220 & 659A.800  
Stats. Implemented: ORS 279C, 651, 652, 653, 658 & 659A  
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-002-0060

### Time and Manner of Objecting to Subpoenas

(1) Any person served with an investigative subpoena may object to testifying or providing the documents or other things sought. Grounds for objections include:

(a) The information sought is irrelevant to a lawful investigative purpose;

(b) The information sought is unreasonable in scope;

(c) The witness is ordered to appear to give testimony in a place that is not suitable or not in the vicinity to which the testimony is applicable;

(d) The time and expense involved in copying the documents sought.

In order to have this objection considered, a person making this objection must include a written estimate of the time involved and number of copies to be made in order to comply with the subpoena;

(e) Reasonable cause to refuse to comply; and

(f) Any other basis that may be asserted under Oregon law.

(2) Objections to subpoenas must be in writing and must be received by the Division at least seven calendar days before the time that the witness is subpoenaed to testify or provide documents or other things.

(3) If a subpoenaed witness refuses to answer specific questions while giving testimony, the witness must state the reason for the witness's objection at the time that the witness refuses to answer the questions.

Stat. Auth.: ORS 651.060, 658.220 & 659A.800  
Stats. Implemented: ORS 279C, 651, 652, 653, 658 & 659A  
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-002-0065

### Response to Objections

(1) The Division will respond in writing to any objections timely received under OAR 839-002-0060(2).

(2) If the objection made is the time and expense involved in copying the documents sought, the Division will provide a check to the person subpoenaed to pay for the estimated time and expense, calculated at the rates set out in OAR 839-030-0010. The Division may provide this check before or at the time the witness is subpoenaed to provide documents or other things.

Stat. Auth.: ORS 651.060, 658.220 & 659A.800  
Stats. Implemented: ORS 279C, 651, 652, 653, 658 & 659A  
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-002-0070

### Method of Taking Testimony

(1) When a witness appears to give testimony in response to a subpoena ad testificandum, an oath or affirmation will be administered to the witness prior to the witness's testimony. The oath or affirmation will be administered by an officer authorized to administer oaths in Oregon, generally a notary public employed by the Bureau of Labor and Industries.

(2) The witness's testimony will be preserved by an audio or video recording. Upon request, the Division will give the witness a copy of the recording at no cost.

Stat. Auth.: ORS 651.060, 658.220 & 659A.800  
Stats. Implemented: ORS 279C, 651, 652, 653, 658 & 659A  
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12

# ADMINISTRATIVE RULES

## 839-002-0075

### Failure to Appear

If a person served with a subpoena fails to appear and has not filed any prior objections, the commissioner will conclude that the person has refused, without reasonable cause, to answer any question or to produce any document or other thing.

Stat. Auth.: ORS 651.060, 658.220 & 659A.800  
Stats. Implemented: ORS 279C, 651, 652, 653, 658 & 659A  
Hist.: BLI 38-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-002-0080

### Enforcement of Subpoena

If a person served with a subpoena refuses, without reasonable cause, to be examined, to answer any question, or to produce any document or other thing as required by the subpoena, the commissioner may petition the circuit court in the county in which the investigation is pending for an order directing the person to show cause why the person has not complied with the subpoena and should not be held in contempt. The commissioner shall serve the court's order upon the person in the manner provided by ORCP 55 D.

Stat. Auth.: ORS 651.060, 658.220 & 659A.800  
Stats. Implemented: ORS 279C, 651, 652, 653, 658 & 659A  
Hist.: BLI 38-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12

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**Rule Caption:** Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

**Adm. Order No.:** BLI 14-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 839-005-0075, 839-005-0130, 839-005-0135

**Rules Amended:** 839-005-0160, 839-005-0170, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0345, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0365

**Rules Renumbered:** 839-005-0033 to 839-005-0125

**Subject:** The new rules would implement HB 2036, which (1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112–659A.139); (2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and (3) clarifies that an employer may consider the credit history of applicants for public safety officer employment and clarifies exceptions to the prohibition on the use of credit history information in employment.

The new rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The new rules would implement provisions of HB 3482, adding harassment to crime victim protections.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-005-0075

### Exceptions

OL 2010, Ch. 102 does not apply to:

- (1) Employers that are federally insured banks or credit unions;
- (2) Employers that are required by state or federal law to use individual credit history for employment purposes;
- (3) Employees in or applicants for positions responsible for enforcing the criminal laws of this state, including:
  - (a) A public safety officer who is a member of a law enforcement unit;
  - (b) A peace officer commissioned by a city, port, school district, mass transit district, county, Indian reservation, or the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, the Governor; or
- (c) Employees in positions responsible for enforcing the criminal laws of this state or laws or ordinances related to airport security; or

(4)(a) The obtaining or use by an employer of information in the credit history of an applicant or employee because the information is substantially job-related, and the employer's reasons for the use of such information are disclosed to the employee or prospective employee in writing.

(b) The burden of proving the employer's disclosure to the employee rests with the employer.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805  
Stats. Implemented: OL 2010, Ch. 102  
Hist.: BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-005-0125

### Discrimination in Retaliation for Opposing Unlawful Practices

(1) This rule interprets ORS 659A.030(1)(f).  
(2) An employer will be found to have unlawfully retaliated against an employee if:

(a) The employee has engaged in protected activity by:  
(A) Explicitly or implicitly opposing an unlawful practice or what the employee reasonably believed to be an unlawful practice, or  
(B) Filing a charge, testifying, or assisting in an investigation, proceeding, or lawsuit under ORS 659A, or attempting to do so;

(b) The employer has subjected the employee to any adverse treatment, in or out of the workplace, that is reasonably likely to deter protected activity, regardless of whether it materially affects the terms, conditions, or privileges of employment; and

(c) There is a causal connection between the protected activity and the adverse treatment.

Stat. Auth.: ORS 659A.805  
Stats. Implemented: ORS 659A.030(1)(f)  
Hist.: BLI 27-2008, f. 8-5-08, cert. ef. 8-6-08; Renumbered from 839-005-0033, BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-005-0130

### Discrimination Against Employees Serving as Jurors

(1) An employer commits an unlawful employment practice under ORS chapter 659A if the employer discharges, threatens to discharge, intimidates or coerces any employee by reason of the employee's service or scheduled service as a juror on a grand jury, trial jury or jury of inquest.

(2) An employee who alleges a violation of subsection (1) of this rule may bring a civil action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

Stat. Auth.: ORS 659A.805  
Stats. Implemented: ORS 10.090, OL 2011 c. 118  
Hist.: BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-005-0135

### Insurance Coverage for Employees Serving as Jurors

(1) An employer who employs 10 or more persons commits an unlawful employment practice under ORS chapter 659A if:

(a) The employer ceases to provide health, disability, life or other insurance coverage for an employee during times when the employee serves or is scheduled to serve as a juror; and

(b) The employee elected to have coverage continued while the employee served or was scheduled to serve as a juror, and the employee provided notice of that election to the employer in compliance with the employer's policy for notification.

(2) Notwithstanding ORS 652.610(3), if, following an election described in subsection (1) of this section, an employer is required or elects to pay any part of the costs of providing health, disability, life or other insurance coverage for the employee that should have been paid by the employee, the employer may deduct from the employee's pay such amounts upon the employee's return to work until the amount the employer advanced toward the payments is paid. The total amount deducted for insurance under this subsection may not exceed 10 percent of the employee's gross pay each pay period.

(3) Notwithstanding ORS 652.610(3), if the employer pays any part of the costs of providing health, disability, life or other insurance coverage for an employee under subsection (2) of this section, and the employee ceases to work for the employer before the total amount the employer advanced toward the payments is paid, the employer may deduct the remaining amounts from any amounts owed by the employer to the employee or may seek to recover those amounts by any other legal means.

(4) An employee who alleges a violation of this section may bring a civil action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

Stat. Auth.: ORS 659A.805  
Stats. Implemented: ORS 10.090, OL 2011 c. 118  
Hist.: BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12

# ADMINISTRATIVE RULES

## 839-005-0160

### Protection from Discrimination and Safety Accommodation for Victims of Domestic Violence, Harassment, Sexual Assault or Stalking

(1) As provided in ORS 659A.290, it is an unlawful employment practice for an employer, because an individual is a victim of domestic violence, harassment, sexual assault or stalking, to:

- (a) Refuse to hire an otherwise qualified individual; or
- (b) Discharge, threaten to discharge, demote, suspend or in any way discriminate or retaliate against an individual with respect to promotion, compensation or any other terms, conditions or privileges of employment.

(2) ORS 659A.290 requires employers to provide safety accommodation for victims of domestic violence, harassment, sexual assault or stalking.

(3) The Civil Rights Division (“division”) of the Bureau of Labor and Industries enforces ORS 659A.290.

(4) Leave from employment is available for victims of domestic violence, harassment, sexual assault or stalking for purposes including but not limited to: seeking legal or law enforcement remedies, seeking medical care or counseling, and for relocating or other safety measures. The division enforces ORS 659A.270 to 659A.285, which require leave for victims of domestic violence, harassment, sexual assault or stalking. OAR 839-009-0321 to 839-009-0365 implement and interpret ORS 659A.270 to 659A.285.

(5) OAR 839-005-0160 to 839-005-0170 implement and interpret ORS 659A.290.

(6) Definitions for OAR 839-005-0160 to 839-005-0170:

(a) “Victim of domestic violence” means:

(A) An individual who has been threatened with abuse or is a victim of abuse, as defined in ORS 107.705; or

(B) Any other person who has suffered financial, social, psychological or physical harm as a result of domestic violence committed against the victim as defined in subsection (a), including a member of the victim’s immediate family.

(b) “Victim of harassment” means an individual against whom harassment has been committed as described in Oregon’s criminal code at ORS 166.065.

(c) “Victim of sexual assault” means:

(A) An individual against whom a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525; or

(B) Any other person who has suffered financial, social, psychological or physical harm as a result of a sexual assault committed against the victim as defined in subsection (a), including a member of the victim’s immediate family.

(d) “Victim of Stalking” means:

(A) An individual against whom stalking has been threatened or committed as described in ORS 163.732; or

(B) Any other person who has suffered financial, social, psychological or physical harm as a result of a stalking committed against the victim as defined in subsection (a), including a member of the victim’s immediate family; or

(C) An individual who has obtained a court’s stalking protective order or a temporary court’s stalking protective order under ORS 30.866.

(e) In no event will an alleged perpetrator of domestic violence, harassment, sexual assault or stalking be considered a victim for the purposes of ORS 659A.290 or these rules.

Stat. Auth.: ORS 659A.805, 659A.270

Stats. Implemented: ORS 659A.290, OL 2011 c. 687

Hist.: BLI 9-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-005-0170

### Reasonable Safety Accommodation for Victims of Domestic Violence, Harassment, Sexual Assault or Stalking

(1) It is an unlawful employment practice to refuse to make a reasonable safety accommodation requested by an individual who is a victim of or under threat of domestic violence, harassment, sexual assault, or stalking, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer.

(2) “Reasonable safety accommodation” may include, but is not limited to, a transfer, reassignment, modified schedule, unpaid leave from employment, changed work telephone number, changed work station, installed lock, implemented safety procedure or any other adjustment to a job structure, workplace facility or work requirement in response to actual or threatened domestic violence, harassment, sexual assault or stalking.

(3) Undue hardship means a significant difficulty and expense to an employer’s business and includes consideration of the size of the employ-

er’s business. Other factors to consider in determining whether granting a safety accommodation will cause an undue hardship on an employer’s business include, but are not limited to:

(a) The safety accommodation requested and the relative cost to an employer’s business;

(b) The overall financial resources of the employer’s facility or facilities, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility if the safety accommodation were granted;

(c) The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees and the number, type and location of the employer’s facilities;

(d) The type of operations conducted by the employer, including the composition, structure and functions of the employer’s workforce.

(4) Prior to making a reasonable safety accommodation, an employer may require an individual to provide certification that the individual is a victim of domestic violence, harassment, sexual assault, or stalking.

(a) An individual must provide a certification permitted under OAR 839-009-0362(5) within a reasonable time after receiving the employer’s request for certification.

(b) Any of the following constitutes sufficient certification:

(A) A copy of a police report indicating that the individual was or is a victim of domestic violence, harassment, sexual assault or stalking.

(B) A copy of a protective order or other evidence from a court or attorney that the individual appeared in or is preparing for a civil or criminal proceeding related to domestic violence, harassment, sexual assault or stalking.

(C) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the individual was or is undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, harassment, sexual assault or stalking.

(D) All records and information kept by an employer regarding a reasonable safety accommodation made for an individual are confidential and may not be released without the express permission of the individual, unless otherwise required by law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.290, OL 2011 c. 687

Hist.: BLI 9-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-009-0325

### Purpose and Scope

(1) The Civil Rights Division of the Bureau of Labor and Industries (“division”) enforces ORS 659A.270 to 659A.285 which require leave for victims of domestic violence, harassment, sexual assault or stalking. These rules implement and interpret ORS 659A.270 to 659A.285.

(2) The division enforces ORS 659A.290, requiring employers to provide safety accommodation for, and prohibiting discrimination or retaliation against, victims of domestic violence, harassment, sexual assault or stalking. The rules implementing and interpreting ORS 659A.290 are found at OAR 839-005-0160 and 839-005-0170.

(3) ORS 659A.190 to 659A.198 provide for leave for crime victims to attend criminal proceedings. The division does not enforce ORS 659A.190 to 659A.198.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285, OL 2011 c. 687

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-009-0330

### Prohibited Discrimination

It is an unlawful employment practice for a covered employer to deny leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking to an eligible employee or to discharge, threaten to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment because the employee inquires about, applies for, or takes leave as provided under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285, OL 2011 c. 687

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12

# ADMINISTRATIVE RULES

839-009-0340

## Definitions

(1) "Covered employer" means an employer who employs 6 or more individuals in the state of Oregon for each working day during each of 20 or more calendar workweeks in the calendar year in which an eligible employee takes leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking or in the calendar year immediately preceding the year in which an eligible employee takes the leave.

(2) "Eligible employee" means an employee who is employed in the state of Oregon on the date leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking begins; and

(a) Worked an average of more than 25 hours per week for a covered employer for at least 180 calendar days immediately preceding the date the employee takes the leave.

(A) In determining that an employee has been employed for the preceding 180 calendar days, the employer must count the number of days an employee is maintained on the payroll, including all time paid or unpaid. If an employee continues to be employed by a successor in interest to the original employer, the number of days worked are counted as continuous employment by a single employer.

(B) In determining more than 25 hours average per week, the employer must count actual hours worked using guidelines set out pursuant to the regulations under the Fair Labor Standards Act (See 29 CFR Part 785).

(C) For the purpose of qualifying as an eligible employee, the employee need not perform work solely in the state of Oregon.

(D) Eligibility of employees reemployed following a period of unformed service:

(i) The federal Uniformed Services Employment and Reemployment Act, 38 USC 43 (USERRA) provides that an employee reemployed following a period of unformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the unformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. Federal Department of Labor regulation 20 CFR 1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by unformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. Under USERRA, a reemployed service member would be eligible for leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking if the number of days and the number of hours of work for which the service member was employed by the civilian employer, together with the number of days and number of hours of work for which the service member would have been employed by the civilian employer during the period of unformed service, meet the eligibility requirements of these rules. In the event that a service member is denied leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking for failing to satisfy the days and hours of work requirement due to absence from employment necessitated by unformed service, the service member may have a cause of action under USERRA but not under these statutes.

(ii) ORS 659A.082–659A.088 provides that an employee reemployed following a period of unformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the unformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by unformed service is not considered a break in employment. If a reemployed service member was eligible for leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking prior to the date unformed service began, the leave eligibility requirements are considered met.

(b) Is a victim of domestic violence, harassment, sexual assault or stalking or is the parent or guardian of a minor child or dependent who is the victim of domestic violence, harassment, sexual assault or stalking.

(3) "Dependent" means an adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.104(1)(a), (3), and (4) or any adult of whom the employee has guardianship.

(4) "Foster child" means a child, not adopted, but being reared as a result of legal process, by a person other than the child's natural parent.

(5) "Health care professional" means a physician or other health care practitioner who is licensed, certified or otherwise authorized by law to provide health care services.

(6) "Immediate family" means spouse, domestic partner, father, mother, sibling, child, stepchild, grandparent, or any person who had the same primary residence as the victim at the time of the domestic violence, harassment, sexual assault or stalking.

(7) "In loco parentis" means in the place of a parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

(8) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule.

(9) "Law enforcement officer" means all police, corrections, and parole and probation officers who are included in the Public Safety Standards and Training Act as described in ORS 181.610 and 181.651.

(10) "Minor child," means a biological, adopted, foster or stepchild, or a child with whom the employee is or was in a relationship of in loco parentis. It also includes the biological, adopted, foster or stepchild of an employee's registered domestic partner. The minor child must be under the age of 18.

(11) "Parent or guardian" means a custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent or an employee who is or was in relationship of in loco parentis with a minor child or a dependent with whom the employee is or was in a relationship of in loco parentis.

(12) "Protective order" means an order authorized by ORS 30.866, 107.095(1)(c), 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750 or any other order that restrains an individual from contact with an eligible employee or the employee's minor child or dependent.

(13) "Reasonable leave" means any amount of leave that does not cause an undue hardship on a covered employer's business.

(14) "Victim of domestic violence" means:

(a) An individual who has been threatened with abuse or who is a victim of abuse, as defined in ORS 107.705; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of domestic violence committed against the victim as defined in (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the domestic violence be considered a victim for the purposes of these rules.

(15) "Victim of harassment" means an individual against whom harassment has been committed as described in Oregon's criminal code at ORS 166.065.

(16) "Victims services provider" means a prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, harassment, sexual assault or stalking.

(17) "Victim of sexual assault" means:

(a) An individual against whom a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of a sexual assault committed against the victim as defined in (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the sexual offense be considered a victim for the purposes of these rules.

(18) "Victim of stalking" means:

(a) An individual against whom stalking has been threatened or committed as described in ORS 163.732; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of a stalking committed against the victim as defined in (a), including a member of the victim's immediate family; or

(c) An individual who has obtained a court's stalking protective order or a temporary court's stalking protective order under ORS 30.866.

(c) In no event will the alleged perpetrator of the stalking be considered a victim for the purposes of these rules.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285, OL 2011 c. 687

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-009-0345

### Purposes for Taking Leave

A covered employer must allow an eligible employee to take reasonable leave from employment for any of the following purposes:

(1) To seek legal or law enforcement assistance or remedies to ensure the health and safety of the eligible employee or the eligible employee's

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minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, harassment, sexual assault or stalking.

(2) To seek medical treatment for or to recover from injuries caused by domestic violence or harassment or sexual assault or stalking of the eligible employee or the eligible employee's minor child or dependent.

(3) To obtain, or to assist the eligible employee's minor child or dependent in obtaining counseling from a licensed mental health professional related to an experience of domestic violence, harassment, sexual assault or stalking.

(4) To obtain services from a victim services provider for the eligible employee or the eligible employee's minor child or dependent.

(5) To relocate or take steps to secure an existing home to ensure the health and safety of the eligible employee or the eligible employee's minor child or dependent. Relocate includes:

(a) Transition periods spent moving the eligible employee or the eligible employee's minor child or dependent from one home or facility to another, including but not limited to time to pack and make security or other arrangements for such transitions related to domestic violence, harassment, sexual assault or stalking;

(b) Transportation or other assistance required for an eligible employee or the eligible employee's minor child or dependent related to the domestic violence, harassment, sexual assault or stalking.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285, OL 2011 c. 687

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-009-0355

### Undue Hardship

Undue Hardship means a significant difficulty and expense to a covered employer's business and includes consideration of the size of the covered employer's business and the covered employer's critical need for the eligible employee. Other factors to consider in determining whether granting leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking will cause an undue hardship on a covered employer's business include, but are not limited to:

(1) The length of leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking requested and the relative cost to a covered employer's business;

(2) The overall financial resources of the covered employer's facility or facilities, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility if the leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking were granted;

(3) The overall financial resources of the covered employer, the overall size of the business of the covered employer with respect to the number of its employees and the number, type and location of the covered employer's facilities;

(4) The type of operations conducted by the covered employer, including the composition, structure and functions of the covered employer's workforce.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285, OL 2011 c. 687

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-009-0360

### Intermittent Leave and Alternate Duty

(1) An eligible employee may take leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking in multiple blocks of time and/or requiring an altered or reduced work schedule.

(2) A covered employer may transfer an employee on intermittent leave or a reduced work schedule into an alternate position with the same or different duties to accommodate the leave, provided the following exist:

(a) The eligible employee accepts the transfer position voluntarily and without coercion;

(b) The transfer is temporary, lasts no longer than necessary to accommodate the leave and has equivalent pay and benefits;

(c) Transfer to an alternate position is used only when there is no other reasonable option available that would allow the eligible employee to use intermittent leave or reduced work schedule; and

(d) The transfer is not used to discourage the eligible employee from taking intermittent or reduced work schedule leave, or to create a hardship for the eligible employee.

(3) An eligible employee transferred to an alternate position for the purpose of a reduced work schedule under section (2)(a) through (d) of this rule must be returned to the eligible employee's former position when the eligible employee notifies the employer that the eligible employee is ready to return to the former position.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285, OL 2011 c. 687

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-009-0362

### Notice by Employee

(1) An eligible employee seeking leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking will give the covered employer reasonable advance notice of the employee's intention to take leave unless giving the advance notice is not feasible.

(2) When taking leave in an unanticipated or emergency situation, an eligible employee must give oral or written notice as soon as is practicable. This notice may be given by any other person on behalf of an eligible employee taking unanticipated leave.

(3) An eligible employee able to give advance notice of the need to take leave must follow the covered employer's known, reasonable and customary procedures for requesting any kind of leave;

(4) The covered employer may require the eligible employee to provide certification that:

(a) The eligible employee or the eligible employee's minor child or dependent is a victim of domestic violence, harassment, sexual assault or stalking as defined in OAR 839-009-0340(14), (15), (16) and (17); and

(b) The leave taken is for one of the purposes identified in OAR 839-009-0345.

(5) Any of the following constitutes sufficient certification:

(a) A copy of a police report indicating that the eligible employee or the eligible employee's minor child or dependent was a victim or alleged victim of domestic violence, harassment, sexual assault or stalking as defined in OAR 839-009-0340(14), (15), (16) and (17); or

(b) A copy of a protective order or other evidence from a court or attorney that the eligible employee appeared in or is preparing for a civil or criminal proceeding related to domestic violence, harassment, sexual assault or stalking as defined in OAR 839-009-0340(14), (15), (16) and (17); or

(c) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the eligible employee or the eligible employee's minor child or dependent is undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, harassment, sexual assault or stalking as defined in OAR 839-009-0340(14), (15), (16) and (17).

(6) Consistent with ORS 659A.306, the covered employer must pay the cost of any medical verification related to OAR 839-009-0345(1)(b) and (c) not covered by insurance or other benefit plan.

(7) The eligible employee will provide the certification within a reasonable time after receiving the covered employer's written request for the certification.

(8) The covered employer may provisionally designate an absence as leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking until sufficient certification is received, if requested, to make a determination.

(9) An eligible employee on leave who needs to take more leave than originally authorized should give the covered employer notice as soon as is practicable prior to the end of the authorized leave, following the covered employer's known, reasonable and customary procedures for requesting any kind of leave. However, when an authorized period of leave has ended and an eligible employee does not return to work, a covered employer having reason to believe the continuing absence may qualify as leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking may request additional information. If the covered employer requests additional information the eligible employee will provide the requested information as soon as is practicable. The covered employer may not treat a continuing absence as unauthorized unless requested information is not provided or does not support leave qualification.

(10) All records and information kept by a covered employer regarding an eligible employee's leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking, including the fact that the eligible employee has requested or obtained such leave, are

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confidential and may not be released without the express permission of the eligible employee, unless otherwise required by law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285, OL 2011 c. 687

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-009-0365

### Enforcement and Denial of leave under ORS 659A.270 to 659A.285 for Victims of Domestic Violence, Harassment, Sexual Assault or Stalking

(1) A covered employer's duties and obligations under ORS 659A.270 to 659A.285 extend to a successor employer as defined in 29 CFR 825.107.

(2) It is an unlawful employment practice for a covered employer to count leave under ORS 659A.270 to 659A.285 against an employee in determining the employee's compliance with attendance policies or to count such leave against an employee when determining eligibility for bonuses based on attendance. An employee is entitled to continue eligibility for a bonus based on attendance upon return from leave under ORS 659A.270 to 659A.285 and may not be disqualified from the bonus as a result of taking leave.

(3) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of ORS 659A.270 to 659A.285 or to attempt to do so.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285, OL 2011 c. 687

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12

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**Rule Caption:** New and amended rule language to conform to and implement statutes relating to veterans' employment.

**Adm. Order No.:** BLI 15-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 839-006-0440, 839-006-0450, 839-006-0455, 839-006-0470, 839-006-0480

**Subject:** The new rules would implement HB 2241, which expands the definition of "uniformed service" for purpose of employment protections to match federal definitions.

The new rules would implement HB 3207, which requires public employers to interview each veteran who applies for a civil service position or eligibility list and who has obtained through military education or experience skills that substantially relate to the civil service position.

The new rules would implement SB 72, which clarifies the definition of "disabled veteran" for purposes of statutes relating to veterans' preference in public employment.

The new rules would implement SB 277, which clarifies that a veteran or disabled veteran who applies for a vacant civil position or who seeks promotion to a civil service position with a higher maximum salary rate is entitled to veterans' preference.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-006-0440

### Definitions

(1) "Active duty" does not include attendance at a school under military orders, except schooling incident to an active enlistment or a regular tour of duty, or normal military training as a reserve officer or member of an organized reserve or a National Guard unit.

(2) "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof. (Title 38 USC Part I Chapter 1 Section 101). Reserve components mean:

- (a) The Army Reserve;
- (b) The Navy Reserve;
- (c) The Marine Corps Reserve;
- (d) The Air force Reserve;
- (e) The Coast Guard Reserve;
- (f) The Army National Guard of the United States; and
- (g) The Air National Guard of the United States.

(3) "Civil service position" means any position for which a hiring or promotion decision is made or required to be made based on the results of a merit based, competitive process that includes, but is not limited to, con-

sideration of an applicant's or employee's relative ability, knowledge, experience and other skills. A "civil service" position need not be labeled a "civil service position."

(4) "Combat zone" means an area designated by the President of the United States by executive order in which, on the dates designated by executive order, the Armed Forces of the United States are or have engaged in combat.

(5) "Disabled veteran" means a person who has a disability rating from the United States Department of Veterans Affairs, a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty or a person who was awarded the Purple Heart for wounds received in combat.

(6) "Eligibility list" means a list of ranked eligible candidates for a civil service position who have become eligible for the position through a test or series of tests and who will be considered for the civil service position in ranked order. Rankings of eligible candidates identified as tiers, bands or other names function as eligibility lists for purposes of these rules.

(7) "Military leave" means any period of time for which a person is absent from a permanent civil service position for the performance of active duty in the Armed Forces of the United States.

(8) "Promotion" means any position with a higher maximum salary rate.

(9) "Public employer" includes a public body as defined in ORS 174.109, and any person authorized to act on behalf of the public body, with respect to control, management or supervision of any employee. "Public employer" includes but is not limited to:

(a) Employers in local governments;

(b) Employers in a public corporation created under a statute of this state and specifically designated as a public corporation; and

(c) Employers in any public body that is created by statute, ordinance or resolution that is not part of state government or local government.

(10) "Transferable skill" means a skill that a veteran has obtained through military education or experience that substantially relates, directly or indirectly, to the civil service position for which the veteran is applying.

(11) "Veteran" means a person who:

(a) Served on active duty with the Armed Forces of the United States:

(A) For a period of more than 90 consecutive days beginning on or before January 31, 1955, and was discharged or released under honorable conditions;

(B) For a period of more than 178 consecutive days beginning after January 31, 1955, and was discharged or released from active duty under honorable conditions;

(C) For 178 days or less and was discharged or released from active duty under honorable conditions because of a service-connected disability;

(D) For 178 days or less and was discharged or released from active duty under honorable conditions and has a disability rating from the United States Department of Veterans Affairs; or

(E) For at least one day in a combat zone and was discharged or released from active duty under honorable conditions;

(b) Received a combat or campaign ribbon or an expeditionary medal for service in the Armed Forces of the United States and was discharged or released from active duty under honorable conditions; or

(c) Is receiving a nonservice-connected pension from the United States Department of Veterans Affairs.

(d) For questions regarding military discharge, consult the Oregon Department of Veterans' Affairs website at <[http://www.oregon.gov/ODVA/docs/PDFs/Criminal\\_Justice\\_Portal/Military\\_discharge.pdf?ga=t](http://www.oregon.gov/ODVA/docs/PDFs/Criminal_Justice_Portal/Military_discharge.pdf?ga=t)>.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.225, 408.230, 408.235, OL 2011, Ch 484, OL 2011, Ch 29

Hist.: BLI 37-2008, f. 11-6-08, cert. ef. 11-10-08; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-006-0450

### Applying the Employment Preference

(1) A public employer shall grant a preference to a veteran or disabled veteran who applies for a vacant civil service position or who seeks promotion to a civil service position with a higher maximum salary rate and who:

(a) Successfully completes an initial application screening or an application examination for the position; or

(b) Successfully completes a civil service test the employer administers to establish eligibility for the position; and

(c) Meets the minimum qualifications and any special qualifications for the position.

(2) At each stage of the application process a public employer will grant a preference to a veteran or disabled veteran who successfully com-

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pletes an initial application screening or an application examination or a civil service test the public employer administers to establish eligibility for a vacant civil service position.

(3) For an initial application screening used to develop a list of persons for interviews, the public employer will add five preference points to a veteran's score and ten preference points to a disabled veteran's score.

(4) For an application examination, given after the initial application screening, that results in a score, the public employer will add five preference points to a veteran's and ten preference points to a disabled veteran's total combined examination score without allocating the points to any single feature or part of the examination.

(5) If a public employer uses an application examination that consists of an evaluation method of ranking an applicant that does not result in a score, the public employer will devise and apply methods by which the public employer gives special consideration in the public employer's hiring decision to veterans and disabled veterans.

(6) When an interview is a component of the selection process for a civil service position or for an eligibility list for a civil service position, a public employer shall interview each veteran:

(a) Whom the public employer determines meets the minimum qualifications and special qualifications for the civil service position or eligibility list; and

(b) Who submits application materials that the public employer determines show sufficient evidence that the veteran has the transferable skills required and requested by the public employer for the civil service position or eligibility list.

(7) A public employer is not required to comply with subsection (6) of this rule if the employer's practice is to generate an eligibility list without conducting interviews of possible candidates.

(8) A public employer may consult with the Oregon Military Department and the Department of Veterans' Affairs to determine whether certain military education or experience produces a transferable skill. To evaluate a veteran's transferable skills from a transcript of military training, a public employer may consult the American Council on Education's website, "A Guide to Educational Experiences in the Military," at <<http://militaryguides.acenet.edu/CourseSearch.asp>>.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.230, 408.235, OL 2011, Ch 484

Hist.: BLI 37-2008, f. 11-6-08, cert. ef. 11-10-08; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-006-0455

### Employment Preference for Promotions

A public employer will grant a preference to a person seeking promotion in the manner described at OAR 839-006-0450.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.225, 408.230, 408.235, OL 2011, Ch 484

Hist.: BLI 37-2008, f. 11-6-08, cert. ef. 11-10-08; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-006-0470

### Enforcement

The Civil Rights Division of the Bureau of Labor and Industries enforces the provisions of ORS 408.230. A person claiming a violation of 408.230 may file a verified written complaint with the Civil Rights Division in accordance with 659A.820.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.230, 408.235, 659A.820, OL 2011, Ch 484

Hist.: BLI 37-2008, f. 11-6-08, cert. ef. 11-10-08; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-006-0480

### Discrimination Based on Uniformed Service

(1) For purposes of this rule:

(a) "Service" means the performance of duty on a voluntary or involuntary basis in a uniformed service that may involve active duty, active duty for training, initial active duty for training, inactive duty for training, full time duty in the National Guard, funeral honors duty or an examination to determine fitness for service in a uniformed service; and

(b) "Uniformed service" means the Armed Forces of the United States, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training or full-time National Guard duty, the commissioned corps of the United States Public Health Service and any other category of persons designated by the President of the United States in a time of war or national emergency.

(2) It is an unlawful employment practice for an employer to discriminate against a person because of the person's service in a uniformed service by:

(a) Denying a public officer or public employee the status or rights provided by ORS 408.240 to 408.240 and 408.290, if the employer is a public body.

(b) Discharging, expelling, disciplining, threatening or otherwise retaliating against the person for exercising or attempting to exercise the status or rights provided by this section.

(c) Denying any of the following because a person is a member of, applies to be a member of, performs, has performed, applies to perform or has an obligation to perform service in a uniformed service:

(A) Initial employment;

(B) Reemployment following a leave from employment taken by reason of service in a uniformed service;

(C) Retention in employment;

(D) Promotion; or

(E) Any other term, condition or privilege of employment, including but not limited to compensation.

(3) An employer does not commit an unlawful employment practice under this rule if the employer acted based on a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business and the employer's actions could not be avoided by making a reasonable accommodation of the person's service in a uniformed service.

(4) The federal Uniformed Services Employment and Reemployment Act, 38 USC 43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. Federal Department of Labor regulation 20 CFR 1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute.

(5) To the extent possible, this rule shall be construed in a manner that is consistent with similar provisions of the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 USC 43.

(6) Protections for spouses and domestic partners of uniformed service members may be found under the Oregon Family Military Leave Act, ORS 659A.090 to 659A.099 and OAR 839-009-0370 - 839-009-0460.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.082, OL 2011, Ch 18

Hist.: BLI 8-2010, f. & cert. ef. 2-24-10; BLI 15-2011, f. 12-30-11, cert. ef. 1-1-12

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**Rule Caption:** Amendments clarifying filing deadlines, default relief and ex parte definition.

**Adm. Order No.:** BLI 16-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 839-050-0040, 839-050-0310, 839-050-0340

**Subject:** The amendments add a reference to state furlough days to the rule on filing documents, clarify the relief from default rule and add the definition of ex parte to the ex parte rule.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-050-0040

### Filing of Documents with the Hearings Unit; Calculation of Time and Filing Dates

(1) Except as modified by statute or enlarged by these rules, by order of the commissioner, or by decision of the administrative law judge, a document is filed with the Hearings Unit either on the date the Hearings Unit receives the document, or on the date postmarked on the properly addressed document, whichever is earlier.

(2) Documents are not to be filed by facsimile transmission except with the prior approval of the administrative law judge. The administrative law judge may require the participant filing a document by facsimile transmission to also send the Hearings Unit a copy of the document by mail or personal delivery and may require the participant to serve the other participants with the document by facsimile transmission in addition to mail or personal delivery.

(3) The computation of any period of time will not include the day from which the designated period begins to run. The computation will include the last day of this period unless it is a Saturday, Sunday, furlough day officially recognized by the State of Oregon or holiday officially rec-



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ognized by the State of Oregon or the federal government. If the last day of the time period is a Saturday, Sunday, furlough day or holiday, the period will run until 5 p.m. of the next day that is not a Saturday, Sunday, furlough day or holiday.

(4) All time periods described in these rules are measured in calendar days.

Stat. Auth.: ORS 183 & 651.060(4)  
Stats. Implemented: ORS 279C.860, 279C.865, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850  
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0035; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 16-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-050-0310

### Ex Parte Communications

(1) An ex parte communication is an oral or written communication to an agency decision maker or the presiding officer not made in the presence of all parties to the hearing, concerning a fact in issue in the proceeding, but does not include communication from agency staff or counsel about facts in the record.

(2) The administrative law judge will place on the record a statement of the substance of any ex parte communication on a fact in issue made to the administrative law judge while the proceeding is pending. Participants will be given notice of such ex parte communication and of their right to rebut the substance of the ex parte communication on the record.

Stat. Auth.: ORS 183 & 651.060(4)  
Stats. Implemented: ORS 279C.860, 279C.865, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850  
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0101; BLI 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 16-2011, f. 12-30-11, cert. ef. 1-1-12

## 839-050-0340

### Relief from Default

(1) A party seeking relief from default must file a written request for relief from default within 10 days after any of the following:

(a) A Final Order by default has been issued by the administrator of the Wage and Hour Division;

(b) A notice of default has been issued; or

(c) A party has failed to appear at a hearing.

(2) Relief from default may be granted when the party's written request for relief from default shows good cause for the party's action or inaction that caused the default. The party's request should state any facts supporting the party's claim of good cause and include any documents that support the party's claim.

(3) The computation of the 10-day deadline for filing begins on the day after one of the events listed in (1)(a), (b) or (c) of this rule occurs. If the 10th day is a Saturday, Sunday, furlough day officially recognized by the State of Oregon, or holiday officially recognized by the State of Oregon or the federal government, the 10-day deadline will expire at 5 p.m. of the next day that is not a Saturday, Sunday, furlough day or holiday. A request for relief from default is filed on the date that it is postmarked or received, whichever is earlier.

(4) A request for relief from default made after a Final Order by default has been issued by the administrator of the Wage and Hour Division must be addressed to the administrator of the Wage and Hour Division and ruled upon by an administrative law judge. When the administrator of the Wage and Hour Division receives a request for relief from default, the administrator will forward that request to the Hearings Unit for assignment to an administrative law judge, along with a copy of the Final Order by default. The administrator may also file a response to the request for relief from default. Any response the administrator files will be served on the requesting party.

(5) A request for relief from default made after a notice of default has been issued or after the party has failed to appear at a hearing must be addressed to and ruled upon by the administrative law judge.

Stat. Auth.: ORS 183 & 651.060(4)  
Stats. Implemented: ORS 279C.860, 279C.865, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850  
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1987, f. 2-11-87, ef. 2-13-87; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0190; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 16-2011, f. 12-30-11, cert. ef. 1-1-12

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**Rule Caption:** Correct grammar and conform administrative rules for registered apprenticeship programs to federal requirements.

**Adm. Order No.:** BLI 1-2012

**Filed with Sec. of State:** 1-3-2012

**Certified to be Effective:** 1-3-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 839-011-0020, 839-011-0050, 839-011-0051, 839-011-0060, 839-011-0070, 839-011-0072, 839-011-0074, 839-011-0082, 839-011-0084, 839-011-0088, 839-011-0090, 839-011-0140, 839-011-0141, 839-011-0142, 839-011-0143, 839-011-0145, 839-011-0162, 839-011-0175, 839-011-0265, 839-011-0270, 839-011-0290, 839-011-0310, 839-011-0320, 839-011-0334

**Subject:** Pursuant to ORS 660.010–660.210, the Oregon Bureau of Labor and Industries (BOLI) administers registered apprenticeship programs through its Apprenticeship and Training Division (ATD). States that administer registered apprenticeship programs do so under an agreement with the United States Department of Labor, Employment and Training Administration (USDOL, ETA). Recent changes in federal apprenticeship regulations have necessitated changes to ORS 660.010–660.210. The proposed amendments bring Oregon into conformance with federal requirements. Corrections in grammar and usage were also incorporated into these amendments. The proposed amendment harmonizes definitions in these rules with federal definitions and requirements

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-011-0020

### Date and Location of Council Meetings

The Council shall hold at least four regular public meetings each year as required by ORS 660.120(2)(g). The date of the next regular Council meeting will be designated by the Chair and announced at each Council meeting. Meetings may be scheduled at any location within the state of Oregon selected by the Chair.

Stat. Auth.: ORS 660  
Stats. Implemented: ORS 660.120(2)(g)  
Hist.: BL 4-1985, f. & ef. 8-8-85; BL 1-1991, f. & cert. ef. 1-23-91; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0050

### Certificate of Meritorious Service

Upon the recommendation of a local committee or the motion of a Council member, the Council may award a certificate of meritorious service to any individual who has devoted a minimum of three years of service to a registered apprenticeship program.

Stat. Auth.: ORS 660  
Stats. Implemented: ORS 660.120  
Hist.: BL 4-1985, f. & ef. 8-8-85; BL 1-1991, f. & cert. ef. 1-23-91; BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0051

### Delegation of Authority by Council

(1) The Chair and Director, with the approval of the Chair, may act on behalf of the Council for federal purposes and in all cases where immediate action is deemed necessary by the Chair and Director. All such actions shall be placed on the agenda for the next regular Council meeting for Council approval or ratification.

(2) All matters pertaining to the approval or deregistration of apprenticeship committees, standards, program sponsors, employers, training agents or apprentices must be ratified by the Council at its next meeting.

(3) Any standards referred back to local committees by the Council for revision may be approved by the Director when revised according to Council action.

Stat. Auth.: ORS 660.120(3)  
Stats. Implemented: ORS 660.120, 660.210 & 660.170  
Hist.: BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0060

### Public Records Request

(1) The Bureau will make available any record requested by any person pursuant to ORS 192.420, provided that the request is in writing and the record requested is not exempt from disclosure under the provisions of ORS chapter 192 or other applicable law. A reasonable time shall be allowed for the Bureau to locate and retrieve information requested.

(2) The Bureau may charge a fee reasonably calculated to reimburse the Bureau for costs of providing and conveying copies of public records. When the fee is estimated to exceed \$25.00 per public records request, the Bureau will provide the requestor with written notice of the estimated

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amount of the fee and require written confirmation that the requestor intends to proceed with the request.

(3) As used in these rules:

(a) "Page" refers to paper either 8.5 x 11 inches or 8.5 x 14 inches. Staff will not reduce size or otherwise manipulate records to fit additional records on a page, unless staff concludes that it will be the most effective use of their time. 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.

(b) "Normal and reasonable" staff time is 10 minutes or less per request.

(4) Unless otherwise specified in OAR Chapter 839, the Bureau will charge a minimum fee of \$5.00 per request for records located in the Bureau's office facilities or \$15.00 per request for records located offsite, plus \$.20 per page, as reimbursement for requests requiring normal and reasonable staff time.

(5) If the time required exceeds normal and reasonable staff time, the actual costs of staff or supervisory time necessary for locating, reviewing, separating, photocopying, certifying and preparing records for mailing or other delivery will be charged for each hour or fraction thereof as follows:

(a) Supervisor/Administrator — \$39.00 per hour;

(b) Investigator/Compliance Specialist/Consultant — \$32.00 per hour;

(c) Clerical — \$23.00 per hour.

(6) In addition to staff time, the Bureau will charge for supplies and use of equipment for producing records as follows:

(a) Twenty cents per page for photocopies;

(b) Actual cost for postage or other delivery costs;

(c) Fifty cents per page for copies by facsimile (fax) machine with a limit of 20 pages.

(7) The Bureau will charge \$41.00 per hour, with a \$12.00 minimum, for public record requests that require electronic reproduction. Charges include, but are not limited to, staff time spent locating, downloading, formatting, copying and transferring records to media, and any charges by a third party vendor.

(8) The Bureau will provide blank reproduction media at the following rates:

(a) Diskettes, 3.5 inch, \$1.00 each. (Due to the possibility of computer viruses, the Bureau will not permit requesters to provide diskettes;

(b) Video Cassettes, two hours, \$3.00 each;

(c) Audio Cassettes, \$2.00 each;

(d) Compact disks, 1.5 hours: \$1.50 (Due to the possibility of computer viruses, the Bureau will not permit requesters to provide compact disks.).

(9) The costs of any necessary Attorney General review of requested public records will be charged to the requester at the rate billed by the Department of Justice to the Bureau.

(10) The Bureau may require that all fees assessed pursuant to this rule be paid in cash, in correct change, prior to furnishing any copies, material, or information.

(11) Where a request is made to inspect records, the Bureau may impose restrictions regarding the location where the information requested will be made available for inspection. Where the Bureau allows the person requesting the information to search or inspect Bureau records, the Bureau may, as it deems necessary for the protection of the records, assign an employee to supervise the search. The charge for this service will be in accordance with section (5) of this rule.

(12) The Bureau may enter into agreements to provide routine, periodic reports in a consistent format for a negotiated price.

(13) The commissioner may waive the requirements to pay the charges described in this rule, or any part thereof after determining that the waiver is in the public interest and primarily benefits the general public. In determining whether sufficient public interest is demonstrated, relevant factors include:

(a) The requester's identity;

(b) The intended use of the information;

(c) The character of the information;

(d) Whether the requested information is already in the public domain;

(e) Whether the requester can demonstrate the ability to disseminate the information to the public; and

(f) The requestor's inability to pay, although this alone is not a sufficient basis to waive a fee.

Stat. Auth.: ORS 344.745(1) & 660.120(1)

Stats. Implemented: ORS 344.745

Hist.: BL 4-1985, f. & ef. 8-8-85; BL 1-1991, f. & cert. ef. 1-23-91; BL 7-1993, f. & cert. ef. 7-12-93; BL 6-1994, f. & cert. ef. 10-10-94; BL 7-1996, f. & cert. ef. 7-22-96; BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0070

### Definitions

(1) "Division" means the Apprenticeship and Training Division of the Bureau.

(2) "Employee" means any person employed or active in an applicable trade.

(3) "Local Committee" means any registered joint or trades apprenticeship or training committee approved by the Council.

(4) "State minimum guideline standards" means industry/trade benchmarks developed by a Council approved state committee and approved by the Council that represent the fundamental requirements necessary for entry into and completion of specific Council approved apprenticeship or training programs.

(5) "Registered apprenticeship program" means a local committee approved by the Council to operate an apprenticeship or training program in a specific occupation.

(6) "Registration of an Apprenticeship Agreement" means the acceptance and recording of an apprentice or trainee agreement by the Division on behalf of the Council. Registration is evidence of the participation of the apprentice or trainee in a registered program.

(7) "Standards" means a written agreement submitted by a local committee and approved by the Council, which sets forth a plan containing all terms and conditions for the qualification, employment and training of apprentices or trainees as set forth in ORS 660.126 and 660.137.

(8) "Trainee" means any individual registered to a registered training program. For the purposes of these rules, all apprentice requirements apply to trainees unless otherwise noted.

(9) "Training agent" means an employer approved by a local committee to train apprentices and registered with the Division.

(10) "Training program" means any registered program of 2,000 on-the-job training hours or less. For the purposes of these rules, all apprenticeship requirements apply to training programs unless otherwise noted.

(11) "Traveling Training Agent" is an approved training agent working outside the geographic area where its primary place of business is located and registered by the Division.

(12) "Journeyworker" is a fully skilled practitioner who can work independently in a given trade or occupation in accordance with ORS 660.010(4). Generally, a skilled crafts person has a minimum of four years of verifiable trade-specific experience or has completed a state certified apprenticeship program in the applicable trade and holds a license where required.

(13) "Completion rate" means the percentage of an apprenticeship cohort who receive a certificate of apprenticeship completion within 1 year of the projected completion date. An apprenticeship cohort is the group of individual apprentices registered to a specific program during a 1 year time frame, except that a cohort does not include the apprentices whose apprenticeship agreement has been cancelled during the probationary period. The projected completion date is the number of years determined by the greater of the following measures:

(a) The number of required on-the-job training hours needed for completion of the program divided by 2000 and rounded up to the nearest whole number; or

(b) The number of years of required related training prescribed in the applicable standard.

(14) "Job Site" means:

(a) For standards in construction trades, the area covered by an approved building permit, plan of development or contract number, or contractual agreement for new construction or renovation;

(b) For standards in non-construction trades, the physical area within the wall that services are offered or the location that is identified on the license by the licensing board and/or other local government or a single job or group of jobs on the same circuit or within the same general area.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 660.120(1)

Hist.: BL 6-1985, f. & ef. 10-15-85; BL 7-1991, f. & cert. ef. 8-15-91 (and corrected 2-3-92); BL 6-1994, f. & cert. ef. 10-10-94; BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0072

### Formation of Joint Committees

(1) Any person or group interested in forming a local joint committee may give written notice to the Division. Local committees in building and

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construction trades occupations may only be approved as group programs serving multiple employers.

(2) The interested party or group shall establish a date for an organizational meeting and provide the Division with written notice of the date, time and location of the meeting at least 5 (five) working days in advance of the meeting. Division staff may attend organizational meetings in an informational role.

(3) At the organizational meeting participants, excluding Division staff, will:

(a) Adopt Roberts Rules of Order;

(b) Specify the committee name, its geographical jurisdiction, and the occupation(s) for which it will train;

(c) Nominate committee members and submit their names to the Council pursuant to OAR 839-011-0074;

(d) Elect a chair and a secretary as committee officers, pursuant to OAR 839-011-0074(8).

(4) Local committees and training agents shall be responsible for the administrative cost and expenses associated with the operation of their programs. No committee or training agent shall charge or cause charges to be levied against an apprentice for purposes of financially supporting the administrative, clerical or organizational cost of operating a registered program. Apprentices may be required to pay the normal cost of tuition and related training materials.

Stat. Auth.: ORS 660

Stats. Implemented: ORS 660.120(2)(c), 660.135(1), (2), (3), (4) & (5)

Hist.: BL 6-1985, f. & ef. 10-15-85; BL 1-1991, f. & cert. ef. 1-23-91; BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0074

### Committee Member Selection

(1) Committees shall consist of an equal number of employer and employee representatives.

(a) Representatives of employers, or an employer organization representing the industry, shall submit nominations for employer committee members.

(b) Individuals representing the journey level workforce for the occupation, or an employee organization that represents the concerned employees and is involved with the occupation, shall submit nominations for employee committee members. For the purposes of these rules, an individual is eligible to serve as an employee representative for the occupation only if that individual:

(A) Is or has been a skilled practitioner in the occupation and does not serve in a supervisory capacity as defined in the National Labor Relations Act, as amended; or

(B) Is a bargaining unit representative for the employees of a participating training agent.

(2) Joint apprenticeship or training committees (JATC/JAC/JTC) shall consist of not less than two or more than four principal employer representatives and not less than two or more than four principal employee representatives.

(3) Trade apprenticeship or training committees (TATC/TAC/TTC) shall consist of one principal employer representative and one principal employee representative for each approved standard of the committee.

(4) State minimum guideline committees shall consist of one principal employer and one principal employee representative from each local committee training in the occupation pursuant to the appointment procedures in OAR 839-011-0141.

(5) Committees may nominate one alternate member for each principal committee member and the alternate shall be selected according to the nominations procedures for principal committee members set forth in this rule. Alternates shall serve in the absence of principal members consistent with ORS 660.135(2).

(6) The Director shall list the names of the nominees on the next Council agenda. After consideration of whether the appointments provide a balanced representation of the viewpoints of employer and employee groups, the Council will approve the nominations.

(a) The Council may request the names of additional nominees if it does not approve any of the nominees.

(b) If either employers or employees cannot or will not recommend nominees for the committee, the Apprenticeship Representative for the area may recommend individuals involved with the occupation, and forward the name of the individual(s) to the Director. The Director will evaluate the individual(s), and if appropriate, provide interim approval pending submital of the names of the individual(s) to the Council for approval according to the procedures of section (1) of this rule.

(7) When a vacancy occurs on a committee, it shall be filled according to the member nomination procedures set forth in this rule.

(8) Each committee shall elect a chairperson and a secretary from committee members. One of the offices must be held by an employer member and one office must be held by an employee member.

(a) The officers shall serve for no less than one year and no more than two years without an election unless the committee has adopted policies and procedures establishing the duration of officers' terms.

(b) In the event of a vacancy in an office, the respective employer or employee members shall elect from their representation a replacement to serve the unfilled term of office consistent with ORS 660.

(9) No Division staff may be elected or appointed to any position within a committee.

(10) Associate members may be elected or appointed by the committee but such members do not have voting rights on local committee matters.

Stat. Auth.: ORS 660

Stats. Implemented: ORS 660.145

Hist.: BL 6-1985, f. & ef. 10-15-85; BL 1-1991, f. & cert. ef. 1-23-91; BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0082

### Deregistration of Committees

(1) The Council will deregister committees for inactivity, inadequate activity, or failure to abide by ORS Chapter 660 or the rules and policies of the Council pursuant to ORS 660.120(4)(d), or if the committee has informed the Director or the Council that it will no longer perform its duties.

(2) On behalf of the Council, the Director shall, to the extent practical, secure the formation of a new committee where a previously approved committee failed to carry out an effective program.

(3) A committee shall be subject to deregistration if it has had no apprentices registered for two years or more, has not had at least two quorum meetings in a twelve month period, has failed to administer to the needs of the apprentices or the industry concerned or if so otherwise deemed appropriate by the Council.

Stat. Auth.: ORS 660

Stats. Implemented: ORS 660.120(d)

Hist.: BL 6-1985, f. & ef. 10-15-85; BL 1-1991, f. & cert. ef. 1-23-91; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0084

### Approval of New Committees and Standards

(1) Additional committees or standards in an area already served by an existing committee in the same trade, craft or occupation shall be established in the same manner as any other local committee.

(2) All employers and their qualified employees shall be afforded the opportunity to participate, on a non-discriminatory basis, in existing programs.

(3) The Council and the Apprenticeship and Training Division of the Bureau of Labor and Industries will approve the creation of a new local committee or new standards for an existing committee only if the applicant for the new program or new standards can first demonstrate to the Council and the Apprenticeship and Training Division, by a preponderance of evidence, that the application is in conformity with the following requirements:

(a) The applicant shall submit documentation showing committee composition pursuant to ORS 660.135, .145.

(b) The applicant shall submit standards in a format approved by the Council that meet or exceed any existing statewide minimum guideline standards for the occupation. Where no state guideline standards exist, proposed standards shall meet or exceed national guideline standards approved by the federal Office of Apprenticeship. Where no state or national guideline standards exist, standards will be approved at the discretion of the Council and the Apprenticeship and Training Division when the proposed occupation is clearly identified and commonly recognized throughout an industry.

(c) The applicant shall submit an administration plan that includes:

(A) Written designation of the program administrator;

(B) Documented assurances that the committee will be adequately funded to support its administration and the presentation of related instruction;

(C) A written statement that details all costs to apprentices (including instruction, books, tuition); and

(D) Assurances that training agents and prospective training agents will be provided with a written statement of costs for program participation.

(d) The applicant must demonstrate the ability to track required on-the-job training, related and supplemental training and affirmative action

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information (i.e., work progress reports, apprentice/trainee rotation system, employer's apprentice/trainee evaluation forms, grading sheets, applicant logs) and provide the Council with copies of the forms and documents that will be used to track such information.

(e) The applicant shall submit a plan detailing how the committee will ensure that participating employers will provide work in all areas covered by the program standards (ORS 660.137(5)), including:

- (A) Training in all counties listed in proposed geographical area;
- (B) Training in all work processes set forth in the standards;

(C) Committee expectations of supervising journeyworkers and a plan for the supervision of apprentices/trainees in the ratio set forth in the standards (ORS 660.126(1)(c), (f));

(D) Training agent qualifications and duties (ORS 660.137(5)); and

(E) A plan for training participating employers on their duties and responsibilities.

(f) The applicant shall submit a complete related training curriculum, including instructor qualifications, class outlines and expected competencies, grading procedures and completion criteria. This submission shall include:

(A) An explanation of the curriculum delivery method and a description of the related training facilities;

(B) Certification of the curriculum and instructional delivery plan by either a state education certifying authority or nationally recognized industry association (ORS 660.137(2)(c), .126(1)(j), .157); and

(C) Assurances that classroom and related instruction can be delivered throughout the geographic area. The applicant must submit a contract or other documentation demonstrating that actual instructional resources are in place. The committee's geographic area must be one that can be reasonably served by the committee with respect to employers and the location of the related training services (ORS 660.126(1)(a)).

(D) Assurances that instructors meet the Oregon Department of Education or Office of Community Colleges and Workforce Development requirements for vocational-technical instructors or are subject matter experts, defined as an individual, such as a journeyworker, who is recognized within an industry as having expertise in a specific occupation. If the instructor is a subject matter expert, the submission must include assurances that the instructor has or will have had training in teaching techniques and adult learning styles, which may occur before or within nine months after the apprenticeship instructor has started to provide the related technical instruction.

(g) The applicant must submit operating policies and procedures and assurances that the program will be operated in accordance with the same; and

(h) The applicant shall submit a plan to recruit, evaluate and select apprentice/trainee applicants, including an application form that meets Council requirements.

(4) All objections to the approval of a new committee or new standards shall be submitted to the Council in writing at the meeting where the application is being considered for approval, specifically detailing any objections to the application. Council may rule on the application and objections thereto at that time or grant the applicant 30 days after the Council meeting to submit a written rebuttal to the objections to the Director. Council shall direct the Director to investigate and evaluate the objections and rebuttal and to provide a report to Council within 45 days of receipt of the rebuttal statement. At the next Council meeting after the initial submission, Council shall either approve or deny the application and provide a specific written explanation for its actions.

(5) All new programs shall serve a probationary period of three years after Council approval. Failure to clearly demonstrate the ability to operate a satisfactory program during the probationary period, based upon periodic program reviews conducted by the Division, shall result in deregistration of the program by Council.

(6) Compliance reviews will be conducted during the probationary period pursuant to OAR 839-011-0145 unless the Council directs the Division to conduct reviews more frequently. Should the Council find operating deficiencies in the course of any such review, the program shall immediately take action to correct the deficiencies and submit a report to the Council explaining corrective measures taken within 90 days of the Council initial finding of deficiencies. If the committee has not corrected the deficiencies within the 90 day period, the Council shall deregister the program at the next scheduled Council meeting.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 660.135(1)

Hist.: BL 6-1985, f. & ef. 10-15-85; BL 1-1991, f. & cert. ef. 1-23-91; BLI 2-1999, f. & cert. ef. 4-2-99; BLI 16-2005(Temp), f. & cert. ef. 8-23-05 thru 2-19-06; Administrative correction 3-20-06; BLI 16-2006, f. 4-17-06, cert. ef. 4-18-06; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10;

BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0088

### Registration of Apprenticeship Agreements

(1) The Council delegates registration of apprenticeship agreements to the Division and recognizes an agreement as registered when:

(a) It is on a form that has been approved pursuant to ORS 660.020 and issued by the Division;

(b) Information requested on the form as authorized by ORS 660.020 has been supplied by the apprentice. The requested information includes, but is not limited to the apprentice's Social Security Number for identification purposes;

(c) It has been signed by the apprentice and the local joint committee. Approval must be recorded as soon as possible at a committee meeting; and

(d) The agreement has been submitted to and received by a representative of the Division.

(2) The effective starting date of an apprenticeship in non-licensed trades shall be not more than forty five (45) days prior to the date that a fully executed original agreement and committee minutes approving the registration are received by a representative of the Division. In the licensed trades, the effective starting date of an apprenticeship shall not commence before a fully executed apprenticeship agreement is received by a representative of the Division, unless the committee has written authorization from the Division to issue an initial license and operates in accordance with the conditions of authorization.

(3) Local committees shall develop and implement a policy and procedures detailing the process for evaluating previous experience in a uniform manner and awarding advanced standing to new apprentices for on-the-job or related training.

(a) The committee may grant credit for prior experience for any time previously spent by the apprentice in the trade or occupation that the committee considers applicable to the work processes in the program standards.

(b) In licensed trades, only lawfully obtained and documented experience that specifically applies to an Oregon license may be considered in granting credit for prior experience.

(4) All apprenticeship agreements will be maintained in the Division's main office.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 657.732 & 660.060(8)

Hist.: BL 6-1985, f. & ef. 10-15-85; BL 1-1991, f. & cert. ef. 1-23-91; BL 7-1996, f. & cert. ef. 7-22-96; BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0090

### Causes for Disciplinary Actions by Council

The Council has the authority to take disciplinary action against a committee for conduct or action, including but not limited to:

(1) Inappropriate use of an apprentice's registration status or an apprentice's time, skills or training;

(2) Inadequate training of apprentices;

(3) Inappropriate assignment or abuse of discretion in work assignments;

(4) Discriminatory action(s) against an apprentice(s);

(5) Violation of any state or federal law;

(6) Failure to submit required documentation to the Division in a timely manner;

(7) Failure to communicate with the Division or the Council in a timely manner; or

(8) Any other action deemed inappropriate by the Council.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(1) & ORS 660.120(2)(d)

Hist.: BL 6-1994, f. & cert. ef. 10-10-94; BLI 2-1999, f. & cert. ef. 4-2-99; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0140

### Approval and Dissolution of Standards

(1) A local committee must submit new standards or revisions to previously approved standards, together with executed signature sheets and committee minutes to the Director at least 45 calendar days before the date of the next Council meeting pursuant to OAR 839-011-0030.

(2) Proposed standards and revisions must be in a form and format approved by Council that includes all elements specified in ORS 660.126. The Council may require additional information of committees pursuant to OAR 839-011-0084, including program administration and training plans.

(3) Standards in a form or format other than that approved by the Council and the Division may be accepted when they are part of the federal Office of Apprenticeship approved national pattern standards and are

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consistent with federal Office of Apprenticeship regulations and guidelines, these rules and Council policies.

(4) With Council approval, local committees may charge applicants a reasonable non-refundable application fee. Such fees shall be stated in the standards as a minimum qualification for entry into the program. Committees shall be required to:

(a) Incorporate the payment of a non-refundable application fee into the minimum qualifications of the committee's standards. The standards shall also reflect that applicants with an income below 150% of the federal poverty guidelines may apply for a non-refundable application fee waiver. Federal poverty guidelines are established by the Federal Department of Health and Human Services and are recognized by the Oregon Adult and Family Services Division;

(b) Show that the non-refundable application fee results in no disparate impact and report annually to the Council whether disparate impact has been determined to result from the fees charged; and

(c) Show that the local committee experiences an extraordinary burden with respect to the administration of applications, i.e., beyond the ordinary course of conducting such procedures. Examples of an extraordinary burden include, but not limited to, development of specific entrance examinations, validation studies and extensive testing or interview procedures.

(5) Revised standards will supersede the committee's previous standards covering the same occupation.

(6) Every registered apprenticeship program must have at least one registered apprentice, except for the following specified periods of time, that may not exceed 1 year:

(a) Between the date when a program is registered and the date of registration for its first apprentice(s); or

(b) Between the date that a program graduates an apprentice and the date of registration for the next apprentice(s) in the program.

(7) The Division will report any standards that apprentices have not been active in for two or more years to the Council for dissolution due to inactivity. Thereafter, new standards must be approved prior to registration of any new apprentices.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 660.120(2)(b), 660.126 & 660.137

Hist.: BL 95, f. 8-16-65; BL 130, f. 10-5-72, ef. 10-15-72; BL 3-1978, f. & ef. 4-3-78; BL 13-1988, f. & cert. ef. 7-1-88; BL 1-1991, f. & cert. ef. 1-23-91; BL 6-1994, f. & cert. ef. 10-10-94; BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0141

### Minimum Guideline Standards

The Council may approve minimum guideline standards for occupations it deems necessary.

(1) At its discretion, or upon petition by two or more local committees directly affected by minimum guideline standards, the Council will direct the Division to convene a state committee composed of members of local committees training in the occupation. Division staff will organize the meeting time and location, and contact all appropriate local committees.

(a) Each local joint committee training in the occupation may appoint no more than one employer and one employee representative (with alternates) to the state committee pursuant to OAR 839-011-0074. Notification of this action must be submitted to the Division in writing annually. Appointments will be valid only after written notice of the names of the appointees is received by the Division at least one (1) day before a scheduled state guideline committee meeting.

(b) The employer and employee members of local trades committees (and alternates) shall represent their respective occupations on the state committee pursuant to ORS 660.155(2).

(c) Only properly appointed representatives to the state guideline committee will be permitted to vote on issues before the State Guideline Committee.

(d) A quorum shall consist of 50% plus one of the total appointed local joint committee representatives; local trade committee representatives will be counted only if they are present at the state committee meeting. A quorum of the total appointed local committee representatives constituted pursuant to this rule may revise the quorum requirement for future state committee meetings, pending review and approval by the Council.

(e) Each state committee may adopt policies and procedures consistent with ORS 660 as it deems necessary for the orderly conduct of its meetings.

(2) The state committee will develop or revise minimum guideline standards in accordance with the needs of the industry and occupation. This committee shall establish minimum guidelines in the following standards areas:

(a) Minimum qualifications;

(b) Hours of employment;

(c) Maximum probationary period;

(d) Maximum ratio of apprentices to journey workers;

(e) Minimum work processes and approximate hours; and

(f) Minimum related/supplemental instruction.

(3) New or revised minimum guideline standards shall be distributed to all local committees training in the occupation for review and comment prior to submission to the Council.

(a) Each local committee shall have not more than 30 days to present any written objections. This information shall be referred to the state committee for review.

(b) The state committee shall then prepare its final recommendations to the Council.

(c) If consensus is not reached by the state committee, a majority and minority report will be submitted to the Council for consideration.

(d) When majority and minority reports are submitted, the Council and the Division will take into consideration the geographic area covered by each participating committee as well as the number of apprentices served and the number of training agents affected in determining whether to accept the minimum guideline standard as submitted or approved amendments thereto.

(4) Total on-the-job training hours for a local committee may not fluctuate below the requirements dictated by minimum guideline standards. The variations must be within statutory limits governing the licensed occupations.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 660.120(2)(a)

Hist.: BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0142

### Apprentice/Trainee Qualifications

(1) The Council and the Division shall evaluate proposed qualification standards or selection methods pursuant to the criteria set forth in Title 29 CFR Part 30, the Equal Employment Opportunity in Apprenticeship Plan noted in OAR 839-011-0200, the objectives expressed by the committee and/or sponsor, and such other factors as the Council and the Division may deem appropriate. Evaluation of proposed qualification standards or selection methods shall include an analysis of whether they would result in an adverse impact upon any protected class of applicants.

(2) The Council and the Division shall not consider proposed standards that contain any of the following requirements within their minimum qualifications:

(a) Physical ability to do the job, unless it specifically references a validated occupational requirement, such as lifting a sack of cement to a specified height;

(b) Any tests (including color tests) that do not meet the validity requirements under 41 CFR 60.3;

(c) A valid driver's license; or

(d) A medical exam.

(3) Standards submitted containing any of these requirements will not be placed on the Council agenda.

(4) The minimum qualifications section of the standards may include a note advising applicants that employers may require apprentices to meet additional lawful conditions of employment. These must be identified by employers and specified in the standards.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 660.120(2)(a)

Hist.: BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0143

### Ratio

(1) Registered apprentices shall only work for training agents registered to the same committee as the apprentice the subject committees and employer have reached agreement on a plan that will enhance the training opportunities for all apprentices and have jointly submitted a written request to the Council outlining their plan and requesting the exemption from this rule.

(2) Except as provided in sections (6) and (7) below, registered apprentices shall be supervised by journeyworkers employed in the same trade or occupation by the same training agent employing the apprentice.

(3) The apprentice to journey worker ratio for any registered program approved by the Council and the Division shall be clearly set forth in the standards for the given occupation and must be specific as to application in terms of jobsite, workforce, department or plant.

# ADMINISTRATIVE RULES

(4) The maximum ratio of apprentices to journey workers for an occupation covered by a state committee will be developed as part of the minimum guideline standards for the occupation. Requests for a less restrictive ratio from local committees will be referred to the state committee for evaluation of minimum guideline ratio.

(5) For occupations where a minimum guideline standard is not in place, local committees are expected to meet the following apprentice to journey level ratios:

(a) Construction trades: Not more than one apprentice for the first journeyworker on the job site. Additional apprentices are authorized at the ratio of one apprentice for each three additional journeyworkers on the job site. (Expressed hereafter as 1:1, 1:3)

(b) Industrial trades and fixed-site facilities: 1:1, 1:2

(c) Other trades (non-traditional and new and emerging occupations): 1:1, 1:1

(d) Committees wishing a less restrictive ratio must submit a request to the Council for consideration, along with information including but not limited to:

(A) Specific workforce demographics justifying a different ratio;

(B) Plan to monitor effects of ratio on the safety and continuity of employment for apprentices; and

(C) Comparison of completion rate to statewide average for occupation.

(6) In licensed trades, an apprentice must be supervised by a journey worker in the same or a higher license classification than the apprentice, unless the local committee that the apprentice is registered to has approved supervision by a journeyworker holding a license covering the specific work being performed by the apprentice on the job site.

(7) Electrical power line installers and repairers and linemen apprentices may work for training agents registered to other local joint committees in order to ensure that all work processes are fulfilled, pursuant to a written agreement between the apprentice, the local committees and both training agents.

(8) In limited situations, the Council may grant a training agent a short-term waiver of the established ratio for a given program, upon demonstration of extreme need. In no event shall an apprentice work without qualified journeyworker supervision. Ratio waivers of less than 90 days must be requested by the committee on behalf of a training agent. Local committees are not authorized to grant temporary waivers to training agents. A temporary waiver of ratio may be granted under the following circumstances:

(a) Serious injury or illness of the journeyworker, where the journeyworker is expected to return to work in 90 days or less; or

(b) The sudden departure of a journeyworker from employment with the training agent for causes not attributable to the training agent. The employer is expected to replace the departing journeyworker within a reasonable amount of time and in no event shall this amount of time exceed ninety (90) days. The training agent must document its efforts to replace journey workers which may include, but shall not be limited to:

(A) Copies of job orders;

(B) Classified advertising, including a posting of the journey wage rate offered; and

(C) Job orders placed with the Oregon Employment Division.

(9) The lack of available qualified or licensed journeyworkers shall not be a valid reason for granting a temporary ratio waiver.

(10) The Council may authorize the Director to grant or deny waivers as set forth above on an interim basis. Such action taken by the Director must be submitted to the Council for ratification at its next meeting after interim approval or denial has been made.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 660.120(2), 660.126(1)(f)

Hist.: BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0145

### Compliance Reviews

(1) All committees are subject to periodic reviews of program operation and affirmative action activities.

(2) The Division shall develop and maintain a review schedule that identifies programs scheduled for review, the type of review to be conducted and the time period to be evaluated.

(3) The Program Operation Compliance Review will evaluate program operation and administration.

(a) New committees will receive a Program Operation Compliance Review annually for the first three years of operation, unless otherwise directed by the Council.

(b) After the first three (3) years, committees found in compliance will receive a Program Operation Compliance Review every three (3) years. Committees maintaining a completion rate of at least 70% for all standards during the three (3) previous consecutive years will receive a Program Operation Compliance Review every five (5) years.

(4) The Affirmative Action Compliance Review will evaluate outreach, recruitment, and selection activities.

(a) Committees with five or more apprentices registered to a single standard during the previous three years will receive an annual Affirmative Action Compliance Review.

(b) Training agents who select their own apprentices in accordance with the committee's approved selection procedure will receive a separate annual Affirmative Action Compliance Review.

(5) Additional reviews may be scheduled if

(a) The Director has a reasonable belief that such reviews are prudent and in the best interest of apprenticeship;

(b) Complaints have been received that the program is not operating in compliance; or

(c) At the Council's direction.

(6) Committees found out of compliance will be required to appear at the next meeting of the appropriate Council subcommittee.

(7) All reviews shall be reported on a form and in a format approved by the Council. Upon review of compliance reports, the Council shall take action including but not limited to any of the following:

(a) Approve the report;

(b) Refer the report back for further clarification;

(c) Extend the review period for up to six (6) months;

(d) Order a probationary period including more frequent and detailed program reviews;

(e) Direct compliance and/or corrective action accordingly;

(f) Impose sanctions;

(g) Deregister the committee and/or standards for non-compliance; and

(h) Any other action as directed by the Council and the Division.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 660.120(2)(a) & 660.120(2)(f)

Hist.: BL 16-1979, f. & ef. 11-8-79; BL 6-1994, f. & cert. ef. 10-10-94; BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0162

### Employer Training Agents

(1) The Division will register training agents upon receipt of committee minutes showing approval of specific employers as training agents and a fully executed training agent registration agreement for each employer.

(2) The effective starting date for a new training agent shall be no more than forty five (45) days prior to the date that a fully executed original training agent agreement and committee minutes approving the registration of the employer are received by a representative of the Division.

(3) No employer shall be required to join an industry or trade association as a condition of approval as a training agent.

(4) Where two or more programs of the same occupation exist in the same geographical area an employer may not serve as an approved training agent for more than one such program at a time.

(a) In the event an employer has been approved as a training agent by two or more such programs, the Division shall notify the employer and the appropriate committees of this rule and require that the employer respond within twenty (20) working days of receipt of the notice, designating the program in which the employer chooses to continue and resigning from all others. Such notice shall be sent by certified mail, return receipt requested.

(b) An employer who does not respond pursuant to section (3)(a) of this rule, shall be deemed conclusively to have elected to resign as a training agent from all such programs. The Division shall notify the committees serving programs in which the employer had participated that the employer's training agent status has been revoked by operation of this rule.

(5) In limited cases where special conditions exist, the Council may consider an employer's request to participate in multiple programs in the same occupation within the same geographical area:

(a) When an individual construction project has special conditions warranting consideration for multiple training agent status, the employer must work with all committees involved to establish a plan that provides for the health, safety, and continuity of employment for all apprentices.

(b) When the committees and employer have reached agreement on a plan that will enhance the training opportunities for all apprentices, they shall jointly submit a written request to the Council outlining their plan and requesting the exemption from section (2) of this rule.

# ADMINISTRATIVE RULES

(6) An employer with a principal place of business outside the geographic jurisdiction of a local committee may seek approval to register with that local committee as a traveling training agent. Each such employer must agree to comply with Oregon state, county and municipal laws, rules and ordinances and the rules, policies, procedures and standards of the local committee.

(7) A local committee may approve traveling training agent status for an applicant employer that is a registered training agent with an apprenticeship sponsor or committee outside its geographic jurisdiction if:

(a) The employer is in good standing with its sponsor or home committee;

(b) The employer provides the committee with periodic updates of its good standing status from its sponsor or home committee;

(c) The employer and its sponsor provides the local committee with a plan explaining how the related training of any traveling apprentices will be accomplished;

(d) The employer and its sponsor provide updates to the local committee every six (6) months on the progress status of any traveling apprentices; and

(e) The employer and the local committee must agree on the number of traveling apprentices, directly employed by the traveling training agent, who will be registered through the local committee. The employer and the local committee must agree on the manner in which local apprentices will be utilized by the traveling training agent.

(8) A local committee may approve traveling training agent status for an unregistered employer whose principal place of business is outside of its geographic jurisdiction, but all apprentices dispatched to the traveling training agent must be registered to the local committee.

Stat. Auth.: ORS 660

Stats. Implemented: ORS 660.120(1) & 660.137(5)

Hist.: BL 17-1979, f. & ef. 11-8-79; BL 1-1991, f. & cert. ef. 1-23-91; BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0175

### Cancellation Notices

All notices to appear for cancellation of apprenticeship agreements must be mailed and addressed to the apprentice and postmarked at least twenty-two (22) calendar days in advance of the appearance date for the consideration of the cancellation.

Stat. Auth.: ORS 660.137(4)

Stats. Implemented: ORS 660

Hist.: BL 6-1994, f. & cert. ef. 10-10-94; BL 11-1996, f. & cert. ef. 12-10-96; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0265

### Partial Rotation of Apprentices

(1) All apprentices must obtain work experience for at least 50% of the hours listed for each work process in the committee's approved standards. A committee unable to provide an apprentice with work experience equaling at least 50% of the hours listed in any of the work processes must provide and document additional related training to compensate for the lack of on-the-job training. A written statement, held in the apprentice's files, shall document such compensatory training and shall include, date, time, place, hours and instructor. In no event may distance learning classes be used to compensate for deficiencies in total work process hours.

(2) For licensed occupations, all variations in work processes must be within the statutory limits governing the trade.

Hist.: BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0270

### Administrative Cancellation or Completion of Apprenticeship Agreements

(1) Whenever a local committee has insufficient members to conduct business, has not met at least once within a six-month period or has been dissolved by Council, the Director may:

(a) Cancel an apprenticeship agreement:

(A) At the apprentice's request; or

(B) For good cause as defined by ORS 660.060(7) or;

(C) In the case of program deregistration, or for lack of training standards.

(b) Complete an apprenticeship agreement when documentation has been submitted to the Director demonstrating that the apprentice has complied with the required standards established by the committee.

(2) Such action by the Director or the committee shall be taken pursuant to the following procedure:

(a) Notice shall be provided by certified mail to the apprentice, employer, committee, Council and any interested parties before any action to administratively complete or cancel an agreement; and

(b) Written notice to the apprentice, employer, committee, Council and any interested parties of the final action taken by the Director.

(3) An apprentice may appeal an administrative cancellation as an order other than a contested case order under ORS 183.484.

Stat. Auth.: ORS 660.120

Stats. Implemented: ORS 660.120(2)(f)

Hist.: BL 7-1986, f. & ef. 7-14-86; BL 1-1991, f. & cert. ef. 1-23-91; BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0290

### Plumber Apprentices — Phased Supervision

(1) The Division shall issue plumbing apprentice licenses to active apprentices or trainees registered to standards approved by the Council. Apprentice license formats shall be jointly agreed to by the Division and the Oregon Building Codes Division.

(2) All apprentices and trainees must be directly supervised in accordance with OAR 839-011-0143, unless approved for phased supervision.

(3) Pursuant to OAR 918-695-0140, a local committee may take action to permit plumbing apprentices to work under phased supervision under the following circumstances:

(a) The plumber apprentice must work in the physical presence of an appropriate journey level plumber; and

(b) An appropriate journey level plumber present at the immediate work site at all times, except for not more than a cumulative thirty (30) minutes during any work shift during which time the journeyworker is immediately available by voice communication.

(4) The plumber apprentice may work under phased supervision when the following specific conditions are met:

(a) The appropriate journeyworker is immediately available to the apprentice by voice communication (immediately available means that the apprentice can reach the appropriate journeyworker within a 15-minute period);

(b) The appropriate journeyworker meets with the apprentice at least once each day to go over the work done by the apprentice;

(c) The activity is consistent with the committee's work requirements as established in its written policy;

(d) There is only one apprentice on the job site; and

(e) The apprentice has been specifically approved for one (1) or more of the following phases:

(A) Phase 1: The apprentice only engages in water heater replacement or conversion after completing at least six (6) months of work experience, eight (8) hours of related instruction and is evaluated and authorized to do this type of work by the committee;

(B) Phase 2: The apprentice engages in work covered in Phase 1 and minor repairs in a one (1) or two (2) family dwelling after completion of three (3) periods of work experience, the appropriate related instruction for three (3) periods and is evaluated and authorized to do this type of work by the committee;

(C) Phase 3: The apprentice engages in work covered in Phase 1 and 2, and general repairs and replacement of existing installations after completion of four (4) periods of work experience, the appropriate related instruction for four (4) periods and is evaluated and authorized to do this type of work by the committee; or

(D) Phase 4: The apprentice engages in work covered in Phase 1, 2 and 3, and new or remodel installations after completing five (5) periods of work experience, the appropriate related instruction for five (5) periods and is evaluated and authorized to do this type of work by the committee.

(5) Phased supervision licenses will be issued by the Division upon notification of committee approval and reissued for the duration of the program unless the committee takes action to rescind approval.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 693.040

Hist.: BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0310

### Apprentice Rights

(1) Upon registration the local committee shall provide each apprentice with the following information:

(a) Apprenticeship Standards for the program in which the apprentice is registered;

(b) Division approved committee policies and procedures; and

(c) Copy of the apprenticeship agreement.

# ADMINISTRATIVE RULES

(2) Within the constraints of industry and market conditions, the apprentice has the right to be employed and diligently and faithfully trained by the committee's approved training agents in accordance with the terms and conditions of the Apprenticeship Agreement and Apprenticeship Standards.

(3) The apprentice has the right to classroom and workplace conditions that are free of harassment or intimidation.

(a) "Harassment or intimidation" includes any act that takes place on or immediately adjacent to apprenticeship classrooms or training agent work sites that:

(A) Substantially interferes with the apprentice's educational benefits, opportunities or performance; and

(B) Has the effect of:

(i) Physically harming an apprentice or damaging an apprentice's property; or

(ii) Knowingly placing an apprentice in reasonable fear of physical harm to the apprentice or damage to the apprentice's property; or

(iii) Creating a hostile educational environment, including interfering with the psychological well-being of an apprentice; and

(C) May be based on, but not limited to, the protected class status of a person.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(2)(a)

Hist.: BL 7-1991, f. & cert. ef. 8-15-91 (and corrected 2-3-92); BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0320

### Required Appearance at Council Meetings

(1) The Council shall require a committee member or designee other than Division or federal Office of Apprenticeship staff to be present at the appropriate subcommittee meeting when seeking approval for:

(a) New committee;

(b) New standards or;

(c) Other submittals that do not have a staff recommendation for approval.

(2) When a committee member or designee is not required to be present at a subcommittee meeting and questions or deficiencies are noted, the committee will be given ten (10) working days to correct the deficiencies and obtain a Division recommendation for approval.

(a) If deficiencies are corrected, the submittal will be moved to the Council agenda.

(b) Any submittal with deficiencies not corrected within the ten (10) day time limit will be referred to the next meeting of the appropriate subcommittee.

(3) The Director may make exceptions to this rule upon receipt of a written request from the committee setting forth circumstances, such as an emergency or undue hardship, that might justify a failure to attend subcommittee meeting.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(2)(a)

Hist.: BL 7-1991, f. & cert. ef. 8-15-91 (and corrected 2-3-92); BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 1-2012, f. & cert. ef. 1-3-12

## 839-011-0334

### Eligibility of Family and Current Employees

(1) To the extent that the State Apprenticeship and Training Council determines that it would not result in an adverse impact on apprenticeship opportunities based on an individual's protected class status, an applicant who is otherwise eligible for selection as an apprentice under the selection method approved by the Council for use by the local committee may be directly registered to a family business or the applicant's current employer, subject to the consent of the applicant, regardless of whether another employer would otherwise be entitled to register the applicant under the selection method used by the local committee.

(2) As used in this section, "otherwise eligible for selection as an apprentice under the selection method approved by the Council for use by the local committee" shall mean that the applicant:

(a) Has met the minimum qualifications for entry into the program; and

(b) Has been evaluated or ranked by the local committee pursuant to the procedure set forth in its approved selection method; and

(c) Based on that evaluation or ranking, is the next applicant or in the immediate group of applicants eligible to be assigned or dispatched to a registered training agent pursuant to the local committee's approved selection method.

(3) When submitting a new or revised selection method to the Council for approval, local committees must indicate whether they will be using an

exception to the selection methods established in Title 29 CFR Part 30 and must note in their committee minutes when an individual is registered pursuant to subsections (1) and (2) above.

(4) Nothing in this rule is intended or should be interpreted as discouraging the use of a qualification standard or selection method on the basis of relative qualifications, if the qualification standard or selection criteria have been validated in accord with the guidelines established in Title 41 CFR Part 60-3.6.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.139

Hist.: BLI 17-1999, f. & cert. ef. 12-20-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 1-2012, f. & cert. ef. 1-3-12

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## Construction Contractors Board Chapter 812

**Rule Caption:** Amend definition of employee for residential continuing education.

**Adm. Order No.:** CCB 1-2012(Temp)

**Filed with Sec. of State:** 1-13-2012

**Certified to be Effective:** 1-13-12 thru 7-11-12

**Notice Publication Date:**

**Rules Amended:** 812-021-0005

**Subject:** OAR 812-021-0005 is amended to clarify the definition of employee for the purposes of CCB Residential Continuing Education (RCE). The term "employee" does not mean a leased or temporary employee.

**Rules Coordinator:** Catherine Dixon—(503) 934-2185

## 812-021-0005

### Definitions — Continuing Education for Residential Contractors

The following definitions apply to OAR 812-021-0000 to 812-021-0047:

(1) "BEST" means Building Exterior Shell Training.

(2) "Building code" means a specialty code as defined in ORS 455.010(7).

(3) "Employee" means any individual employed by a contractor. "Employee" does not include either a subcontractor, which is an independent contractor, or a leased or temporary employee.

(4) "'Green' or sustainable building practices" means the practice of increasing the efficiency with which buildings use resources such as energy, water, and materials, while reducing building impacts on human health or the environment.

(5) "License period" means the two-year period from the date a contractor's license is first issued or last renewed until the date the license is next scheduled to expire.

(6) "Officer" means an individual person as defined in OAR 812-002-0533.

(7) "Owner" means an individual person as defined in OAR 812-002-0537.

(8) "Residential contractor" means a licensed contractor as defined in ORS 701.005(12).

(9) "Responsible managing individual (RMI)" means an individual person as defined in ORS 701.005(15).

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09; CCB 1-2012(Temp), f. & cert. ef. 1-13-12 thru 7-11-12

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## Department of Administrative Services Chapter 125

**Rule Caption:** Amends Department of Administrative Services Public Contracting Rules.

**Adm. Order No.:** DAS 3-2011

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 125-246-0100, 125-246-0300, 125-246-0570, 125-247-0100, 125-247-0310, 125-247-0320, 125-247-0400, 125-247-0410, 125-247-0420, 125-247-0440, 125-247-0450, 125-247-0460, 125-247-0470, 125-247-0480, 125-247-0490, 125-247-0525, 125-247-0575, 125-247-0620, 125-247-0640, 125-247-0650, 125-247-0660, 125-247-0670, 125-247-0700, 125-247-0710, 125-247-0720, 125-247-0731, 125-247-0740, 125-247-0750, 125-247-0760, 125-



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248-0100, 125-248-0110, 125-248-0120, 125-248-0130, 125-248-0200, 125-248-0210, 125-248-0220, 125-248-0230, 125-248-0240, 125-248-0250, 125-248-0260, 125-248-0300, 125-248-0310, 125-248-0340, 125-249-0100, 125-249-0130, 125-249-0140, 125-249-0150, 125-249-0160, 125-249-0200, 125-249-0210, 125-249-0220, 125-249-0230, 125-249-0240, 125-249-0250, 125-249-0260, 125-249-0270, 125-249-0280, 125-249-0290, 125-249-0300, 125-249-0310, 125-249-0320, 125-249-0330, 125-249-0340, 125-249-0350, 125-249-0360, 125-249-0370, 125-249-0380, 125-249-0390, 125-249-0395, 125-249-0400, 125-249-0410, 125-249-0420, 125-249-0430, 125-249-0440, 125-249-0450, 125-249-0460, 125-249-0470, 125-249-0490, 125-249-0600, 125-249-0610, 125-249-0620, 125-249-0640, 125-249-0645, 125-249-0650, 125-249-0660, 125-249-0670, 125-249-0680, 125-249-0690, 125-249-0800, 125-249-0810, 125-249-0815, 125-249-0820, 125-249-0830, 125-249-0840, 125-249-0850, 125-249-0860, 125-249-0870, 125-249-0880, 125-249-0890, 125-249-0900, 125-249-0910

**Subject:** Since 2005, the Department of Administrative Services (DAS) has developed and amended rules (Rules) to put into practice the Public Contracting Code, ORS 279ABC (Code). The Rules apply to state agencies subject to DAS procurement authority (Agencies). In 2011, the Legislature made changes to select sections of the Code. In addition to the legislative changes to the Code, the Department of Justice and Agencies requested select Rule changes to streamline or reduce duplications in 2011 and 2012. Now, in response to the legislative changes and requests for change from stakeholders, DAS needs to amend the select Rules listed above.

**Rules Coordinator:** Janet Chambers — (503) 378-5522

## 125-246-0100

### Application; Commentary; Federal Law Prevails

(1) These Rules of the Department of Administrative Services (Department) are policy and procedure for the Public Contracting of Agencies subject to these Rules and all state agencies that are subject to the DAS rules adopted under ORS 279A.140(2)(h) to regulate personal services contracts (see OAR 125-246-0353). According to ORS 279A.065(5), the Department adopts these Rules, including but not limited to selected and adapted Public Contract Model Rules. Except for those Public Contract Model Rules expressly adopted by the Department in OAR 125-246-0100, 125-247-0100, 125-248-0100 and 125-249-0100, the Public Contract Model Rules adopted by the Attorney General do not apply to the Department or the Agencies. These Department Public Contracting Rules implement the Oregon Public Contracting Code and consist of the following four Divisions:

- (a) Division 246, which applies to all Public Contracting;
- (b) Division 247, which applies only to Public Contracting for Supplies and Services, and not to construction services or Architectural, Engineering and Land Surveying Services, and Related Services;
- (c) Division 248, which applies only to Public Contracting for Architectural, Engineering and Land Surveying Services and Related Services; and
- (d) Division 249, which applies only to Public Contracting for construction services.

(2) If a conflict arises between these Division 246 Rules and Rules in Division 247, 248 or 249, the Rules in Divisions 247, 248 or 249 take precedence over these Division 246 Rules.

(3) Commentary on these Rules may be published by the Department to assist the Agencies by providing: examples, options, references, background, and other commentary. The Department's commentary is not a Rule or interpretation of any Rule and has no legally-binding effect.

(4) Federal statutes and regulations prevail and govern, except as otherwise expressly provided in ORS 279C.800 through 279C.870 (Prevailing Wage Rate) and despite other provisions of the Public Contracting Code, under the following conditions:

- (a) Federal funds are involved; and
- (b) The federal statutes or regulations either:
  - (A) Conflict with any provision of ORS Chapters 279A, 279B, or 279C.005 through 279C.670; or
  - (B) Require additional conditions in Public Contracts not authorized by ORS Chapters 279A, 279B, or ORS 279C.005 through 279C.670.
- (5) Adaptation of Model Rules for Agency Use. The following words found in those Model Rules expressly adopted by the Department are replaced by the words as defined in OAR 125-246-0110:

(a) "Contracting agency(ies)" is replaced by "Authorized Agency(ies)."

(b) "Goods or services" is replaced by "Supplies and Services."

(c) "Agreements to agree" and "price agreement" are replaced by "Price Agreement."

(6) Capitalization of Defined Terms. Uncapitalized terms in those Model Rules expressly adopted by the Department have the same meaning as the same terms that are capitalized and defined in OAR 125-246-0110.

(7) Department Policy. Agencies must comply with Department policies, if applicable.

(8) For purposes of these division 246 rules, the Department adopts the following Model Public Contract Rules: 137-046-0300.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.020, 279A.030 & 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 4-2005, f. 4-13-05, cert. ef. 6-6-05; DAS 7-2005, f. & cert. ef. 6-6-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-246-0300

### Preference for Oregon Supplies and Services

See OAR 137-046-0300.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.120

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-246-0570

### Reinstatement of Expired Contract; Retroactive Approval of Existing Contract

(1) Application. This Rule applies to the reinstatement of expired or terminated Contracts (expired Contracts) and the retroactive approval of existing Contracts procured by Authorized Agencies for Supplies and Services and for Architectural, Engineering and Land Surveying Services or Related Services ("Contracts"). This Rule does not apply to mistakes that may occur in the solicitation process (see OAR 125-247-0470).

(2) Requirements to Reinstatement an Expired Contract.

(a) Before expiration, the Contract was properly signed by all parties;

(b) Then the signed Contract expired;

(c) The Agency reinstates the Contract:

(A) To fulfill its term, up to the maximum time period provided in the Contract; or

(B) To complete one or more deliverable(s) included within the Contract's Scope at the time of its expiration;

(d) The Agency documents in the Procurement File the deliverable(s) to be completed at the time of the expired Contract's reinstatement; and

(e) If the Contractor has performed work under the Contract, the reinstatement does not apply to payments made for work performed between the expiration of the Contract and the date of any reinstatement.

(3) Requirements to Retroactively Approve an Existing Contract.

(a) The Contract exists and has not expired;

(b) The Contract was signed by all parties except that the required approval of the DPO or CPO was lacking;

(c) If the Contractor has performed work under the Contract, the retroactive approval does not apply to payments made for work performed between the start of the Contract and the date of any retroactive approval.

(4) Process. For either a reinstatement of an expired Contract or retroactive approval of an existing Contract, the requesting Agency must meet the following conditions:

(a) The Agency must submit a Written request to the Agency's Designated Procurement Officer (DPO) if the Agency is authorized under OAR 125-246-0170, or if not, to the Chief Procurement Officer (CPO) with authority under OAR 125-246-0170 (Request). If the Request is submitted to the DPO, the Agency must also follow its internal procedures.

(b) The Request must explain the following:

(A) The proposed reinstatement of the expired Contract or retroactive approval of the existing Contract.

(B) The background facts that led to the Request;

(C) The good faith basis for making the Request;

(D) The need for reinstatement of an expired Contract or retroactive approval of an existing Contract due to unforeseen or unavoidable conditions;

(E) The steps to prevent a reoccurrence. For examples:

(i) Improvement of Agency's internal policies and procedures; and

(ii) Provision of new training or retraining; and

(F) Acknowledgement that the Request is in the best interest of the Agency.

(c) Obtain all other approvals required for the Contract, including but not limited to: Attorney General's approval of legal sufficiency under ORS

# ADMINISTRATIVE RULES

291.047 or ratification under ORS 291.049. The Authorized Agency must obtain all other approvals required for the Contract before any reinstatement, extension of time under Subsection (6), or retroactive approval becomes binding.

(d) The DPO or CPO, as described in Subsection (3)(a), must approve the Request.

(5) Effect of Approval.

(a) An approved reinstatement of an expired Contract makes the Contract in full force and effect, as if it had not expired.

(b) An approved retroactive approval of an existing Contract makes the Contract in full force and effect, as if it had been approved by the DPO or CPO when the Contract was formed.

(c) The DPO or CPO, as appropriate, may create any related Contract documents to implement the reinstatement or retroactive approval.

(d) The Agency may make an approved payment after any related Contract documents are signed by the necessary parties.

(6) Amendments of a Reinstated Contract.

(a) If the Agency requests reinstatement of an expired Contract, the Request of the Agency may also include a request to amend the reinstated Contract for time only. The DPO or CPO, as appropriate, may approve this Request, including the amendment.

(b) The Agency may amend a reinstated or retroactively approved Contract for purposes other than time in accordance with OAR 125-246-0560.

(7) An Authorized Agency may combine in one document a Reinstatement of a Contract in accordance with this Rule, Retroactive Approvals of that Contract in accordance with OAR 125-246-0575, and its Amendment in accordance with OAR 125-246-0560, as needed.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0100

### Applicability

(1) In addition to the general requirements set forth in division 246 of these rules, the rules in this division 247 apply to Public Contracting for Supplies and Services. In the event of conflict or ambiguity, the more specific requirements of the rules in this division 247 take precedence over the more general requirements of the rules in division 246.

(2) The rules implement the Oregon Public Contracting Code, as defined in ORS 279A.010, and this division 247 of the rules specifically addresses matters covered in ORS Chapter 279B.

(3) For purposes of these division 247 rules, the Department adopts the following Model Public Contract Rules: OAR 137-047-0310, 137-047-0320, 137-047-0400, 137-047-0410, 137-047-0420, 137-047-0440, 137-047-0450, 137-047-0460, 137-047-0470, 137-047-0480, 137-047-0490, 137-047-0525, 137-047-0575, 137-047-0620, 137-047-0640, 137-047-0650, 137-047-0660, 137-047-0670, 137-047-0700, 137-047-0710, 137-047-0720, 137-047-0745, 137-047-0740, 137-047-0750, 137-047-0760.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.015

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0310

### Bids or Proposals are Offers

See OAR 137-047-0310.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0320

### Facsimile Bids and Proposals

See OAR 137-047-0320.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0400

### Offer Preparation

See OAR 137-047-0400.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0410

### Offer Submission

See OAR 137-047-0410.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0420

### Pre-Offer Conferences

See OAR 137-047-0420.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0440

### Pre-Closing Modification or Withdrawal of Offers

See OAR 137-047-0440.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0450

### Receipt, Opening, and Recording of Offers

See OAR 137-047-0450.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0460

### Late Offers, Late Withdrawals, and Late Modifications

See OAR 137-047-0460.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0470

### Mistakes

See OAR 137-047-0470.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0480

### Time for Authorized Agency Acceptance

See OAR 137-047-0480.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0490

### Extension of Time for Acceptance of Offer

See OAR 137-047-0490.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0525

### Qualified Products Lists

See OAR 137-047-0525.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085, 279B.115

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0575

### Debarment of Prospective Offerors

See OAR 137-047-0575.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.050-279B.085, 279B.130

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0620

### Documentation of Award

See OAR 137-047-0620.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0640

### Rejection of an Offer

See OAR 137-047-0640.

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Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279B.050-279B.090  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10;  
DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0650

### Rejection of All Offers

See OAR 137-047-0650.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279B.050-279B.085  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0660

### Cancellation of Procurement or Solicitation

See OAR 137-047-0660.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279B.050-279B.085  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10;  
DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0670

### Disposition of Offers if Solicitation Cancelled

See OAR 137-047-0670.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279B.050-279B.085  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0700

### Protests and Judicial Review of Approvals of Special Procurements

See OAR 137-047-0700.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279B.400  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0710

### Protests and Judicial Review of Sole-Source Procurements

See OAR 137-047-0710.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279B.405  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0720

### Protests and Judicial Review of Multiple-Tiered and Multistep Solicitations

See OAR 137-047-0720.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279B.405  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10;  
DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0731

### Protests and Judicial Review of Qualified Products List Decisions

See OAR 137-047-0745.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070  
Stats. Implemented: ORS 279B.115  
Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0740

### Protests and Judicial Review of Contract Award

See OAR 137-047-0740.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279B.410 & 270B.415  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0750

### Judicial Review of Other Violations

See OAR 137-047-0750.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279B.420  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-247-0760

### Review of Prequalification and Debarment Decisions

See OAR 137-047-0760.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279B.425  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-248-0100

### Application

(1) In addition to the general requirements set forth in division 246 of these rules, the rules in this division 248 apply to:

(a) The screening and selection of Architects, Engineers, Land Surveyors, and Providers of Related Services under Contracts, and set forth the procedures through which Authorized Agencies select Consultants to perform Architectural, Engineering and Land Surveying Services or Related Services; and

(b) Two-tiered procedures for selection of Architects, Engineers, Land Surveyors and Providers of Related Services for certain Public Improvements owned and maintained by a Local Government.

(2) In the event of conflict or ambiguity, the more specific requirements of the rules in this division 248 take precedence over the more general requirements of the rules in division 246.

(3) The rules as a whole implement the Oregon Public Contracting Code, as defined in ORS 279A.010, and this division 248 of the rules specifically addresses matters covered in ORS Chapter 279C.110 through 279C.125.

(4) Delegation of authority for these contracts must be according to OAR 125-246-0170.

(5) The dollar Threshold amounts that are applicable to the Direct Appointment Procedure, OAR 125-248-0200, the Informal Selection Procedure, OAR 125-248-0210, and the Formal Selection Procedure, OAR 125-248-220, are independent from and have no effect on the dollar Threshold amounts that trigger the legal sufficiency review requirement for Agencies under ORS 291.047.

(6) For purposes of these division 248 rules, the Department adopts the following Model Public Contract Rules: OAR 137-048-0110, 137-048-0120, 137-048-0130, 137-048-0200, 137-048-0210, 137-048-0220, 137-048-0230, 137-048-0240, 137-048-0250, 137-048-0260, 137-048-0300, 137-048-0310 & 137-048-0320.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279A.065  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-248-0110

### Definitions

See OAR 137-048-0110.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279A.065  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-248-0120

### List of Interested Consultants; Performance Record

See OAR 137-048-0120.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279C.110  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-248-0130

### Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest

See OAR 137-048-0130.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279A.065, 279C.100 - 279C.125 & 279C.307  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-248-0200

### Direct Appointment Procedure

See OAR 137-048-0200.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279C.110 & 279C.115  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-248-0210

### Informal Selection Procedure

See OAR 137-048-0210.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279C.110  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

# ADMINISTRATIVE RULES

## 125-248-0220

### Formal Selection Procedure

See OAR 137-048-0220.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-248-0230

### Ties Among Proposers

See OAR 137-048-0230.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-248-0240

### Protest Procedures

See OAR 137-048-0240.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065 & 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-248-0250

### Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility for Costs

See OAR 137-048-0250.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-248-0260

### Two-Tiered Selection Procedure for Local Contracting Agency Public Improvement Projects

See OAR 137-048-0260.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110, 279C.125

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-248-0300

### Contract Form; Prohibited Payment Methodology; Purchase Restrictions

(1) See OAR 137-048-0300.

(2) Contract Forms. The State Procurement Office or its delegatee must develop and maintain a standard Contract form and an Amendment form, which must be used by the Authorized Agencies in completing all Architectural, Engineering and Land Surveying and Related Services Contracts. These forms can be obtained from the State Procurement Office. Authorized Agencies must review the approved Contract form and Amendment form at least every two years. If upon review the Authorized Agency revises either form, the Authorized Agency must obtain approval from its Designated Procurement Officer for revised forms up to \$100,000 or approval from the Department of Justice for revised forms exceeding \$100,000, before using the revised Contract or Amendment form. In using the standard Contract form and standard Amendment form, Authorized Agencies must abide by the following Contract provisions:

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-248-0310

### Expired or Terminated Contracts; Reinstatement

See OAR 137-048-0310.

Stat. Auth.: ORS 279A.050, 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279A.070, 279C.110 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-248-0340

### Contract Amendments

See OAR 137-048-0320.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0100

### Application; Federal Override; Effective Date

See OAR 137-049-0100.

(1) In addition to the general requirements set forth in division 246 of these rules, the rules in this division 249 apply to Public Improvement Contracts. Only specific rules in this division 249 apply to Public Contracts for Ordinary Construction Services as described in OAR 125-249-0140. In the event of conflict or ambiguity, the more specific requirements of the rules in this division 249 take precedence over the more general requirements of the rules in division 246.

(2) The rules as a whole implement the Oregon Public Contracting Code (Code), as defined in ORS 279A.010. This division 249 of the rules specifically addresses matters covered in ORS Chapter 279C.005, 279C.010, 279C.300 through 279C.870. Rules related to Architectural, Engineering, Land Surveying, and Related Services are found in division 248.

(3) According to OAR 125-246-0100 and except as otherwise expressly provided in ORS 279C.800 through 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations require additional conditions or conflict with the Code or with these rules.

(4) For purposes of these division 249 rules, the Department adopts the following Model Public Contract Rules: OAR 137-049-0130, 137-049-0140, 137-049-0150, 137-049-0160, 137-049-0200, 137-049-0210, 137-049-0220, 137-049-0230, 137-049-0240, 137-049-0250, 137-049-0260, 137-049-0270, 137-049-0280, 137-049-0290, 137-049-0300, 137-049-0310, 137-049-0320, 137-049-0330, 137-049-0340, 137-049-0350, 137-049-0360, 137-049-0370, 137-049-0380, 137-049-0390, 137-049-0395, 137-049-0400, 137-049-0410, 137-049-0420, 137-049-0430, 137-049-0440, 137-049-0450, 137-049-0460, 137-049-0470, 137-049-0490, 137-049-0600, 137-049-0610, 137-049-0620, 137-049-0640, 137-049-0645, 137-049-0650, 137-049-0660, 137-049-0670, 137-049-0680, 137-049-0690, 137-049-0800, 137-049-0810, 137-049-0815, 137-049-0820, 137-049-0830, 137-049-0840, 137-049-0850, 137-049-0860, 137-049-0870, 137-049-0880, 137-049-0890, 137-049-0900, 137-049-0910.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0130

### Competitive Bidding Requirement

See OAR 137-049-0130.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.335

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0140

### Contracts for Construction Other Than Public Improvements

See OAR 137-049-0140.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.320

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0150

### Emergency Contracts; Bidding and Bonding Exemptions

See OAR 137-049-0150.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.080, 279C.320 & 279C.380(4)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 5-2009(Temp), f. & cert. ef. 2-13-09 thru 8-12-09; DAS 9-2009, f. & cert. ef. 8-11-09; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0160

### Intermediate Procurements; Competitive Quotes and Amendments

See OAR 137-049-0160.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.412

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0200

### Solicitation Documents; Required Provisions; Assignment or Transfer

See OAR 137-049-0200.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.110, 279A.120, 279C.365, 279C.370, 279C.375, 279C.390, 279C.505-580, 279C.605, 305.385, 468A.720, 701.005 & 701.026

# ADMINISTRATIVE RULES

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0210

### Notice and Advertising Requirements; Posting

(1) See OAR 137-049-0210.

(2) Regardless of OAR 137-049-0210, the Authorized Agency must furnish Notice using ORPIN.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.360 & 200.035

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0220

### Prequalification of Offerors

See OAR 137-049-0220.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.430 & 279C.435

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0230

### Eligibility to Bid or Propose; Registration or License

See OAR 137-049-0230.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365, 671.530 & 701.026

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0240

### Pre-Offer Conferences

See OAR 137-049-0240.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365 & 279C.370

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0250

### Addenda to Solicitation Documents

See OAR 137-049-0250.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065 & 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0260

### Request for Clarification or Change; Solicitation Protests

See OAR 137-049-0260.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.345 & 279C.365

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0270

### Cancellation of Solicitation Document

See OAR 137-049-0270.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0280

### Offer Submissions

See OAR 137-049-0280.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.365, 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0290

### Bid or Proposal Security

See OAR 137-049-0290.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365 & 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0300

### Facsimile Bids and Proposals

See OAR 137-049-0300.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0310

### Electronic Procurement

See OAR 137-049-0310.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0320

### Pre-Closing Modification or Withdrawal of Offers

See OAR 137-049-0320.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.360, 279C.365, 279C.375 & 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0330

### Receipt, Opening and Recording of Offers; Confidentiality of Offers

See OAR 137-049-0330.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365, 279C.375 & 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0340

### Late Bids, Late Withdrawals and Late Modifications

See OAR 137-049-0340.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365, 279C.375 & 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0350

### Mistakes

See OAR 137-049-0350.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.375 & 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0360

### First-Tier Subcontractors; Disclosure and Substitution; ITB

See OAR 137-049-0360.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.370, 279C.585, 279C.590 & 279C.835

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0370

### Disqualification of Persons

See OAR 137-049-0370.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 200.065, 200.075, 279A.110, 279C.440, 279C.445 & 279C.450

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0380

### Bid or Proposal Evaluation Criteria

See OAR 137-049-0380.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.335

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0390

### Offer Evaluation and Award; Determination of Responsibility

See OAR 137-049-0390.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070, OL 2005, Ch. 413

Stats. Implemented: ORS 279C.335, 279C.365, 279C.375, 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0395

### Notice of Intent to Award

See OAR 137-049-0395.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0400

### Documentation of Award; Availability of Award Decisions

See OAR 137-049-0400.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365, 279C.375

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Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0410

### Time for Authorized Agency Acceptance; Extension

See OAR 137-049-0410.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0420

### Negotiation With Bidders Prohibited

See OAR 137-049-0420.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.340 & 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10;

DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0430

### Negotiation when Bids Exceed Cost Estimate

See OAR 137-049-0430.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.340

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0440

### Rejection of Offers

See OAR 137-049-0440.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.105, 279A.110, 279C.375, 279C.380 & 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0450

### Protest of Contractor Selection, Contract Award

See OAR 137-049-0450.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.375, 279C.380, 279C.385 & 279C.460

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0460

### Performance and Payment Security; Waiver

(1) See OAR 137-049-0460.

(2) In addition to OAR 137-049-0460, an Authorized Agency having delegated purchasing authority according to OAR 125-246-0170 may, in its discretion, waive the bid security requirements and performance and payment requirements if the amount of the Contract for the Public Improvement is less than \$100,000.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.375, 279C.380 & 279C.390

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0470

### Substitute Contractor

See OAR 137-049-0470.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.365, 279C.370, 279C.375, 279C.380, 279C.390

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0490

### Foreign Contractor

See OAR 137-049-0490.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.120

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0600

### Purpose

See OAR 137-049-0600.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279C.335 & 351.086

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0610

### Definitions for Alternative Contracting Methods

See OAR 137-049-0610.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065 & 279C.335

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0620

### Use of Alternative Contracting Methods

See OAR 137-049-0620.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279C.335 & 351.086

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0640

### Competitive Proposals; Procedure

See OAR 137-049-0640.

Stat. Auth.: ORS 279C.335 & 279A.065

Stats. Implemented: ORS 279A.065, 279C.335 & 351.086

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0645

### Requests for Qualifications (RFQ)

See OAR 137-049-0645.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.405

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0650

### Requests for Proposals (RFP)

See OAR 137-049-0650.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.400 - 279C.410

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0660

### RFP Pricing Mechanisms

See OAR 137-049-0660.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.335

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0670

### Design-Build Contracts

See OAR 137-049-0670.

Stat. Auth.: ORS 279C.335 & 279A.065

Stats. Implemented: ORS 279A.065, 279C.110, 279C.335 & 351.086

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0680

### Energy Savings Performance Contracts (ESPC)

See OAR 137-049-0680.

Stat. Auth.: ORS 279C.335 & 279A.065

Stats. Implemented: ORS 279A.065, 279C.110, 279C.335 & 351.086

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0690

### Construction Manager/General Contractor (CM/GC)

See OAR 137-049-0690.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.335 & 279C.380(2)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0800

### Required Contract Clauses

See OAR 137-049-0800.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.505 - 279C.545, 279C.800 - 279C.870

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0810

### Waiver of Delay Damages Against Public Policy

See OAR 137-049-0810.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.315

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0815

### BOLI Public Works Bond

See OAR 137-049-0815.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.830

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

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## 125-249-0820

### Retainage

See OAR 137-049-0820.  
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279C.560, 279C.570 & 701.420  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0830

### Contractor Progress Payments

See OAR 137-049-0830.  
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279C.570  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0840

### Interest

See OAR 137-049-0840.  
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279C.570  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0850

### Final Inspection

See OAR 137-049-0850.  
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279C.570(8)  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0860

### Public Works Contracts

See OAR 137-049-0860.  
Stat. Auth.: ORS 279A.065(5)(a), 279A.070  
Stats. Implemented: ORS 279C.800 - 279C.870  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0870

### Specifications; Brand Name Products

See OAR 137-049-0870.  
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279C.345  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0880

### Records Maintenance; Right to Audit Records

See OAR 137-049-0880.  
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279A.030, 279C.375, 279C.380 & 279C.440  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0890

### Authorized Agency Payment for Unpaid Labor or Supplies

See OAR 137-049-0890.  
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279C.515  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0900

### Contract Suspension; Termination Procedures

See OAR 137-049-0900.  
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279C.650, 279C.655, 279C.660, 279C.665 & 279C.670  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

## 125-249-0910

### Changes to the Work and Contract Amendments

See OAR 137-049-0910.  
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279A.065 & 279C.400(1)  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

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## Department of Agriculture Chapter 603

**Rule Caption:** Implementation of the wolf depredation compensation and financial assistance grant program.

**Adm. Order No.:** DOA 25-2011

**Filed with Sec. of State:** 12-28-2011

**Certified to be Effective:** 12-28-11

**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 603-019-0001, 603-019-0005, 603-019-0010, 603-019-0015, 603-019-0020, 603-019-0025, 603-019-0030, 603-019-0035, 603-019-0040

**Subject:** The purpose of these rules is to provide criteria and procedures for implementation and administration of the Wolf Depredation Compensation and Financial Assistance Grant Program. Grant funds will be awarded to qualified county programs for compensation to persons who suffer death of or injury to livestock or working dogs that is attributed to wolf depredation. grant funds may also be awarded for financial assistance to persons who implement livestock management techniques or non-lethal wolf deterrence techniques designed to discourage wolf/livestock interactions and reduce wolf depredations. grant funds may also compensate counties for expenses associated with up to 90% of the implementation of the County Program as defined in the rule.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-019-0001

### Definitions

As used in 603-019-0001 to 603-019-0040, unless the context requires otherwise:

(1) “Livestock” means, ratites, horses, mules, jackasses, cattle, llamas, alpacas, sheep, goats, swine, bison, domesticated fowl and any fur-bearing animal bred and maintained commercially, or otherwise, within pens, cages or hutches.

(2) “Working dog” means any animal of the species *Canis familiaris* used to aid in the herding or guarding of livestock.

(3) “Department” means the State Department of Agriculture.

(4) “Trust Fund” means the Wolf Management Compensation and Proactive Trust Fund

(5) “County Program” means an established county government wolf depredation compensation and financial assistance program meeting all of the requirements established under this rule.

(6) “Attributed to wolf depredation” means a finding by the Oregon Department of Fish and Wildlife (ODF&W) or a designated agent for ODF&W, that wolf depredation was the probable cause of the death or injury.

(7) “Area of known wolf activity” means an area of known wolf activity that is designated as such by the ODF&W.

Stat. Auth.: ORS 690

Stats. Implemented: ORS 690

Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

## 603-019-0005

### Purpose

The purpose of these rules is to provide criteria and procedures for implementation and administration of the Wolf Depredation Compensation and Financial Assistance Grant Program. Grant funds will be awarded to qualified county programs for;

(a) Compensation to persons who suffer death of or injury to livestock or working dogs that is attributed to wolf depredation as well as compensation for certain missing animals that qualify and/or;

(b) Financial assistance to persons who implement livestock management techniques or nonlethal wolf deterrence techniques designed to discourage wolf /livestock interactions and reduce wolf depredations.

(c) Expenses associated with up to 90% of the implementation of a county program as defined in 603-019-0015(g).

Stat. Auth.: ORS 690

Stats. Implemented: ORS 690

Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

## 603-019-0010

### Eligible Applicants

Eligible applicants are county governments that have established an advisory committee and otherwise met the requirements listed in OAR 603-019-0015 and are prepared to assess applications from persons who are eligible to apply for grant funds from the county.

Stat. Auth.: ORS 690

Stats. Implemented: ORS 690

Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

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## 603-019-0015

### Standards to Determine Grant Award Eligibility

(1) The Department will consider applications for funds from the Trust Fund from county programs that meet the stated purpose of this rule and contain the elements specified in this section.

(2) Grants are subject to available funding in the Trust Fund. A county may qualify for a grant if a county has a county program that meets the following requirements:

(a) A county must establish a county advisory committee to oversee the county program.

(A) Advisory committee membership shall include:

(i) One county commissioner;

(ii) Two members who own or manage livestock; and

(iii) Two members who support wolf conservation or coexistence with wolves.

(B) Once established, the county advisory committee shall agree upon two county business representatives to serve as additional county advisory committee members.

(b) A county must establish a procedure by which livestock owners and managers experiencing above expected death or injury to livestock or working dogs attributed to wolf depredation shall be given priority by the committee for grant moneys received under the County Program.

(c) A county program must require that an advisory committee must establish compensation rates for death or injury to livestock or working dogs attributable to wolf depredation, that are based on fair market value. Compensation for death or injury of livestock or working dogs takes priority over compensation for missing livestock.

(d) A county program must require that within an area of known wolf activity, a county advisory committee must establish compensation rates for missing livestock attributable to wolf depredation. To qualify for compensation for missing livestock producers must document that other possible causes for their animals to be missing, not including wolf depredation, have been eliminated for the number of missing animals they are claiming. Compensation for missing livestock may be at a lower value than compensation for death or injury as allowed in 603-019-0015(2)(c) at the discretion of the county advisory committee. Losses confirmed as due to wolf depredation shall be given priority over losses for missing livestock.

(e) A county program must establish eligibility requirements for compensation that ensures, contingent upon available funds, that:

(A) In order to consider awarding any compensation for death or injury to livestock or working dogs, or missing livestock and working dogs attributed to wolf depredation, the county advisory committee must determine that the person did not unreasonably or purposefully create circumstances that attract wolves or encourage conflict between wolves and livestock or working dogs, excluding accepted normal husbandry and grazing activities.

(B) Compensation for documented death or injury to livestock or working dogs that is attributed to wolf depredation that occurred outside an area of known wolf activity shall be compensated regardless of the preexistence of wolf deterrence techniques.

(C) Compensation for documented death or injury to livestock or working dogs that is attributed to wolf depredation that occurred within an area of known wolf activity shall be compensated if owners have demonstrated implementation of best management practices to deter wolves including reasonable non-lethal methods when practicable.

(D) Compensation for missing livestock or working dogs that is attributed to wolf depredation that occurred within an area of known wolf activity may be granted if owners document that other possible causes for their animals to be missing, not including wolf depredation, have been eliminated for the number of missing animals they are claiming.

(f) A county program must distribute grant program funds, to the extent possible, in an equal and balanced manner between payments to compensate for death or injury to livestock or working dogs attributed to wolf depredation and payments to implement livestock management techniques or nonlethal wolf deterrence techniques designed to discourage wolf depredation of livestock, with a minimum of 30% of a county's grant funds, as distributed by the Department to that county, distributed for livestock management techniques or nonlethal wolf deterrence techniques designed to discourage wolf depredation of livestock.

(g) The county must contribute an amount of money equal to 10% of the allowable expenditures necessary to implement the county program during the calendar year. Allowable expenditures are:

(A) Establishing a county advisory committee.

(B) Establishing a procedure by which persons applying for compensation will provide sufficient evidence of actual livestock and/or working dog losses attributed to wolf depredation.

(C) Establishing a procedure by which persons applying for financial assistance for the cost of livestock management or nonlethal deterrence provides an estimate of the potential cost.

(D) Establishing compensation rates for livestock or working dog losses from death, injury or missing all of which are attributed to wolf depredation.

(E) Distributing grant program funds.

(F) Preparation of an annual report to the Department.

Stat. Auth.: ORS 690

Stats. Implemented: ORS 690

Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

## 603-019-0020

### Distribution of Grant Funds by County Advisory Committees

Grant funds received by a county program from the Department may only be used to reimburse the following expenses or losses:

(1) Compensation for documented death or injury to livestock and working dogs determined as attributed to wolf depredation.

(2) Compensation for missing livestock or working dogs only when the animals in question became missing from within an area of known wolf activity and the livestock owner or manager has satisfied the requirements described in 603-019-0015.

(3) Compensation for death, injury or missing livestock or working dogs within a known area of wolf activity requires the livestock owner or manager to demonstrate to the county advisory committee, that they implemented best management practices to deter wolves, including reasonable use of nonlethal methods when practicable.

(4) Compensation for the cost of livestock management techniques or nonlethal wolf deterrence techniques designed to limit wolf/livestock interactions and discourage wolf depredation of livestock. These funds must amount to at least 30% of the total grant funds distributed by the Department to a county program.

(5) A county may submit up to 90% of expenses incurred by implementation of a county program meeting the requirements specified in OAR 603-019-0015. The county must make a money contribution equaling at least 10% of the expenses for one calendar year for implementation of a county program.

Stat. Auth.: ORS 690

Stats. Implemented: ORS 690

Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

## 603-019-0025

### Application Procedures

(1) Grant application forms will be made available and distributed by the Department.

(2) Each county shall submit its proposal for funding on the Department's application form, including attachments as necessary.

(3) Applications for grant funds may be submitted to the Department by February 15th of each year. Late submissions may be accepted in the discretion of the Department as is consistent with law.

(4) Grant applications may be made for:

(a) Funds to compensate for the loss or injury of livestock or working dogs due to wolf depredation;

(b) Funds to compensate for missing livestock consistent with OAR 603-019-0015;

(c) Funds for financial assistance for the implementation of nonlethal management techniques designed to discourage wolf depredation of livestock; and

(d) For up to 90% of the expense for one calendar year of implementing a county program as described in 603-019-0015.

Stat. Auth.: ORS 690

Stats. Implemented: ORS 690

Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

## 603-019-0030

### Application Review

(1) The Department may process grant applications to evaluate the reasonableness of the amount of money requested. The Department may use formulas it may derive for allocating available funds equitably among grant requests.

(2) The Department will review each application for completeness, accuracy, and consistency with these rules. Incomplete applications may be returned for correction or completion. Applications not meeting the standards established in these rules may be denied. If an application is denied,



# ADMINISTRATIVE RULES

the Department may identify standards necessary for approval of a future grant application.

Stat. Auth.: ORS 690  
Stats. Implemented: ORS 690  
Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

## 603-019-0035

### Grant Awards

(1) After reviewing a county application, the Department will make one of the following decisions for each county's grant request.

- (a) Approval of grant award for the full amount requested;
- (b) Approval of grant award of partial amount requested. In this instance, the Department may elect to fund a portion of grant request;
- (c) Deferral of request for further consideration based upon submission of additional information;
- (d) Denial of request. Applicants whose proposals are denied may reapply the following year.

(2) Any funds not allocated within the current calendar year by the Department shall be carried forward in the Trust Fund into the following year.

Stat. Auth.: ORS 690  
Stats. Implemented: ORS 690  
Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

## 603-019-0040

### Grant Administration

(1) The Department and the recipient county will enter a grant agreement that includes but is not limited to the following:

- (a) A description of the county program and a description of the work elements for which grant funding is received. ;
- (b) A payment schedule as determined by the Department.
- (c) A condition requiring the participating county to prepare an annual report that specifies the actions taken, compensation paid and financial assistance provided under the grant. This report will be due to the Department on June 1st of each year beginning in the year 2012.
- (d) A condition allowing the Department to withhold the relevant payment pending resolution of the identified deficiencies in grant administration or in the event the Department finds a report unsatisfactory.
- (e) A condition allowing, termination of the grant agreement if a county is consistently unable to meet performance standards as identified in the grant or as consistent with law.

(2) A condition requiring each recipient to submit a final report to the Department within six months of the official close of the grant period. The final report must detail the actions taken consistent with the grant agreement, compensation paid and financial assistance provided under the grant.

(3) A condition requiring counties to maintain any and all records necessary to allow the Department to monitor administration of the grant.

(4) A condition specifying that grantees and the Department may amend timelines specified in the grant agreement provided such amendments are in writing and are mutually agreed to.

(5) A condition specifying that unexpended grant funds not used by the grantee must be returned to the Department for reallocation to the Trust Fund.

(6) A condition specifying that as part of its duty to monitor the county programs, the Department may audit and review county program grant application documents, subsidiary record documentation, and source documents, including but not limited to, invoices, cost computations by the county or by a County Advisory committee and all other instruments and documents upon which expenditure of grant funding was determined and which the Department ascertains is necessary to determine compliance with a county program.

(7) A condition specifying that any grant moneys disbursed to a county that remain unobligated or unexpended as of the termination date of a grant agreement must be returned to the Department.

Stat. Auth.: ORS 690  
Stats. Implemented: ORS 690  
Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

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**Rule Caption:** Implementation of Oregon Laws 2011 Chapter 436 regarding the management of egg-laying hens in cages.

**Adm. Order No.:** DOA 26-2011(Temp)

**Filed with Sec. of State:** 12-28-2011

**Certified to be Effective:** 12-28-11 thru 6-20-12

**Notice Publication Date:**

**Rules Adopted:** 603-018-0001, 603-018-0003, 603-018-0007, 603-018-0009, 603-018-0011, 603-018-0013

**Subject:** ORS Oregon Laws 2011 Chapter 436 requires the department 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

## 603-018-0001

### Definitions

For purposes of OAR 603-018-0003 to 603-018-0013:

(1) "Commercial egg-laying farm" means any commercial farm that has caged egg-laying hens at any one location or multiple locations.

(2) "Director" means the Director of the 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, joint stock companies, public and municipal corporations, political subdivisions of the state and any agency thereof, and the federal government and any agency thereof.

(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.

Stat. Auth.: 2011 OL Ch. 436  
Stats. Implemented: 2011 OL Ch. 436  
Hist.: DOA 26-2011(Temp), f. & cert. ef. 12-28-11 thru 6-20-12

## 603-018-0003

### Poultry Husbandry, Cage Size Standards for Egg Laying Hens

(1) All cages used, or intended for use to confine egg-laying hens that were constructed or otherwise acquired before January 1, 2012 must meet, or exceed, the following standards for certification established in the 2010 Edition of the United Egg Producers' (UEP) Animal Husbandry Guidelines for U.S. Egg Laying Flocks addressing Housing and Space Guidelines.

(a) Cage configuration and equipment maintenance must be such that manure from birds in upper cage levels does not drop directly on birds in lower level cages.

(b) All hens must be able to stand comfortably upright in their cage. The slope of the cage floor should not exceed 8 degrees.

(c) Space allowance must be in the range of 67 to 86 square inches of usable space per bird to optimize hen welfare.

(d) Feeder space must be sufficient to allow all birds to eat at the same time.

(e) Chicks, pullets and hens must have continuous access to clean drinking water except that water may be shut off temporarily in preparation for the administration of vaccines or medication in the water.

(2) All cages used, or intended for use to confine egg-laying hens that are constructed or otherwise acquired after January 1, 2012 must meet, or be convertible into enclosures that meet, or exceed, standards equivalent to the American Humane Certified TM Animal Welfare Standards for Enriched Colony Housing (revised June 29, 2011).

(3) At a minimum, all cages used, or intended for use to confine egg-laying hens to produce eggs for distribution into, or within Oregon and were constructed or otherwise acquired before January 1, 2012 must meet the standards described in OAR 603-018-0003(1) or must meet standards for UEP certification until cages meet, or are converted to meet, or exceed, standards equivalent to American Humane Certified TM Animal Welfare Standards for Enriched Colony Housing (revised June 29, 2011).

Stat. Auth.: 2011 OL Ch. 436  
Stats. Implemented: 2011 OL Ch. 436  
Hist.: DOA 26-2011(Temp), f. & cert. ef. 12-28-11 thru 6-20-12

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## 603-018-0007

### Standards for, and documentation of, production and distribution of eggs and egg products

(1) All eggs, or egg products distributed in Oregon shall be from hens managed in accordance to Oregon law and OAR 603-018-0001 through 603-018-0007.

(2) Distributors of eggs or egg products into, or within, this state, for use within this state to any entity other than the retail end-user of shell eggs, must provide documentation to the department that the eggs or egg products originated from hens managed according to (OAR 603-018-0007(1)). Such documentation may include a copy of current UEP certification, AHA certification, certification by an independent third party approved by the Director.

(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, the distributor of eggs or egg products must complete and submit documentation of current UEP Certification, or a notarized letter from an independent third party approved by the Director, certifying that the eggs being distributed in Oregon meet the requirements of 603-018-0001 through OAR 603-018-0007 to the State Department of Agriculture before distributing any eggs or egg products in the state. The documentation required by 603-018-0007(2) must be submitted annually.

(4) Any Oregon purchaser, other than the retail end-user of shell eggs, of eggs or egg products must maintain receipts or other documentation identifying the 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 department upon request.

(5) 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.

(6) A person may not fail, or refuse, to submit documentation that eggs, or egg products sold in Oregon meet the standards required by the department. Failure, or refusal to submit documentation to the department may result in an enforcement action including civil penalty.

(7) A person may not fail, or refuse, to possess or maintain records as required in OAR 603-018-0007 (4) of this section. Failure, or refusal to possess and maintain documentation as required may result in an enforcement action including civil penalty.

(8) A person may not distribute eggs or egg products that the person knows, or reasonably should know that 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 603-018-0001 through 603-018-0007. Any such distribution may result in an enforcement action including civil penalty.

Stat. Auth.: 2011 OL Ch. 436

Stats. Implemented: 2011 OL Ch. 436

Hist.: DOA 26-2011(Temp), f. & cert. ef. 12-28-11 thru 6-20-12

## 603-018-0009

### Commercial Egg-Laying Farm Business Plans

(1) Upon renewal of an "Egg Breaker" or "Egg Handler" license issued by the department annually beginning July 1, 2012, all commercial egg laying farms in Oregon must write and 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) Date 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 managed according to the standards of OAR 603-018-0001 through OAR 603-018-0007 at a minimum.

(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.

(4) Each person submitting a Farm Business Plan must maintain adequate documentation to support the information provided therein. These documents must be made available to the department upon 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 a department representative.

(6) A person may not fail or refuse to submit a Farm Business Plan as required. Failure or refusal to submit a Farm Business Plan as required 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.

Stat. Auth.: 2011 OL Ch. 436

Stats. Implemented: 2011 OL Ch. 436

Hist.: DOA 26-2011(Temp), f. & cert. ef. 12-28-11 thru 6-20-12

## 603-018-0011

### 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.: 2011 OL Ch. 436

Stats. Implemented: 2011 OL Ch. 436

Hist.: DOA 26-2011(Temp), f. & cert. ef. 12-28-11 thru 6-20-12

## 603-0018-0013

### 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) A civil penalty imposed under the applicable statutes and these rules may be remitted or reduced upon such terms and conditions, as the Director considers proper and consistent with public health and safety.

(4) Civil penalties shall be due and payable ten (10) business days after the order becomes final by operation of law or on appeal. A person may pay a civil penalty before an order becomes final. Payment of a civil penalty before an order becomes final is an admission by the person of all of the allegations in the Notice of Imposition of Civil Penalty.

Stat. Auth.: 2011 OL Ch. 436

Stats. Implemented: 2011 OL Ch. 436

Hist.: DOA 26-2011(Temp), f. & cert. ef. 12-28-11 thru 6-20-12

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**Rule Caption:** Inland Rogue Agricultural Water Quality Management Area Rules.

**Adm. Order No.:** DOA 1-2012

**Filed with Sec. of State:** 1-12-2012

**Certified to be Effective:** 1-12-12

**Notice Publication Date:** 7-1-2011

**Rules Adopted:** 603-095-1460

**Rules Amended:** 603-095-1400, 603-095-1420, 603-095-1440

**Rules Repealed:** 603-095-0200, 603-095-0220, 603-095-0240, 603-095-0260, 603-095-0280

**Subject:** The Rules effectuate the implementation of the Inland Rogue Agricultural Water Quality Management Area Plan developed under ORS 568.900 through 568.933 and OAR Chapter 603 Division 90.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-095-1400

### Purpose

(1) These rules have been developed to implement a water quality management area plan for the Inland Rogue Agricultural Water Quality

# ADMINISTRATIVE RULES

Management Area pursuant to authorities vested in the department through ORS 568.900 – 568.933 and 561.190 – 561.191. The area plan is known as the Inland Rogue Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Inland Rogue Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with OAR 603-095-1400 to 603-095-1460 is expected to aid in the achievement of applicable water quality standards in the Inland Rogue Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 13-2001, f. & cert. ef. 6-8-01; DOA 1-2012, f. & cert. ef. 1-12-12

## 603-095-1420

### Geographic and Programmatic Scope

(1) The Inland Rogue Agricultural Water Quality Management Area includes the drainage area of the Rogue River primarily within the political boundaries of Jackson and Josephine counties. It does not include the drainage area of the Lower Rogue outside the Josephine county boundary. The physical boundaries of the Inland Rogue Agricultural Water Quality Management Area are indicated on the map included as Appendix 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Inland Rogue Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle, or on which management has been deferred, and forested lands with agricultural activities, with the exception of public lands managed by federal agencies, reservation and tribal trust lands, and activities which are subject to the Forest Practices Act.

(3) Current productive agricultural use is not required for the provisions of these rules to apply. For example, highly erodible lands with no present active use are within the purview of these rules.

(4) The provisions and requirements outlined in these rules may be adopted by reference by Designated Management Agencies with appropriate authority and responsibilities in other geographic areas of the Inland Rogue Agricultural Water Quality Management Area.

(5) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the Department of Agriculture (department) and the appropriate Local Management Agency will work with these Designated Management Agencies to assure that provisions of these rules apply and to assure that duplication of any services provided, or fees assessed does not occur.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 13-2001, f. & cert. ef. 6-8-01; DOA 1-2012, f. & cert. ef. 1-12-12

## 603-095-1440

### Prohibited Conditions

(1) All landowners or operators conducting activities on lands described above in OAR 603-095-1420(2) shall be in compliance with the following rules. A landowner shall be responsible for only those conditions caused by the activities of the landowner or operator. Rules do not apply to conditions resulting from unusual weather events or other exceptional circumstances that could not have been reasonably anticipated. Limited duration activities may be exempt from these conditions subject to approval by the department.

#### (2) Excessive Soil Erosion

(a) There shall be no visible evidence of erosion resulting from agricultural management in a location where erosion has contributed or will contribute sediment to waters of the state. Visible evidence of erosion may consist of the following features:

(A) Sheet wash, noted by visible pedestalling, surface undulations, and/or flute marks on bare or sparsely-vegetated ground;

(B) Visibly active gullies, as defined by OAR 603-095-0010(1);

(C) Multiple rills, which have the form of gullies, but are smaller, in cross-sectional area, than one square foot.

#### (3) Riparian Vegetation Destruction

(a) Agricultural management of riparian areas shall not impede the development and maintenance of adequate riparian vegetation to control water pollution, provide stream channel stability, moderate solar heating, and filter nutrients and sediment from runoff.

(b) This condition is not intended to prohibit riparian grazing where it can be done while managing for riparian vegetation required in OAR 603-095-1440(3)(a).

(c) Constructed ditches that carry only irrigation delivery and drainage water are exempt from conditions described in OAR 603-095-1440(3).

(4) Surface Irrigation Return Flows. Runoff of surface irrigation that enters waters of the state shall not exceed water quality standards or cause pollution of the receiving water.

(5) Waste. No person subject to these rules shall violate any provision of ORS 468B.025 or ORS 468B.050.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 13-2001, f. & cert. ef. 6-8-01; DOA 1-2012, f. & cert. ef. 1-12-12

## 603-095-1460

### Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, the department may conduct an investigation. The department may coordinate inspection activities with the appropriate Local Management Agency.

(2) Each notice of an alleged occurrence of agricultural pollution will be evaluated in accordance with the criteria in ORS 568.900 to 568.933, or any rules adopted thereunder to determine whether an investigation is warranted.

(3) Any person allegedly being damaged or otherwise adversely affected by agricultural pollution, or alleging any violation of ORS 568.900 to 568.933, or any rules adopted thereunder, may file a complaint with the department.

(4) The department will evaluate or investigate a complaint filed by a person under section OAR 603-095-1460(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The waters of the state allegedly being damaged or impacted; and

(b) The property allegedly being managed under conditions violating criteria described in ORS 568.900 to 568.933, or any rules adopted thereunder.

(5) As used in section OAR 603-095-1460(4), "person" does not include any local, state, or federal agency.

(6) Notwithstanding OAR 603-095-1460(4), the department may investigate at any time any complaint if the department determines that the violation alleged in the complaint may present an immediate threat to the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Statutory Authority: ORS 561.190 - 561.191 & 568.912

Statutes Implemented: ORS 568.900 - 568.933

Hist.: DOA 1-2012, f. & cert. ef. 1-12-12

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**Rule Caption:** Renames Directly Supervised Trainee license and allows for multiple year renewal with continuing education component.

**Adm. Order No.:** DOA 2-2012

**Filed with Sec. of State:** 1-13-2012

**Certified to be Effective:** 1-1-13

**Notice Publication Date:** 9-1-2011

**Rules Amended:** 603-057-0001, 603-057-0100, 603-057-0127

**Subject:** The rules rename the Directly Supervised Trainee License to avoid confusion with the Immediately Supervised trainee License. The Directly Supervised trainee License is renamed the Pesticide Apprentice License. In addition, the rules expand the ability to renew the Pesticide Apprentice License. Existing administrative rules limit directly supervised trainees to one lifetime annual renewal. A pesticide Apprentice may maintain this license indefinitely by attending educational program. The rules restrict Pesticide Apprentices from applying pesticides by helicopter or fixed wing aircraft.

The amendments are intended to allow flexibility for employers to hire, train, supervise and maintain Pesticide Apprentices. Persons who qualify for the Pesticide Apprentice license will be able to enter the industry at a more gradual pace and will be introduced to concepts presented in continuing education programs. Persons with limited written English language skills or test-taking abilities will be allowed to continue employment under the supervision of a fully

# ADMINISTRATIVE RULES

licensed applicator. The rules clarify several trainee responsibilities, ensure documentation of the supervisor-trainee relationship; and

The Agency received public comments in support of the rule change as it will streamline the licensing process by having the Pesticide Apprentice license replace both the Commercial Directly Supervised trainee license and the Public Directly Supervised trainee license. Also allowing conditions to renew this license reduces the negative economic impact of the rule on businesses by allowing them to retain trained employees.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-057-0001

### Definitions

In addition to the definitions set forth in ORS 634.006, the following shall apply

(1) "Accident" means an undesirable and unintended event, caused by the use or application of pesticides, that adversely affects the environment.

(2) "Compatibility" means the properties of a pesticide that permit its use with other chemicals without undesirable results being caused by such combination.

(3) "Competence" means the proficiency in the performance of activities related to pesticide application, the degree of which is directly related to the nature of such activities.

(4) "Common Exposure Route" means a likely way (oral, dermal, respiratory) by which a pesticide may enter an organism.

(5) "Environment" means water, air, land and plants, humans, or other animals living therein or thereon, and the interrelationships existing among them.

(6) For the purpose of pesticide registration as specified in ORS 634.016, "pesticide product" means a pesticide readily distinguishable from any other pesticide by its content, registration number assigned by the United States Environmental Protection Agency, brand name, trade name, manufacturer, registrant, use as specified in labeling, or other distinction, but not including size or quantity of package.

(7) "Non-Target Organism" means plant or animal life other than to which the pesticide is applied or is intended to be applied.

(8) "Regulated Pest" means a specific organism determined by the Department to be a pest requiring control, or eradication in order to protect the environment.

(9) For the purposes of ORS 634.006(9)(c), 634.106(7), 634.126(1)(c), OAR 603-057-0001(11), and 603-057-0127, the terms "direct charge of," "supervises," "direct supervision," or "supervision" means that:

(a) The supervisor of the person applying a pesticide has determined that the person applying a pesticide has sufficient knowledge and ability to safely apply the particular pesticide according to its label directions and any other additional directions;

(b) The person applying a pesticide is applying the particular pesticide under the instructions of their supervisor; and

(c) The person applying a pesticide is applying the pesticide in such proximity to their supervisor that such supervisor is reasonably available for any needed consultation or further direction, even though such supervisor is not physically present at the time or place of the pesticide application.

(10) "Immediate Supervision" means supervision by an appropriately licensed applicator who is:

(a) Located on the pesticide application site at all times during the application; and

(b) Available at the specific point of pesticide use within a time period of no more than five minutes.

(11) "Pesticide Apprentice" is a type of pesticide trainee or a type of public trainee, as those terms are defined in ORS 634.006(14) and (18), that engages in pesticide application activities under the supervision of a licensed pesticide applicator or a licensed public applicator as described in OAR 603-057-0127. A pesticide apprentice is limited to the categories of pesticide application authorized on the applicator license of the supervisor.

(12) For the purposes of subsection (9) of this rule, "supervisor" means a person that is responsible for the actions of a person applying a pesticide.

Stat. Auth.: ORS 561.190 & 634

Stats. Implemented: ORS 634.306

Hist.: AD 7-1977, f. & ef. 4-5-77; AD 7-1980, f. & ef. 9-25-80; AD 17, f. & cert. ef. 11-15-89; AD 12-1992, f. 10-13-92, cert. ef. 1-1-93; DOA 2-2012, f. 1-13-12, cert. ef. 1-1-13

## 603-057-0100

### Operators, Applicators, Dealers, and Consultants License Fees

The following designated annual fees shall be applicable to each described license:

(1) Pesticide Operator: \$90 including one category; \$15 for each additional category; and \$20 for each additional category after license issued.

(2) Pesticide Applicator: \$50 including one category; \$7.50 for each additional category; and \$12.50 for each additional category after license issued.

(3) Pesticide Trainee or Apprentice: Same as pesticide applicators.

(4) Public Applicator, Trainee or Apprentice: Same as pesticide applicators.

(5) Pesticide Dealer: \$75, with a separate license required for each sales outlet or location.

(6) Pesticide Consultant: \$40.

Stat. Auth.: ORS 561 & 634

Stats. Implemented: ORS 634.116, 634.122, 634.126, 634.132 & 634.136

Hist.: AD 1001(15-73), f. 11-20-73, ef. 12-11-73; AD 7-1977, f. & ef. 4-5-77; AD 24-1981, f. & ef. 12-1-81; DOA 39-2003, f. 10-17-03, cert. ef. 11-15-03; DOA 2-2012, f. 1-13-12, cert. ef. 1-1-13

## 603-057-0127

### Pesticide Apprentice Standards of Competence

(1) The department may issue a pesticide apprentice license for one licensing period, or portion thereof. The department may issue the license to an applicant that is at least 18 years of age upon receipt of:

(a) A license application form that contains all of the information requested by the department;

(b) Payment of the appropriate fee; and

(c) Documentation that the applicant successfully completed, within two years of the date of initial application, a written examination developed and administered by the department for the purpose of assuring that the applicant is competent in the use of pesticides as a pesticide apprentice. The content of this examination shall include the topics listed in OAR 603-057-0129(1)(a) through (e). Successful completion of the examination shall require answering at least 70 percent of the examination questions correctly.

(d) A pesticide apprentice license shall expire on December 31 of the year of issuance, or the following year if issued a license for two consecutive years.

(2) The department may renew a pesticide apprentice license for consecutive licensing periods upon receipt of:

(a) A license renewal application form containing all of the information requested by the department;

(b) Payment of the appropriate fee; and

(c) Documentation that the applicant successfully completed the required credit hours of pesticide instructional sessions during the previous licensing period. The department must accredit the instructional sessions. Eight (8) credit hours are required for each year of a licensing period. Four (4) of the eight (8) credit hours must be core credits as described in OAR 603-057-0135. All training requirements may be waived for the first year of the initial licensing period only.

(3) If a person licensed as a pesticide apprentice does not deliver the form, fee, and documentation described in subsection (2) of this rule to consecutively renew their license, the person will not be eligible to renew their pesticide apprentice license. The person must retake the qualifying examination as described in (1)(c) of this section.

(4) A pesticide apprentice license authorizes the holder to conduct pesticide application activities under the supervision of an appropriately licensed supervisor. The licensed apprentice may apply pesticides only in the categories listed on the supervisor's license. If the supervisor is a licensed public applicator, the licensed apprentice may only apply pesticides as described in ORS 634.116(12).

(5) For each pesticide application made by a pesticide apprentice, a pesticide application record, as required by ORS 634.146 and OAR 603-057-0130, must be made that also contains the names and pesticide license numbers of the appropriately licensed pesticide apprentice(s) and the supervisor(s). The employer of the licensed pesticide apprentice shall retain the record for a period of three years and release them to the department for inspection as required or authorized by ORS Chapters 561 or 634 or rules adopted thereunder.

(6) A pesticide apprentice license does not authorize the holder to conduct pesticide applications by helicopter or fixed wing aircraft.

(7) For purposes of this section "an appropriately licensed supervisor" is:

(a) A licensed pesticide applicator, or licensed public applicator;

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(b) Licensed in the category, or categories, in which the pesticide apprentice is currently engaged.

(8) Any pesticide apprentice conducting pesticide application activities without a valid appropriately licensed supervisor, or who is unable to identify their supervisor, will be considered unlicensed and subject to enforcement actions in accordance to ORS 634.900

Stat. Auth.: ORS 561.190 & 634

Stats. Implemented: ORS 634.306

Hist.: AD 12-1992, f. 10-13-92, cert. ef. 1-1-93; DOA 2-2012, f. 1-13-12, cert. ef. 1-1-13

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

**Rule Caption:** Adopts the 2011 Boiler and Pressure Vessel Specialty Code.

**Adm. Order No.:** BCD 31-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 918-225-0430, 918-225-0435, 918-225-0570, 918-225-0600, 918-225-0620

**Subject:** These rules adopt minimum safety standards for the safe installation and operation of boilers and pressure vessels in Oregon by adopting provisions of national boiler and pressure vessel model codes and standards. These rules adopt the model codes and standards with additional Oregon amendments that will be referred to as the 2011 Oregon Boiler and Pressure Vessel Specialty Code.

Additional rules are amended to change the format of the tables with no changes to the text.

**Rules Coordinator:** Stephanie Snyder—(503) 373-7438

### 918-225-0430

#### Adopted Oregon Boiler and Pressure Vessel Specialty Code

(1) Effective January 1, 2012 the Oregon Boiler and Pressure Vessel Specialty Code consists of the following minimum safety standards for boilers, pressure vessels, pressure piping, parts, items, and repair and alteration procedures:

(a) ORS 480.510 to 480.670 and OAR chapter 918, division 225;

(b) **The Boiler and Pressure Vessel Code of The American Society of Mechanical Engineers (ASME), 2010 Edition** as published, including Section I; Section II, Parts A, B, C, and D; Section IV; Section V; Section VIII, Division 1, 2, and 3; Section IX; and Section X only;

(c) **The 2010 Edition of the ANSI/ASME B31.1 Power Piping Code;**

(d) **The 2010 Edition of the ANSI/ASME B31.3 Process Piping Code;**

(e) **The 2010 Edition of the ANSI/ASME B31.5 Refrigeration Piping Code;**

(f) **The 2011 Edition of the ANSI/ASME B31.9 Building Service Piping Code;**

(g) **The 2011 Edition of the National Board Inspection Code ANSI/NB 23**, including Parts 1, 2, and 3, with Oregon amendments;

(h) **The 2011 Edition of NFPA 85, Boiler and Combustion Systems Hazards Code;** and,

(i) **The 2009 Edition of ASME, CSD-1, Controls and Safety Devices for Automatically Fired Boilers.**

(2) Notwithstanding any licensing or certification provisions contained in the model codes adopted in subsection (1) of this section for inclusion in the **Oregon Boiler and Pressure Vessel Specialty Code**, the standards and requirements applicable to boiler and pressure vessel business and trade licenses, as well as inspector certifications, issued by the Building Codes Division are established in ORS Chapters 455 and 480, and OAR chapter 918, divisions 30, 90, and 225.

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

Stat. Auth.: ORS 455.020, 480.545 & 480.560

Stats. Implemented: ORS 480.545, 480.550 & 480.560

Hist.: DC 17, f. 7-31-72, ef. 8-15-72; DC 19, f. 6-21-73, ef. 7-1-73; DC 27(Temp), f. & ef. 12-31-73; DC 33, f. 5-6-74, ef. 5-25-74; DC 38(Temp), f. & ef. 11-1-74; DC 50, f. 7-2-75, ef. 7-25-75; DC 89, f. & ef. 6-2-77; DC 93, f. & ef. 7-19-76; DC 1-1978, f. 1-5-78, ef. 1-15-78; DC 4-1980, f. & ef. 5-30-80; DC 6-1982, f. & ef. 2-4-82; DC 23-1982, f. & ef. 11-9-82; DC 18-1983, f. & ef. 8-11-1983; DC 21-1983, f. & ef. 9-29-83; DC 1-1984, f. & ef. 1-5-84; DC 18-1984, f. & ef. 5-9-84; DC 36-1984, f. & ef. 12-4-84; DC 16-1985, f. & ef. 7-1-85; DC 6-1986, f. & ef. 5-5-86; DC 2-1987, f. & ef. 2-18-87; BCA 5-1987, f. & ef. 8-24-87; BCA 15-1988, f. & cert. ef. 11-16-88; BCA 25-1989, f. & cert. ef. 7-27-89; Renumbered from 814-025-0006; BCA 5-1990, f. & cert. ef. 2-6-90; BCA 26-1990, f. & cert. ef. 10-30-90; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0015; BCD 17-1996, f. & cert. ef. 9-17-96; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 26-1998, f. 12-30-98, cert. ef. 1-

1-99; BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 13-2002, f. 6-28-02, cert. ef. 7-1-02; BCD 17-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05; BCD 20-2005, f. 9-15-05, cert. ef. 10-1-05; BCD 16-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 33-2008, f. 12-31-08, cert. ef. 1-1-09; BCD 31-2011, f. 12-30-11, cert. ef. 1-1-12

### 918-225-0435

#### Amendments to the Oregon Boiler and Pressure Vessel Specialty Code

(1) The Oregon Boiler and Pressure Vessel Specialty Code is adopted and amended pursuant to OAR chapter 918, division 8. Amendments adopted for inclusion into the Oregon Boiler and Pressure Vessel Specialty Code are placed in this rule.

(2) Effective January 1, 2012, the 2011 Edition of the National Board Inspection Code ANSI/NB 23, part 1 is amended in Oregon as provided in Table 2-B.

**NOTE:** Table 2-B is available on the division's Web site at <<http://www.bcd.oregon.gov/rules.html#oar>>.

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

Stat. Auth.: ORS 455.020, 480.545 & 480.550

Stats. Implemented: ORS 480.545 & 480.550

Hist.: BCD 16-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 6-2007, f. 6-8-07, cert. ef. 6-15-07; BCD 33-2008, f. 12-31-08, cert. ef. 1-1-09; BCD 31-2011, f. 12-30-11, cert. ef. 1-1-12

### 918-225-0570

#### Boiler and Pressure Vessel Inspection Schedules

Unless the division grants special permission, all inspectors must comply with the following inspection schedule:

(1) Power boilers must be inspected, at minimum:

(a) Internally — every year, when physical construction of the boiler allows; and

(b) Externally — every year, while under pressure.

(2) Cast iron boilers must be inspected externally — every two years, while under pressure.

(3) Low pressure steam boilers must be inspected, at minimum:

(a) Internally — every two years, when physical construction of the boiler allows; and

(b) Externally — every two years, while under pressure.

(4) Hot water heating and hot water supply boilers must be inspected:

(a) Internally — every six years, when physical construction of the boiler allows; and

(b) Externally — every two years, while under pressure.

(5) Pressure vessels containing anhydrous ammonia intended for use as fertilizer must be inspected, at minimum, externally every three years.

(6) Portable pressure vessels, mounted on a motorized vehicle and containing only air, not exceeding 5 cubic feet in volume and operated at gauge pressures of not more than 200 pounds per square inch must be inspected, at minimum:

(a) Internally — every four years, subject to section (14) of this rule; and

(b) Externally — every four years.

(7) Fixed pressure vessels, containing only air, not located at a place of public assembly, not exceeding 20 cubic feet in volume, and operated at gauge pressures of not more than 200 pounds per square inch must be inspected, at minimum:

(a) Internally — every six years, subject to section (14) of this rule; and

(b) Externally — every six years.

(8) Co2 vessels and hydro-pneumatic pressure vessels, used for beverage service, not exceeding 20 cubic feet in volume, and operated at gauge pressures of not more than 300 pounds per square inch must be inspected, at minimum:

(a) Internally — every six years, subject to section (14) of this rule; and

(b) Externally every six years.

(9) Pressure vessels, not classified in sections (5), (6), (7) and (8) of this rule, and subject to internal corrosion or erosion must be inspected, at minimum:

(a) Internally — every two years, subject to section (14) of this rule; and

(b) Externally — every two years.

(10) Unfired pressure vessels, not classified in sections (5), (6), (7), (8), (11) and (12) of this rule, and not subject to internal corrosion must be inspected, at minimum, externally — every four years.

(11) Unfired pressure vessels not subject to internal corrosion but containing a substance which, if it were to leak, might cause serious irreversible harm to a person must be inspected, at minimum:

(a) Internally — every two years, subject to section (14) of this rule; and

(b) Externally — every two years.

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(c) A substance “might cause serious irreversible harm” if the substance’s Material Safety Data Sheet describes serious health or physical risks caused by short-term exposure to the substance.

(12) Unfired pressure vessels not subject to internal corrosion that are located at a place of public assembly and are not classified in section (8) of this rule must be inspected, at minimum:

(a) Internally — every two years, subject to section (14) of this rule; and

(b) Externally — every two years.

(13) Pressure piping systems containing refrigerants, steam, or pressurized condensate: Inspection during fabrication, installation, repair, or alteration for verification of compliance with material, welding, brazing, and structural support requirements. The inspector may require other tests to verify quality of weldments. This rule does not apply to welded repair of pressure piping under OAR 918-225-0720.

(14) The inspector may waive an internal inspection, under section (6), (7), (8), (9), (11) or (12) of this rule if the inspector believes from alternate inspection methods an internal inspection is not necessary to verify the safe condition of the vessel.

(15) An inspector may require additional internal or external inspections, or tests, other than those required in this rule, if the inspector has reason to believe that the boiler or pressure vessel does not meet minimum safety standards.

(16) Failure to comply with sections (1) through (15) of this rule may cause inspections to be performed by a deputy inspector per ORS 480.570(6) as directed by the chief inspector.

**NOTE:** The information in this rule is summarized in Table 1-B, Boiler and Pressure Vessel Inspection Cycles.

Stat. Auth.: ORS 480.545, 480.550 & 480.560

Stats. Implemented: ORS 480.545, 480.550 & 480.560

Hist.: DC 17, f. 7-31-72, ef. 8-15-72; DC 12-1980, f. & ef. 9-12-80; BCA 1-1987, f. & ef. 7-1-87; Renumbered from 814-025-0075; BCA 22-1992(Temp), f. 12-15-92, cert. ef. 1-1-93; BCA 4-1993, f. & cert. ef. 4-5-93; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0175; BCD 18-1996, f. & cert. ef. 9-17-96; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 15-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 7-2007, f. 7-13-07, cert. ef. 9-1-07; BCD 29-2008, f. 12-31-08, cert. ef. 1-1-09; BCD 31-2011, f. 12-30-11, cert. ef. 1-1-12

## 918-225-0600

### Permits

(1) An installation permit is required before installing, altering, or repairing a nonexempt boiler or pressure vessel. Fees for installation permits are non-refundable.

(2) An operating permit or a temporary operation authorization is required before placing a nonexempt vessel into operation.

(3) An installation permit fee includes two inspections of the boiler or pressure vessel. An operating permit fee includes one external inspection of the boiler or pressure vessel and one internal inspection when both are required. If an inspection is scheduled, and the inspector is at the site but the boiler or pressure vessel is not ready or cannot be accessed, the rescheduled inspection will be at an additional cost. The fee for such inspections is the hourly rate specified in ORS 480.605.

(4) Permits to operate boilers or pressure vessels shall be issued periodically according to vessel type, based on the schedule established by the division in **Table 1-A**.

(5) Operating and installation permit fees are as shown in **Table 3-B**.

(6)(a) Operating permit fees not received within 90 days of the billing date may be considered delinquent and subject to a late penalty of double the fee amount. It is the equipment owner’s responsibility to maintain a current operating permit. This responsibility includes notifying the division of address and other billing information changes. Late penalties may only be waived under exceptional circumstances.

(b) All waiver requests must be submitted in writing and must clearly state the reason for the request. A waiver may be granted for all or part of the additional fee.

(7) Prepaid permit application forms do not authorize work until the contractor provides the required information to the division for review and approval. Prior to beginning the intended installation, repair, or alteration, the contractor must notify the deputy or special inspector who will inspect the work. Work may not begin until the inspector has reviewed and approved the work to be performed.

(8) Upon receipt of permit approval:

(a) The permit must be posted at the job site before beginning the work; or

(b) The approved permit number must be posted at the job site and signed by the contractor.

(9) A permit issued under this rule is not transferable.

(10) This rule does not change the provisions for emergency permits in ORS 480.630(6). It is recommended, but not required, that emergency permits be reviewed and coordinated with the inspector responsible for inspecting the completed work.

**NOTE:** Table 1-A, Boiler and Pressure Vessel Operating Permit Periods, and Table 3-B, Boiler and Pressure Vessel Permit Fees, are available on the division’s Web site at <<http://www.bcd.oregon.gov/rules.html#oar>>.

Stat. Auth.: ORS 480.585, 480.595 & 480.605

Stats. Implemented: ORS 480.585, 480.595, 480.605 & 480.630

Hist.: BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 14-2007, f. 12-28-07 cert. ef. 1-1-08; BCD 4-2009(Temp), f. & cert. ef. 7-16-09 thru 1-1-10; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10; BCD 31-2011, f. 12-30-11, cert. ef. 1-1-12

## 918-225-0620

### Bulk Rate Permits

(1) Bulk rate permits may be granted if there is a quantity of either six (6) or more boilers or six (6) or more pressure vessels at the same location.

(2) To obtain bulk rate permits, the owner or user must make a written request to the division at least 30 days before the expiration of existing operating permits.

(3) If a bulk rate site requires two or more inspections during an inspection cycle, the division may rescind bulk rate permits and charge the full operating permit fees, as provided in **Table 3-B**. Inspection cycles are listed in **Table 1-B**.

**NOTE:** Table 1-B, Boiler & Pressure Vessel Inspection Cycles, and Table 3-B, Boiler & Pressure Vessel Permit Fees, are available on the division’s Web site at <<http://www.bcd.oregon.gov/rules.html#oar>>

Stat. Auth.: ORS 480.600

Stats. Implemented: ORS 480.600

Hist.: DC 17-1982, f. 7-31-72, ef. 8-15-72; Renumbered from 814-025-0050; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0120; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10; BCD 31-2011, f. 12-30-11, cert. ef. 1-1-12

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**Rule Caption:** Updates referenced standards in the 2010 Oregon Structural Code.

**Adm. Order No.:** BCD 32-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 918-460-0015

**Subject:** This rule adopts amendments to update certain National Fire Protection Association (NFPA) standards referenced in the 2010 Oregon Structural Specialty Code (OSSC). The changes bring the referenced standards up to the current editions of NFPA 13, NFPA 13R, NFPA 13D, Installation of Fire Sprinklers, and NFPA 72, National Fire Alarm and Signaling Code series. The changes are in Chapter 35 which contains the referenced standards.

**Rules Coordinator:** Stephanie Snyder—(503) 373-7438

## 918-460-0015

### Amendments to the Oregon Structural Specialty Code

The **2010 Oregon Structural Specialty Code** is adopted and amended pursuant to OAR chapter 918, division 8. Amendments adopted for inclusion into the **2010 Oregon Structural Specialty Code** are placed in this rule, showing the section reference, a descriptive caption, and a short description of the amendment.

(1) Effective January 1, 2011 the 2010 Oregon Structural Specialty Code is amended by adding Section 1811 Radon Control Methods for Public Buildings and Section 1812 Radon Control Methods for R-2 and R-3 Occupancies.

(a) Radon mitigation provisions in Section 1811 applicable to new public buildings are adopted January 1, 2011 but do not become enforceable until April 1, 2013 as authorized by Chapter 83, 2010 Laws (Senate Bill 1025).

(b) Radon mitigation provisions in Section 1812 applicable to residential buildings identified as Group R-2 or R-3 are adopted January 1, 2011 but do not become enforceable until April 1, 2011 as authorized by Chapter 83, 2010 Laws (Senate Bill 1025).

(2) Effective April 1, 2011 the **2010 Oregon Structural Specialty Code** Section 908 “Emergency Alarm Systems” is amended by adding new subsection 908.7 requirements for Carbon Monoxide Alarms.

(3) Effective May 13, 2011, Section 2308.9.3.2 alternate braced wall panel adjacent to a door or window opening is amended for tie-down devices.

(4) On November 1, 2011, the **2010 Oregon Structural Specialty Code** is amended to include revisions to the federal regulations for Title II and Title III of the Americans with Disabilities Act, and Oregon-specific

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amendments. These amendments are not enforceable until March 1, 2012. The amendments include:

(a) Replace Chapter 11 with Chapter 11 from the 2009 edition of the International Building Code (IBC), as amended to include Oregon-specific amendments;

(b) Amend Chapter 9 by adding 2009 IBC Table 907.5.2.3.3, Visible Alarms;

(c) Amend Chapter 10 by adding 2009 IBC Section 1007, Accessible Means of Egress;

(d) Amend Chapter 34 by adding 2009 IBC Section 3411, Accessibility for Existing Buildings;

(e) Amend Chapter 11 by adding Section 1111, accessibility standards for clustered mailboxes;

(f) Add as referenced standards American National Standards Institute (ANSI) Standard 117.1, 2003 Edition, Sections 101-106, 201-203, 301-309, 401-406.11, 406.13, 406.14, 501-506, 601-611, 701-708, 801-807, 901-904, and 1001-1005.

(5) Effective January 1, 2012, the **2010 Oregon Structural Specialty Code** is amended as follows:

(a) Fire Sprinklers. The reference in Chapter 35 to NFPA 13-07, Installation of Sprinkler Systems, is deleted and replaced with NFPA 13-10, Installation of Sprinkler Systems.

(b) Fire Sprinklers. The reference in Chapter 35 to NFPA 13D-07, Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, is deleted and replaced with 13D-10, Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.

(c) Fire Sprinklers. The reference in Chapter 35 to NFPA 13R-07 Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height is deleted and replaced with 13R-10 Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.

(d) Fire Alarms. The reference in Chapter 35 to NFPA 72-07, National Fire Alarm Code, is deleted and replaced with 72-10, National Fire Alarm and Signaling Code.

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

Stat. Auth.: ORS 447.231, 447.247, 455.030, 455.110 & 455.112

Stats. Implemented: ORS 447.247, 455.110, 455.112 & 2011 OL Ch. 488, Sec. 5

Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCD 6-1994, f. 2-25-94, cert. ef. 5-1-94; BCD 22-1994, f. 9-28-94, cert. ef. 1-1-95; BCD 31-1994(Temp), f. & cert. ef. 12-23-94; BCD 32-1994, f. & cert. ef. 12-30-94; BCD 2-1995, f. & cert. ef. 2-9-95; BCD 5-1995, f. & cert. ef. 3-15-95; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 6-1996, f. 3-29-96, cert. ef. 4-1-96; BCD 12-1997, f. 9-10-97, cert. ef. 10-1-97; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 24-1998(Temp), f. & cert. ef. 12-1-98 thru 5-29-99; Temporary Rule repealed by BCD 3-1999, f. 3-12-99, cert. ef. 4-1-99; BCD 5-1999, f. 6-17-99, cert. ef. 10-1-99; BCD 12-1999(Temp), f. 9-23-99, cert. ef. 11-1-99 thru 4-28-00; BCD 2-2000, f. 1-14-00, cert. ef. 4-1-00; BCD 20-2000, f. 9-15-00, cert. ef. 10-1-00; BCD 8-2001, f. 7-17-01, cert. ef. 10-1-01; BCD 18-2001, f. 12-21-01, cert. ef. 1-1-02; BCD 14-2003, f. 8-13-03, cert. ef. 10-1-03; BCD 18-2003(Temp), f. & cert. ef. 11-14-03 thru 5-11-04; BCD 5-2004, f. & cert. ef. 4-1-04; BCD 16-2004, f. 9-24-04, cert. ef. 10-1-04; BCD 21-2004, f. & cert. ef. 10-1-04; BCD 9-2005(Temp), f. & cert. ef. 4-7-05 thru 9-30-05; BCD 14-2005, f. & cert. ef. 7-5-05; BCD 18-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05; BCD 22-2005, f. 9-29-05, cert. ef. 10-1-05; BCD 23-2005, f. 9-29-05, cert. ef. 10-1-05; BCD 1-2006, f. & cert. ef. 2-1-06; BCD 9-2006, f. 6-30-2006, cert. ef. 7-1-06; BCD 1-2007, f. 2-15-07, cert. ef. 4-1-07; BCD 9-2008(Temp), f. & cert. ef. 6-25-08 thru 12-22-08; BCD 20-2008, f. 9-30-08, cert. ef. 10-1-08; BCD 4-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 19-2010, f. 12-30-10, cert. ef. 1-1-11; BCD 1-2011, f. & cert. ef. 2-15-11; BCD 14-2011(Temp), f. & cert. ef. 5-13-11 thru 11-9-11; BCD 28-2011, f. 9-30-11, cert. ef. 10-1-11; BCD 30-2011, f. & cert. ef. 11-1-11; BCD 32-2011, f. 12-30-11, cert. ef. 1-1-12

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**Rule Caption:** Adopts the 2011 Oregon Elevator Specialty Code.

**Adm. Order No.:** BCD 33-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 918-400-0455, 918-400-0458

**Subject:** These rules adopt minimum safety standards for the safe installation, inspection and operation of elevators in Oregon that will be referred to as the 2011 Oregon Elevator Specialty Code. These rules adopt provisions of national model elevator codes and standards for use in Oregon and make certain Oregon-specific amendments to the model code language.

Additional rules are amended to change the format of the tables with no changes to the text.

**Rules Coordinator:** Stephanie Snyder—(503) 373-7438

## 918-400-0455

### Adopted Oregon Elevator Specialty Code

(1) Effective January 1, 2012, the **2011 Oregon Elevator Specialty Code** is comprised of:

(a) The Oregon Specialty Lift Code, 2005 edition; and

(b) Four national model codes published by the American Society of Mechanical Engineers (ASME), as amended by the Building Codes Division in OAR 918-400-0458, which are the:

(A) Safety Code for Elevators and Escalators, ASME A17.1-2010;

(B) Guide for Inspection of Elevators, Escalators and Moving Walks, ASME A17.2-2010;

(C) Standard for Elevator Suspension, Compensation, and Governor Systems, ASME 17.6-2010;

(D) Safety Standard for Platform Lifts and Stairway Chairlifts, ASME A18.1-2008; and

(E) Safety Standard for Belt Manlifts, ASME A90.1-2009.

(2)(a) Referenced standards referred to within adopted national model codes shall recognize the latest Oregon adopted edition unless otherwise specified in this rule.

(b) Notwithstanding any licensing or certification provisions contained in the model codes adopted in subsection (1) of this section for inclusion in the **Oregon Elevator Specialty Code**, the standards and requirements applicable to elevator business and trade licenses, as well as inspector certifications, issued by the Building Codes Division are established in ORS chapters 455, 460, and 479, and OAR chapter 918, divisions 30, 90, and 282.

[Publications: Publications referenced are available for review at the agency.]

Stat. Auth.: ORS 455.030 & 460.085

Stats. Implemented: ORS 455.030 & 460.085

Hist.: DC 25-1982, f. & ef. 12-16-82; DC 12-1986(Temp), f. & ef. 7-8-86; DC 10-1987, f. & ef. 4-13-87; Renumbered from 814-030-0005; BCA 35-1989, f. 12-22-89, cert. ef. 1-1-90; BCA 7-1992, f. & cert. ef. 4-10-92; BCA 26-1992, f. 12-29-92, cert. ef. 1-1-93; BCA 13-1993(Temp), f.6-23-93, cert. ef. 7-1-93; BCA 17-1993, f. 8-24-93, cert. ef. 9-1-93; BCA 24-1993, f. 10-22-93, cert. ef. 11-1-93; BCA 35-1993, f. 12-14-93, cert. ef. 1-1-94; BCD 21-1994, f. 9-13-94, cert. ef. 9-15-94; BCD 18-1995, f. & cert. ef. 12-15-95; Renumbered from 918-400-0010; BCD 3-1997, f. 3-18-97, cert. ef. 4-1-97; BCD 20-1997, f. 12-24-97, cert. ef. 1-1-98; BCD 13-1999, f. & cert. ef. 10-1-99, Renumbered from 918-400-0520; BCD 3-2003, f. 2-28-03, cert. ef. 3-1-03; BCD 2-2005, f. 3-16-05, cert. ef. 4-1-05; BCD 17-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 34-2008, f. 12-31-08, cert. ef. 1-1-09; BCD 33-2011, f. 12-30-11, cert. ef. 1-1-12

## 918-400-0458

### Amendments to the Oregon Elevator Specialty Code

(1) The **Oregon Elevator Specialty Code**, adopted at OAR 918-400-0455, is amended pursuant to OAR chapter 918, division 8. Amendments to the **Oregon Elevator Specialty Code** are provided in this rule, along with the title of the amended code and a descriptive caption of the amendment.

(2) Effective January 1, 2011, the Safety Code for Elevators and Escalators, ASME A17.1-2010, is amended by the adoption of Oregon specific amendments. The Oregon specific amendments are published in their entirety at Table 2-L.

**NOTE:** Table 2-L is available on the division's Web site at

<<http://www.bcd.oregon.gov/rules.html#oar>>

[Publications: Publications referenced are available for review at the agency.]

Stat. Auth.: ORS 455.030 & 460.085

Stats. Implemented: ORS 455.030 & 460.085

Hist.: BCD 17-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 34-2008, f. 12-31-08, cert. ef. 1-1-09; BCD 33-2011, f. 12-30-11, cert. ef. 1-1-12

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**Rule Caption:** Clarifying Oregon Reach Code Plan Review and Inspections.

**Adm. Order No.:** BCD 34-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 918-098-1000, 918-098-1620

**Subject:** These rules clarify which certifications are required for inspecting buildings under the Oregon Reach Code. The Oregon Reach Code does not alter any of the existing certification rules. The Oregon Reach Code builds off of the existing specialty codes. These rules clarify that individuals certified to inspect particular specialty codes are also charged with inspecting the corresponding provisions of the Oregon Reach Code. These rules also delete an obsolete reference to certifications no longer offered in relation to post-earthquake damage inspector registration requirements.

**Rules Coordinator:** Stephanie Snyder—(503) 373-7438

# ADMINISTRATIVE RULES

## 918-098-1000

### Purpose and Scope

(1) These rules establish minimum training, experience, certification, and certification renewal requirements for building officials and persons who perform specialty code plan review and inspections in this state.

(a) The certification requirements for commercial plumbing and electrical inspectors are located in OAR 918-695-0400 through 918-695-0410 and 918-281-0000 through 918-281-0020.

(b) Plan review and inspections required under the Oregon Reach Code are to be performed by individuals certified under these rules, OAR chapter 918, division 281, or chapter 918, division 695 to conduct plan review or inspections for the specialty code under which the particular Reach Code provision is regulated.

(2) Nothing in these rules is intended to allow a person to violate statute or rule or change certification and licensing requirements set forth in statute.

(3) Nothing in these rules prevents the director from waiving procedural requirements in the rare circumstance where substantial compliance is impracticable.

Stat. Auth.: ORS 455.720 & 455.500

Stats. Implemented: ORS 446.250, 455.622, 455.720 & 455.500

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 18-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11; BCD 20-2011(Temp), f. & cert. ef. 7-12-11 thru 12-31-11; BCD 24-2011, f. 7-26-11, cert. ef. 10-1-11; BCD 34-2011, f. 12-30-11, cert. ef. 1-1-12

## 918-098-1620

### Post Earthquake Damage Inspector Registration Requirements

All persons seeking registration as a post-earthquake inspector must complete a division application form and complete a division approved Applied Technology Council (ATC) training course within three years of application.

(1) To be registered as a general post-earthquake damage inspector, an applicant must:

(a) Be registered in any state as an architect, or be qualified by training and experience to take the Oregon examination for registration as an architect; or

(b) Be certified in the state of Oregon as an A-level, B-level structural or fire and life safety plans examiner or inspector; or

(c) Possess a current ICC Commercial Building Inspector, Commercial Building Plans Examiner or Commercial Fire Plans Examiner certificate; or

(d) Be registered in any state as a certified professional engineer in civil or structural engineering, or be qualified by education and experience to take the Oregon certified professional engineer examination in civil or structural engineering, even though the applicant has not taken the Fundamentals of Engineering examination.

(2) To be registered as a limited post-earthquake damage inspector, an applicant must:

(a) Meet any of the qualifications listed in subsection (1) of this rule;

(b) Be certified in the State of Oregon as a residential structural inspector; or

(c) Be certified in the State of Oregon as a residential plans examiner; or

(d) Possess a current ICC Residential Building Inspector certificate.

Stat. Auth.: ORS 455.100 & 455.448

Stats. Implemented: ORS 455.448 & 455.449

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0620; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0620; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 34-2011, f. 12-30-11, cert. ef. 1-1-12

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**Rule Caption:** Adopts amendments to the 2010 Oregon Energy Efficiency Specialty Code.

**Adm. Order No.:** BCD 35-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 918-460-0510

**Subject:** This rule exempts economizer relief dampers that are integral to unitary and packaged equipment from the requirement in Section 503.2.4.5 of the Oregon Energy Efficiency Specialty Code that all outdoor air supply and exhaust vents be equipped with motorized dampers that shut automatically when the systems or spaces served are not in use.

**Rules Coordinator:** Stephanie Snyder—(503) 373-7438

## 918-460-0510

### Amendments to the Oregon Energy Efficiency Specialty Code

(1) The Oregon Energy Efficiency Specialty Code is adopted and amended pursuant to OAR chapter 918, division 8. Amendments adopted for inclusion into the Oregon Energy Efficiency Specialty Code are placed in this rule, showing the section reference, a descriptive caption, and a short description of the amendment.

(2) Effective January 1, 2012 Section 503.2.4.5 of the Oregon Energy Efficiency Specialty Code is amended to include an additional exception for economizer relief dampers in certain applications.

Stat. Auth.: ORS 455.030, 455.110 & 455.511

Stats. Implemented: ORS 455.030, 455.110 & 455.511

Hist.: BCD 5-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 4-2011, f. & cert. ef. 3-11-11; BCD 21-2011, f. 7-26-11, cert. ef. 10-1-11; BCD 35-2011, f. 12-30-11, cert. ef. 1-1-12

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**Rule Caption:** Boiler and Pressure Vessel Revised Definitions and Installation Permit Requirements; Establishment of Minor Repair Permits.

**Adm. Order No.:** BCD 36-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 12-1-2011

**Rules Adopted:** 918-225-0606, 918-225-0609, 918-225-0612, 918-225-0615, 918-225-0618

**Rules Amended:** 918-225-0240, 918-225-0600

**Subject:** These rules establish new definitions for the Oregon boiler and pressure vessel program. These rules replace the current definition of “installer” with a definition of “installation” and adopt a definition of “repair” that establishes three categories of repairs: welded repairs, non-welded major repairs, and minor repairs.

These rules also establish a requirement that owners of boilers and pressure vessels must acquire an installation permit before installing, altering, or repairing equipment located in certain types of structures. Owners of boilers and pressure vessels that provide 24-hour manned operation of their equipment are exempt from the installation permit requirement. These rules provide that installation permits expire 18 months after purchase unless the purchaser requests an extension.

These rules also establish a system of minor repair permits for minor repairs made to boilers and pressure vessels.

**Rules Coordinator:** Stephanie Snyder—(503) 373-7438

## 918-225-0240

### Definitions

As used in OAR 918, division 225, unless the context requires otherwise:

(1) “Agricultural Purposes” means:

(a) Sowing, tending, and harvesting of products of the soil grown under natural conditions;

(b) Raising of poultry or fowl;

(c) Pasturage or raising of livestock or other animals; or

(d) Original processing of the farm product, but not the processing of the product of a different operator, or reprocessing work as freezing, canning, or packing if performed substantially for commercial purposes.

(2) “Available” to determine inspection fees at cost, means the vessels must be due for inspection in the year the notification is applicable, and must all be ready for inspection at the time designated by the inspector.

(3) “Board” is defined in ORS 480.515(2).

(4) “Boiler Room” means any enclosed room or designated space within a building, intended by design or by usage to contain a boiler that is connected and available for use. A boiler located in an area not meeting the definition of “boiler room” under OAR 918-225-0465 shall apply to any space within 20 feet of any burner.

(5) “Building Service Piping” means piping systems operating at or less than 150 psig steam; and water at or less than 160 psig and 250° F as described in ANSI/ASME Standard B31.9.

(6) “Chief Inspector” means the inspector appointed by the director pursuant to ORS 480.565(1).

(7) “Farm” means an area of land:

(a) Located in a rural district;

(b) Of sufficient size to generally be considered as a farm in its locale; and

(c) Devoted primarily to tillage and raising crops under natural conditions, or to raising animals, fowl, or poultry.



# ADMINISTRATIVE RULES

(8) "Emergency" as used in ORS 480.630(6) means an unplanned circumstance requiring immediate repair, installation, replacement, or shut-down because of risk to health, life, or property.

(9) "Hobby" or "Demonstration" means recreational or other non-commercial use.

(10) "Immediate Safety Hazard" means hazardous conditions exist requiring immediate correction to a boiler, pressure vessel, or pressure piping system to preserve the safety of people or property.

(11) "Installation" means, but is not limited to, permanently placing in its final operating position, assembling, or connecting a boiler, pressure vessel, boiler controls, or related appurtenances for service or use. Installation includes, but is not limited to, connecting water, steam, air, refrigerant, fuel source, or other product piping to or from a boiler or pressure vessel. Merely transporting, moving or temporarily positioning a boiler or pressure vessel is not an installation. For the purposes of these rules, an electrical power supply connection to a boiler or pressure vessel is not an installation.

(12) "National Board" means the National Board of Boiler and Pressure Vessel Inspectors.

(13) "Operating" means any vessel connected and ready for service.

(14) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(15) "Place of Public Assembly" means a building used or held for use, in whole or in part, for worship; health treatment; rest, recuperation, or retirement living; child care nurseries or institutions; public meetings; education; instruction; entertainment; eating; recreation; or awaiting transportation.

(16) "Pressure Piping" means piping systems and components under the scope of ASME B31.1, B31.3, B31.5, and B31.9.

(17) "Pressure Relief Valve" means a valve activated by inlet static pressure which opens in proportion to the increase in pressure over the opening pressure range. Only ASME approved valves are allowed under the boiler rules.

(18) "Pressure Vessel" is defined in ORS 480.515(12).

(19) "Process Piping Inspector" means the owner's inspector, for the inspection of ASME B31.3 Process Piping, Category "M" fluid service only.

(20) "Psig" means pounds per square inch gauge pressure.

(21) "Related Appurtenance" is defined in ORS 480.515(13).

(22) "Repair" means:

(a) Welded or Riveted Repairs, meaning welding or riveting within or on the pressure boundaries of a boiler, pressure vessel or related appurtenance to restore the vessel or appurtenance to a safe and satisfactory operating condition, or any work that might impair the integrity of the pressure retaining item;

(b) Non-welded Major Repairs, meaning work performed on a boiler or pressure vessel and its related appurtenances by non-welded means to restore the vessel or appurtenance to a safe and satisfactory operating condition, including but not limited to the replacement of burners, tubes and cast iron sections; and

(c) Minor Repairs, meaning the non-welded replacement of safety devices, including but not limited to, low water cut-offs, pressure relief valves, safety valves, safety switches, rupture discs, high pressure or temperature limits, low pressure or temperature limits, fuel train components, flame detectors, flame safeguards, heat exchanger elements, and burner components.

(23) "Safety Valve" means a valve activated by inlet static pressure and characterized by rapid opening or pop action. Only ASME approved valves are allowed under the boiler rules.

(24) "Same Location," to determine inspection fees at cost, means that all vessels are within 2,000 feet of one another.

(25) "Service of Process" means deposit in the U.S. mail a copy of a notice addressed to the respondent at the respondent's last known address.

(26) "Single Family Dwelling" means a one-family dwelling structure.

(27) "Structure" means a building or shed with a roof and enclosed on the sides 75 percent or more.

(28) "Traction Boiler" means a boiler constructed before January 1, 1961, designed to operate or pull equipment, or to convert steam power into a flywheel energy driving apparatus such as a thresher, road roller, or grind-ing equipment.

(29) "Vessel That is Considered Subject to Corrosion or Erosion" means the vessel contains or is intended to contain contents having a corrosive or erosive effect on any portion of the vessel. The use of glass linings

leaves a vessel subject to corrosion unless all portions of the vessel are impervious to the corrosive or erosive effects of the contents.

Stat. Auth.: ORS 455.030 & 480.545

Stats. Implemented: ORS 480.525, 480.545, 480.550, 480.560 & 480.565

Hist.: DC 17, f. 7-31-72, ef. 8-15-72; DC 3-1982, f. & ef. 2-3-82; DC 1-1984, f. & ef. 1-5-84; BCA 4-1989, f. & cert. ef. 4-17-89; Renumbered from 814-025-0003; BCA 4-1989, f. & cert. ef. 4-17-89; BCA 5-1991, f. & cert. ef. 3-15-91; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0005; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 26-1998, f. 12-30-98, cert. ef. 1-1-99; BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 4-2003, f. & cert. ef. 3-14-03; BCD 17-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05; BCD 20-2005, f. 9-15-05, cert. ef. 10-1-05; BCD 14-2007, f. 12-28-07 cert. ef. 1-1-08; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10; BCD 36-2011, f. 12-30-11, cert. ef. 1-1-12

## 918-225-0600

### Permits

(1) Except as otherwise provided in this rule, an installation permit is required before installing, altering, or repairing a nonexempt boiler or pressure vessel.

(2) Notwithstanding section (1) of this rule:

(a) An installation permit is not required for minor repairs performed under a minor repair permit in accordance with OAR 918-225-0606 to 918-225-0618.

(b) An installation permit is not required for minor repairs or non-welded major repairs to a pressure vessel containing liquefied petroleum gas that is under the jurisdiction of the State Fire Marshal.

(c) If the installation, alteration, or repair will be performed by the owner of the boiler or pressure vessel or an employee of the owner, an installation permit is only required if the boiler or pressure vessel is located in a structure that:

(i) Is classified as an Education Group "E" Occupancy under the Oregon Structural Specialty Code;

(ii) Is classified as an Institutional Group "I-2" Occupancy under the Oregon Structural Specialty Code; or

(iii) Has an occupant load greater than 100, as calculated under the Oregon Structural Specialty Code.

(d) Notwithstanding subsection (c) of this rule, an installation permit is not required for a boiler or pressure vessel that is installed, altered, or repaired by its owner or an employee of its owner in a location that is staffed 24 hours a day, seven days a week, by individuals knowledgeable in the operation and maintenance of the boiler or pressure vessel.

(3) An operating permit or a temporary operation authorization is required before placing a nonexempt vessel into operation.

(4) An installation permit fee includes two inspections of the boiler or pressure vessel. An operating permit fee includes one external inspection of the boiler or pressure vessel and one internal inspection when both are required. If an inspection is scheduled, and the inspector is at the site but the boiler or pressure vessel is not ready or cannot be accessed, the rescheduled inspection will be at an additional cost. The fee for such inspections is the hourly rate specified in ORS 480.605.

(5) Permits to operate boilers or pressure vessels shall be issued periodically according to vessel type, based on the schedule established by the division in Table 1-A.

(6) Operating and installation permit fees are as shown in Table 3-B.

(7)(a) Operating permit fees not received within 90 days of the billing date may be considered delinquent and subject to a late penalty of double the fee amount. It is the equipment owner's responsibility to maintain a current operating permit. This responsibility includes notifying the division of address and other billing information changes. Late penalties may only be waived under exceptional circumstances.

(b) All waiver requests must be submitted in writing and must clearly state the reason for the request. A waiver may be granted for all or part of the additional fee.

(8) Where an installation permit is required, the equipment owner or, if the work will be performed by a contractor, the contractor, must acquire the installation permit prior to beginning the intended installation, repair, or alteration, and notify the deputy or special inspector who will inspect the work. Work may not begin until the inspector has reviewed and approved the work to be performed.

(a) The installation permit must be posted at the job site before beginning the work.

(b) This rule does not change the provisions for emergency permits in ORS 480.630(6). It is recommended, but not required, that emergency permits be reviewed and coordinated with the inspector responsible for inspecting the completed work.

(c) Commissioning of a boiler by a commissioning agent or manufacturer's representative does not require a separate installation permit.

(9) An installation permit or operating permit issued under this rule is not transferable.

# ADMINISTRATIVE RULES

(10) An installation permit automatically expires 18 months from the date of issuance unless the installation, alteration, or repair begins before the end of the 18th month.

(a) The holder of an un-expired installation permit may submit a written request for an unconditional six-month extension of the expiration date. The division may not extend an installation permit more than twice.

(b) An expired installation permit may not be extended or renewed. A new application and fee will be required. The division will not refund the fees for an expired installation permit.

(c) Fees for installation permits are non-refundable.

**NOTE:** Boiler and Pressure Vessel Operating Permit Periods can be found in Table 1A and Boiler and Pressure Vessel Permit Fees can be found in Table 3-B.

Stat. Auth.: ORS 480.585, 480.595, & 480.605

Stats. Implemented: ORS 480.585, 480.595, 480.605, & 480.630

Hist.: BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 14-2007, f. 12-28-07 cert. ef. 1-1-08; BCD 4-2009(Temp), f. & cert. ef. 7-16-09 thru 1-1-10; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10; BCD 31-2011, f. 12-30-11, cert. ef. 1-1-12; BCD 36-2011, f. 12-30-11, cert. ef. 1-1-12

## 918-225-0606

### Issuance and Purchase of Minor Repair Permits

(1) Beginning January 15, 2012, the Building Codes Division will issue minor repair permits in lots of five at a cost of \$175 per lot. Each lot of minor repair permits is valid for one year from the date of purchase.

(2) The following persons may purchase minor repair permits:

(a) Contractors holding a verified Construction Contractors Board license and a valid boiler contractor license under ORS 480.630; or

(b) Owners of boilers and pressure vessels and their designated representatives.

(3) Minor repair permits are not transferable.

Stat. Auth.: ORS 480.595, 455.154 & 455.155

Stats. Implemented: ORS 480.595, 455.154 & 455.155

Hist.: BCD 36-2011, f. 12-30-11, cert. ef. 1-1-12

## 918-225-0609

### Use of Minor Repair Permits

(1) Only those minor repairs described in OAR 918-225-0612 may be performed under a minor repair permit.

(2) A minor repair permit authorizes work on a single boiler or pressure vessel. Multiple minor repairs may be performed under a minor repair permit provided that each minor repair is completed within the five day period that begins when the first minor repair is completed.

(3) All work performed under a minor repair permit must conform to the Oregon Boiler and Pressure Vessel Specialty Code.

(4) An individual performing work under a minor repair permit must:

(a) Hold the appropriate license, if required, under ORS 480.630 and OAR 918-225-0691 for the type of work performed;

(b) Fill out the information required on the minor repair permit; and

(c) Post the minor repair permit in a secure and visible location near the site of the repair.

(5) Within five business days of work being completed, the purchaser of the minor repair permit is responsible for ensuring that all work that was performed under the minor repair permit is recorded in the manner approved by the division.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 480.595, 455.154 & 455.155

Stats. Implemented: ORS 480.595, 455.154 & 455.155

Hist.: BCD 36-2011, f. 12-30-11, cert. ef. 1-1-12

## 918-225-0612

### Scope of Work Allowed under Minor Repair Permit

(1) Only minor repairs may be performed under a minor repair permit. Minor repairs include, but are not limited to, the non-welded replacement of the following:

(a) Low water cut-off;

(b) Pressure relief valve;

(c) Safety valve;

(d) Safety switch;

(e) Rupture disc;

(f) High pressure or temperature limit;

(g) Low pressure or temperature limit;

(h) Fuel train component;

(i) Flame detector;

(j) Flame safeguard;

(k) Heat exchanger element; and

(l) Burner components.

(2) Nothing in this rule prohibits purchasing an installation permit to ensure that a minor repair will be individually inspected.

(3) A minor repair permit is not required for minor repairs made to pressure vessels containing liquefied petroleum gas that are under the jurisdiction of the State Fire Marshal.

Stat. Auth.: ORS 480.595, 455.154 & 455.155

Stats. Implemented: ORS 480.595, 455.154 & 455.155

Hist.: BCD 36-2011, f. 12-30-11, cert. ef. 1-1-12

## 918-225-0615

### Inspection of Minor Repair Permits

(1) The division will randomly inspect at least one permit from each lot of minor repair permits

(2) The division will initially select one minor repair permit from each lot for inspection. If the division determines that the work done under the first permit does not comply with the Oregon Boiler and Pressure Vessel Specialty Code, the division will inspect a second permit from the same lot. If the division determines that the work done under the second permit is also non-compliant, the division will individually inspect all remaining permits from the same lot.

(3) The purchase price for each lot of minor repair permits includes the fee for one inspection. The division will charge for any additional inspections at its hourly inspection rate.

(4) If the division determines that work performed under a minor repair permit did not comply with the Oregon Boiler and Pressure Vessel Specialty Code, the division will require corrections to bring the boiler or pressure vessel into code compliance. Such corrections may not be performed under a minor repair permit. Installation permit and inspection requirements apply.

(5) Work performed under a minor repair permit that is not randomly inspected in accordance with this rule will be inspected during the boiler or pressure vessel's next regularly scheduled inspection.

Stat. Auth.: ORS 480.595, 455.154 & 455.155

Stats. Implemented: ORS 480.595, 455.154 & 455.155

Hist.: BCD 36-2011, f. 12-30-11, cert. ef. 1-1-12

## 918-225-0618

### Misuse of Minor Repair Permits

(1) An individual performing work under a minor repair permit misuses the minor repair permit if the work performed does not conform to the Oregon Boiler and Pressure Vessel Specialty Code.

(2) The purchaser of a lot of minor repair permits misuses minor repair permits if:

(a) Two or more repairs performed under the lot do not conform to the Oregon Boiler and Pressure Vessel Specialty Code; or

(b) In the case of a purchaser who has purchased and used ten or more lots of minor repair permits, more than 5% of all repairs performed under minor repair permits issued to the purchaser did not conform to the Oregon Boiler and Pressure Vessel Specialty Code.

(3) If the division determines that a person or entity has misused minor repair permits, the division may immediately suspend that person or entity from purchasing, using, or performing work under minor repair permits for not less than one year. In the case of a purchaser, the period of suspension may be extended until all unused minor repair permits have been returned to the division.

(4) Violations of the minor repair permit rules may also be subject to civil penalties and license revocations.

Stat. Auth.: ORS 480.595, 455.154 & 455.155

Stats. Implemented: ORS 480.595, 455.154 & 455.155

Hist.: BCD 36-2011, f. 12-30-11, cert. ef. 1-1-12

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**Rule Caption:** Amends the 2010 Oregon Mechanical Specialty Code.

**Adm. Order No.:** BCD 37-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 918-440-0012

**Subject:** This rule amends the 2010 Oregon Mechanical Specialty Code by updating the referenced National Fire Protection Association (NFPA) standards in the Code. The changes bring the referenced standards up to the current editions of NFPA 13, Installation of Fire Sprinklers, and NFPA 72, National Fire Alarm and Signaling Code series.

**Rules Coordinator:** Stephanie Snyder—(503) 373-7438

# ADMINISTRATIVE RULES

918-440-0012

## Amendments to the Oregon Mechanical Specialty Code

(1) The **Oregon Mechanical Specialty Code** is adopted and amended pursuant to OAR chapter 918, division 8. Amendments adopted for inclusion into the **Oregon Mechanical Specialty Code** are placed in this rule, showing the section reference, a descriptive caption, and a short description of the amendment.

(2) Effective January 1, 2012, the 2010 Oregon Mechanical Specialty Code is amended as follows:

(a) Fire Sprinklers. The reference in Chapter 15 to NFPA 13-07, Installation of Sprinkler Systems, is deleted and replaced with NFPA 13-10, Installation of Sprinkler Systems.

(b) Fire Alarms. The reference in Chapter 15 to NFPA 72-07, National Fire Alarm Code, is deleted and replaced with 72-10, National Fire Alarm and Signaling Code.

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

Stat. Auth.: ORS 455.030

Stats. Implemented: ORS 455.110

Hist.: BCD 32-1994, f. & cert. ef. 12-30-94; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 5-1997, f. 3-21-97, cert. ef. 4-1-97; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 15-1999, f. & cert. ef. 10-6-99 thru 4-2-00; BCD 5-2000, f. 3-9-00, cert. ef. 4-1-00; BCD 8-2001, f. 7-17-01, cert. ef. 10-1-01; BCD 19-2003, f. 12-15-03, cert. ef. 1-1-04; BCD 10-2004, f. 8-6-04 cert. ef. 10-1-04; BCD 9-2006, f. 6-30-06, cert. ef. 7-1-06; Renumbered from 918-440-0040 by BCD 3-2010, f. 5-14-10, cert. ef. 7-1-10; Renumbered from 918-440-0040 by BCD 5-2011, f. & cert. ef. 3-11-11; Renumbered from 918-440-0040 by BCD 22-2011, f. 7-26-11, cert. ef. 10-1-11; BCD 37-2011, f. 12-30-11, cert. ef. 1-1-12

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

**Rule Caption:** Repealing appraisal management company rules to transfer responsibility to the Appraiser Certification and Licensure Board.

**Adm. Order No.:** FCS 14-2011

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Repealed:** 441-674-0005, 441-674-0100, 441-674-0120, 441-674-0130, 441-674-0140, 441-674-0210, 441-674-0220, 441-674-0230, 441-674-0240, 441-674-0250, 441-674-0310, 441-674-0510, 441-674-0520, 441-674-0910, 441-674-0915, 441-674-0920

**Subject:** This rulemaking repeals the entire division of administrative rules that govern the registration and auditing of appraisal management companies (AMCs). In response to new federal standards for AMCs contained within the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 110-203), the Oregon Legislature passed legislation to transfer authority over AMCs from DCBS to the Oregon Appraiser Certification and Licensure Board. HB 2499 takes effect on January 1, 2012. Section 6 of the bill states that DCBS' rules remain in effect until "superseded or repealed by rules" of the ACLB. On December 21, 2011, in a special board meeting, the ACLB voted to adopt rules on a temporary basis that implement the provisions of HB 2499. The rules adopted by the ACLB become effective as of January 1, 2012. In order to ensure continuity for regulated entities, the repeal of the rules contained in the notice will take effect as of January 1, 2012.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

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## Department of Consumer and Business Services, Insurance Division Chapter 836

**Rule Caption:** Changes to Rates and Form Filing Rules to Reflect Interstate Insurance Product Regulation Commission Membership.

**Adm. Order No.:** ID 20-2011

**Filed with Sec. of State:** 12-16-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 836-010-0000, 836-010-0011

**Rules Repealed:** 836-010-0012

**Subject:** This rulemaking is necessary to implement the requirements of House Bill 2095 (2011 Session) by which the State of Ore-

gon becomes a member of the Interstate Insurance Product Regulatory Commission (IIPRC) on January 1, 2012.

This rulemaking revises the department's rules to reflect Oregon's new status as a member of the IIPRC. The rules remove obsolete references adopted under previous legislation to life insurance, annuities or disability insurance products that the director need not separately consider or review if the form was already approved by the Interstate Insurance Product Regulation Commission. This rulemaking reflect Oregon's new status as a member of the Compact. The rules remove the obsolete references to those earlier approved products and clarify that rates and forms approved by the IIPRC are not subject to the department's rate and form review process.

The rules will take effect on and apply to products filed after January 1, 2012, the date Oregon becomes a member of the IIPRC.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-010-0000

### Statutory Authority and Implementation

(1) OAR 836-010-0000, 836-010-0011 and 836-010-0021 are adopted under the authority of ORS 731.244 and 731.296, to aid in giving effect to provisions of ORS Chapters 737, 742 and 743 relating to the filing of rates and policy forms with the Director. The requirements of OAR 836-010-0000, 836-010-0011 and 836-010-0021 are in addition to any other requirements established by statute or by rule or bulletin of the Department.

(2) OAR 836-010-0000, 836-010-0011, and 836-010-0021 apply to all filings submitted or resubmitted to the Director on or after May 1, 2002.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 731.296, 737.205, 737.207, 742.001, 743.015 & 743.018

Hist.: ID 9-1994, f. 7-1-94, cert. ef. 7-15-94; ID 20-1997(Temp), f. 12-29-97, cert. ef. 12-30-97 thru 6-11-98; ID 11-1998, f. & cert. ef. 8-10-98; ID 11-2002(Temp), f. & cert. ef. 4-18-02 thru 10-11-02; ID 20-2002, f. 10-11-02, cert. ef. 10-12-02; ID 8-2010, f. 3-31-10, cert. ef. 4-1-10; ID 20-2011, f. 12-16-11, cert. ef. 1-1-12

## 836-010-0011

### Filing, Review of Rates and Forms

(1) Except as provided in this section, this rule applies to filings of all insurers, including health care service contractors as defined in ORS 750.005, multiple employer welfare arrangements as governed by 750.301 to 750.431 and fraternal benefit societies as governed by ORS Chapter 748. This rule does not apply to:

(a) Purchasing group insurance filings.

(b) Negotiated forms as described in ORS 742.003, but only if each of the negotiated forms is issued only to one policyholder, the insurer has determined that the forms comply with benefits and coverages mandated by statute and the forms have a company-assigned form number.

(c) Rates and forms approved by the Interstate Insurance Product Regulation Commission.

(2) An insurer must follow the applicable standards set forth on the Oregon Insurance Division's website, [www.insurance.oregon.gov/insurer/rates\\_forms/rateform.html](http://www.insurance.oregon.gov/insurer/rates_forms/rateform.html), when making rate and form filings, except that if the insurer files electronically on SERFF (System for Electronic Rates and Forms Filing), the insurer must comply with the Oregon standards set forth in SERFF.

(3) An insurer must submit a completed certificate of compliance as provided in this section with each filing of a new or revised rate and each filing of a new or amended form. The insurer must use the certificate of compliance in Exhibit I to this rule. The certificate of compliance must certify compliance with the applicable filing requirements and product standards set forth on the Oregon Insurance Division's website, [www.insurance.oregon.gov/docs/serff/filing\\_requirements.html](http://www.insurance.oregon.gov/docs/serff/filing_requirements.html), or on the SERFF system for Oregon, if filed electronically. The certificate must be accompanied by the applicable product standards form. A certificate of compliance must be completed and signed by:

(a) An officer of the insurer who is authorized by the insurer to do so; and

(b) Signed by the filer who is specifically designated by the insurer to prepare and make the filing.

(4) An insurer filing changes to a form or forms that were previously approved must highlight or otherwise visually call attention to the changes in new or revised forms and must submit a letter explaining the changes.

(5) A filing received for prior approval by the Department that does not contain a certificate of compliance and does not comply with the standards referenced in this rule is incomplete and will be returned to the insurer as disapproved.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 731.244 & 731.296

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 731.296, 737.205, 737.207, 742.001, 743.015 & 743.018 & 2011 OL Ch. 520, (Enrolled HB 2095)  
Hist.: ID 9-1994, f. 7-1-94, cert. ef. 7-15-94; ID 11-1996, f. 6-28-96, cert. ef. 7-1-96; ID 20-1997(Temp), f. 12-29-97, cert. ef. 12-30-97 thru 6-11-98; ID 11-1998, f. & cert. ef. 8-10-98; Administrative correction 6-25-99; ID 6-2000, f. & cert. ef. 7-19-00; ID 3-2001, f. 3-19-01, cert. ef. 5-1-01; ID 11-2002(Temp), f. & cert. ef. 4-18-02 thru 10-11-02; ID 20-2002, f. 10-11-02, cert. ef. 10-12-02; ID 8-2010, f. 3-31-10, cert. ef. 4-1-10; ID 20-2011, f. 12-16-11, cert. ef. 1-1-12

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**Rule Caption:** Aligns Oregon surplus lines laws with federal Nonadmitted and Reinsurance Reform Act of 2010.

**Adm. Order No.:** ID 21-2011

**Filed with Sec. of State:** 12-16-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 836-071-0501

**Rules Amended:** 836-071-0500

**Subject:** This rulemaking implements House Bill 2679 enacted by the 2011 Legislative Assembly. House Bill 2679 aligns Oregon surplus lines laws with the federal Nonadmitted and Reinsurance Reform Act of 2010 that is part of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act. The rules amend the current surplus lines licensing and filing requirements rules and provide new insured and surplus lines licensee requirements regarding reporting of allocation information on Oregon home state risks.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-071-0500

### Nonresident Licensing and Placement Requirements

(1) This rule establishes requirements that a nonresident surplus lines licensee or a nonresident insurance producer not licensed in this state must satisfy in connection with placement of a surplus lines insurance policy where Oregon is determined to be the home state as defined in ORS 735.405(8).

(2) A person who is licensed as a resident agent or producer in another state must be licensed in this state as a nonresident surplus lines insurance licensee in order to place a surplus lines insurance policy on a risk where Oregon is determined to be the home state.

(3) When a nonresident surplus lines licensee transacts surplus lines insurance on a risk where Oregon is determined to be the home state, the nonresident surplus lines licensee shall comply with the placement requirements in ORS 735.410(1) and (2) related to an exempt commercial purchaser

Stat. Auth.: ORS 731.244 & 735.410

Stats. Implemented: ORS 735.410

Hist.: ID 6-2002, f. & cert. ef. 2-6-02; ID 21-2011, f. 12-16-11, cert. ef. 1-1-12

## 836-071-0501

### Allocation of Coverage Totals on Multi-state Policies

(1) This rule establishes requirements that a surplus lines licensee must satisfy in connection with the reporting of a surplus lines insurance policy where Oregon is determined to be the home state as defined in ORS 735.405(8), and the requirements that an insured who obtains independently procured insurance must satisfy in connection with the reporting of a surplus lines insurance policy in section 5, chapter 660, Oregon Laws 2011 where Oregon is determined to be the home state.

(2) For each surplus lines insurance policy with coverage starting at any time beginning January 1, 2012 through December 31, 2016 where Oregon is determined to be the home state, each insured who obtains independently procured insurance must include in their written report filed with the Director of the Department of Consumer and Business Services the allocated premium, by coverage for Oregon and other applicable states in accordance with the filing instructions on the Surplus Line Association of Oregon Web site in addition to the filing requirements in section 5, chapter 660, Oregon Laws 2011. Notwithstanding the January 1, 2012 through December 31, 2016 time period referenced above, on or after January 1, 2015 the Director may determine that insureds no longer need to include this allocated premium information in their filed written report.

(3) For each surplus lines insurance policy with coverage starting at any time beginning January 1, 2012 through December 31, 2016 where Oregon is determined to be the home state, a surplus lines licensee must include in their statement filed with the Director the allocated premium, by coverage for Oregon and other applicable states in accordance with the filing instructions on the Surplus Line Association of Oregon Web site in addition to the filing requirements in ORS 735.425(1) and (2). Notwithstanding the January 1, 2012 through December 31, 2016 time period

referenced above, on or after January 1, 2015 the Director may determine that surplus lines licensees no longer need to include this allocated premium information in their filed statement.

(4) The written report required in section 5, chapter 660, Oregon Laws 2011 and the statements required in ORS 735.425(1) must be filed with the Surplus Line Association of Oregon.

Stat. Auth.: ORS 731.244 & 735.425

Stats. Implemented: ORS 735.425 & OL 2011, Ch. 660 § 5

Hist.: ID 21-2011, f. 12-16-11, cert. ef. 1-1-12

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**Rule Caption:** Requires vendors to obtain limited license to sell portable electronics insurance.

**Adm. Order No.:** ID 22-2011

**Filed with Sec. of State:** 12-16-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 836-071-0550, 836-071-0560, 836-071-0565, 836-071-0570

**Subject:** This rulemaking implements House Bill 3411 enacted by the 2011 Legislative Assembly. House Bill 3411 requires that vendors who sell or lease portable electronics devices, such as cell phones or electronic tablets, must obtain a limited insurance producer license from the Department of Consumer and Business Services before issuing, selling or offering portable electronics insurance coverage to customers. The rules will establish the vendor application and renewal requirements, including fees, and training requirements for a vendor's employees, agents or authorized representatives.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-071-0550

### Statutory Purpose and Authority

(1) OAR 836-071-0550 to 836-071-0570 apply to vendors who sell or lease portable electronics devices, including but not limited to cell phones or electronic tablets, and wish to issue, sell or offer for sale portable electronics insurance coverage.

(2) OAR 836-071-0550 to 836-071-0570 are adopted pursuant to the authority in section 7, chapter 393, Oregon Laws 2011 and ORS 705.135, for the purpose of implementing sections 1 to 7, chapter 393, Oregon Laws 2011.

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

## 836-071-0560

### Limited License Application, Portable Electronics Insurance Coverage; Required Information

(1) An applicant for a portable electronics limited license shall submit 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](http://www.insurance.oregon.gov).

(2) In addition to the requirements in section 2(2)(b), chapter 393, Oregon Laws 2011, 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 chapter 393, Oregon Laws 2011:

(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 sections 1 to 7, chapter 393, Oregon Laws 2011, for fraud;

(C) A claim of indebtedness by an insurer or agent, and the details of any such indebtedness; or

# ADMINISTRATIVE RULES

(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 section 5(1)(b), chapter 393, Oregon Laws 2011, 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 section 4, chapter 393, Oregon Laws 2011, 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

## 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:

(a) A completed renewal application on the form entitled "Renewal Notice for Portable Electronics Insurance Vendors." The renewal application will be sent by the Director to the limited licensee prior to the expiration of the limited license. If mailed back to the Director, the renewal application must be postmarked by the United States Postal Service or another nationally recognized delivery service 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 section 5(1)(b), chapter 393, Oregon Laws 2011, 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 section 4, chapter 393, Oregon Laws 2011, 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  
Hist.: ID 22-2011, f. 12-16-11, cert. ef. 1-1-12

## 836-071-0570

### List of Employees Selling Coverage; Training Program

(1) A limited licensee shall maintain at all times standard operating procedures to assure that all employees, agents and authorized representatives are authorized to issue, sell or offer for sale portable electronics insurance coverage to a customer. The limited licensee must provide a description of these procedures, upon request, to the Director within 21 calendar days.

(2) A limited licensee must ensure that the information required under section 5(1)(b), chapter 393, Oregon Laws 2011, is included in any training program for the limited licensee's employees, agents and authorized representatives who will be issuing, selling or offering for sale portable electronics insurance coverage.

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

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**Rule Caption:** Implementation of Legislation Enacting State and Federal Health Insurance Reforms.

**Adm. Order No.:** ID 23-2011

**Filed with Sec. of State:** 12-19-2011

**Certified to be Effective:** 12-19-11

**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 836-053-0415, 836-053-0825, 836-053-0830, 836-053-0857, 836-053-0862, 836-053-1033, 836-053-1035

**Rules Amended:** 836-053-0410, 836-053-0851, 836-053-1000, 836-053-1030, 836-053-1060, 836-053-1070, 836-053-1080, 836-053-1100, 836-053-1110, 836-053-1140, 836-053-1310, 836-053-1340, 836-053-1342, 836-053-1350

**Rules Repealed:** 836-053-0856, 836-053-0861, 836-053-0866

**Subject:** These rules implement provisions of Chapter 500, Oregon Laws 2011 (Enrolled Senate Bill 89). The rules ensure that the Oregon Insurance Code is consistent with the federal Affordable Care Act, the federal health care reform law signed by President Obama on March 23, 2010. The rules also make changes to Oregon administrative rules to ensure consistency with other state and federal legislation. The changes are generally in these areas:

- Revisions to Oregon's rescission provisions including requirements for the contents of the notice required to be provided to enrollees whose coverage is rescinded, and requirements and timelines for notice of rescissions that insurers must provide to the director of the Department of Consumer and Business Services Division.

- Clarifying when notice requirements are triggered when an insurer takes administrative action to cancel coverage under an individual health benefit plan.

- Implementing the changes made to the state continuation laws including clarifying the requirements of the notice that insurers must send to covered persons and qualified beneficiaries eligible for state continuation coverage; defining or clarifying statutory terms and explaining circumstances under which a person is not considered to be a qualified beneficiary.

- Defining requirements for cultural and linguistic appropriateness in accordance with federal law.

- Implementing changes to Oregon's internal and external review processes for adverse benefit determinations in a manner that is consistent with and approved by federal regulators.

- A number of changes to clarify and make the rules consistent with the statutory changes enacted by Senate Bill 89.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-053-0410

### Purpose; Statutory Authority; Enforcement

(1) OAR 836-053-0410 to 836-053-0465 are adopted under the authority of ORS 743.769 and section 4a, chapter 500, Oregon Laws 2011 (Enrolled Senate Bill 89) for the purpose of implementing ORS 743.766 to 743.769, and section 4a, chapter 500, Oregon Laws 2011 (Enrolled Senate Bill 89) relating to individual health benefit plans.

(2) Violation of any provision of OAR 836-053-0430 to 836-053-0465 is an unfair trade practice under ORS 746.240.

Stat. Auth.: ORS 743.769 & § 4a, Ch. 500, OL 2011 (Enrolled SB 89)  
Stats. Implemented: ORS 743.766 - 743.769 & § 4a, Ch. 500, OL 2011 (Enrolled SB 89)

# ADMINISTRATIVE RULES

Hist.: ID 12-1996, f. & cert. ef. 9-23-96; ID 5-1998, f. & cert. ef. 3-9-98; ID 23-2011, f. & cert. ef. 12-19-11

## 836-053-0415

### Cancellation of an Individual Health Benefit Plan Coverage

The notice requirements of section 4a, chapter 500, Oregon Laws 2011 (Enrolled Senate Bill 89), are triggered at the time an insurer takes administrative action to terminate coverage.

Stat. Auth.: ORS 743.769 & § 4a, Ch. 500, OL 2011 (Enrolled SB 89)

Stats. Implemented: ORS 743.766-743.769 & § 4a, Ch. 500, OL 2011 (Enrolled SB 89)

Hist.: ID 23-2011, f. & cert. ef. 12-19-11

## 836-053-0825

### Rescission of a Group Health Benefit Plan

(1) For purposes of ORS 743.737 and 743.754, "representative" means a person who, with specific authority from the small employer or plan sponsor to do so, binds the small employer or plan sponsor to a contract for health benefit plan coverage.

(2) The notice required by ORS 743.737 and 743.754 and section 4(3), chapter 500, Oregon Laws 2011 (Enrolled Senate Bill 89) to each plan enrollee affected by the rescission must be in writing and include all of the following:

(a) Clear identification of the alleged fraudulent act, practice or omission or the intentional misrepresentation of material fact underlying the rescission.

(b) An explanation of why the act, practice or omission was fraudulent or was an intentional misrepresentation of a material fact.

(c) A statement explaining any rights to grieve or request a review of the decision to rescind coverage.

(d) A description of the health carrier's applicable grievance procedures, including any time limits applicable to those procedures.

(e) A statement explaining that complaints relating to the subject matter of the notice required under ORS 743.737 and 743.754 and section 4(3), chapter 500, Oregon Laws 2011 (Enrolled Senate Bill 89) may be made with the Insurance Division of the Department of Consumer and Business Services by writing to the Insurance Division at PO Box 14480, Salem, OR 97309-0405; by calling (503) 947-7984 or (888) 877-4894; or by email at <http://www.cbs.state.or.us/ins/consumer/consumer.html> or [cp.ins@state.or.us](mailto:cp.ins@state.or.us). The statement shall also explain that complaints to the Insurance Division do not constitute grievances under the health benefit plan and may not preserve a member's rights under the plan.

(f) The toll-free customer service number of the insurer.

(g) The effective date of the rescission and the date back to which the coverage will be rescinded.

(3) Subject to section 3, chapter 75, Oregon Laws 2010 (Enrolled House Bill 3666), a health carrier may provide the required notice for small employer group health insurance or individual health insurance either by first class mail or electronically.

(4)(a) An insurer shall provide to the Department of Consumer and Business Services the notice required by ORS 743.737(8)(c) and (9)(c), 743.754(8)(c) and (9)(c) and section 4(4), chapter 500, Oregon Laws 2011 (Enrolled Senate Bill 89) no later than February 15 of each calendar year. The insurer shall submit the notice electronically in accordance with instructions provided by the department. The notice shall include information related to rescissions for the prior calendar year, including but not limited to the total number of:

(A) Rescission reviews started;

(B) Rescissions completed;

(C) Total rescissions of an entire insurance policy;

(D) Partial rescissions;

(E) Individual policies in force on December 31 of the report year;

(F) Individual health benefit plans that had either a full or partial rescission;

(G) Group health benefit plans in force on December 31 of the report year; and

(H) Group health benefit plans that had either a full or partial rescission.

(b) The notice required under this section may be combined with the notice required under OAR 836-053-0830.

Stat. Auth.: ORS 743.018, 743.019, 743.020 & § 4, Ch. 500, OL 2011 (Enrolled SB 89)

Stats. Implemented: ORS 742.003, 742.005, 742.007, 743.018, 743.019, 743.020, 743.730, 743.737, 743.754 & 743.767 & § 4, Ch. 500, OL 2011 (Enrolled SB 89)

Hist.: ID 23-2011, f. & cert. ef. 12-19-11

## 836-053-0830

### Rescission of an Individual's Group, Individual or Portability Health Benefit Plan, or Group or Individual Health Insurance Coverage.

(1) Subject to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, P.L. 99-272, April 7, 1986, and ORS 743.601 and 743.610, for purposes of rescission of a group health insurance policy under ORS 743.737 and 743.754 and section 4(2), chapter 500, Oregon Laws 2011 (Enrolled Senate Bill 89), "rescission" does not include retroactive cancellation or discontinuance of coverage of an enrollee if:

(a) The enrollee is no longer eligible for such coverage;

(b) The enrollee has not paid required premiums or contributed to coverage or any premiums paid have been refunded; and

(c) The insurer is not notified of the enrollee's change in eligibility when the change occurs.

(2) The notice required by section 4(2), chapter 500, Oregon Laws 2011 (Enrolled Senate Bill 89) to the individual whose coverage is rescinded must be in writing and include all of the following:

(a) Clear identification of the alleged fraudulent act, practice or omission or the intentional misrepresentation of material fact underlying the rescission.

(b) An explanation as to why the act, practice or omission was fraudulent or was an intentional misrepresentation of a material fact.

(c) A statement informing the individual of any right the individual has to file a grievance or to request a review of the decision to rescind coverage.

(d) A description of the health carrier's grievance procedures, including any time limits applicable to those procedures if such procedures are available to the individual.

(e) A statement explaining that complaints relating to the subject matter of the notice required under this section may be made with the Oregon Insurance Division at PO Box 14480, Salem, OR 97309-0405; (503) 947-7984 or (888) 877-4894; <http://www.cbs.state.or.us/ins/consumer/consumer.html>; or [cp.ins@state.or.us](mailto:cp.ins@state.or.us) and that such complaints do not constitute grievances.

(f) The toll-free customer service number of the insurer.

(g) The effective date of the rescission and the date back to which the coverage will be rescinded.

(3) Subject to chapter 75, Oregon Laws 2010 (Enrolled House Bill 3666), a health carrier may provide the notice required under section 4(2), chapter 500, Oregon Laws 2011 (Enrolled Senate Bill 89) for small employer group health insurance or individual health insurance either by first class mail or electronically.

(4)(a) An insurer shall provide to the Director of the Department of Consumer and Business Services the notice required by section 4(4), chapter 500, Oregon Laws 2011 (Enrolled Senate Bill 89) no later than February 15 of each calendar year. The insurer shall submit the notice electronically in accordance with instructions provided by the department. The notice shall include information related to rescissions for the prior calendar year, including but not limited to the total number of:

(A) Rescission reviews started;

(B) Rescissions completed;

(C) Total rescissions of an entire insurance policy;

(D) Partial rescissions;

(E) Individual policies in force on December 31 of the report year;

(F) Individual health benefit plans that had either a full or partial rescission;

(G) Group health benefit plans in force on December 31 of the report year; and

(H) Group health benefit plans that had either a full or partial rescission.

(b) The notice required under this section may be combined with the notice required under OAR 836-053-0825.

Stat. Auth.: ORS 731.244 & § 4, Ch. 500, OL 2011 (Enrolled SB 89)

Stats. Implemented: ORS 743.731 & § 4, Ch. 500, OL 2011 (Enrolled SB 89)

Hist.: ID 23-2011, f. & cert. ef. 12-19-11

## 836-053-0851

### Purpose; Authority; Applicability; and Enforcement

OAR 836-053-0851 to 836-053-0862 apply to insurers issuing continuation coverage as required under ORS 743.610 and are adopted under the authority of ORS 731.244, 743.601 and 743.610 and section 2, chapter 73, Oregon Laws 2009.

Stat. Auth.: ORS 731.244, 743.610 & 2009 OL Ch. 73 (HB 2433)

Stats. Implemented: ORS 743.610 & 2009 OL Ch. 73 (HB 2433)

Hist.: ID 12-2010, f. & cert. ef. 6-11-10, ID 23-2011, f. & cert. ef. 12-19-11

# ADMINISTRATIVE RULES

836-053-0857

## Definitions

(1) As used in ORS 743.601, "enrollee" has the same meaning as "covered person" as defined in ORS 743.610.

(2) As used in ORS 743.610:

(a) "Claim" means a request for payment of medical treatment, services, drugs, equipment, or other medical benefit under a health benefit plan.

(b) "Notice" means the notice provided by an insurer to a covered person or qualified beneficiary about continuing group coverage after a qualifying event.

(c) "Qualified beneficiary" does not include:

(A) An individual eligible for Federal Medicare coverage.

(B) An individual eligible for any other group health plan. This limitation does not apply to coverage consisting only of:

(i) Dental, vision, counseling, or referral services;

(ii) Coverage under a health flexible spending arrangement as defined in section 106(c)(2) of the Internal Revenue Code of 1986; or

(iii) Treatment that is furnished in an on-site medical facility maintained by an employer.

(d) "Similar" means a plan that provides benefits that are the same or nearly the same as the coverage provided under the group health benefit plan that is being terminated.

(3) As used in ORS 743.610(7)(a), "coverage" means the benefits provided under a health benefit plan continued by a covered person or qualified beneficiary.

(4) As used in ORS 743.601 and 743.610 "dissolution" includes a separation upon a judgment of separation granted pursuant to ORS 107.025.

Stat. Auth.: ORS 731.244, 743.601, & 743.610 & 2009 OL Ch. 73 (HB 2433)

Stats. Implemented: ORS 743.601 & 743.610 & 2009 OL Ch. 73 (HB 2433)

Hist.: ID 23-2011, f. & cert. ef. 12-19-11

836-053-0862

## Notifications

(1) For purposes of the notice required by ORS 743.610(10):

(a) An insurer may provide a single notice under ORS 743.610(10) to a covered person and a qualified beneficiary when:

(A) The notice is addressed to the covered person or qualified beneficiary at the last known address of the covered person or qualified beneficiary;

(B) The covered person and qualified beneficiary are eligible for state continuation coverage by virtue of the same qualifying event; and

(C) The covered person and qualified beneficiary have the same last known mailing address.

(b) An insurer that does not require a covered person or qualified beneficiary to complete a form to request continuation of coverage need not include a form in the notice. However, the insurer must provide sufficient instructions to inform the covered person or qualified beneficiary how to apply for continuation of coverage.

(c) An insurer is not required to include premium rates in the notice. However, an insurer that does not provide premium rates for continuation of coverage in the notice must instruct the covered person or qualified beneficiary how and from whom the premium rates can be obtained.

(d) The requirement to provide written notice under ORS 743.610(1) may be triggered either by the notification of a qualifying event received from the covered person or qualified beneficiary under ORS 743.610(5) or notice of the qualifying event submitted to the insurer by the group policy holder.

(e) The enrollment information required to be in the notice under ORS 743.610(10) may instruct the covered person or qualified beneficiary to contact the employer or group for information about additional coverage for which the covered person or qualified beneficiary may be eligible.

(f) The explanation of appeal rights required to be included in the notice under ORS 743.610(1) may be provided by a statement that continuation coverage constitutes continued coverage under the group policy and that the covered person or qualified beneficiary has the same rights to appeal or grieve a decision by the insurer on a medical claim that exists under the group policy unless the group policy has been replaced with coverage that provides different appeal or grievance rights.

(2) Notice provided under ORS 743.610 must include the following information: "Oregon Insurance Division, (503) 947-7984 or (888) 877-4894."

Stat. Auth.: ORS 731.244, 743.601 & 743.610

Stats. Implemented: ORS 743.601 & 743.610

Hist.: ID 23-2011, f. & cert. ef. 12-19-11

836-053-1000

## Statutory Authority and Implementation

(1) OAR 836-053-1000 to 836-053-1200 are adopted under the authority of ORS 731.244, 743.814, and 743.819, for the purpose of implementing ORS 743.804, 743.807, 743.814, 743.817, 743.819, 743.821, 743.829, 743.837 and 743A.012. The filing and reporting requirements in this rule and in OAR 836-053-1070, 836-053-1130, 836-053-1170, and 836-053-1190 apply to all domestic insurers transacting health benefit plans, including health care service contractors, to all foreign carriers transacting health benefit plans who transacted \$2 million or more in annual health benefit plan premium in Oregon, and to other carriers transacting health benefit plans as determined by the Director of the Department of Consumer and Business Services.

(2) When an insurer maintains more than one type of health benefit plan, the insurer shall comply with OAR 836-053-1000 to 836-053-1200 on a plan-by-plan basis.

(3) Not later than June 30 of each year, each insurer shall file with the director for the immediately preceding calendar year the following information as required of the insurer:

(a) An annual summary of the insurer's aggregate data relating to grievances, appeals and applications for external review, required by ORS 743.804 of all insurers;

(b) An annual summary relating to the insurer's utilization review policies, required by ORS 743.807(1) of each insurer that provides utilization review or has utilization review provided on its behalf;

(c) An annual summary relating to the insurer's quality assessment activities required by ORS 743.814(2) of each insurer that offers managed health insurance;

(d) The results of all publicly available federal Health Care Financing Administration reports and accreditation surveys by national accreditation organizations required by ORS 743.814(3)(a) of each insurer that offers managed health insurance;

(e) The insurer's health promotion and disease prevention activities, if any, including a summary of screening and preventive health care activities covered by the insurer, required by ORS 743.814(3)(b) of each insurer that offers managed health insurance. The insurer may submit the summary required in this subsection in the format of the insurer's choosing, including a summary prepared for another purpose. The summary required in this subsection shall include the following activities, to the extent the insurer engages in them, and may include any additional information that the insurer deems significant in describing its health promotion and disease prevention activities:

(A) Tobacco use and cessation;

(B) Cancer screening, including mammography;

(C) Diabetes education and home monitoring;

(D) Immunizations;

(E) Childbirth education and parenting support;

(F) Nutrition;

(G) Cardiovascular health; and

(H) Injury prevention; and

(f) An annual summary relating to the scope of the insurer's network and to the accessibility of services, required by ORS 743.817(1) of each insurer that offers managed health insurance.

(4) In order to minimize duplicative reporting requirements, an insurer may submit a copy of a report prepared for a national accreditation organization to meet the reporting requirements of section (3)(e) of this rule relating to the insurer's health promotion and disease prevention activities, OAR 836-053-1130(1) relating to the insurer's utilization review policies, OAR 836-053-1170(1) relating to the insurer's quality assessment activities and OAR 836-053-1190(1) relating to the insurer's provider network and the accessibility of services. To the extent that a report prepared for a national accreditation organization does not include information required by the department, the insurer must submit an addendum to the report that provides this information.

(5) If information required to be filed annually with the department pursuant to this rule has not changed since an insurer's previous annual filing, an insurer may satisfy the reporting requirements of this rule by indicating that the information has not changed, or if some but not all information has changed, by submitting an addendum to the previous annual filing indicating only the information that has changed since the previous filing. However, every third year the insurer must file all required information, including information that may not have changed since the previous filing. For example, if an insurer made an annual filing in 1998, it is sufficient to indicate in 1999 and 2000 that certain information has not changed since the previous annual filing or to submit an addendum indicating the infor-

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mation that has changed, but the filing in 2001 must contain all information required by the department pursuant to this rule.

(6) All filings required in section (3) of this rule must be made electronically.

(7) For purposes of OAR 836-053-1000 to 836-053-1200, "insurer" also includes a health care service contractor as defined in ORS 750.005 and a multiple employer welfare arrangement as defined in ORS 750.301.

(8) OAR 836-053-1000 to 836-053-1200 apply to a self-insured public entity to the extent provided in ORS 731.036.

(9) An insurer shall administer the plan in compliance with ORS 743.804, 743.807, 743.814, 743.817, 743.821, 743.829, 743.837 and 743A.012 and OAR 836-053-1000 to 836-053-1200.

(10) An insurer shall comply with the federal Newborns' and Mothers' Health Protection Act of 1996, as referred to in ORS 743.823 with respect to group health insurance plans and individual health insurance plans.

Stat. Auth.: ORS 731.244, 743.814 & 743.819

Stats. Implemented: ORS 743.804, 743.807, 743.814, 743.817, 743.819, 743.821, 743.829, 743.837 & 743A.012

Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 15-2010, f. & cert. 8-19-10; ID 23-2011, f. & cert. ef. 12-19-11

## 836-053-1030

### Written Information to Enrollees

(1) Each insurer must furnish the written general information to policyholders that is required by ORS 743.804, including but not limited to information relating to enrollee rights and responsibilities, including the right to appeal adverse benefit determinations, services, access thereto and related charges and scheduling, and access to external review, as provided in this rule. An insurer:

(a) Must furnish the information regarding an individual health insurance policy to each policyholder; and

(b) Must furnish the information regarding a group health insurance policy to the group policyholder for distribution to enrollees of the group policy.

(2)(a) The written general information referred to in section (1) of this rule must be included either in the policy or in other evidence of coverage that is delivered to the individual policyholder by the insurer, or in the case of a group health insurance policy, that is delivered by the insurer to the group policyholder for distribution to enrollees.

(b) For purposes of ORS 743.804(2)(g), "continued coverage under the health benefit plan" means coverage of an ongoing course of treatment previously approved by the insurer.

(c) The information required under subsection (a) of this section must include all of the following:

(A) A description of the external review process, including when external review is available and how to request external review. The description must include the phone number of the Oregon Insurance Division.

(B) A disclosure that when filing a request for an external review the enrollee will be required to authorize the release of any records, including medical records of the covered person that may be required to be reviewed for the purpose of reaching a decision on the external review.

(C) A disclosure that the enrollee is financially responsible for benefits paid to or on behalf of an enrollee pursuant to ORS 743.804(2)(g) if the insurer's adverse benefit determination is upheld on appeal.

(D) A disclosure that the enrollee may request and receive from the insurer the information the insurer is required to disclose under ORS 743.804(5).

(3) The written general information must disclose the following in relation to referrals for specialty care, behavioral health services, hospital services and other services, in addition to other relevant information regarding referrals:

(a) If applicable, how gate keeping or access controls apply to referrals and whether and how the controls differ for specialty care, behavioral health services and hospital services; and

(b) Any limitation on referrals if a plan has a defined network of participating providers and if referrals for specialty care may be limited to a portion of the network, such as to those specialists who contract with an enrollee's primary care group.

(4) The written general information must include the information required by ORS 743.699, relating to coverage of emergency medical conditions and obtaining emergency services, including a statement of the prudent layperson standard for an emergency medical condition, as that term is defined in 743.801. An insurer may meet the requirement of providing information in 743.699 by providing adequate disclosure in the written general information required by 743.804(5) and this rule. An insurer may use

the following statement regarding the use of the emergency telephone number 9-1-1, or other wording that appropriately discloses its use:

If you or a member of your family needs immediate assistance for a medical emergency, call 9-1-1 or go directly to an emergency room.

(5) The written general information must include information regarding the use of the insurer's grievance process, including the assistance available to enrollees in filing written grievances in accordance with OAR 836-053-1090 and the utilization review appeal procedures required by ORS 743.807(2)(c). The information must be contained in a separate section of the written information and captioned in a manner that clearly indicates that the section addresses grievances and appeals.

(6) The written general information must include a notice that states the right to file a complaint with or seek assistance from the Director of the Department of Consumer and Business Services. An insurer may use the following statement or other appropriate wording for this purpose:

You have the right to file a complaint or seek other assistance from the Oregon Insurance Division. Assistance is available:

By calling (503) 947-7984 or the toll free message line at (888) 877-4894.

By writing to the Oregon Division of Insurance, Consumer Advocacy Unit,  
PO Box 14480; Salem, OR 97309-0405.

Through the Internet at <http://www.insurance.oregon.gov/consumer/consumer.html>  
By e-mail at: [cp.ins@state.or.us](mailto:cp.ins@state.or.us)

(7) The written general information for an insurance policy providing managed health care must include a description of the procedures by which enrollees, purchasers and providers may participate in the development and implementation of insurer policy and operation.

(8) The portion of the written general information that describes how an insurer makes decisions regarding coverage and payment for treatment or services must include a notice to enrollees that they may request an additional written summary of information that the insurer may consider in its utilization review of a particular condition to the extent the insurer maintains such criteria. The notice to enrollees must include the name and telephone number of the administrative section of the insurer that handles enrollee requests for information.

(9) If a plan has a defined network of participating providers, the written general information must include a list of all primary care providers and direct access providers, and may also include a list of all specialty care providers. For the purposes of this section, a primary care provider or direct access provider is a participating provider under the terms of the plan who an enrollee may designate as the primary care provider for the enrollee or from whom an enrollee may obtain services without referral. The list of providers must include for each provider the provider's name, professional designation, category of practice and the city in which the practice of the provider is located. If the information does not list participating specialty care providers, the information must state that fact and must disclose the manner in which an enrollee may obtain information about participating specialty care providers.

(10) If a plan includes risk-sharing arrangements with physicians or other providers, the written general information must contain a statement to that effect, including a brief description of risk-sharing in general, and must notify enrollees that additional information is available upon request. For the purpose of this requirement, a risk-sharing arrangement does not include a fee-for-service arrangement or a discounted fee-for-service arrangement. An insurer may use the following statement to describe risk-sharing, or other appropriate wording:

This plan includes "risk-sharing" arrangements with physicians who provide services to the members of this plan. Under a risk-sharing arrangement, the providers that are responsible for delivering health care services are subject to some financial risk or reward for the services they deliver. An example of a risk sharing arrangement is a contract between an insurer and a group of heart surgeons in which the surgeons agree to provide all of the heart operations needed by plan members and the insurer agrees to pay a fixed monthly amount for those services.

(11) If the insurer of a plan uses a mandatory closed formulary, the written general information for that plan must prominently disclose and explain the formulary provision. The disclosure and explanation must be in boldfaced type or otherwise emphasized.

(12) The written general information must include a notice disclosing that additional information is available to enrollees upon request to the insurer. The notice must include the name and telephone number of the insurer's administrative section that handles enrollee requests for information. For the notice required in the written general information disclosing information available from the Department of Consumer and Business Services, an insurer may use the following statement, or other appropriate wording:

The following information regarding the health benefit plans of (insurer's name) is available from the Oregon agency:

1. An annual summary of grievances and appeals;



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2. (if applicable) An annual summary of utilization review policies;
  3. (if applicable) An annual summary of quality assessment activities;
  4. (if applicable) The results of all publicly available accreditation surveys;
  5. (if applicable) An annual summary of the insurer's health promotion and disease prevention activities;
  6. (if applicable) An annual summary of scope of network and accessibility of services.
- This information is available:  
By calling (503) 947-7984 or the toll free message line at (888) 877-4894.  
By writing to the Oregon Division of Insurance, Consumer Advocacy Unit,  
PO Box 14480; Salem, OR 97309-0405.  
Through the Internet at <http://www.insurance.oregon.gov/consumer/consumer.html>  
Or by e-mail at: [cp.ins@state.or.us](mailto:cp.ins@state.or.us)  
Stat. Auth.: ORS 731.244 & 743.857  
Stats. Implemented: ORS 743.699, 743.804 & 743.807  
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 11-2011(Temp), f. & cert. ef. 7-7-11 thru 12-21-11; ID 23-2011, f. & cert. ef. 12-19-11

## 836-053-1033

### Cultural and Linguistic Appropriateness

(1) All notices and communications required to be provided by an insurer to enrollees under ORS 743.804 and 743.857 must be provided in a manner that is culturally and linguistically appropriate, as required by ORS 743.804. For purposes of this section, an insurer is considered to provide relevant notices in a culturally and linguistically appropriate manner if the plan or issuer meets all the following requirements with respect to the applicable non-English languages as described in section (2) of this rule:

(a) The plan or issuer must provide oral language services (such as a telephone customer assistance hotline) that include answering questions in any applicable non-English language and providing assistance with filing claims and appeals (including external review) in any applicable non-English language.

(b) The plan or issuer must provide, upon request, a notice in any applicable non-English language.

(c) The plan or issuer must include in the English versions of all notices, a statement prominently displayed in any applicable non-English language clearly indicating how to access the language services provided by the plan or issuer.

(2) For the purpose of this rule, "applicable non-English language" means, with respect to an address in any United States county to which a notice is sent, a non-English language for which ten percent or more of the population residing in the county is literate only in the same non-English language.

Stat. Auth.: ORS 731.244 & 743.804  
Stats. Implemented: ORS 743.804  
Hist.: ID 23-2011, f. & cert. ef. 12-19-11

## 836-053-1035

### Summary of Benefits and Explanation of Coverage

The summary of benefits and explanations of coverage required by ORS 743.804 must be provided in a manner and form consistent with the requirements of 45 CFR 147.200 as set forth on August 22, 2011.

Stat. Auth.: ORS 731.244 & 743.804  
Stats. Implemented: ORS 743.804  
Hist.: ID 23-2011, f. & cert. ef. 12-19-11

## 836-053-1060

### Definitions

For purposes of grievance procedures under OAR 836-053-1000 to 836-053-1200, and ORS 743.804:

(1) "Complaint" means an expression of dissatisfaction directly to an insurer that is about a specific problem encountered by an enrollee or about a decision by an insurer or by an insurance producer acting on behalf of the insurer and that includes a request for action to resolve the problem or change the decision. "Complaint" does not include an inquiry as that term is defined in this rule.

(2) "Inquiry" means a written request for information or clarification about any subject matter related to the enrollee's health benefit plan.

Stat. Auth.: ORS 731.244 & 743.819  
Stats. Implemented: ORS 743.801 & 743.804  
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 23-2011, f. & cert. ef. 12-19-11

## 836-053-1070

### Reporting of Grievances; Format and Contents

(1) For the purpose of complying with the requirement in ORS 743.804 that each insurer provide an annual summary of the insurer's aggregate data regarding grievances, appeals and applications for external review, an insurer must report the data required in section (2) of this rule for

grievances closed in the previous calendar year ending December 31. The data must be reported in a format prescribed by the Director of the Department of Consumer and Business Services. For purposes of this rule, a grievance is "closed" if:

(a) The grievance has been appealed through all available grievance appeal levels; or

(b) The insurer determines that the complainant is no longer pursuing the grievance.

(2) The data to be included in the annual summary are as follows:

(a) The total number of grievances closed in the reporting year;

(b) The number of grievances closed in each of the categories listed in section (3) of this rule;

(c) The number and percentage of grievances in each of the categories listed in section (3) of this rule in which the insurer's initial decision is upheld and the number and percentage in which the initial decision is reversed at closure of the grievance;

(d) The number and percentage of all grievances that are closed at the conclusion of the first level of appeal;

(e) The number and percentage of all grievances that are closed at the conclusion of the second level of appeal;

(f) The number and percentage of all grievances that result in applications for external review; and

(g) For each level of appeal listed in subsections (d) and (e) of this section, the average length of time between the date an enrollee files the appeal and the date an insurer sends written notice of the insurer's determination for that appeal to the enrollee, or person filing the appeal on behalf of the enrollee.

(3) An insurer must report each grievance according to the nature of the grievance. The nature of the grievance shall be determined according to the categories listed in this section. The insurer must report each grievance in one category only and must have a system that allows the insurer to report accurately in the specified categories. If a grievance could fit in more than one category, an insurer shall report the grievance in the category established in this section that the insurer determines to be most appropriate for the grievance. The categories of grievances are as follows:

(a) Adverse benefit determinations based on medical necessity under ORS 743.857;

(b) Adverse benefit determinations based on an insurer's determination that a plan or course of treatment is experimental or investigational under ORS 743.857;

(c) Continuity of care as defined in ORS 743.854;

(d) Access and referral problems including timelines and availability of a provider and quality of clinical care;

(e) Whether a course or plan of treatment is delivered in an appropriate health care setting and with the appropriate level of care;

(f) Adverse benefit determinations of otherwise covered benefits due to imposition of a preexisting condition exclusion, source-of-injury exclusion, out-of-network or out-of-plan exclusion, annual benefit limits or other limitations of otherwise covered benefits;

(g) Adverse benefit determinations based on general exclusions, not a covered benefit or other coverage issues not listed in this section;

(h) Eligibility for, or termination of enrollment, rescission or cancellation of a policy or certificate;

(i) Quality of plan services, not including the quality of clinical care as provided in subsection (d) of this section;

(j) Emergency services; and

(k) Administrative issues and issues other than those otherwise listed in this section.

(4) Nothing in this rule prohibits an insurer from creating or using its own system to categorize the nature of grievances in order to collect data if the system allows the insurer to report grievances accurately according to the categories in section (3) of this rule and if the system enables the director to track the grievances accurately.

Stat. Auth.: ORS 731.244 & 732.819  
Stats. Implemented: ORS 743.804  
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 15-2010, f. & cert. 8-19-10; ID 23-2011, f. & cert. ef. 12-19-11

## 836-053-1080

### Tracking Grievances

An insurer shall record data relating to all grievances, significant actions taken from each initial grievance filing through the appeals process, and applications for external review as required by ORS 743.804, in a manner sufficient for the insurer to report grievances accurately as required by ORS 743.804 and OAR 836-053-1070, and for the insurer to track individual files in response to a market conduct examination or other inquiry by

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the Director of the Department of Consumer and Business Services under ORS 733.170 and OAR 836-080-0215. In accordance with ORS 743.804, records documenting grievances must be maintained for a period of at least six years after the date the record is generated.

Stat. Auth.: ORS 731.244 & 743.819  
Stats. Implemented: ORS 743.804  
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 15-2010, f. & cert. 8-19-10; ID 23-2011, f. & cert. ef. 12-19-11

## 836-053-1100

### Internal Appeals Process

(1) The minimum standards for timeliness of response by an insurer to appeals by its enrollees, for purposes of the system of resolving and appeals required by ORS 743.804 are as follows:

(a) An insurer shall acknowledge receipt of an appeal from an enrollee not later than the seventh day after receiving the appeal;

(b) An insurer shall make a decision on the appeal not later than the 30th day after receiving notice of the appeal.

(2) An otherwise applicable standard for timeliness in section (1) of this rule does not apply when:

(a) The period of time is too long to accommodate the clinical urgency of the situation;

(b) The enrollee does not reasonably cooperate; or

(c) Circumstances beyond the control of a party prevent that party from complying with the standard, but only if the party who is unable to comply gives notice of the specific circumstances to the other party when the circumstances arise.

(3) For adverse benefit determinations eligible for external review under ORS 743.857, an insurer may waive its internal appeals process at any time. If the insurer waives its internal appeals process, the internal appeals process is deemed exhausted for the purposes of qualifying for external review.

Stat. Auth.: ORS 731.244  
Stats. Implemented: ORS 743.804  
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 11-2011(Temp), f. & cert. ef. 7-7-11 thru 12-21-11; ID 23-2011, f. & cert. ef. 12-19-11

## 836-053-1110

### Notice of Complaint Filing with Director

(1) A written decision by an insurer in response to a grievance, a first appeal and a second appeal must prominently disclose the following:

You have the right to file a complaint or seek other assistance from the Oregon agency. Assistance is available:

By calling (503) 947-7984 or the toll free message line at (888) 877-4894.

By writing to the Oregon Division of Insurance, Consumer Advocacy Unit,

PO Box 14480; Salem, OR 97309-0405.

Through the Internet at <http://www.insurance.oregon.gov/consumer/consumer.html>

Or by e-mail at: [cp.ins@state.or.us](mailto:cp.ins@state.or.us)

(2) The information stated in section (1) of this section is subject to change upon notice from the Director of the Department of Consumer and Business Services.

Stat. Auth.: ORS 731.244  
Stats. Implemented: ORS 743.804  
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 23-2011, f. & cert. ef. 12-19-11

## 836-053-1140

### Appeal, Utilization Review Determinations

(1) When a provider first appeals the decision of an insurer to deny treatment or payment for services as not medically necessary or experimental under ORS 743.807(2)(c):

(a) The insurer shall acknowledge receipt of the notice of appeal not later than the seventh day after receiving the notice; and

(b) An appropriate medical consultant or peer review committee shall review the appeal and decide the issue not later than the 30th day after the insurer receives notice of the appeal.

(2) A standard for timeliness in section (1) of this rule does not apply when:

(a) The period of time is too long to accommodate the clinical urgency of the situation;

(b) The provider does not reasonably cooperate; or

(c) Circumstances beyond the control of a party prevent that party from complying with the standard, but only if the party who is unable to comply gives notice of the specific circumstances to the other party when the circumstances arise.

(3) An insurer shall treat an appeal from a decision by a medical consultant or peer review committee pursuant to section (1)(b) of this rule as

an internal appeal under the insurer's grievance procedures under ORS 743.804(3).

(4) Nothing in this rule shall prevent an enrollee from filing an internal appeal under the insurer's regular grievance procedure established pursuant to ORS 743.804 when the grievance concerns an adverse benefit determination, but this rule does not entitle a person not otherwise allowed to file a grievance or to appeal a decision by a medical consultant or peer review committee to file such a grievance or appeal.

Stat. Auth.: ORS 731.244  
Stats. Implemented: ORS 743.804, 743.806 & 743.807  
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 23-2011, f. & cert. ef. 12-19-11

## 836-053-1310

### Contracting Requirements

(1) To be considered for contracting with the Director of the Department of Consumer and Business Services as an independent review organization under ORS 743.858 for the purpose of providing independent review under ORS 743.857, an independent review organization must submit to the director a response to the director's request for proposal according to its requirements. The response must include:

(a) For an independent review organization that is publicly held, the name of each stockholder or owner of more than five percent of any stock or options;

(b) The name of any holder of bonds or notes of the independent review organization that exceed \$100,000;

(c) The name and type of business of each corporation or other organization that the independent review organization controls or is affiliated with and the nature and extent of the affiliation or control;

(d) The name and a biographical sketch of each director, officer and executive of the independent review organization and any entity listed under subsection (c) of this section and a description of any relationship the named individual has with:

(A) An insurer;

(B) A utilization review agent;

(C) A nonprofit or for-profit hospital or other health care corporation;

(D) A doctor of medicine or osteopathy, a provider or other health care professional;

(E) A drug or device manufacturer; or

(F) A group representing any of the entities described by paragraph

(A) to (E) of this subsection;

(e) The percentage of the independent review organization's revenues that the independent review organization anticipates will be derived from reviews conducted under ORS 743.862;

(f) A description of the areas of expertise of the medical reviewers making review determinations for the independent review organization, as well as policies and standards of the independent review organization that address qualifications, training and assignment of all types of medical reviewers and that are compliant with requirements of OAR 836-053-1317;

(g) The procedures that the independent review organization will use in making review determinations regarding reviews conducted under ORS 743.862;

(h) Attestations that all requirements will be met;

(i) Evidence of accreditation by a nationally recognized private accrediting organization;

(j) Other documentation, including but not limited to legal and financial information, policies and procedures, and data that are pertinent to requirements of ORS 743.862 and OAR 836-053-1315; and

(k) Any other requirements established by the director that demonstrate the independent review organization's ability to meet all requirements for contracting as an independent review organization in this state.

(2) In order to enable the director to consider the response of an independent review organization under section (1) of this rule:

(a) The independent review organization must authorize release of information from primary sources, including full reports of site visits, inspections and audits; and

(b) The Director may require the independent review organization to indicate which documents demonstrate compliance with specific statutory requirements under ORS 743.862 and OAR 836-053-1315.

(3) Investigation and verification activities of the director regarding the independent review organization may include, but are not limited to:

(a) Review of the response of the independent review organization to the request for proposals and its filings for completeness and compliance with standards;

(b) On-site survey or examination;

(c) Primary-source verification with accreditation or regulatory bodies of compliance with requirements that are used to demonstrate compli-

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ance with applicable standards established in ORS 743.862 and OAR 836-053-1315; and

(d) Other means of determining regulatory and accreditation histories.  
Stat. Auth.: ORS 731.244, 743.857 & 743.858  
Stats. Implemented: ORS 743.858  
Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 11-2011(Temp), f. & cert. ef. 7-7-11 thru 12-21-11; ID 23-2011, f. & cert. ef. 12-19-11

## 836-053-1340

### Timelines and Notice for Dispute That is Not Expedited

(1) An insurer shall give the Director of the Department of Consumer and Business Services notice of an enrollee's request for independent review by delivering a copy of the request to the director not later than the second business day of the insurer after the insurer receives the request for the independent review. In the event the enrollee applies to the director rather than to the insurer for independent review, the director shall provide the insurer notice of the enrollee's request for independent review by delivering a copy of the request to the insurer not later than the next business day of the department after the director receives the request for independent review.

(2) If an insurer reverses its final adverse determination before expiration of the deadline for sending the notice to the director under section (1) of this rule, the insurer must notify the enrollee not later than the next business day of the insurer after its reversal. The notice to the enrollee may be given electronically, by facsimile or by telephone, followed by a written confirmation.

(3) Not later than the next business day of the department after the director has received a request for independent review from an insurer or an enrollee, the director shall assign the review to one of the independent review organizations with whom the director has contracted. The director shall notify the insurer in writing of the name and address of the independent review organization to which the request for the independent review should be sent. If sending written notice will unduly delay notification, the director shall give the notice electronically, by facsimile or by telephone, followed by a written confirmation.

(4) The director shall notify the enrollee, not later than the second business day of the department after the director gave notice under section (3) of this rule of the assignment of the request. The notice must include a written description of the independent review organization selected to conduct the independent review and information explaining how the enrollee may provide the director with documentation regarding any potential conflict of interest of the independent review organization as described in OAR 836-053-1320.

(5) Not later than the third calendar day following receipt of notice from the director under section (4) of this rule, or the subsequent business day of the department if any of the days is not a normal business day of the department, the enrollee may provide the director with documentation regarding a potential conflict of interest of the independent review organization. The documentation shall be sent in written form. If sending written documentation will unduly delay the process, the enrollee shall give the notice electronically, by facsimile or by telephone, followed by a written confirmation. If the director determines that the independent review organization presents a conflict of interest as described in OAR 836-053-1320, the director shall assign another independent review organization not later than the next business day of the department. The director shall notify the insurer of the new independent review organization to which the request for the independent review should be sent. The director shall also notify the enrollee of the director's determination regarding the potential conflict of interest and the name and address of the new independent review organization.

(6) Not later than the sixth business day of the insurer after the date on which the insurer received notice from the director under section (3) of this rule, the insurer shall deliver to the assigned independent review organization the following documents and information considered in making the insurer's final adverse decision, including the following:

(a) Information submitted to the insurer by a provider or the enrollee in support of the request for coverage under the health benefit plan's procedures.

(b) Information used by the health benefit plan during the internal appeal process to determine whether the course or plan of treatment is:

(A) Medically necessary;

(B) Experimental or investigational; or

(C) An active course of treatment for purposes of continuity of care.

(c) A copy of all denial letters issued by the plan concerning the case under review.

(d) A copy of the signed waiver form, or a waiver, authorization or consent that is otherwise permitted under the federal Health Insurance Portability and Accountability Act or other state or federal law, authorizing the insurer to disclose protected health information, including medical records, concerning the enrollee that is pertinent to the independent review.

(e) An index of all submitted documents.

(7) Not later than the second business day of the independent review organization after receiving the material specified in section (6) of this rule, the independent review organization shall deliver to the enrollee the index of all materials that the insurer has submitted to the independent review organization. The insurer shall provide to the enrollee, upon request, all relevant information supplied to the independent review organization that is not confidential or privileged under state or federal law concerning the case under review.

(8) After receipt of the notice from the director under section (4) of this rule, the enrollee, the insurer or a provider acting on behalf of the enrollee or at the enrollee's request may submit additional information to the independent review organization. In accordance with OAR 836-053-1325(3)(b) the independent review organization must consider this additional information if the information is related to the case and relevant to the statutory grounds for external review contained in ORS 743.857. The independent review organization is not required to consider this information if the information is submitted after the seventh calendar day following the receipt of notice from the director under section (4) of this rule, or the subsequent business day of the independent review organization if any of the seven days is not a normal business day of the independent review organization. Upon receiving information under this section the independent review organization must:

(a) Forward any information provided by the insurer to the enrollee within one business day after the independent review organization receives the information.

(b) Forward any information provided by the enrollee or a provider acting on behalf of the enrollee or at the enrollee's request to the insurer within one business day after the independent review organization receives the information.

(9) The independent review organization shall notify the enrollee, the provider of the enrollee and the insurer of any additional medical information required to conduct the review after receipt of the documentation under section (7) of this rule. Not later than the fifth business day of such a request, the enrollee or the provider of the enrollee shall submit the additional information or an explanation of why the additional information is not being submitted to the independent review organization. If the enrollee or the provider of the enrollee fails to provide the additional information or the explanation of why additional information is not being submitted within the timeline specified in this subsection, the assigned independent review organization shall make a decision based on the information submitted by the insurer as required by section (6) of this rule. Except as provided in this section, failure by the insurer to provide the documents and information within the time specified in section (6) of this rule shall not delay the conduct of the independent review.

(10) An independent review organization must provide notice to enrollees and the insurer of the result and basis for the determination as provided in OAR 836-053-1325 not later than the fifth day after the independent review organization makes a determination in a regular, nonexpedited case.

Stat. Auth.: ORS 731.244, 743.858 & 743.862

Stats. Implemented: ORS 743.858 & 743.862

Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 11-2011(Temp), f. & cert. ef. 7-7-11 thru 12-21-11; ID 23-2011, f. & cert. ef. 12-19-11

## 836-053-1342

### Timelines and Notice for Expedited Decision-Making

(1) When an insurer expedites an enrollee's case under ORS 743.857(5), the insurer shall inform the Director of the Department of Consumer and Business Services and the independent review organization that the referral is expedited. If information on whether a referral is expedited is not provided to the independent review organization, the independent review organization may presume that the referral is not an expedited review, but the independent review organization may request clarification from the insurer.

(2) The insurer and the director must expedite external review that is required to be expedited under ORS 743.857(5) when:

(a) An enrollee requests external review before the enrollee has exhausted all internal appeals; or

(b) An enrollee simultaneously requests an expedited internal appeal and an expedited external review.

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(3) An independent review organization shall make its decision in each expedited case within a time period that is appropriate for accommodating the clinical urgency of the particular case, but in any event not exceeding the maximum time period specified in ORS 743.862(3).

(4) In an expedited case, an independent review organization shall immediately provide notice to enrollees and the insurer of the result and basis for the determination as provided in OAR 836-053-1325.

Stat. Auth.: ORS 731.244, 743.858 & 743.862  
Stats. Implemented: ORS 743.857, 743.858 & 743.862  
Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 11-2011(Temp), f. & cert. ef. 7-7-11 thru 12-21-11; ID 23-2011, f. & cert. ef. 12-19-11

## 836-053-1350

### Ongoing Requirements for Independent Review Organizations

(1) An independent review organization shall file an annual statistical report with the Director of the Department of Consumer and Business Services, on a form specified by the director, that summarizes reviews conducted. The report shall include, but need not be limited to, volumes, types of cases, compliance with timelines for expedited and nonexpedited cases, determinations, number and nature of complaints and compliance with conflict of interests rules.

(2) An independent review organization shall submit updated information to the director if at any time there is a material change in the information included in the response of the independent review organization to the director's request for proposals.

(3) An independent review organization shall maintain records of all materials, including materials submitted by all parties, notifications, documents relied upon, and the independent review organization's ultimate decision for a period of not less than three years after any review. The independent review organization shall provide copies of any of these documents to the director at the director's request.

Stat. Auth.: ORS 731.244, 743.857, 743.858 & 743.862  
Stats. Implemented: ORS 743.858 & 743.862  
Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 11-2011(Temp), f. & cert. ef. 7-7-11 thru 12-21-11; ID 23-2011, f. & cert. ef. 12-19-11

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**Rule Caption:** Suspension of Rules for Physician Credentialing and Recredentialing in Connection with Health Care Service Contractors.

**Adm. Order No.:** ID 1-2012(Temp)

**Filed with Sec. of State:** 1-12-2012

**Certified to be Effective:** 1-13-12 thru 5-1-12

**Notice Publication Date:**

**Rules Suspended:** 836-052-0900

**Subject:** This rulemaking suspends rules adopted by the Department of Consumer and Business Services related to physician credential and recredentialing by health care service contractors. During the 2009 Legislative Session, the statutory authority for adopting these rules was transferred from DCBS to the Oregon Health Authority. The Oregon Health Authority is proposing to adopt temporary rules that replace this DCBS rule and that make further changes to these rules, rather than relying on the rules in force previously adopted by DCBS. To avoid confusion, the DCBS rule will be suspended until permanent rules are adopted by the Oregon Health Authority, at which time the DCBS rule will be repealed.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-052-0900

### Physician Credentialing, Health Care Service Contractors

(1) The Oregon Practitioner Credentialing Application and the Oregon Practitioner Recredentialing Application, both of which were approved by the Advisory Committee on Physician Credentialing Information (ACPCI) on September 22, 2008, and both of which carry that date, are adopted with respect to hospitals and health care service contractors as Exhibits 1 and 2 to this rule.

(2) Each hospital and health care service contractor shall use the application forms adopted in section (1) of this rule

(3) This rule is adopted pursuant to the authority of ORS 442.807 for the purpose of enabling the collection of uniform information necessary for hospitals and health care service contractors to credential physicians seeking designation as a participating practitioner for a health plan, thereby implementing ORS 442.800 to 442.807 with respect to hospitals and health care service contractors.

Stat. Auth.: ORS 442.807

Stats. Implemented: ORS 442.800 - 442.807  
Hist.: ID 12-2001, f. & cert. ef. 10-15-01; ID 1-2004, f. & cert. ef. 2-3-04; ID 2-2005, f. & cert. ef. 3-1-05; Renumbered from 836-052-0700, ID 10-2007, f. 12-3-07, cert. ef. 1-1-08; ID 5-2009, f. 7-21-09, cert. ef. 10-1-09; Suspended by ID 1-2012(Temp), f. 1-12-12, cert. ef. 1-13-12 thru 5-1-12

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## Department of Corrections Chapter 291

**Rule Caption:** Interstate Compact for Adult Offenders.

**Adm. Order No.:** DOC 1-2012(Temp)

**Filed with Sec. of State:** 1-10-2012

**Certified to be Effective:** 1-10-12 thru 7-8-12

**Notice Publication Date:**

**Rules Amended:** 291-180-0275

**Subject:** The Department of Corrections fully participates in the Interstate Compact for Adult Offender Supervision (ICAOS). These rule modifications are necessary so that the Department may adopt by reference the most current rules published by the Interstate Commission for Adult Offender Supervision.

On March 5, 2011 the department adopted OAR 291-180-0251 and -261, and suspended OAR 291-180-0115, -0125, -0135, -0145, -0155, -0165, -0175, -0185, -0195, -0205, -0215, -0225, -0235, -0245, -0255, -0285, -0295, -0305, -0315, -0325, -0335, -0345, -0355, -0365, -0375, -0385, -0395, -0405, -0415, -0425, -0435, -0445, -0455, -0465, -0475, -0485, -0495, -0505, -0515, -0525, -0535, -0545, -0555, -0565, -0575, -0585, -0595, -0605, -0615, -0625, -0635, -0645, -0655, and -0665, via a temporary rulemaking action.

By this rulemaking action the department permanently adopts OAR 291-180-0251 and 291-180-0261, which apply retroactively to all offenders locating to other states, applying for or receiving interstate compact services under the Interstate Compact for Adult Offender Supervision, on or after August 31, 2011. The department also retroactively repeals OAR 291-180-0115, -0125, -0135, -0145, -0155, -0165, -0175, -0185, -0195, -0205, -0215, -0225, -0235, -0245, -0255, -0285, -0295, -0305, -0315, -0325, -0335, -0345, -0355, -0365, -0375, -0385, -0395, -0405, -0415, -0425, -0435, -0445, -0455, -0465, -0475, -0485, -0495, -0505, -0515, -0525, -0535, -0545, -0555, -0565, -0575, -0585, -0595, -0605, -0615, -0625, -0635, -0645, -0655, effective August 31, 2011.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

## 291-180-0275

### Retaken Offenders

(1) An offender who was previously retaken and returned to this state from another state at cost to the State of Oregon, whether by formal or informal means, shall not be approved by the Department of Corrections for an interstate compact supervision transfer under these rules until such time as the offender repays to the State of Oregon all costs incurred by the State of Oregon in effecting the offender's return to this state. Limited exceptions may be granted by the Compact Administrator or designee based on individual circumstances.

(2) This rule applies to all offenders applying for a transfer of their supervision to another state under the Interstate Compact for Adult Offender Supervision (ICAOS) before, on or after January 1, 2012, whose applications have not been previously approved by the Department of Corrections.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075  
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; DOC 1-2012(Temp), f. & cert. ef. 1-10-12 thru 7-8-12

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## Department of Energy Chapter 330

**Rule Caption:** Eliminates certain alternative devices and modifies the eligibility criteria for some alternative energy devices.

**Adm. Order No.:** DOE 11-2011

**Filed with Sec. of State:** 12-16-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 330-070-0029

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**Rules Amended:** 330-070-0013, 330-070-0014, 330-070-0019, 330-070-0020, 330-070-0021, 330-070-0022, 330-070-0024, 330-070-0025, 330-070-0026, 330-070-0027, 330-070-0045, 330-070-0048, 330-070-0060, 330-070-0064, 330-070-0070, 330-070-0073, 330-070-0089, 330-070-0091, 330-070-0097

**Subject:** The rules amendments are for changes to the Residential Energy Tax Credit (RETC) rules. Rule changes eliminate alternative fuel vehicles and certain appliances, modify the appropriate level of incentive for eligible alternative energy devices, modify requirements for wind alternative energy devices and provide process rules for implementing a cap n tax credits for solar third party applications.

**Rules Coordinator:** Kathy Stuttaford—(503) 373-2127

## 330-070-0013

### Definitions

For the purposes of Oregon Administrative Rules, Chapter 330, Division 70 the following definitions apply unless the context requires otherwise:

- (1) "AED" – Alternative Energy Device.
- (2) "Active Solar Heating" – A solar system that uses air or water that is moved by pumps or fans to collect, store and distribute the sun's energy to a dwelling or part of a dwelling.
- (3) "AHRI" – Air-Conditioning, Heating, and Refrigeration Institute.
- (4) "Alternative Energy Device" (AED) – A device or system that reduces the amount of conventional energy used by a dwelling.
  - (a) AEDs eligible for tax years prior to January 1, 2012 include, but are not limited to, systems that collect and use solar energy; ground source heat pump systems; certain energy-efficient appliances, energy-efficient heating, ventilating and air conditioning systems; premium efficiency biomass combustion devices, fuel cell systems; alternative fuel vehicles and related alternative fuel devices or wind devices that supply, offset or supplement electricity used for a dwelling or that supply electricity to a utility.
  - (b) AEDs eligible for tax years beginning on or after January 1, 2012 include, but are not limited to, systems that collect and use solar energy; ground source heat pump systems; energy-efficient heating and ventilation systems, premium efficiency biomass combustion devices, fuel cell systems; and wind devices that supply, offset or supplement electricity used for a dwelling or that supply electricity to a utility.
- (5) "Alternative Fuel" – Electricity, natural gas, ethanol, methanol, propane, and any other fuel approved by the Director.
- (6) "Alternative Fuel Device" –
  - (a) Prior to January 1, 2012 an alternative fuel vehicle, equipment necessary to convert a vehicle to use an alternative fuel, or a fueling system necessary to operate an alternative fuel vehicle.
  - (b) Beginning on January 1, 2012 a facility for mixing, storing, compressing or dispensing fuels for alternative fuel vehicles, and any other necessary and reasonable equipment.
- (7) "Annual Fuel Utilization Efficiency" (AFUE) – An efficiency descriptor of the ratio of annual output energy to annual input energy as developed in accordance with the requirements of the U.S. Department of Energy 10 CFR Part 430.
- (8) "Applicant" – A person who applies for a residential alternative energy device tax credit under this section, which may include:
  - (a) A person who files an Oregon tax return and applies for a residential alternative energy device tax credit under this section, or
  - (b) An Oregon Investor Owned Utility (IOU) as defined in ORS 757.005 or its subsidiaries and affiliated interests as defined in 757.015 that is designated by an applicant under (a) to receive the residential tax credit certificate for a qualifying alternative fuel device on behalf of that designated applicant.
- (9) "ARI" – Air Conditioning and Refrigeration Institute.
- (10) "ASHRAE" – American Society of Heating, Refrigerating and Air-Conditioning Engineers.
  - (11) "AWEA" – American Wind Energy Association.
  - (12) "Btu" – British Thermal Unit.
  - (13) "CEF" – Energy Factor for Combined Systems: A non-dimensional descriptor of efficiency for combined space and water heating systems during operation in the water-heating mode only. This part of the three-part rating (which also includes space heating efficiency and combined efficiency) takes into account the standby losses from the storage tank, if any. A higher energy factor denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124 test method.

(14) "Coefficient of Performance" (COP) – The ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(15) "Combined Annual Fuel Utilization Efficiency" (CAFUE) – The effective efficiency of the combined appliance in performing the function of space heating. A descriptor of efficiency for combined space and water heating systems during operation in the space heating mode only. This part of the three-part rating (which also includes water heating efficiency and combined efficiency) does not count standby losses from the storage tank, if any. A higher AFUE denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124-1991 test method.

(16) "Consumer Disclosure" – A department approved form completed by the Tax Credit Certified Technician and provided to the buyer of AEDs, except for energy-efficient appliances and alternative fuel devices, including estimated energy savings of the AED, required conservation items, required maintenance, and freeze protection information.

(17) "Cost" – As defined in ORS 469.160.

(18) "Domestic Water Heating" – The heating of water used in a dwelling for bathing, clothes washing, dishwashing and other related functions.

(19) "Ductless Mini-split Heat Pump" – An air-source heat pump consisting of an outdoor unit connected directly to one or more indoor units where the refrigerant is condensed and conditioned air is delivered directly to the room or zone of a home rather than through a central air handler.

(20) "Dwelling" – means real or personal property inhabited as a principal or secondary residence. "Dwelling" includes, but is not limited to, a single-family residence and an individual unit within multiple unit residential housing.

(a) Principal residence is the dwelling owned by the applicant who on the date of the application has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property, and who inhabits the dwelling for no fewer than 14 days in a calendar year.

(b) Secondary residence is a vacation or other dwelling owned by the applicant that is not the applicant's principal residence.

(c) A dwelling does not include a motor home or recreational vehicle as defined in ORS 446.003.

(21) "Electric Load" – Appliance and lighting exclusive of any water or space heating use.

(22) "Energy Efficiency Ratio" (EER) – EER is calculated by dividing the cooling capacity in Btu per hour (Btu/hr) by the power input in watts at any given set of rating conditions, expressed in Btu/hr per watt.

(23) "Energy-Efficient Appliance" – Prior to January 1, 2012 a clothes washer, clothes dryer, water heater, refrigerator, dishwasher, space conditioning system, solar electric alternating current (AC) module, or any other major household appliance that has been certified by the department to have premium energy efficiency characteristics. On or after January 1, 2012 includes only emerging technologies, such as high-efficiency heat-pump water heaters for domestic hot water, for gas water heaters, ductless heat pumps, high-efficiency furnaces that are at least 95 percent efficient, instantaneous or tankless gas water heaters and heat-pumps, that exceed code as specified in these rules.

(24) "Energy Factor" (EF) – Energy Factor is the ratio of useful energy output from the water heater to the total amount of energy delivered to the water heater. EF is a metric used to compare relative efficiencies of water heaters. The higher the EF is, the more efficient the water heater. EF is determined by the DOE test procedure, Code of Federal Regulations, Title 10, Section 430.

(25) "Energy Yield Chart" – Chart approved by the department showing first year energy yield of an AED.

(26) "Energy Recovery Ventilator" (ERV) – A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream that is also capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32 degrees F when operating at the lowest fan speed.

(27) "EUI (FURNACE)" – The Energy Use Index for a furnace, used to determine its electric efficiency, and calculated by the following formula, with inputs derived from the appropriate values in the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment:  $(3413 \times \text{EAE}) / [(3413 \times \text{EAE}) + (1,000,000 \times \text{EF})] \leq 2.0$  percent. EAE is the average annual auxiliary electrical energy consumption for a gas furnace in kilowatt-hours per year (kWh/yr). It is a measure of the total electrical ener-

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gy supplied to a furnace during a one-year period. EF is the average annual fuel energy consumption for a gas furnace in millions of Btu's per year (MMBtu/yr).

(28) "EUI (HERV)" – The Energy Use Index for an HRV or ERV, used to determine its electric efficiency, and calculated by dividing a model's power consumption, in watts, by the net supply air delivered, in cubic feet per minute (cfm), while the unit is operating in the lowest speed for which performance data is provided in the Home Ventilating Institute (HVI) Directory.

(29) "FERC" – Federal Energy Regulatory Commission.

(30) "First Year Energy Yield" – Usable energy produced under average conditions by an AED in 12 consecutive months of continuous operation expressed in kWh. Usable energy is the gross energy contribution minus any parasitic energy used to operate the system.

(31) "Fuel Cell Stack" – The portion of a fuel cell system where the electrochemical reactions take place, generally consisting of an anode, an electrolyte, and a cathode and supporting systems bringing fuel to the stack and carrying away the electricity, electrochemical products and thermal energy generated.

(32) "Fuel Cell System" – A system for producing electricity electrochemically and non-reversibly, using a hydrogen rich fuel and oxygen, and producing an electric current, water, and thermal energy.

(33) "Ground Source Heat Pump" – A heating, ventilating and air-conditioning system, also known as a ground source heat pump, earth-coupled heat pump, geothermal heat pump or ground loop AED, that utilizes a subsurface closed loop heat exchanger to extract or reject heat to the earth.

(34) "Heat Recovery Ventilator" (HRV) – A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream.

(35) "Heating Season Performance Factor" (HSPF) – The total heating output of a heat pump during its normal annual usage period for heating divided by the total electric power input in watt-hours during the same period. HSPF is measured according to test procedures defined by AHRI in its Standard 210/240 as well as ASHRAE Standard 116 and the DOE Test Procedure in 10 CFR; Part 430, Appendix M (ARI, 2003).

(36) "HUD" – U.S. Department of Housing and Urban Development.

(37) "Hybrid Vehicle" – An alternative fuel vehicle that draws propulsion energy from on-board sources of stored energy that include both an internal combustion or heat engine and a rechargeable energy storage system.

(38) "Hydronic Space Heating System" – A system that uses hot or warm water to deliver heat from a boiler or water heater to the living spaces in a home.

(39) "Installed Output" – The rated capacity of a photovoltaic system measured in average alternating current watts for the purpose of determining the tax credit for systems installed on or after January 1, 2011 or before January 1, 2012. Installed output equals 0.7 multiplied by the rated direct current capacity as measured at standard test conditions.

(40) "IREC" – Interstate Renewable Energy Council.

(41) "kWh" – Kilowatt-hour; 1 kWh = 3413 BTU for purposes of department calculations.

(42) "Latent Recovery Moisture Transfer" (LRMT) – In an HRV or ERV, moisture recovered to the ventilation supply air stream divided by moisture being exhausted, corrected for cross leakage, if any. LRMT = 0 would indicate that no exhausting moisture is recovered for the incoming supply air stream. LRMT = 1 would indicate that all exhausting moisture is transferred.

(43) "MCFC" – Molten carbonate fuel cell.

(44) "Modified Energy Factor" (MEF) – The non-dimensional efficiency rating for clothes washers. This measure, unlike the EF, takes into account the moisture removed from the wash load in the spin cycle, thereby changing energy use in the drying cycle. A higher MEF denotes a more efficient clothes washer.

(45) "MM" – Million (Roman Numeral M = 1000, MxM = 1000 x 1000 = 1,000,000 or 106).

(46) "Net Generation" – The gross kWh produced minus internal losses and parasitic loads. The net generation includes both the amount of generation available to serve dwelling loads and to provide to a utility.

(47) "OG" – Operating guidelines developed by the Solar Rating and Certification Corporation (SRCC) including system performance or component characteristics defined by SRCC in its directory.

(48) "Owner-Built" – An AED that is assembled and installed on an owner's property and with an owner's labor only.

(49) "Parasitic Power" – The electrical energy the system uses to operate.

(50) "Passive" – A solar AED that relies on heated liquid or air rising to collect, store and move heat without mechanical devices.

(51) "Passive Solar Space Heating" – A system or building design that collects and stores solar energy received directly through south facing windows. The system/design is without powered moving parts and includes provisions to collect, store and distribute the sun's energy using only convection, radiation and conduction of energy.

(52) "Pass-Through Amount" – The sum, equal to the present value of the credit, paid to an eligible AED owner in exchange for the right to claim the tax credit. The present value of the tax credit shall be determined periodically by the Director.

(53) "Pass-Through Partner" – An individual or business that pays the pass-through amount to an applicant and receives the tax credit in place of the applicant.

(54) "Pass-Through Verification" – A determination based on information collected by the department that the approved pass-through amount has been provided, that the applicant has relinquished any claim to the tax credit and has assigned the credit to the pass-through partner.

(55) "Peak Power Ratio" – The maximum power available from the electric motor of a hybrid vehicle providing propulsion energy when powered by the rechargeable energy storage system, divided by the total of such maximum power and the SAE net power of the internal combustion or heat engine.

(56) "Performance Checked Duct System" – A forced air duct system that has been tested for duct leakage by a tax credit certified technician using the department's approved testing procedures, and that has been repaired or constructed for premium efficiency using the department's approved materials to reduce duct air leakage. For purposes of the tax credit, performance checked duct systems are considered energy-efficient appliances.

(57) "Performance Checked Heat Pump or Air Conditioner" – A heat pump or air conditioner that has been tested and repaired or serviced for premium efficiency by a tax credit certified technician using department approved procedures to assure that refrigerant charge and system air flow are within ranges recommended by the equipment manufacturer. For purposes of the tax credit, performance tested heat pumps and air conditioners are considered energy-efficient appliances.

(58) "Premium Efficiency Biomass Combustion Device" – Any device that burns wood, compressed wood or other non-gaseous or non-liquid solid fuels of 100 percent organic origin for aesthetic or space-heating purposes.

(59) "PV System" – A complete solar electric power system capable of delivering power to either the main or sub-panel in a dwelling. Necessary components include solar electric modules, inverter, mounting system, and disconnection equipment.

(60) "Seasonal Energy Efficiency Ratio" (SEER) – A measure of the efficiency of a cooling system over the entire cooling season (cooling accomplished divided by power used), expressed in Btu/kWh.

(61) "Solar Attic Fan" – A device that uses photovoltaics to power a fan that pulls hot air out of an attic or roof space. Such a device may either be a complete, all-in-one unit or be comprised of a small photovoltaic panel and a DC powered attic fan designed to be run by photovoltaic panel.

(62) "Solar Domestic Water Heating System" – Any configuration of plumbing equipment and components to collect, convey, store and convert the sun's energy for the purpose of heating water.

(63) "Solar Electric AC Module" – A solar photovoltaic module coupled with a utility interactive inverter. The combined system must be Underwriters Laboratory (UL) listed and meet all current Institute of Electronic and Electrical Engineers (IEEE) 929 requirements.

(64) "SRCC" – Solar Rating and Certification Corporation.

(65) "Sensible Recovery Efficiency" (SRE) – In an HRV or ERV, the measurable (sensible) energy recovered to the ventilation supply air stream minus supply fan and preheat coil energy use divided by the total sensible energy being exhausted plus exhaust fan energy. This measure of efficiency accounts for the effects of cross leakage between air streams, purchased energy for fan controls, and defrost system energy use.

(66) "Standard Test Conditions" (STC) – 25 degrees Celsius cell temperature and 1000 watts per square meter (W/m<sup>2</sup>).

(67) "Sunchart" – A chart or form issued or approved by the department, and completed, signed and dated by tax-credit certified technician showing the plotted path of the sun and any objects, including both plant life and structures, that block the sun from an AED. The viewpoint must be from the center of the lower edge of the collector, and must depict whether

# ADMINISTRATIVE RULES

any plant life is made up of evergreen or leafy trees. A lack of shading on the AED must be indicated in writing on the chart.

(68) "System Certification" – Certification that an AED as described in an application for tax credit meets all criteria for the tax credit.

(69) "System Owner" – A person who owns the AED.

(70) "Tax-Credit Certified Technician" (TCCT) – A technician who has been approved by the department to implement the tax credit program. A tax-credit certified technician is responsible for assuring that AEDs are installed in accordance with the department's rules and must verify system installation quality and performance.

(71) "Tax-Credit Listed Company" – A company that employs at least one tax-credit certified technician.

(72) "Third-party" – means the owner, or the owner's representative, of the alternative energy device for the duration of the third-party agreement.

(73) "Third-party alternative energy device installation" – has the definition given in Oregon Laws 2011, chapter 730, section 70.

(74) "Total Solar Resource Fraction" – The fraction of usable solar energy that is received by the solar panel/collector throughout the year, which accounts for impacts due to external shading, collector tilt and collector orientation.

(75) "Unconditioned Spaces" – An enclosed space within a building that is not a conditioned space or a semi-heated space such as attics, garages, and any space with an average ambient temperature of less than 55 degrees Fahrenheit during the heating season.

(76) "Used Equipment" – Any product or any piece of equipment not under a current manufacturer's warranty or which has been acquired by a previous owner or user.

(77) "Wastewater Heat Recovery Device" – A device designed to recover thermal energy from household wastewater streams for the purpose of returning a portion of this energy to the dwelling's hot water supply system.

(78) "Water Factor" (WF) – The measure of water efficiency in clothes washers, measured in gallons per cubic foot of tub capacity, per cycle (gal/ft<sup>3</sup>/cycle).

(79) "Wind AED" – A qualifying wind energy conversion system that uses wind to produce mechanical or electrical power or energy, including turbines, towers and their associated components needed to form a complete system.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88, Renumbered from 330-070-0023; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0014

### Pass-Through Eligibility

(1) Any person or business 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 applicant.

(2) In accordance with ORS 469.170(10) the department establishes the following rates for calculating the present value of the tax credit:

(a) For tax credits greater than \$1,500 when the pass-through partner is a business, the present value is 80 percent of the tax credit amount.

(b) For tax credits greater than \$1,500 when the pass-through partner is a resident, the present value is 86 percent of the tax credit amount.

(c) For tax credits less than \$1,500 the present value is 95 percent of the tax credit amount.

(3) The department will issue a credit to the pass through partner when the applicant confirms receipt of an equal amount to the present value of the tax credit and relinquishes any claim to the credit.

Stat. Auth.: ORS 469.040, 469.160 - 180 & 469.710 - 720

Stats. Implemented: ORS 469.040, 469.160 - 180 & 469.710 - 720

Hist.: DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0019

### Cost

(1) Notwithstanding the definition in OAR 330-070-0013, an applicant who installed eligible AEDs on or after August 1, 2010 and prior to January 1, 2011, other than those under contract on or before August 13, 2010 and installed prior to January 1, 2011, must determine cost by calcu-

lating the amount the applicant paid for design, acquisition, building and installation of the AED, including permit and inspection fees. The cost must include the value of federal tax credits and utility incentives. Cost does not include service contracts, rebates, or refunds.

(2) An applicant:

(a) With an eligible AED installed prior to August 1, 2010 must clearly indicate on the application that the date of installation completion was prior to August 1, 2010; or

(b) With an eligible AED installed on or after August 1, 2010 and prior to December 31, 2010, who have a signed contract dated on or before August 13, 2010, must:

(A) Have provided a copy of the contract for the installation of an eligible AED to the department no later than 5:00 p.m. on Friday, August 27, 2010;

(B) Indicate on the application that the project was completed on or before December 31, 2010; and

(C) Provide the department evidence of the completed installation in the form of a copy of the approved final inspection, dated on or before December 31, 2010, as issued by the local jurisdiction.

(3) The department may grant an additional 15 days for project completion upon the written request of the applicant for good cause shown. The applicant must request the additional time in writing and explain the extenuating circumstances as to why the installation was not completed on or before December 31, 2010. Any project granted the additional time must be completed no later than Friday, January 14, 2011.

Stat. Auth.: ORS 469.160 - 469.180

Stats. Implemented: ORS 469.160.160 - 469.180

Hist.: DOE 10-2010(Temp), f. & cert. ef. 7-30-10 thru 1-24-11; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0020

### Eligibility

(1) To qualify for a credit, a person must:

(a) Have an income tax liability in Oregon; and

(b) Purchase an AED, complete construction and installation if applicable, and obtain a certification in accordance with OAR 330-070-0010 through 330-070-0097; and

(c) Be the owner or contract buyer of an Oregon dwelling served by the AED, or be a tenant of the dwelling owner; and

(A) Use the dwelling as a primary or secondary residence; or

(B) Rent or lease the dwelling to a tenant who uses the dwelling or dwellings as a principal or secondary residence.

(2) If the basis for the credit is the installation of an energy-efficient appliance, the credit shall be allowed only to the taxpayer who actually occupies the dwelling as a principal or secondary residence.

(3) If the basis for the credit is a fueling station necessary to operate an alternative fuel vehicle, unless the certificate is transferred, the company that constructs the dwelling that incorporates the fueling station or who installs the fueling station in the dwelling may claim the credit. If the alternative energy device is an alternative fuel vehicle or related equipment, the credit must be claimed by the system owner.

(4) Any person that pays the present value of the tax credit for a qualified alternative energy device to the person who originally purchases the device shall be entitled to claim the credit in place of the original credit owner.

(5) For a qualified vehicle owned by a lessor during the period of first use of a new vehicle, the lessor may pass-through the right to claim the credit to the lessee exercising the first new use.

(6) Notwithstanding (1)(b), a residential property owner may qualify for a credit of a third party alternative energy device installation by meeting the following additional requirements:

(a) Installations must include a minimum 10-year agreement between the residential property owner and the third party owner of the AED. The agreement must cover maintenance of the AED and either the use of the AED or the power generated by the AED for the entire length of the agreement.

(b) The third party must comply with OAR 330-070-0029.

(c) The applicant must provide system cost information for third-party AED installations. System cost can be demonstrated by providing either a copy of an invoice for the purchase of the AED by the third party, or a declaration of representative market value for an AED that includes the costs of supply and installation. Such a declaration must include a list of primary system components and their costs.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.160

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE

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4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0021

### Eligible Devices

(1) To earn a tax credit, an AED must:

(a) Be a complete system that is currently operating and meets these rules. Additions to existing AED systems, except for pool, spa, or hot tub systems, are eligible when those additions increase the energy production capacity and the kWh saved by the system;

(b) Be a system that is built, installed, and operated in accordance with ORS 469.160 through 469.180;

(c) Be a system with manufacturers' warranties against defects in products and materials, including remanufactured equipment;

(d) Be a system that complies with general and specific standards in these rules as they apply to AED systems and be one of the following:

(A) A system that uses solar energy;

(B) A ground source heat pump;

(C) A renewable energy system that heats or cools space, heats water, or makes electricity;

(D) An energy-efficient appliance including a wastewater heat recovery device;

(E) An alternative fuel device; For tax years prior to January 1, 2012 this includes vehicles licensed and registered for first new use on Oregon roadways and used vehicles being modified for first new use of a qualifying alternative fuel device.

(F) A fuel cell system;

(G) For tax years prior to January 1, 2012 a heat pump water heater. Beginning January 1, 2012 only heat pump water heaters that meet the Northern Tier specification established by the Northwest Energy Efficiency Alliance for electricity will be eligible;

(H) A premium efficiency biomass combustion device;

(I) A ductless mini-split heat pump;

(J) A Gas Furnace;

(K) A Heat and Energy Recovery Ventilator; or

(L) An Air Source Heat Pump.

(2) The following devices are not eligible for an AED tax credit:

(a) Standard efficiency furnaces;

(b) Standard backup heating systems;

(c) Wood stoves or wood furnaces, or any part of a heating system that burns wood except a qualifying premium efficiency biomass combustion device;

(d) Heat pump water heaters that are part of a geothermal heat pump space heating system;

(e) Structures that cover or enclose a swimming pool and are not attached to the dwelling;

(f) Swimming pools and hot tubs used to store heat;

(g) Photovoltaic systems installed on recreational vehicles;

(h) Additions to existing spa and hot tub systems;

(i) Above ground, un-insulated swimming pools, spas and hot tubs;

(j) Conversions of systems from one type to another. An example is a conversion of a draindown solar hot water system to a drainback solar hot water system;

(k) Used equipment, not including remanufactured equipment that meets program standards;

(l) Repairs and maintenance of systems having received prior certification for an AED tax credit;

(m) Water source heat pump: A system that uses surface or subsurface water in a single pass without recirculation (open loop);

(n) Hydro systems;

(o) Wind systems that are used to heat or cool buildings, or to heat domestic, swimming pool or hot tub water; and

(p) Renewable energy systems that received certification under the Business Energy Tax Credit program as Homebuilder Installed Renewable Energy Facilities or as part of a High Performance Home.(q) Air Conditioning Systems (effective January 1, 2012).(r) Boilers (effective January 1, 2012).

(s) Dishwashers (effective January 1, 2012).

(t) Refrigerators and Freezers (effective January 1, 2012).

(u) Clothes Washers and Dryers (effective January 1, 2012).

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004,

## 330-070-0022

### Amount of Tax Credit

(1) The amount of the AED tax credit is based on the first-year energy yield of an eligible AED. The energy yield basis for a solar tax credit may be adjusted by the department to account for less than optimal solar access.

(2) The amount of the AED tax credit shall not exceed the lesser of:

(a) \$1,500 or the first-year energy yield of the AED in kWh multiplied by 60 cents for AEDs used for solar or geothermal space heating, cooling, or domestic water heating for tax years beginning on or after January 1, 1998. The amount of the credit may not exceed 100 percent of the cost of the system components and their installation. Only one tax credit for ground source heat pump systems will be issued per year per residence.

(b) For an alternative energy device used for swimming pool, spa or hot tub heating, the credit allowed must be based upon 50 percent of the cost of the device or the first year's energy yield in kilowatt hours per year multiplied by 15 cents, whichever is lower, up to maximum credit amounts set in subsections (a) through (c) of this section.

(c) For each alternative fuel device, the credit allowed is 25 percent of the eligible cost of the alternative fuel device, not to exceed \$750 for devices placed in service on or after January 1, 1998. Individual credit may be claimed for both an alternative fuel vehicle, if purchased before January 1, 2012, and an alternative fuel fueling system.

(A) Eligible cost is the difference in the cost between a conventional fueled vehicle of similar size with similar features and the cost of an alternative fuel vehicle and its charging or fueling systems.

(i) Conventional fuel vehicles manufactured by the same manufacturer with the same seating capacity and/or cab cubic volume or weight difference that are less than 20 percent, may be used to define eligible costs, provided that other features (upholstery, audio, suspension, body appointment) are similar.

(ii) Low-speed vehicles, as defined under ORS 801.331 (2009 Oregon Vehicle Code) and alternative fuel vehicles capable of using E-85 and gasoline (flex-fuel vehicles) are not eligible for a tax credit.

(d) For fuel cell systems placed in service on or after January 1, 2007, one tax credit may be issued per year per residence based on the first-year energy yield of the AED in kWh multiplied by 60 cents, not to exceed \$6,000 and not to exceed 50 percent of the cost of the system. The maximum credit claimed per year will not exceed \$1,500.

(e) For photovoltaic systems installed on or after November 4, 2005, one \$6,000 tax credit per year per residence for four years (\$1,500 per year) not to exceed 50 percent of the cost of the system as defined in OAR 330-070-0022(4).

(f) For wind AEDs installed on or after January 1, 2007, one tax credit may be issued per year per residence based on the first-year energy yield of the AED in kWh multiplied by \$2.00, not to exceed \$6,000 and not to exceed 50 percent of the cost of the system. The maximum credit claimed per year will not exceed \$1,500.

(3) For an energy-efficient appliance, the credit allowed under this section shall equal:

(a) 40 cents per kilowatt hour saved, or the equivalent for other fuel saved. The total for each appliance is not to exceed 25 percent of the cost of the appliance.

(b) \$50 per 6,000 Btu/hr of nominal rated capacity, up to \$400 or 25 percent of the cost, whichever is less, if the energy-efficient appliance is a very high efficiency air source ductless heat pump.

(4) For photovoltaic systems:

(a) Installed on or after November 4, 2005 and prior to January 1, 2011, the credit allowed under this section shall equal \$3 per watt of the installed capacity measure in watts of direct current at industry standard test conditions.

(b) Installed on or after January 1, 2011 and before January 1, 2012, the credit allowed under this section shall equal \$3 per watt of the installed output. This is equal to \$2.10 per watt of the installed capacity measured in watts of direct current at industry standard test conditions.

(c) Installed on or after January 1, 2012, the credit allowed under this section shall equal \$2.10 per watt of the installed capacity measured in watts of direct current at industry standard test conditions.

(d) A maximum of one credit valued at \$6,000 shall be issued per residence per AED. The maximum amount of credit allowed per year, beginning in the year in which the AED was installed, is \$1,500 per year over a four-year period. The total credit shall not exceed 50 percent of the cost of



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the system. All photovoltaic systems installed at a dwelling within a 5 year period shall be considered a single device.

(5) For premium efficiency biomass combustion devices, the credit allowed under this section shall be up to \$300 or 25 percent of the cost of the device, whichever is less, based upon the efficiency and the first year energy yield of the AED in kilowatt hours multiplied by 40 cents as determined by the department.

(6) The amount of the tax credit must not exceed the net cost of the AED to the applicant. The sum of any rebates or cash payments, including public purpose organization or federal grants or credits and the residential energy tax credit may not exceed costs.

(7) For purposes of the tax credit, the cost of the AED must:

(a) Comply with OAR 330-070-0060 through 330-070-0097, as those rules apply;

(b) Be the net cost of acquiring the system.

(A) AEDs using an alternative energy source for only a part of their energy output or savings will have net cost prorated. Net cost must be based on that part of the AED's energy output or savings that is due to the alternative source;

(B) The department may find an AED to be too large for a dwelling. In such case net cost must be prorated. Net cost must be based on the largest useful size of an AED for the dwelling. The department must determine largest useful size based on the energy needs of the building; and

(C) The amount of credit for the original system and an addition may not exceed \$1,500 per year.

(8) For purposes of the tax credit, the net eligible cost of the AED is only those costs necessary for the system to yield energy savings and must not include:

- (a) Unpaid labor including the applicant's labor;
- (b) Operating and maintenance costs;
- (c) Land costs;
- (d) Legal and court costs;
- (e) Patent search fees;
- (f) Fees for use permits or variances;
- (g) Loan interest;
- (h) Vendor rebates, discounts and refunds;
- (i) Service contracts;
- (j) Cost of moving a used AED from one site to another;
- (k) Cost of repair or resale of a system;
- (l) Any part of the purchase price which is optional, such as an extended warranty; and
- (m) Delivery fees.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0024

### Year Credit Claimed

(1) The tax credit must be claimed pursuant to ORS 316.116.

(2) The tax credit may not exceed a person's tax liability. Unused credit may be carried forward for a maximum of 5 years as allowed under ORS 316.116.

(3) Proof of purchase must be a contract or invoices dated in the year for which the applicant is claiming the credit.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.160

Hist.: DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0025

### Application for System Certification

(1) Applicants for a tax credit must obtain a system certification from the department.

(2) Applications for a system certification must be made in a form developed by the department:

(a) All applications must provide all requested information and include a statement that the system and technician or owner-builder will meet all federal, state and local requirements;

(b) All applications must include the applicant's social security number for use as an identification number in maintaining internal records. The applicant's social security number may be shared with the Department of

Revenue to establish the identity of an individual in order to administer state tax law.

(c) All applications must state:

(A) The net cost of the AED;

(B) The location of the AED;

(C) Estimated first-year energy yield of the AED provided by the technician or from the department's energy yield chart, if any; and

(D) That the applicant has received an operating manual for the AED, except that no operating manual is required for sunspaces or direct gain space heating systems.

(d) All applications must state that the technician agrees to make any changes required by the department for the system to comply with ORS 469.160 through 469.180;

(e) All applications must be signed by the applicant and technician, if any, or, a form of electronic signature acceptable to the department shall be provided; and

(f) A technician or applicant must not give the department false or misleading information about an AED.

(g) Applications for third-party installations must include a valid reference number as issued to the third-party by the department under 330-070-0029.

(3) System certification applications for solar water heating AEDs must contain:

(a) All the data required in section (2) and must also include:

(b) The number of collectors;

(c) The manufacturer and/or supplier;

(d) The collector dimensions and/or the net area of the collectors;

(e) The amount of heat storage;

(f) The system type;

(g) Declaration of SRCC certification status or equivalence as determined by the department;

(h) A description of the freeze protection for the system;

(i) A description of the over-heat protection for the system;

(j) The system model;

(k) Orientation and tilt of the collector;

(l) A sunchart for the collector location;

(m) A Consumer Disclosure signed by the applicant and technician or supplier, if any;

(n) A statement that the applicant has received a copy of consumer information supplied by the department; and

(o) Other data the department requires to determine eligibility.

(4) System certification applications for active solar space heating AEDs must contain:

(a) All the data required in sections (2) and (3) of this rule;

(b) A heat loss estimate for the home;

(c) The type and amount of thermal storage;

(d) A sunchart for the collector location; and

(e) Other data the department requires to determine eligibility.

(5) System certification applications for passive solar space heating AEDs must contain:

(a) All the data required in section (2) above and must also contain:

(a) A copy of the building permit plans;

(b) A copy of the window specifications used;

(c) The type and amount of thermal storage;

(d) A sunchart taken at the center of the solar glazing; and

(e) Other data the department requires to determine eligibility.

(6) System certification applications for photovoltaic AEDs must contain:

(a) The data required in section 2 and must also contain:

(b) The number of modules;

(c) The brand name of the module(s);

(d) The module(s) area;

(e) The rated DC output in watts of the module(s) under Standard Test Conditions (STC);

(f) A description of the storage provided if storage is a part of the system;

(g) Storage brand and model;

(h) Storage capacity in kWh;

(i) The brand name of the inverter if an inverter is part of the system;

(j) The capacity of the inverter;

(k) Orientation and tilt of the array;

(l) A sunchart of the array location;

(m) Other data the department requires to determine eligibility; and

(n) Must submit copy of final inspection after system has been permitted by applicant's local jurisdiction.

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(7) System certification applications for ground source heat pumps must contain:

(a) All the data required in section (2) of this rule and must also contain:

- (b) For all systems connected to a well, data on the well including:
  - (A) Depth;
  - (B) Diameter (cased);
  - (C) Temperature;
  - (D) Static water level below grade;
  - (E) A copy of the well driller's log, if available; and
  - (F) Other data the department requires to determine eligibility.
- (c) For systems connected to a heat pump:
  - (A) Brand name and model number of the heat pump;
  - (B) Rated output at the entering water temperature;
  - (C) Estimated system COP rated by ARI under Standard 325 -85 at an entering water temperature of 50 degrees Fahrenheit; and
  - (D) Any other data the department requires to determine eligibility.
- (d) For ground loop heat pump systems:
  - (A) All the information in subsection (7)(b) of this rule; and
  - (B) Brand name, rated output, estimated COP;
  - (C) Length and depth of the loop;
  - (D) Materials and spacing used;
  - (E) Type of heat transfer fluid; and
  - (F) Other data the department requires to determine eligibility.

(8) System certification applications for energy-efficient appliances must contain:

- (a) All the data required in section (2) of this rule and must also contain:
  - (b) The dealer's business location;
  - (c) The brand name, make, model number, capacity and/or size of the appliance;
  - (d) A signed copy of the sales agreement, which will include all of the following:
    - (A) Verification of applicant's name and address; and
    - (B) Verification of model of appliance; and
    - (C) Verification of actual price paid for appliance.
  - (e) Certification of new equipment warranty; and
  - (f) Other data the department requires to determine eligibility.
- (9) System certification applications for alternative fuel devices must contain:

- (a) Taxpayer's name;
- (b) Taxpayer i.d. or social security number;
- (c) State of Oregon vehicle registration number if the device is a vehicle;
- (d) Installation location by street address;
- (e) The name of the licensed and bonded company employing the technician;
- (f) The company's business location;
- (g) The brand name, make, model number, or component list of the AFD;
- (h) A signed copy of the sales agreement, which will include all of the following:

- (A) Verification of applicant's name and address; and
- (B) Verification of model of, or components used for AFD; and
- (C) Verification of actual price paid for the AFD.
- (i) Certification of new equipment warranty;
- (j) An optional letter attached to the application declaring that the applicant designates an Investor Owned Utility (IOU) or other qualifying entity as the eligible recipient of the credit certificate on behalf of the project owner applicant that includes:
  - (A) Name, address, contact person, phone number, facsimile number of the IOU or designated qualifying party; and
  - (B) Signature, or form of electronic signature acceptable to the department, of an authorized representative of the IOU or other designated qualifying party stating willingness to accept the tax credit certificate; and
  - (k) Other data the department requires to determine eligibility.
- (10) System certification applications for fuel cells must provide information regarding:

- (a) The data required in section (2) and must also contain:
- (b) The rated fuel cell stack peak capacity, in kW;
- (c) The rated fuel cell system peak capacity, in kW (this rating includes peak capacity enhancing devices such as batteries and other storage devices or systems);
- (d) Whether or not the system is grid connected;
- (e) The fuel used by the system;

(f) The type of fuel stack (PEM, PAFC, SOFC, etc.);

(g) An estimate of the average load, in kW, expected to be placed on the system;

(h) The thermal energy production rate, in Btu/hour, at peak capacity and at the average load specified in (10)(f) above;

(i) Whether or not the system has provisions for thermal heat recovery, and if so, where the thermal energy is designed to be used (domestic hot water, space heating, etc.); and

(j) Other data the department requires to determine eligibility.

(11) System certification applications for premium efficiency biomass combustion devices must provide information regarding:

- (a) The manufacturer, model, capacity, serial number; and
- (b) The device characteristics defined as catalytic, non-catalytic, or pellet stove or boiler; and
- (c) Vendor name and address; and
- (d) Price paid for the device, any parts or installation; and
- (e) A signed certification from the applicant verifying that any wood burning device which is being replaced has been rendered unusable and will be retired permanently from service; and
- (f) The efficiency and grams of smoke per hour published in the List of EPA Certified Wood Stoves; or
- (g) The efficiency and grams of smoke per hour published in a third-party list approved by the Director in the year in which the device was purchased; or
- (h) A certificate of performance including the grams of smoke per hour and efficiency for the specific manufacturer and model of wood burning device from a currently US EPA certified woodstove testing laboratory.

(i) Other data the department required to determine eligibility.

(12) A system certification may be transferred by an applicant who does not qualify for tax relief to the first eligible buyer of the dwelling.

(13) For a third party financed system, the application must provide copies of an energy purchase or lease agreement and full service maintenance agreement.

Stat. Auth.: ORS 469.086  
Stat. Implemented: ORS 316.116  
Hist.: DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1988(Temp), f. & cert. ef. 1-13-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0026 Technician Tax Credit Certification

(1) Technicians may apply for the department's tax-credit certification for a technology listed in subsection (2) of this section. Certification is intended to assist consumers with the state tax credit program, ensure that the systems are installed according to department rules, and verify system installation quality and performance. Technician certifications are valid for three years and must be renewed to remain in effect.

(2) A tax-credit certified technician applies only to the following products:

- (a) Solar water heating systems;
- (b) Ground source heat pumps (geothermal);
- (c) Photovoltaic systems;
- (d) Performance-tested ducts; and
- (e) Air source heat pumps/air conditioning systems.

(3) The tax-credit certified technician's qualification is based on the following:

- (a) Knowledge and understanding of the tax credit program requirements and expectations;
- (b) Ability to provide systems that are designed and installed consistent with the manufacturer's warranty; and
- (c) Employment by a company with a Construction Contractors Board (CCB) license.

(4) Those who do not maintain these competencies are subject to revocation of the certification.

(4) A Tax-credit certified technician qualification entitles a technician to:

- (a) Inform the AED system owner that he or she has attended the department's periodic training classes and is familiar with the rules and requirements of the Residential Energy Tax Credit Program.
- (b) Verify that installation of tax-credit qualified equipment and systems meet department standards for performance and longevity.

(5) Tax-credit certified technician status requires that the technicians must follow department requirements including:

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(a) Duct and air-source heat pump/air conditioning technicians must have a current or valid certification with Performance Tested Comfort System (PTCS) or Proctor Engineering CheckMe! Programs.

(b) Solar technicians must show a valid or current (North American Board of Certified Energy Practitioners-NABCEP certification or Limited Renewable Energy Technician (LRT) license for solar electric, Solar Thermal License (STL) for solar thermal, or pass the department's competency testing with a score of 70 or above for the technology. On or after May 4, 2009, new applicants for tax credit certified solar technicians must show NABCEP photovoltaic (PV) certification or successfully passed the NABCEP PV Entry-Level Exam or Limited Renewable Energy Technician (LRT) license or Solar Thermal License (STL) or other certification approved by the Director to be a tax credit certified solar technician. On and after May 4, 2010 all tax credit certified solar technicians must show proof of appropriate NABCEP or LRT or STL certification or other certification approved by the Director to maintain their tax credit solar certification with the department.

(c) First-time geothermal technician applicants must show proof of successful completion of International Ground Source Heat Pump Association training (IGSHPA) or IGSHPA certified manufacturer's installer training program or other training approved by the Director.

(d) Solar and geothermal tax credit certified technician applicants must participate in periodic department tax-credit training at least once every three years unless otherwise specified in department rule..

(e) Technicians must verify the AED owner has user manual for equipment/system.

(f) Technicians must provide the AED owner with a completed application and a copy of the final itemized dated invoice for the system that is marked "inspected and paid for." Verify owner has a written full warranty for the system that lasts no less than 24 months after the system is installed.

(g) Technicians must maintain tax-credit certification status by completing the following technology-specific requirements during the previous three years:

(A) For solar technology:

(i) Submit and approve two (2) Residential or Business Energy Tax Credit applications for systems in technology in which technician is certified and complete four (4) hours of related technical continuing education; or

(ii) Submit and approve one (1) Residential or Business Energy Tax Credit application for system in technology in which technician is certified and complete six (6) hours of related technical continuing education; or

(iii) Complete eight (8) hours of related technical education.

(B) For air source heat pumps/air conditioning: Must have a current or valid certification with PTCS or Proctor Engineering CheckMe! Programs.

(C) For performance tested duct systems: Must have a current or valid certification with PTCS.

(D) For ground-source heat pumps: Have submitted and approved a minimum of one (1) tax credit application or proof of having completed at least two hours of relevant installer training, community college HVAC course, or other training approved by the Director.

(6) Tax credits for installation of air source heat pumps/air conditioning systems, performance-tested ducts, geothermal systems, solar electric and solar thermal systems must be verified by a department tax-credit certified technician.

(7) A tax-credit certified technician must notify the department within 30 days if changes are made in any of the information in the certification application.

(8) The department will list companies employing duct and air-source heat pump/air conditioning technicians. A listed company must:

(a) Employ a tax credit certified technician who has a valid or current certification with PTCS or Proctor Engineering CheckMe! Programs.

(b) Apply in writing and renew their listing on an annual basis.

(c) Have a minimum of two key administrative staff participate in the department's periodic update training.

(d) Tax credit certified technicians that do not meet the minimum requirements are suspended for one-year after which they may reapply.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0027

### Application Review Process

(1) The department must review applications for AED tax credit approval. AEDs must comply with OAR 330-070-0010 through 330-070-0097. Specific rules for each type of AED are provided in OAR 330-070-0060 through 330-070-0097.

(2) The department will return applications that are not complete and will identify the additional information needed.

(3) The department may require more details to complete its review of an application.

(a) If the department requests additional data and does not receive it within 30 days the department may deny the application;

(b) During review, the department may ask for proof that the AED complies with OAR 330-070-0010 through 330-070-0097. The department may also ask for changes to allow the AED and application to comply with these rules.

(4) To obtain the information needed to evaluate an application or to verify eligibility and first year energy yield, the department may, with the owner's consent, inspect an installed AED:

(a) The department may deny a system certification or request Department of Revenue (DOR) to initiate proceedings for the forfeiture of a tax credit if an owner refuses to allow the department to inspect the AED;

(b) The department may require corrections to make the AED or tax credit application comply with OAR 330-070-0010 through 330-070-0097 to be made within 30 days; and

(c) If such changes are not made within this time limit, the department may reject the application.

(d) The department may use the results of utility inspections in lieu of its own inspection.

(5) The department may reject any application if the AED does not comply with ORS 469.160 through 469.180 and OAR 330-070-0010 through 330-070-0097. The department will explain all rejected applications in writing. Approved requests for lesser cost than claimed by the applicant will also include a written explanation of the basis for the determination.

(6) If the department rejects an application for system certification or approves a certification for lesser cost than claimed by the applicant, an applicant may appeal the rejection. The appeal must be filed within 60 days of the mailing of the rejection notice by the department, in accordance with ORS 183.310 through 183.500.

(7) If the department receives an application(s) for a qualifying alternative fuel device accompanied by a letter from the applicant designating an IOU or other qualifying party as the recipient of the tax credit certificate, then the department may aggregate such applications and issue a single tax credit certificate to designated qualifying party quarterly for applications for projects to be completed in that calendar year.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.160

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 2-1987, f. & ef. 5-13-87; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0029

### Third-Party Alternative Energy Device Installations

(1) A third-party who intends to complete a third-party alternative energy device installation must obtain a reservation before commencing installation.

(2) The third-party must apply to reserve potential tax credits by submitting a completed reservation request to the department. A reservation request may only be submitted after the owner of the residential property has entered into a contract for a third-party alternative energy device installation. The reservation request must contain the information required by the department on its form, but may be submitted in an alternative format.

(3) The department may require the third-party to provide a copy of the signed contract at any time after the submission of a reservation request. Failure to provide requested documents within 30 calendar days may result in the loss of reservations made by the third-party.

(4) A third-party may request the reservation of up to 25 potential tax credits in each reservation request, and may submit one request each week.

(5) The department will reserve the requested potential tax credits from the amount allowed by Oregon Laws 2011, chapter 730, section 75 and will provide the third-party with a reference number for each potential tax credit. The owner of the residential property at which the alternative

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energy device is installed must include the reference number on their tax credit application.

(6) A third-party may release a reservation by submitting a written request, including the reference number, to the department. If reservations are released in the same tax year they are reserved the department will re-allocate the potential tax credits to new reservation requests in the order the requests are received. Reservations of potential tax credits may not be transferred.

(7) The department will continually monitor the rate of allocation of tax credits to ensure that the total amount of tax credits do not exceed the amounts specified in Oregon Laws 2011, chapter 730, section 75. The department will allocate potential tax credits according to these rules and in the order in which requests are received. The department will return any excess reservation requests. A third-party may not commence installation until a reservation is issued by the department.

(8) The department will issue tax credits based on the year the potential tax credit is reserved if the installation is completed, as verified by an approved final inspection issued by the local jurisdiction, before April 1 of the following tax year. Tax credits for installations completed after April 1 of the tax year following reservation will be issued for the tax year in which the installation is completed.

(9) Reservation of potential tax credits does not guarantee approval of tax credit applications.

Stat. Auth.: ORS 469  
Stats. Implemented: ORS 469.160 - 469-180  
Hist.: DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0045

### Enforcement

(1) Applicant's actions that cause for revocation of a residential alternate energy tax credit:

(a) A system certification may be revoked pursuant to ORS 469.180 if the Director finds that:

(A) The applicant obtained the system certification as a result of misrepresentation;

(B) The AED has not been installed or operated in substantial compliance with the plans, specifications or procedures specified in the application or certificate, such as:

(i) Failure to follow applicable standards;

(ii) Failure to comply with required codes or obtain required permits or inspections;

(iii) Return of the AED to the seller or installer for a refund;

(iv) Sale or removal of the device so that it no longer operates on the property of the applicant; or

(C) The applicant refuses to allow the department to inspect the AED after a reasonable written request by the department. A reasonable request must allow applicant to choose a day within three weeks of the request from the department.

(b) Following revocation, the applicant must forfeit the tax credit, and the department of Revenue must proceed to collect any taxes not paid by the taxpayer because of this credit.

(2) A technician's tax credit certification may be revoked pursuant to ORS 469.180 if the Director finds that:

(a) The system or technician tax-credit certification was obtained by fraud or misrepresentation by the technician. The Director may find that fraud or misrepresentation occurred if false statements were made regarding the technician's licenses held, products or warranties carried by the tax-credit certified technician's employing company, the company's range of product cost, personnel employed in the business, or any other item in the application for technician tax-credit certification as defined in OAR 330-070-0026.

(b) The technician's performance regarding sales or installation of the alternative energy device for which the technician is issued a tax credit certificate under ORS 469.170 does not meet industry standards. The Director may find that the technician's performance does not meet industry standards under the following conditions:

(A) The technician's employing company is not registered with the Construction Contractors Board or does not carry the required level of insurance, licensure or bonding; or

(B) The technician and/or employing company fails to obtain the required state, federal or local permits required to install the AED as defined in OAR 330-070-0040; or

(C) The technician fails to install the AED system in compliance with standards adopted under OAR 330-070-0060 through 330-070-0097; or

(D) The technician fails to install the AED system to comply with manufacturers' published specifications; or

(E) The technician and employing company fail to honor contract provisions when there is no legitimate excuse for nonperformance of the obligation; or

(F) The technician and employing company fail to honor a warranty which they are contractually obligated to perform; and

(G) The technician and/or employing company fail to make corrections to remedy failure to comply with paragraphs (A) through (G) of this subsection requested by the department within 30 days of written notification from the department of the problem, unless a time extension is granted by the department.

(H) A tax credit for an AED sold or installed under the technician tax-credit certification is ordered revoked under subsection (2)(a) of this rule; or

(I) New information indicates that the AEDs installed under the technician tax-credit certification and his or her employing company does not meet eligibility requirements.

(c) The technician or employing company has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device. The Director may find that the technician or employing company has misrepresented the tax credit program or the AED under the following conditions:

(A) The technician or employing company has provided false or misleading information to the customer regarding the availability of the tax credit, amount and nature of the tax credit, procedures for tax credit application, eligibility standards for credit, or any other misleading information about the program implemented under ORS 469.160 through 469.180; or

(B) The technician or employing company has misrepresented the nature of the performance of the AED or claimed savings in excess of those on a yield chart without providing accurate calculations to the customer and to the department to substantiate the yield. For geothermal heat pumps, the technician or employing company has claimed savings higher than other units of similar efficiency; or

(C) The technician or employing company has misrepresented the cost of a system. For example, the technician or employing company omits costs in the contract for features necessary for basic installation and/or operation of the system and/or costs to comply with the AED eligibility under ORS 469.160 through 469.180; or

(D) The technician or employing company has misrepresented a competitor's product or service; and

(E) The technician or employing company fails to make corrections requested in writing to the department to remedy violations of (A)-(D) of this subsection within 30 days, unless more time is allowed by the department; or

(F) The technician or employing company fails to remedy the construction and/or warranty claim as directed by order of the Construction Contractors Board.

Stat. Auth.: ORS 469  
Stats. Implemented: ORS 469.180  
Hist.: DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0048

### Administrative Process for Review and Revocation of Technician Tax Credit Certification

(1) If ODOE receives a complaint, the tax-credit certified technician and employing company must be notified and given an opportunity to respond.

(a) If the complaint relates to issues that the Construction Contractors Board (CCB) has authority to resolve, the complaint must be referred to the CCB for resolution. The CCB generally has authority to address construction, warranty claims or complaints involving dishonest or fraudulent conduct. Failure to comply with the order of the CCB must be grounds for revocation of technician tax-credit certification or civil penalty.

(b) In all other cases, ODOE must evaluate the technician's or employing company's response and determine whether a violation occurred. ODOE must notify the technician and employing company of its determination and, if appropriate, the necessary remedy. ODOE must give the technician and employing company 30 days to remedy a violation. ODOE may grant the technician and employing company additional time where appropriate.

(2) If the technician and employing company do not take appropriate action within the time specified, ODOE must begin enforcement proceed-

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ings. An enforcement proceeding may be brought to revoke the technician tax-credit certification, remove company name from ODOE listing, and/or to impose a civil penalty.

(3) ODOE must commence an enforcement proceeding by sending the technician and employing company a notice of violation. The notice must describe the violation(s) and notify the technician and employing company of the proposed penalty (revocation and/or civil penalty).

(4) Civil Penalties: The technician and employing company may be subject to a civil penalty if a system certification or technician tax-credit certification is revoked by the Director. The amount of the penalty must be the total amount of tax relief estimated to have been provided to purchasers of the system for which a system or technician tax-credit certification is revoked under this rule.

(5) Before the Director imposes a penalty, the technician and/or employing company must be given 21 days in which to request a hearing pursuant to ORS 183.310-183.550 and the Attorney General's Uniform and Model Rules of Procedure, January 1, 2006 edition. The hearing will be to contest the revocation of a system or technician tax-credit certification based on actions listed under OAR 330-070-0045.

(6) Re-application: To reapply after the revocation of a technician tax-credit certification, the technician and employing company must prove to the satisfaction of the department that the problem causing revocation has been corrected. Revocation must be in effect for at least one year before that technician or employing company or any other firm with any of the same shareholders may reapply for certification.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.180

Hist.: DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0060

### Solar Domestic Water Heating AEDs

(1) Installations must be of professional quality, comply with all applicable state, county, or local codes and regulations and be verified by a tax-credit certified solar technician.

(2) Consumers who purchase a solar water heating system must receive written operating and maintenance instructions. These instructions must be plainly mounted/displayed on or near the solar storage or backup water-heating tank. These instructions must at a minimum include:

(a) Clear instructions on how to determine if the system is functioning properly;

(b) Description and recommended frequency of homeowner maintenance;

(c) Diagram of the system noting location of valves and monitoring devices;

(d) What to do and who to call in an emergency and when the system needs professional maintenance and repairs; and

(e) How to protect the system from overheating due to stagnation during periods when the system is not in use during the summer months.

(3) System designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads;

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system;

(c) Pipe insulation must be installed on all solar pipe runs and protected against damage from exposure in outdoor conditions and be rated for design condition temperatures;

(d) Any building insulation disturbed due to the system installation must be restored to previous condition;

(e) For systems using pressurized anti-freeze fluids, a pressure gauge must be installed to indicate pressure in the system; and

(f) Piping containing pressurized water in attics 24 hours a day must be of the appropriate material allowed by applicable Oregon plumbing codes. A minimum number of fittings must be used in the attic, and the fittings shall be copper or brass.

(g) Pipe materials (e.g. copper, PEX, polybutylene) must be capable of handling the temperature ranges that they will be exposed to (e.g. freezing or collector stagnation).

(4) Freeze protection must be provided for systems where the heat transfer fluid may freeze. The freeze protection method must follow these rules:

(a) The method must be clearly stated in the owner's manual.

(b) The method must work in the absence of utility electric power.

(c) Systems using tanks, piping, pumps and other components containing water in unheated spaces must be adequately protected from freezing.

(d) Recirculation is not an acceptable freeze protection measure, unless the collector used is a heat pipe type.

(e) Drain-down or manual drain systems are not acceptable freeze protection methods for solar domestic water heating systems.

(f) Thermosyphon systems may not connect power to the electric element in roof-mounted tanks as a freeze protection or backup measure.

(5) The annual energy requirement for domestic water heating must be reduced by setting the water heater thermostat to 120 degrees F.

(6) A method to show that the system is operating correctly must be provided.

(a) For passive systems this must be a thermometer in line between solar storage and backup tank.

(b) For an active system this must be a flow meter in the supply line to the collectors and a thermometer on the outlet port of the solar storage tank.

(c) Equipment meeting this requirement must:

(A) Be a permanent part of the system;

(B) Not require any special tools or equipment to monitor; and

(C) Be in an accessible location.

(7) The costs listed in subsection (8)(a) through (j) of this rule do not include all eligible costs. Other costs will qualify if justified to the department's satisfaction as part of a solar water heating AED. Only total systems will qualify for the tax credit.

(8) Eligible costs include:

(a) The cost of solar collectors;

(b) The cost of thermal storage devices;

(c) The cost of ductwork, piping, fans, pumps and controls that move heat from solar collectors to storage and to heat buildings;

(d) The cost of monitors, meters and controls;

(e) The cost of photovoltaic devices used to supply electricity to parts of the system;

(f) Installation charges;

(g) Fees paid for design or building;

(h) The cost of swimming pool blankets, if they are installed with a solar pool heating system;

(i) The cost of hot water conservation measures installed with a water heating AED; and

(j) Up to \$200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(9) Annual energy savings will be based on the annual performance simulations provided by the Solar Rating and Certification Corporation (SRCC) modified for conditions required under state law.

(a) OG-300 systems that meet the department's approval do not have to be on the yield chart if there has been no request by a tax-credit certified technician that they appear on the yield chart.

(b) For the purposes of determining the tax credit, the annual energy savings will be reduced by:

(A) 25 percent if the total solar resource fraction for the site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent for systems completed prior to January 1, 2011.

(B) 100 percent if the total resource fraction is less than 75 percent for systems completed on or after January 1, 2011.

(10) All systems must meet the standards established by the SRCC OG-300 system certification in effect at the time the rules are adopted, or equivalent requirements as determined by the Director.

(a) Prior to January 1, 2011, temporary authorization will be granted to non-OG-300 systems under a special "Research & Development" status. The department will extend this temporary authorization for up to 12 systems of a specific design. The solar technician will need to submit a complete copy of the system design and operation documents provided to the consumer to the department for approval. The department shall determine that such system will perform well under the conditions it is designed for and will likely last in excess of 15 years without replacement of major components. Tax credit amounts under this status will be determined by the department based on 90 percent of the estimated annual energy output. On or after January 1, 2011, the temporary authorization provided in this section expires.

(b) Prior to January 1, 2011, temporary authorization may be extended to non-OG-300 systems under an "OG-300 Applicant" status providing

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the system manufacturer is currently applying for OG-300 certification from SRCC. The department will extend an unlimited quantity of systems to be installed in a 12-month period, providing the department has reviewed a copy of the SRCC application and determined it to be reasonably likely to achieve OG-300 certification within the 12-month period.

(c) On or after January 1, 2011, temporary authorization may be extended to non-OG-300 systems under an "OG-300 Applicant" status the system must comply with all local codes and the manufacturer must have submitted an application to the SRCC for OG-300 certification. The department must review and approve a copy of the SRCC application including the operations manual prior to the installation of the system.

(11) All technician tax-credit certified-installed systems must:

(a) Include an O&M manual which specifies installation instructions, operation instructions, maintenance plan, fluid quality, service and replacement parts, hazards, and warranty coverage;

(b) Provide clear labeling of on/off/bypass controls and safety issues;

(c) Have a means of indicating proper operation of the solar water heating system (flow indicators/meter or thermometers);

(d) Be installed to meet local building codes; and

(e) Have a tempering valve to prevent greater than 120 degree F. water downstream of the valve.

(12) Systems shall be installed with the OG-300 certification sticker located on the manual cover. The manual and any supporting documentation shall be placed in a waterproof, clear plastic bag located on or near the solar or domestic hot water heater.

(13) Owner-built and site-built domestic water heating systems must meet testing requirements. The department may evaluate the system design and assign it a yield based on 50 percent of its estimated annual energy performance. Owner-built and site-built domestic water heating systems must be tested by a TCCT or a verifier approved by the department.

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

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0064

### Photovoltaic AEDs

(1) Installations must be professional quality, comply with all applicable Oregon codes and be verified by a tax-credit certified solar technician.

(2) System size shall be determined by the sum of all the photovoltaic module DC wattage ratings under standard test conditions (STC).

(3) The minimum system size must be 200 Watts DC output under STC.

(4) Photovoltaic AED costs eligible for the tax credit include the cost of:

(a) Photovoltaic modules;

(b) Inverters;

(c) Storage systems and regulators;

(d) Monitors, meters, and controls;

(e) Wiring and framing materials;

(f) Trackers;

(g) Installation charges; and

(h) Permits and fees, including up to \$200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(5) For the purposes of determining the tax credit, the annual energy savings will be reduced by:

(a) 25 percent if the total solar resource fraction for the site is less than 75 percent and by 100 percent if the total solar resource fraction for the site is less than 50 percent for projects completed prior to January 1, 2011.

(b) 100 percent if the total solar resource fraction for the site is less than 75 percent for projects completed on or after January 1, 2011.

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

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0070

### Ground-Source Heat Pump

(1) Only total systems will qualify for a tax credit. All systems must comply with OAR 330-070-0025 and 330-070-0040 and be of closed loop design and operation. See also OAR 330-070-0027.

(2) Systems must limit waste of the resource.

(3) Systems must not have adverse effects on:

(a) Other systems; and

(b) Water quality applying the standards of the Department of Environmental Quality.

(4) Systems must not create hazards such as:

(a) Steam or water vapor;

(b) Vapors or odors;

(c) Noise; and

(d) Hazardous wellhead design.

(5) System parts must have adequate:

(a) Structural strength;

(b) Resistance to weather and fire;

(c) Ease of upkeep; and

(d) Durability.

(6) No system will cause harmful physical effects on people or unwanted tastes or odors.

(7) Some heat transfer fluids need special handling. These include toxic, corrosive, and explosive fluids. Such fluids shall only be used when the system is designed to safely handle them.

(8) Under normal operation, any part of a system that may be touched by people must be cooler than 141 degrees F. If this cannot be done, any part that reaches more than 140 degrees F. must have warning labels. Each system must include a device to limit water for domestic use to 140 degrees F.

(9) Each system and nearby structures must be protected against pressures, vacuums and temperatures.

(10) Systems must fully protect drinking water as specified in the Oregon Plumbing Specialty Code.

(11) Systems must use storage tanks built by accepted methods. Each tank must be tested for leaks.

(12) Expansion and contraction due to changing heat levels must not cause undue strain or distortion.

(13) Systems that use heat transfer fluids that may freeze must have freeze protection.

(14) Systems must use accepted methods to guard against the known corrosion/scaling level of the water.

(15) Systems must also be designed for the least effect on groundwater.

(16) Ground loop systems must cover enough ground to meet total annual heating requirements, as required by manufacturers' recommended design standards. Ground loops used for cooling must restore soil moisture.

(17) Downhole heat exchangers (direct use geothermal systems) must include a summary report from Oregon Institute of Technology or other source approved by the Director which describes the system and indicates that it will deliver sufficient heat and the design meets current good practice guidelines. They will be reviewed on a case-by-case basis.

(18) The system COP must be at least 3.3 for closed loop systems and 3.5 for direct expansion (DX) systems, including energy used by pumps. COP shall be determined by the following methods:

(a) For water source heat pumps, the COP must be determined in accordance with ARI Standard 325-85, at an entering water temperature of 50 degrees F.

(b) For water source or ground loop heat pumps using ambient surface water as an energy source and for solar assisted heat pumps, the COP must be the measured ratio of the heating season energy output divided by the heating season energy input. Both energy values must be expressed in the same units.

(19) All other types of ground source heat pumps must be reviewed on their COP.

(20) Bermed or earth covered buildings will not qualify for the geothermal tax credit.

(21) All ground source heat pumps must include setting the water heater thermostat to 120 degrees F as a hot water conservation measure.

(22) A ground source heat pump system may receive a supplemental tax credit amount, determined by the department, based on additional energy savings, if the duct system to which it is attached is tested and certified in accordance with the PTCS Duct Sealing Certification Program. This amount is in addition to the tax credit amount for the ground source heat pump system itself, and in addition to the tax credit amount provided for the

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duct testing and certification itself. In order to earn the supplemental tax credit amount, the ground source system must be installed, the duct system must be tested and certified, and the applications for all tax credit amounts associated with the system must be received, as a single package, by the department by April 1st of the tax year following the tax year for which the credits are being claimed.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0073

### Energy-Efficient Appliances and Alternative Fuel Devices

(1) Energy-efficient appliances must meet or exceed the following energy efficiency ratings, as measured in accordance with current United States Department of Energy (USDOE) test procedures where applicable, and be currently listed with the department as qualifying premium efficiency appliances. In the event that the same model number has more than one energy efficiency rating, one of which is non-qualifying, all units with that model number will be declared ineligible and removed from the department's qualifying list of premium efficiency appliances. Models declared ineligible due to multiple energy efficiency ratings may be reinstated upon demonstration by the manufacturer that the problem has been remedied, but not earlier than 12 months from the time of removal from the list.

(2) Where USDOE test procedures do not exist, the department will designate a nationally recognized test procedure that will apply instead.

(3) Clothes washers.

(a) For the purpose of this program, clothes washer efficiency performance is determined using the USDOE Appendix J1 test procedure for residential clothes washers in effect at the time the rules are adopted.

(b) Clothes washers purchased on or after:

(A) April 1, 2007 and prior to January 1, 2011 must have a minimum Modified Energy Factor (MEF) of 2.0 ft<sup>3</sup>/kWh/cycle and a maximum Water Factor (WF) of 6.4 gal/ft<sup>3</sup>/cycle.

(B) January 1, 2011 must have a minimum Modified Energy Factor (MEF) of 2.2 ft<sup>3</sup>/kWh/cycle and a maximum Water Factor (WF) of 4.5 gal/ft<sup>3</sup>/cycle.

(C) January 1, 2012 are not eligible.

(c) Equipment efficiency requirements are based on ENERGY STAR® listing or other third-party certified list approved by the department.

(4) Refrigerator-Freezers.

(a) Refrigerator-Freezers purchased:

(A) prior to January 1, 2011 must have at least 20 percent lower energy consumption than that allowed by the July 1, 2001 USDOE standard for refrigerator/freezers.

(B) on or after January 1, 2011 must have at least 30 percent lower energy consumption than that allowed by the July 1, 2001 USDOE standard for refrigerator/freezers.

(C) on or after January 1, 2012 are not eligible.

(b) Must have a total net volume (sum of the fresh food compartment and freezer compartment volumes) of at least 12 cubic feet, but less than 31 cubic feet; and

(c) Must have a fully automatic defrost cycle.

(d) Equipment efficiency requirements are based on listing by ENERGY STAR® or other third-party certified list approved by the Director.

(5) Dishwashers.

(a) Dishwashers purchased on or after:

(A) January 1, 2008 and prior to January 1, 2011 must have an Energy Factor of 0.70 cycles/kWh or higher.

(B) January 1, 2011, standard dishwashers as defined by ENERGY STAR®, must have an Energy Factor of at least 0.75 cycles/kWh or higher; and compact dishwashers, as defined by ENERGY STAR®, must have an Energy Factor of at least 1.00 cycles/kWh or greater.

(C) January 1, 2012 are not eligible.

(b) Dishwashers must have tax credit eligibility based on an Energy Factor derived from the DOE Dishwasher Test Procedure effective September 28, 2003.

(c) Equipment efficiency requirements are based on by ENERGY STAR® listings or other third-party certified list approved by the Director.

(6) Water Heating Appliances.

(a) Water heater efficiency requirements:

(A) Equipment efficiency requirements for units of nominal 1-ton or less capacity are based on listing by ENERGY STAR® or California Energy Commission or on the USDOE Energy Factor, as derived from the USDOE Appendix E test procedure for residential water heating equipment in effect at the time the rules are adopted. Efficiency requirements for units larger than 1-ton in capacity and smaller than 6-tons in capacity, are based on the system COP at 47 degrees F outdoor air temperature or other rating point appropriate for the system deemed equivalent by the department.

(B) High-efficiency heat pump water heaters for domestic hot water must meet the Northern Tier Specifications established by the Northwest Energy Efficiency Alliance (NEEA) for electricity; split systems with a capacity greater than 1-ton and less than 6-tons shall have a COP rating of not less than 2.5.

(C) Natural gas, propane, or oil-fired residential storage type water heaters, as defined by Title 10, Code of Federal Regulations, Chapter 11, Part 430, Subpart B, Appendix E, must have an Energy Factor of 0.80 or greater as tested with natural gas fuel.

(D) Whole-home gas fired instantaneous water heaters, as defined by Title 10, Code of Federal Regulations, Chapter 11, Part 430, Subpart B, Appendix E, must have:

(i) an Energy Factor of at least 0.80, a maximum firing rate of at least 140,000 Btu/hour and a minimum firing rate no higher than 24,000 Btu/hour if installed prior to January 1, 2011;

(ii) an Energy Factor of at least 0.82 or greater if installed on or after January 1, 2011.

(E) Equipment efficiency requirements are based on either the listing by ENERGY STAR®, the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), or other third-party certified list approved by the Director.

(b) Combined space/water-heating system efficiency must be based on the water heating Energy Factor for Combined Systems (CEF) as derived from the American National Standards Institute/American Society of Heating, Refrigerating, and Air Conditioning Engineers (ANSI/ASHRAE) 124-1991 test method. Water heaters that are part of a combined space and water heating system may not receive a tax credit for space heating efficiency as a boiler in addition to the tax credit as a water heating appliance.

(7) For Wastewater Heat Recovery Systems, field performance data submitted to and approved by the department must be the basis for tax credit qualification. The following rules also apply:

(a) The systems must meet all plumbing code requirements for vented double-wall heat exchangers;

(b) The system must not interfere with the proper operation of the dwelling's wastewater system; and

(c) Energy recovered must be re-introduced into the dwelling's hot water supply system.

(8) Performance Checked Space Conditioning Duct Systems must meet the following requirements:

(a) All work must be done in accordance with Performance Tested Comfort Systems (PTCS) specifications, a regionally developed set of protocols with provisions for testing and sealing duct work that is maintained by the Regional Technical Forum (RTF), as adopted by the RTF and in effect at the time the work is performed.

(b) If the home serviced by the performance checked duct system is new, or the building envelope is being altered, the house must meet residential energy conservation requirements of the Oregon Structural Specialty Code or of the Oregon One and Two Family Dwelling Code in effect at the time the home is constructed or structurally altered.

(c) Duct leakage must be tested in accordance with Performance Tested Comfort Systems (PTCS) approved testing protocols.

(d) Testing to verify that these standards have been achieved must be conducted by technicians approved by the department.

(e) Measures eligible for the purpose of calculating a performance checked duct system tax credit include:

(A) New construction.

(i) Duct sealing labor and materials;

(ii) Heating and cooling load calculations;

(iii) Duct system sizing and design calculations;

(iv) Labor and materials for installing multiple returns;

(v) Labor and materials for installing passive pressure relief grilles;

(vi) Duct testing; and

(vii) Labor and materials for bringing duct systems inside heated space.

(B) New ducts in existing homes.

(i) Duct sealing labor and materials;

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- (ii) Heating and cooling load calculations;
- (iii) Duct system sizing and design calculations;
- (iv) Labor and materials for installing multiple returns;
- (v) Labor and materials for installing passive pressure relief grilles;

and

- (vi) Duct testing.
- (C) Duct repair and sealing/existing ducts in existing homes.
  - (i) Duct sealing labor and materials;
  - (ii) Labor and materials for installing multiple returns;
  - (iii) Labor and materials for installing passive pressure relief grilles;

and

- (iv) Duct testing.

(f) To apply for a performance checked duct tax credit, the following information must be submitted in a form approved by the department:

- (A) Application form;

(B) Test results worksheet for “new construction,” “new duct systems in existing homes,” or “duct repair and sealing”/existing ducts in existing homes, as applicable; or inclusion of the PTCS identification number associated with the measure being submitted for tax credit on the application form.

(C) Copies of heating and cooling load calculations and/or duct sizing calculations, as applicable, shall be made available to the department upon request; and

- (D) Itemized invoice identifying measures detailed in (e).

(g) The amount of the tax credit for performance checked duct systems must be 25 percent of the eligible costs detailed in (e), up to \$250.

(9) Performance Checked Heat Pumps and Central Air Conditioners must meet the following standards:

(a) Systems must be tested and serviced as needed to confirm correct refrigerant charge and air flow by technicians certified by the department and by an approved Performance Tested Comfort System (PTCS) provider.

(b) Testing shall be in accordance with PTCS specifications, a regionally developed set of protocols with provisions for testing the operation of air-source heat pumps and air conditioners that are maintained by the Regional Technical Forum (RTF), as adopted by the RTF and in effect at the time the work is performed.

(c) Eligible measures must be confirmed by the system diagnostic tests using PTCS protocols in use at the time of measure installation. Duplicate tax credits may not be claimed.

(d) Measures eligible for the purpose of calculating a performance checked heat pump/air conditioner tax credit include:

- (A) System diagnostic tests;

(B) Adding or removing refrigerant when initial diagnostic tests indicate need for refrigerant adjustment and post repair tests indicate correct charge has been installed;

(C) Altering the duct system to improve air flow when initial diagnostic tests show low air flow and post repair tests show an air flow improvement of 10 percent or more;

(D) Cleaning the inside coil when initial diagnostic tests indicate low air flow and post repair tests show an air flow improvement of 10 percent or more;

(E) Replacing an existing inside fan motor with an electronically commutated permanent magnet motor (ECPM DC) when initial diagnostic tests show low air flow and tests after ECPM DC installation show an air flow improvement of 10 percent or more; and

(F) Control modifications necessary for the system to pass the diagnostic test.

(e) To apply for a performance checked heat pump/air conditioner tax credit, the following information must be submitted in a form approved by the department:

- (A) Application form;

- (B) Performance checked heat pump/AC diagnostics data entry form;

(C) Pre and post repair system air flow measurements using approved methods listed in (b), if applicable;

(D) Itemized labor and materials cost information for applicable measures, testing, and repairs.

(f) The amount of the performance checked heat pump/AC tax credit must be 25 percent of the cost of testing and modifications to existing equipment, up to \$250.

(10) Alternative Fuel Vehicles must have equipment installed to make the vehicle capable of storing and utilizing an alternative fuel for vehicle propulsion.

- (a) Equipment may consist of:

- (A) Original equipment manufacturer components;

(B) Components for natural gas powered vehicles that meet EPA1-A requirements current at the time these rules are adopted;

(C) Components for hybrid vehicles must provide the hybrid vehicle with a combination of power between propulsion energy systems such that the peak power ratio of the vehicle is 0.10 or greater; or

(D) Other components as recognized by the department as necessary for alternative fuel use.

(b) Those applying for alternative fuel vehicle tax credits must acknowledge that they do not intend to transfer ownership of the vehicle to a non-Oregon resident for a period of one year.

(c) Vehicles must be purchased before January 1, 2012.

(11) Alternative Fuel Fueling Systems must be installed to meet all state and local fire and life safety codes and be capable of re-fueling/recharging an alternative fuel vehicle within 14 hours. The following rules also apply:

(a) On-board charging systems that feed into the rechargeable energy storage system in a hybrid vehicle must be high-voltage systems of 100 Volts or higher that have an active regenerative braking system integrated into the recharging system of the hybrid vehicle; and

(b) The use of an on-board charging system on a hybrid vehicle must result in significant energy savings as determined by the Director.

(12) Energy Recovery Ventilators (ERVs) must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Be capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32°F when operating on the lowest fan speed;

(c) Have a maximum EUI(HERV) of 1.5 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(d) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 65 percent at 32°F/0°C when operating at the lowest fan speed;

(B) 60 percent at 32°F/0°C when operating at the highest fan speed;

and

(C) 60 percent at -13°F/-25°C when operating at the lowest fan speed, if rated at this condition.

(13) Heat Recovery Ventilators must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Have a maximum EUI of 1.5 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(c) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 65 percent at 32°F/0°C when operating at the lowest fan speed;

(B) 60 percent at 32°F/0°C when operating at the highest fan speed;

and

(C) 60 percent at -13°F/-25°C when operating at the lowest fan speed, if rated at this condition.

(14) Very High Efficiency Air Conditioning Systems must:

(a) Be a central, split-system designed and installed to operate in conjunction with the air handling unit or furnace of a home's heating system;

(b) Be tested and rated in accordance with the DOE test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and certified by, and listed in the directory of the Air Conditioning Heating and Refrigeration Institute (AHRI) in effect at the time these rules are adopted;

(c) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI);

(d) Have a minimum EER rating at DOE standard test condition “A” conditions of 13.0;

(e) Be installed in accordance with the protocols specified in section 330-070-0073(9)(a) through 330-070-0073(9)(g) of these rules; and

(f) Be purchased before January 1, 2012.

(15) Very High Efficiency Air Source Heat Pump Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix M test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and be certified by, and be listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) that is in effect at the time these rules are adopted;

(b) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI);

(c) Have a minimum DOE Region IV HSPF rating of 9.0 or greater;

(d) Have a minimum EER rating at DOE's standard test condition “A” of at least 12.0; and



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(e) Be installed in accordance with the protocols specified in section 330-070-0073(9)(a) through 330-070-0073(9)(g) of these rules.

(16) Very High Efficiency Warm Air Furnace Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix N test procedure for furnaces in effect at the time these rules are adopted, and be certified by and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) in effect at the time these rules are adopted;

(b) Have a minimum AFUE rating:

(A) of 0.90 (90 percent) for installations completed prior to January 1, 2009;

(B) of 0.92 (92 percent) for installations completed on or after January 1, 2009 and prior to January 1, 2011;

(C) of 0.94 (94 percent) for installations completed on or after January 1, 2011 and prior to January 1, 2012; and

(D) of 0.95 (95 percent) for installations completed on or after January 1, 2012.

(c) Use ducted outdoor air for combustion; and

(d) Must be listed in the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) directory of Certified Energy Rating in effect at the time these rules are adopted as an “e” “electrically efficient” furnace. The “e” electrically efficient designation applies to furnaces whose electricity consumption is 2 percent or less of the furnaces total energy use, according to the department’s official test procedure, and is determined according to the following formula:  $(3413 \times \text{EAE}) / [(3413 \times \text{EAE}) + (1,000,000 \times \text{EF})] \leq 2.0$  percent. EAE is the average annual auxiliary electrical energy consumption for a gas furnace in kilowatt-hours per year (kWh/yr). It is a measure of the total electrical energy supplied to a furnace during a one-year period. EF is the average annual fuel energy consumption for a gas furnace in millions of Btu’s per year (MMBtu/yr).

(17) Very High Efficiency Air Handlers must:

(a) Be installed as part of a hydronic space heating system; and

(b) Be equipped with an electronically commutated, permanent magnet variable speed DC (ECPM) motor.

(18) Very High Efficiency Hot Water Boiler Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix N test procedure for furnaces in effect at the time these rules are adopted, and be certified by and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) in effect at the time these rules are adopted.

(b) Have a minimum AFUE rating:

(A) Of 0.88 (88 percent) for installations completed prior to January 1, 2009.

(B) Of 0.92 (92 percent) and must include an outdoor temperature reset control for installations completed on or after January 1, 2009.

(c) Be purchased before January 1, 2012.

(19) Very High Efficiency Air Source Heat Pump or Furnace Systems may receive a supplemental tax credit amount, determined by the department, based on additional energy savings if the duct system to which it is attached is tested and certified in accordance with the PTCS Duct Sealing Certification Program. This amount is in addition to the tax credit amount for the Very High Efficiency Air Source Heat Pump or Furnace system itself, and in addition to the tax credit amount provided for the duct testing and certification itself. In order to earn the supplemental tax credit amount, the heating system must be installed, the duct system must be tested and certified, and the applications for all tax credit amounts associated with the system must be received, as a single package, by the department by April 1st of the tax year following the tax year for which the credits are being claimed.

(20) Very High Efficiency Ductless Air Source Heat Pump Systems must:

(a) Include an inverter-driven variable speed compressor;

(b) Be listed in the Air Conditioning, Heating and Refrigeration Institute (AHRI) Directory of Certified Products.

(c) Deliver at least 50 percent of its AHRI-certified rated heating capacity at 17°F outside temperature;

(d) Include no integrated electric resistance backup heat;

(e) Be sized and installed per manufacturer specifications; and

(f) Be installed by a technician trained by the equipment manufacturer within the last five years.

(21) Very Efficient Biomass Combustion Devices must be:

(a) Less than one quarter of a million British thermal units (Btu) per hour heat output, and

(b) Installed in an Oregon residential dwelling; and

(c) Installed with a dedicated outside combustion air intake; and

(d) Listed in the United States Department Environmental Protection Agency List of EPA Certified Wood Stoves or other third-party certified list approved by the Director with emissions of 4.5 grams of smoke per hour or less if it is designated in that list as a non-catalytic wood stove; or

(e) Listed in the List of EPA Certified Wood Stoves or other third-party certified list approved by the Director with emissions of 2.5 grams of smoke per hour or less if it is designated in that list as a catalytic wood or pellet stove; or

(f) Have a certificate of performance for the specific manufacturer and model of wood burning device from a currently US EPA certified wood-stove testing laboratory. The certificate must show emissions of 4.5 grams of smoke per hour or less if it is designated as a non-catalytic wood stove or emissions of 2.5 grams of smoke per hour or less if it is designated as a catalytic wood or pellet stove.

(22) Any other standards adopted by the department for energy-efficient appliances and alternative fuel devices, their components, and/or systems as determined by the Director.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2004, f. & cert. ef. 8-2-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0089

### Wind AEDs

(1) To qualify for a tax credit:

(a) A minimum wind speed of 10 miles per hour at hub height or lower must be demonstrated at the wind AED site.

(b) A wind AED system manufacturer must make available estimated monthly or annual energy production data (kWh) at various annual average wind speeds for each model or system they produce.

(c) The wind AED system model must meet industry standards as approved by the department.

(d) A wind AED system application must include the nominal rated electric capacity, the power curve and energy production data as a function of the average annual wind speed.

(e) A wind system must have a minimum five-year manufacturer’s warranty.

(2) The department reserves the right to deny eligibility for any wind AED for any reason including, but not limited to poor generator performance, concerns about wind generation system design, the quality of data presented, lack of manufacturing support for maintenance or warranties.

(3) Systems must be designed and located to reduce the potential for hazards and unpleasant living conditions. Systems must be designed and located taking into account:

(a) The proximity of the system to buildings, power lines, antennae or other similar hazards;

(b) The effect of high winds on the system and on any building connected to the system by guy wires;

(c) Whether the system blocks fire lanes, obstructs dwelling access, or otherwise increases fire danger;

(d) Whether the operation of the system significantly increases background noise; and

(e) Whether connecting the system to other buildings by guy wires creates vibration and tension in other buildings.

(4) Materials used will assure that the wind AED has adequate:

(a) Strength;

(b) Resistance to ice, moisture, corrosion and fire;

(c) Durability; and

(d) Low maintenance cost.

(5) No part of a wind AED project must put toxic substances into the environment in amounts that will cause disease or harmful physical effects to humans, animals or plants.

(6) Wind AED parts must be serviceable without the need to trespass.

(7) Maximum Design Wind Speed: All parts of a Wind AED project must withstand the highest wind speed expected at its location. All parts must withstand this wind without damage. To meet this requirement, wind AEDs may be shut down during highest expected winds.

(8) Shutdown: All wind AEDs must have a way to stop the rotor from turning. This method must work safely during high winds and routine service.

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(9) Overspeed Control: Rotor overspeeds shall be prevented by the wind AED's design.

(10) Tower Safety: All parts of a wind AED project shall meet accepted engineering standards. Tower design must include consideration of:

- (a) Gravity load; and
- (b) Peak thrust on the rotor, nacelle, tail and tower over the full wind speed operating range.

(11) Tower Height: A minimum tower height of 70 feet is required. All portions of the rotor disc of the wind AED must be at least 30 feet above any object within a 400 foot radius of the wind AED's base.

(12) Electric: All wind AED electrical parts must adhere to all standards and codes in force at the time they are installed.

(13) The Director may waive part or all of section (1) of this rule if production of the wind AED model stopped prior to 1990, or it is an owner-built system or a mechanical wind AED.

(14) The first-year energy yield of wind AEDs must average at least 100 kWh per month based on the actual installation site of the wind AED.

(a) The first-year energy yield must be determined using the measured or estimated wind resource data and the wind AED's power curve or actual energy production data measured in kWh per month.

(A) The provided wind data from the wind AED site must cover a one-year period of 12 consecutive months.

(B) In the event of less than one year's measurements at the wind AED site, the application must include:

- (i) A minimum of six consecutive months of on-site production data of the wind AED;
- (ii) One year's worth of concurrent data from the two nearest wind monitoring stations at 35 feet or less; and
- (iii) One year's worth of concurrent data for the wind AED site from a nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology. These data can be obtained from a company that meets industry standards as approved by the department.

(b) The department will verify data supplied by the applicant and validate the first-year energy yield.

(c) Production data must be provided in the form of kWh produced monthly with the application for a tax credit.

Stat. Auth.: ORS 469.160 - 469.180

Stats. Implemented:

Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0091

### Eligible Costs for a Wind AED

(1) The costs listed in subsections (2)(a) through (m) of this rule do not include all eligible costs. Other costs will qualify if directly associated with the acquisition and installation of the AED. Only systems that are fully functional and producing electricity will qualify for a tax credit. All systems must comply with OAR 330-70-0021 and 330-070-0040.

(2) Eligible costs include:

- (a) The cost of wind turbine generators;
  - (b) The cost of DC/AC converters, inverters and synchronous inverters;
  - (c) The cost of wind and system instruments and controls when part of a total wind AED;
  - (d) The cost of energy storage (batteries or other methods);
  - (e) The cost of tower, foundation and guys;
  - (f) Fees paid for design and building;
  - (g) Fee to install;
  - (h) The cost of electric meters, switches and electrical safety equipment;
  - (i) The cost of electric transformers and lines and supports;
  - (j) The cost of safety equipment;
  - (k) Up to \$500 of wind permitting cost;
  - (l) The cost of windmills;
  - (m) The cost of pumps, linkage, pump heads, and vacuum chambers;
- and
- (n) The cost of obtaining wind data assessments from a nationally recognized service as approved by the department, not to exceed \$50.00.

Stat. Auth.: ORS 469.160 - 469.180

Stats. Implemented:

Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

## 330-070-0097

### Electricity Producing AEDs

Generating AEDs linked with an electric utility must be installed in accordance with local utility interconnect guidelines and be installed per the state electrical code.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.170

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

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**Rule Caption:** Implements new incentive program created by HB 3672 for energy conservation projects.

**Adm. Order No.:** DOE 12-2011(Temp)

**Filed with Sec. of State:** 12-23-2011

**Certified to be Effective:** 12-23-11 thru 6-19-12

**Notice Publication Date:**

**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, 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

**Subject:** House Bill 3672 (2011) created a new energy conservation incentive program within the Department of Energy. These rules provide the operating framework for the program, including application process, prioritization of applications within funding limits, issuance of tax credits, pass-through and compliance activities.

**Rules Coordinator:** Kathy Stuttaford—(503) 373-2127

## 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). The rules also provide procedures for submission, agency review and selection of energy conservation projects for preliminary and final certification of tax credits. These rules apply to all applications for tax credits for energy conservation projects, as governed by Oregon Laws 2011, chapter 730, sections 34 through 51.

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

## 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 Oregon Laws 2011, chapter 730, section 38, 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 Oregon Laws 2011, chapter 730, section 38, 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 cost above a reasonable minimum expected to construct a similar project without energy efficiency features.

(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.

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(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 may be eligible for tax credits.

(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 most recent 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 apply as a total building retrofit; if the project meets the eligibility standards described in these rules.

(17) "Total project cost" means all costs directly associated with an energy conservation project, including ineligible 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

## 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 Oregon Laws 2011, chapter 730, section 49.

(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 a future Opportunity Announcement.

(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;
- (d) Dates of the application opportunity period;
- (e) Instructions and directions to the required application forms and materials;

(f) Minimum technical standards;

(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

## 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. 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.

(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.

(C) If the applicant is a public or government 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 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 personnel and teams working on the energy conservation project's development, implementation and operation.

(f) If the applicant has previously received tax credits or grants issued by the department, 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 the amount by which the energy conservation project will reduce the consumption of purchased energy or use energy more efficiently. If applicable, provide information about the expected level of sustainable building practices project performance.

(i) A detailed description of the energy conservation project, 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 jobs that will be created by the energy conservation project and the number of jobs 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

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12

## 330-210-0040

### Fees

The department adopts the following schedule of fees as provided by Oregon Laws 2011, chapter 730, section 46 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 a 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

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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 choose to 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.

(a) If the department assists the applicant in obtaining a pass-through partner or partners, the fee for that assistance is 1 percent of the tax credit amount, up to \$25,000.

(b) If the department does not assist the applicant in obtaining a pass-through partner, the fee is \$100 per tax certificate issued.

(8) If an applicant fails to pay timely fees 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

## 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 annually. The opportunity period will remain open for one year from the date the department issues the Opportunity Announcement, which 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.

(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;

(b) Information that the project meets the definition of an energy conservation project and is located in Oregon; and

(c) Other requirements described in the Opportunity Announcement.

(4) Small premium projects are eligible for predetermined tax credits 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, applicants 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 filing is complete, the department will confirm in writing the receipt of an informational filing. The department will not process incomplete filings, and will provide written notification.

(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.

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

## 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.

(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 not being 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.

(g) Other requirements described in the Opportunity Announcement have been met.

(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.

(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 a contested case hearing under ORS 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

## 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) Through competitive review, the department's internal review team will prioritize applications for preliminary certification according to the criteria described in the rules and detailed in the Opportunity Announcement. 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) Building energy systems.

(d) Sustainable buildings such as new construction and total building retrofit.

(e) Commercial, agricultural and industrial processes.

(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 include:

(a) The amount of energy saved over the equipment's lifetime;

(b) The project's expected lifespan compared to the 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 job creation;

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(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 selected projects. The department will retain the supplemental list until the technical review for selected energy conservation projects is complete.

(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

## 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.

(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.

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(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

## 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 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 on the project's status beginning one year from the issuing date of the preliminary certificate, if the department has not already received the project's application for final certification. The applicant shall 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.

(6) A preliminary certification remains valid for a period of three calendar years after the date the department issues the 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

## 330-210-0090

### Amendments to Preliminary Certifications

(1) The applicant must notify the department of any changes to the project proposal as described in the application for preliminary certification.

(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, would continue to be technically feasible, would operate as represented and would remain in operation for at least five years. The applicant has the responsibility to provide an amendment request with complete technical documentation that will support a case for 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.

(8) Requests for amendments must include payment of the appropriate fee. The department may accept non-substantive changes, such as change of responsible party information, without payment of the fee.

(9) The department will evaluate amendments to determine if the change would have affected the outcome of competitive review, which may result in denial of the amendment request.

(10) Within 60 calendar days after the date the department receives the amendment request, the department will decide whether to approve the request. If the department does not approve the amendment request within 60 calendar days, it is considered denied.

(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.

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

## 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 amendments to preliminary certifications before or with the final certification application.

(2) The department will not review applications received after the expiration of the preliminary certification or 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.

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(b) Compliance with statute, rules, the relevant Opportunity Announcement 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 infrastructure 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 show that contract and loan agreements directly related to the project are not in default.

(C) The application must include information regarding state and federal incentives applied for or received in connection with the project.

(h) Other information the department requires.

(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.

(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 relevant Opportunity Announcement, the preliminary certification or informational filing, and any other applicable requirements.

(a) The department may issue a credit up to 35 percent of the certified 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 tax credit may not exceed total project costs.

(8) The department will send a written notification to the applicant of its decision to issue a final certification within 60 days, after the department receives a complete application for final certification. If more than 60 days pass from the filing date of a complete application and the applicant has not received a written decision from the department, the application is rejected and no further action will be taken.

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

## 330-210-0150

### Compliance and Pass-through

All participants in this program are subject to OAR 330-230-0000 through 330-230-0140.

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

## 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). The compliance rules in 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 Oregon Laws 2011, chapter 730. The pass-through rules in 330-230-0110 to 330-230-0140 apply to all applicants for the energy incentive program for energy conservation projects as governed by Oregon Laws 2011, chapter 730, sections 34 through 51 and transportation projects as governed by Oregon Laws 2011, chapter 730, sections 52 through 66.

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

## 330-230-0010

### Definitions

For the purposes of 330-230-0010 to 330-230-0060 the following definitions apply:

(1) "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.

(2) "Project" means the system, activity or facility under inspection or review by the department.

(3) "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.

(4) "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

## 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,

(f) Compliance with a performance agreement, or

(g) Compliance with ORS chapter 469 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

## 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

## 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

## 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,

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- (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 469 or any applicable rules or standards adopted by the director, or
  - (f) The project does not comply with the performance agreement.
- 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

### 330-230-0060

#### Failed Inspections; 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 issues identified in a failed 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 or grant due to a failed inspection or review..
- (3) The applicant may request reconsideration of the failed 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  
Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12

### 330-230-0110

#### Definitions

For the purposes of 330-230-0110 to 330-230-0140 the following definitions apply:

- (1) "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.
- (2) "Pass-through partner" means an individual or business that pays the pass-through amount to an applicant and receives the tax credit 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

### 330-230-0120

#### Pass-Through Eligibility

- (1) An entity eligible to receive a tax credit may transfer the credit in return for a cash payment.
- (2) An eligible person or business 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.

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

### 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:  $\text{Tax Credit Amount} / [1 + (3(\text{5 year Treasury yield rate}) - 3 \text{ year net rate of change for the urban CPI for the west region})^5] = \text{Present Value}$
  - (b) For tax credits that may be claimed in one tax year the formula is:  $\text{Tax Credit Amount} / [1 + 2(\text{2 year Treasury yield rate}) + \text{net rate of change for the urban CPI for the west region}]^1 = \text{Present Value}$
- (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. The department will not establish a present value greater than the tax credit amount.

- (3) If an applicant elects to transfer the tax credit, the pass-through amount is determined by the present value calculation in effect on the date the department receives the complete application for preliminary certification or complete informational filing.

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

### 330-230-0140

#### Pass-Through Process

- (1) An applicant planning to transfer the tax credit must select the pass-through option on the preliminary or 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 an updated application 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 both the completed final certification application form 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, an applicant has up to 18 months from the date the first pass-through partner agreement form is received by the department to begin each certification period for claiming the tax credit. For pass-through partner 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. If the preliminary certification expires or otherwise becomes invalid during this period, the department will not certify any remaining tax credits.

- (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 sixty 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 piece causing the application for final certification to be incomplete is the pass-through partner agreement form.

- (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

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**Rule Caption:** Prohibits increases in tax credits through amendments.

**Adm. Order No.:** DOE 1-2012(Temp)

**Filed with Sec. of State:** 1-13-2012

**Certified to be Effective:** 1-13-12 thru 7-10-12

**Notice Publication Date:**

**Rules Amended:** 330-090-0130

**Subject:** The rule amendment prevents applicants that apply to amend existing projects from increasing the amount of tax credit earned. house Bill 3672 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 thus subvert the intent of HB 3672 (2011) to stop new activity within the BETC program.

**Rules Coordinator:** Kathy Stuttaford—(503) 373-2127



# ADMINISTRATIVE RULES

## 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 469.185, 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 469.185 to 469.225 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 469.185 to 469.225 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

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 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 the amendments to ORS 469.210 (3) in Oregon Laws, 2010, Chapter 76, Section 11.

(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 469.185 to 469.225 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 469.185, 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 by Oregon Laws, 2011, Chapter 693 Section 1 do not provide a basis for applicants to obtain amendments to certifications issued under ORS 469.210 or 469.215.

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(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 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 469.185 to 469.225 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 469 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

(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

Hist.: Implemented: ORS 469.185 - 469.225

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

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## Department of Environmental Quality Chapter 340

**Rule Caption:** Adoption of the Eugene-Springfield PM10 Maintenance Plan.

**Adm. Order No.:** DEQ 18-2011

**Filed with Sec. of State:** 12-21-2011

**Certified to be Effective:** 12-21-11

**Notice Publication Date:** 9-1-2011

**Rules Amended:** 340-200-0040, 340-204-0010, 340-204-0030, 340-204-0040

**Subject:** The Eugene-Springfield PM10 Nonattainment Area has not exceeded the federal public health standards for particulate matter ten microns and less (PM10) since 1987. This rulemaking action will officially change the status of this area from a PM10 nonattainment area to a PM10 maintenance area, and adopt a PM10 maintenance plan that will ensure continued attainment with the standard. In addition, DEQ will submit a request to the Environmental Protection Agency that the Eugene-Springfield area be redesignated as in attainment with the standard.

A mandatory residential wood combustion curtailment program implemented by the Lane Regional Air Protection Agency (LRAPA)

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has been the primary mechanism for the Eugene-Springfield area being able to attain the PM10 health standard. This program will continue to be implemented without changes under the PM10 maintenance plan to ensure continued attainment with the standard. Under this plan, industrial emissions growth will be controlled through existing New Source Review regulations, which for maintenance areas reduces the stringency and costs of emission control requirements for new sources, from the Lowest Achievable Emission Rate (LAER) to the Best Available Control Technology (BACT). All other requirements on sources will remain the same.

DEQ will submit these rules to the EPA as a revision to the State Implementation Plan, which is a requirement of the Clean Air Act. **Rules Coordinator:** Maggie Vandehey—(503) 229-6878

## 340-200-0040

### State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A. 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on December 15, 2011.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

**NOTE:** Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000, f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07;

DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 2-2010, f. & cert. ef. 3-5-10; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 14-2010, f. & cert. ef. 12-10-10; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 18-2011, f. & cert. ef. 12-21-11

## 340-204-0010

### Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and 340-200-0020, the definition in this rule applies to this division. Definitions of boundaries in this rule also apply to OAR 340 division 200 through 268 and throughout the State of Oregon Clean Air Act Implementation Plan adopted under 340-200-0040.

(1) "AQCR" means Air Quality Control Region.

(2) "AQMA" means Air Quality Maintenance Area.

(3) "CO" means Carbon Monoxide.

(4) "CBD" means Central Business District.

(5) "Criteria Pollutant" means any of the six pollutants set out by the Clean Air Act (sulfur oxides, particulate matter, ozone, carbon monoxide, nitrogen dioxide, and lead) for which the EPA has promulgated standards in 40 CFR 50.4 through 50.12 (July, 1993).

(6) "Eugene-Springfield UGB" means the area within the bounds beginning at the Willamette River at a point due east from the intersection of East Beacon Road and River Loop No.1; thence southerly along the Willamette River to the intersection with Belt Line Road; thence easterly along Belt Line Road approximately one-half mile to the intersection with Delta Highway; thence northwesterly and then northerly along Delta Highway and on a line north from the Delta Highway to the intersection with the McKenzie River; thence generally southerly and easterly along the McKenzie River approximately eleven miles to the intersection with Marcola Road; thence southwesterly along Marcola Road to the intersection with 42nd Street; thence southerly along 42nd Street to the intersection with the northern branch of US Highway 126; thence easterly along US Highway 126 to the intersection with 52nd Street; thence north along 52nd Street to the intersection with High Banks Road; thence easterly along High Banks Road to the intersection with 58th Street; thence south along 58th Street to the intersection with Thurston Road; thence easterly along Thurston Road to the intersection with the western boundary of Section 36, T17S, R2W; thence south to the southwest corner of Section 36, T17S, R2W; thence west to the Springfield City Limits; thence following the Springfield City Limits southwesterly to the intersection with the western boundary of Section 2, T18S, R2W; thence on a line southwest to the Private Logging Road approximately one-half mile away; thence southeasterly along the Private Logging Road to the intersection with Wallace Creek; thence southwesterly along Wallace Creek to the confluence with the Middle Fork of the Willamette River; thence generally northwesterly along the Middle Fork of the Willamette River approximately seven and one-half miles to the intersection with the northern boundary of Section 11, T18S, R3W; thence west to the northwest corner of Section 10, T18S, R3W; thence south to the intersection with 30th Avenue; thence westerly along 30th Avenue to the intersection with the Eugene City Limits; thence following the Eugene City Limits first southerly then westerly then northerly and finally westerly to the intersection with the northern boundary of Section 5, T18S, R4W; thence west to the intersection with Greenhill Road; thence north along Greenhill Road to the intersection with Barger Drive; thence east along Barger Drive to the intersection with the Eugene City Limits (Ohio Street); thence following the Eugene City Limits first north then east then north then east then south then east to the intersection with Jansen Drive; thence east along Jansen Drive to the intersection with Belt Line Road; thence northeasterly along Belt Line Road to the intersection with Highway 99; thence northwesterly along Highway 99 to the intersection with Clear Lake Road; thence west along Clear Lake Road to the intersection with the western boundary of Section 9, T17S, R4W; thence north to the intersection with Airport Road; thence east along Airport Road to the intersection with Highway 99; thence northwesterly along Highway 99 to the intersection East Enid Road; thence east along East Enid Road to the intersection with Prairie Road; thence southerly along Prairie Road to the intersection with Irvington Road; thence east along Irvington Road to the intersection with the Southern Pacific Railroad Line; thence southeasterly along the Southern Pacific Railroad Line to the intersection with Irving Road; thence east along Irving Road to the intersection with Kalmia Road; thence northerly along Kalmia Road to the intersection with Hyacinth Road; thence northerly along Hyacinth Road to the intersection with Irvington Road; thence east along Irvington Road to the intersection with

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Spring Creek; thence northerly along Spring Creek to the intersection with River Road; thence northerly along River Road to the intersection with East Beacon Drive; thence following East Beacon Drive first east then south then east to the intersection with River Loop No.1; thence on a line due east the Willamette River and the point of beginning.

(7) "Grants Pass CBD" means the area within the City of Grants Pass enclosed by "B" Street on the north, 8th Street to the east, "M" Street on the south, and 5th Street to the west.

(8) Grants Pass Control Area means the area of the state beginning at the northeast corner of Section 35, T35S, R5W; thence south to the southeast corner of Section 11, T37S, R5W; thence west to the southwest corner of Section 9, T37S, R6W; thence north to the northwest corner of Section 33, T35S, R6W; thence east to the point of beginning.

(9) "Grants Pass UGB" as shown on the Plan and Zoning maps for the City of Grants Pass as of Feb. 1, 1988 is the area within the bounds beginning at the NW corner of Sec. 7, T36S, R5W; thence south to the SW corner of Sec. 7; thence west along the southern boundary of Sec. 12, T36S, R5W approx. 2000 feet; thence south approx. 100 feet to the northern right of way of the Southern Pacific Railroad Line (SPRR Line); thence southeasterly along said right of way approx. 800 feet; thence south approx. 400 feet; thence west approx. 1100 feet; thence south approx. 700 feet to the intersection with the Hillside Canal; thence west approx. 100 feet; thence south approx. 550 feet to the intersection with Upper River Road; thence southeasterly along Upper River Road and continuing east along Old Upper River Road approx. 700 feet; thence south approx. 1550 feet; thence west approx. 350 feet; thence south approx. 250 feet; thence west approx. 1000 feet; thence south approx. 600 feet to the north end of Roguela Lane; thence east approx. 400 feet; thence south approx. 1400 feet to the intersection with Lower River Road; thence west along Lower River Road approx. 1400 feet; thence south approx. 1350 feet; thence west approx. 25 feet; thence south approx. 1200 feet to the south bank of the Rogue River; thence northwesterly along said bank approx. 2800 feet; thence on a line southwesterly and parallel to Parkhill Place approx. 600 feet; thence northwesterly at a 90 degree angle approximately 300 feet to the intersection with Parkhill Place; thence southwesterly along Parkhill Place approx. 250 feet; thence on a line southeasterly forming a 90 degree angle approximately 300 feet to a point even with Leonard Road; thence west approx. 1500 feet along Leonard Road; thence north approx. 200 feet; thence west to the west side of Schroeder Lane; thence north approx. 150 feet; thence west approx. 200 feet; thence south to the intersection with Leonard Road; thence west along Leonard Road approx. 450 feet; thence north approx. 300 feet; thence east approx. 150 feet; thence north approx. 400 feet; thence west approx. 500 feet; thence south approx. 300 feet; thence west to the intersection with Coutant Lane; thence south along Coutant Lane to the intersection with Leonard Road; thence west along Leonard Road to the intersection with Buena Vista Lane; thence north along the west side of Buena Vista Lane approx. 200 feet; thence west approx. 150 feet; thence north approx. 150 feet; thence west approx. 200 feet; thence north approx. 400 feet; thence west approx. 600 feet to the intersection with the western boundary of Sec. 23, T36S, R6W; thence south to the intersection with Leonard Road; thence west along Leonard Road approx. 300 feet; thence north approx. 600 feet to the intersection with Darneille Lane; thence northwesterly along Darneille Lane approx. 200 feet; thence west approx. 300 feet; thence south approx. 600 feet to the intersection with Leonard Road; thence west along Leonard Road approx. 700 feet; thence south approx. 1350 feet; thence east approx. 1400 feet to the intersection with Darneille Lane; thence south along Darneille Lane approx. 600 feet; thence west approx. 300 feet; thence south to the intersection with Redwood Avenue; thence east along Redwood Avenue to the intersection with Hubbard Lane and the western boundary of Sec. 23, T36S, R6W; thence south along Hubbard Lane approx. 1850 feet; thence west approx. 1350 feet; thence south to the south side of U.S. Highway 199; thence westerly along U.S. 199 approx. 1600 feet to the intersection with the north-south midpoint of Sec. 27, T36S, R6W; thence south approx. 2200 feet; thence east approx. 1400 feet; thence north approx. 1000 feet; thence east approx. 300 feet; thence north approx. 250 feet to the intersection with the Highline Canal; thence northerly along the Highline Canal approx. 900 feet; thence east to the intersection with Hubbard Lane; thence north along Hubbard Lane approximately 600 feet; thence east approx. 200 feet; thence north approx. 400 feet to a point even with Canal Avenue; thence east approx. 550 feet; thence north to the south side of U.S. 199; thence easterly along the southern edge of U.S. 199 to the intersection with Willow Lane; thence south along Willow Lane to the intersection with Demaray Drive; thence easterly along Demaray Drive and continuing along the southern edge of U.S. 199 to the intersection with Dowell Road; thence south along Dowell Road approx. 550 feet; thence easterly approx. 750

feet; thence north to the intersection with the South Canal; thence easterly along the South Canal to the intersection with Schutzwahl Lane; thence south approx. 1300 feet to a point even with West Harbeck Road; thence east approx. 2000 feet to the intersection with Allen Creek; thence southerly along Allen Creek approx. 1400 feet to a point even with Denton Trail to the west; thence west to the intersection with Highline Canal; thence southerly along Highline Canal to the intersection with the southern boundary of Sec. 25, T36S, R6W; thence east to the intersection with Allen Creek; thence southerly along Allen Creek to the intersection with the western boundary of Sec. 31, T36S, R5W; thence south to the SW corner of Sec. 31; thence east to the intersection with Williams Highway; thence southeasterly along Williams Highway approx. 1300 feet; thence east approx. 200 feet; thence north approx. 400 feet; thence east approx. 700 feet; thence north to the intersection with Espey Road; thence west along Espey Road approx. 150 feet; thence north approx. 600 feet; thence east approx. 300 feet; thence north approx. 2000 feet; thence west approx. 2100 feet; thence north approx. 1350 feet; thence east approx. 800 feet; thence north approx. 2800 feet to the east-west midline of Sec. 30, T36S, R5W; thence on a line due NE approx. 600 feet; thence north approx. 100 feet; thence east approx. 600 feet; thence north approx. 100 feet to the intersection with Highline Canal; thence easterly along Highline Canal approx. 1300 feet; thence south approx. 100 feet; thence east to the intersection with Harbeck Road; thence north along Harbeck Road to the intersection with Highline Canal; thence easterly along Highline Canal to a point approx. 250 feet beyond Skyway Road; thence south to the intersection with Skyway Road; thence east to the intersection with Highline Canal; thence southeasterly along Highline Canal approx. 1200 feet; thence on a line due SW to the intersection with Bluebell Lane; thence southerly along Bluebell Lane approx. 150 feet; thence east to the intersection with Sky Crest Drive; thence southerly along Sky Crest Drive to the intersection with Harper Loop; thence southeasterly along Harper Loop to the intersection with the east-west midline of Sec. 29, T36S, R5W; thence east approx. 400 feet; thence south approx. 1300 feet to a point even with Troll View Road to the east; thence east to the intersection with Hamilton Lane; thence north along Hamilton Lane to the intersection with the Highline Canal; thence northeasterly along the Highline Canal to the northern boundary of Sec. 28, T36S, R5W; thence east approx. 1350 feet to the transmission line; thence north to the intersection with Fruitdale Drive; thence southwesterly along Fruitdale Drive approx. 700 feet; thence north to the northern edge of U.S. 199; thence easterly along the northern edge of U.S. 199 approx. 50 feet; thence north to the north bank of the Rogue River; thence northeasterly along the north bank of the Rogue River approx. 2100 feet to a point even with Ament Road; thence north to Ament Road and following Ament Road to U.S. Interstate Highway 5 (U.S. I-5); thence continuing north to the 1200 foot contour line; thence following the 1200 foot contour line northwesterly approx. 7100 feet to the city limits and a point even with Savage Street to the west; thence north following the city limits approx. 400 feet; thence west to the intersection with Beacon Street; thence north along Beacon Street and the city limits approx. 250 feet; thence east along the city limits approx. 700 feet; thence north along the city limits approx. 2200 feet; thence southwesterly along the city limits approximately 800 feet to the intersection with the 1400 foot contour line; thence northerly and northwesterly along the 1400 foot contour line approx. 900 feet to the intersection with the northern boundary of Sec. 9, T36S, R5W; thence west along said boundary approx. 100 feet to the NW corner of Sec. 9; thence south along the western boundary of Sec. 9 approx. 700 feet; thence west approx. 1400 feet; thence north approx. 2400 feet; thence west approx. 1350 feet; thence north approx. 1100 feet to the city limits; thence following the city limits first west approx. 1550 feet, then south approx. 800 feet, then west approx. 200 feet, then south approx. 200 feet, then east approx. 200 feet, then south approx. 300 feet, and finally westerly approx. 1200 feet to the intersection with the western boundary of Sec. 5, T36S, R5W; thence south along said boundary to the northern side of Vine Avenue; thence northwesterly along the northern side of Vine Avenue approx. 3150 feet to the intersection with the west fork of Gilbert Creek; thence north to the intersection with the southern right of way of U.S. I-5; thence northwesterly along said right of way approx. 1600 feet; thence south to the intersection with Old Highland Avenue; thence northwesterly along Highland Avenue approx. 650 feet; thence west approx. 350 feet; thence south approx. 1400 feet; thence east approx. 700 feet; thence south approx. 1000 feet; thence on a line SW approx. 800 feet; thence south approx. 1400 feet to the intersection with the northern boundary of Sec. 7, T36S, R5W; thence west to the NW corner of Sec. 7, the point of beginning.

(10) Klamath Falls Control Area means the area of the state beginning at the northeast corner of Section 8, T38S, R10E, thence south to the south-

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east corner of Section 5, T40S, R10E; thence west to the southwest corner of Section 3, T40S, R8E; thence north to the northwest corner of Section 10, T38S, R8E; thence east to the point of beginning.

(11) "Klamath Falls UGB" means the area within the bounds beginning at the southeast corner of Section 36, Township 38 South, Range 9 East; thence northerly approximately 4500 feet; thence westerly approximately 1/4 mile; thence northerly approximately 3/4 mile into Section 25, T38S, R9E; thence westerly approximately 1/4 mile; thence northerly approximately 1/2 mile to the southern boundary of Section 24, T38S, R9E; thence westerly approximately 1/2 mile to the southeast corner of Section 23, T38S, R9E; thence northerly approximately 1/2 mile; thence westerly approximately 1/4 mile; thence northerly approximately 1/2 mile to the southern boundary of Section 14, T38S, R9E; thence generally northwesterly along the 5000 foot elevation contour line approximately 3/4 mile; thence westerly 1 mile; thence north to the intersection with the northern boundary of Section 15, T38S, R9E; thence west 1/4 mile along the northern boundary of Section 15, T38S, R9E; thence generally southeasterly following the 4800 foot elevation contour line around the old Oregon Institute of Technology Campus to meet with the westerly line of Old Fort Road in Section 22, T38S, R9E; thence southwesterly along the westerly line of Old Fort Road approximately 1 and 1/4 miles to Section 27, T38S, R9E; thence west approximately 1/4 mile; thence southwesterly approximately 1/2 mile to the intersection with Section 27, T38S, R9E; thence westerly approximately 1/2 mile to intersect with the Klamath Falls City Limits at the northerly line of Loma Linda Drive in Section 28, T38S, R9E; thence northwesterly along Loma Linda Drive approximately 1/4 mile; thence southwesterly approximately 1/8 mile to the Klamath Falls City Limits; thence northerly along the Klamath Falls City Limits approximately 1 mile into Section 21, T38S, R9E; thence westerly approximately 1/4 mile; thence northerly approximately 1 mile into Section 17, T38S, R9E; thence westerly approximately 3/4 mile into Section 17, T38S, R9E; thence northerly approximately 1/4 mile; thence westerly approximately 1 mile to the west boundary of Highway 97 in Section 18, T38S, R9E; thence southeasterly along the western boundary of Highway 97 approximately 1/2 mile; thence southwesterly away from Highway 97; thence southeasterly to the intersection with Klamath Falls City Limits at Front Street; thence westerly approximately 1/4 mile to the western boundary of Section 19, T38S, R9E; thence southerly approximately 1 and 1/4 miles along the western boundary of Section 19, T38S, R9E and the Klamath Falls City Limits to the south shore line of Klamath Lake; thence northwesterly along the south shore line of Klamath Lake approximately 1 and 1/4 miles across Section 25, T38S, R9E and Section 26, T38S, R9E; thence westerly approximately 1/2 mile along Section 26, T38S, R9E; thence southerly approximately 1/2 mile to Section 27, T38S, R9E to the intersection with eastern boundary of Orindale Draw, thence southerly along the eastern boundary of Orindale Draw approximately 1 and 1/4 miles into Section 35, T38S, R9E; thence southerly approximately 1/2 mile into Section 2, T39S, R8E; thence easterly approximately 1/4 mile; thence northerly approximately 1/4 mile to the southeast corner of Section 35, T38S, R8E and the Klamath Falls City Limits; thence easterly approximately 1/2 mile to the northern boundary of Section 1, T38S, R8E; thence southeasterly approximately 1/2 mile to Orindale Road; thence north 500 feet along the west side of an easement; thence easterly approximately 1 and 1/4 miles through Section 1, T38S, R8E to the western boundary of Section 6, T39S, R9E; thence southerly approximately 3/4 mile to the southwest corner of Section 6, T39S, R9E; thence easterly approximately 1/8 mile to the western boundary of Highway 97; thence southwesterly along the Highway 97 right-of-way approximately 1/4 mile; thence westerly approximately 1/2 mile to Agate Street in Section 7, T39S, R8E; thence northerly approximately 1/4 mile; thence westerly approximately 3/4 mile to Orindale Road in Section 12, T39S, R8E; thence northerly approximately 1/4 mile into Section 1, T39S, R8E; thence westerly approximately 3/4 mile to the Section 2, T39S, R8E boundary line; thence southerly approximately 3/4 mile along the Section 2, T39S, R8E boundary line to the northwest corner of Section 12, T39S, R8E; thence westerly approximately 1/8 mile into Section 11, T39S, R8E; thence southerly approximately 1/8 mile; thence northeasterly approximately 3/4 mile to the southern boundary of Section 12, T39S, R8E at Balsam Drive; thence southerly approximately 1/4 mile into Section 12, T39S, R8E; thence easterly approximately 1/4 mile to Orindale Road; thence southeasterly approximately 500 feet to Highway 66; thence southwesterly approximately 1/2 mile along the boundary of Highway 66 to Holiday Road; thence southerly approximately 1/2 mile into Section 13, T39S, R8E; thence northeasterly approximately 1/4 mile to the eastern boundary of Section 13, T39S, R8E; thence northerly approximately 1/4 mile along the eastern boundary of Section 13, T39S, R8E; thence westerly approximate-

ly 1/4 mile to Weyerhaeuser Road; thence northerly approximately 1/8 mile; thence easterly approximately 1/8 mile; thence northerly approximately 1/8 mile; thence westerly approximately 1/8 mile to Farrier Avenue; thence northerly approximately 1/4 mile; thence easterly approximately 1/4 mile to the eastern boundary of Section 13, T39S, R8E; thence northerly approximately 1/8 mile along the eastern boundary of Section 13, T39S, R8E; thence easterly approximately 1/4 mile along the northern section line of Section 18, T39S, R8E; thence southerly approximately 1/4 mile; thence easterly approximately 1/2 mile to the boundary of Highway 97; thence southerly approximately 1/3 mile to the Burlington Northern Right-of-Way; thence northeasterly approximately 1 and 1/3 miles along the high water line of the Klamath River to the Southside Bypass in Section 8, T39S, R9E; thence southeasterly along the Southside Bypass to the Southern Pacific Right-of-Way in Section 9, T39S, R9E; thence southerly approximately 1/2 mile along the Southern Pacific Right-of-Way; thence southwesterly approximately 1/4 mile along the Midland Highway; thence southeasterly approximately 1/4 mile to the old railroad spur; thence easterly 1/4 mile along the old railroad spur; thence southerly approximately 1/4 mile in Section 16, T39S, R9E; thence westerly approximately 1/3 mile; thence southerly approximately 1/4 mile; thence easterly approximately 1/16 mile in Section 21, T39S, R9E; thence southerly approximately 1/8 mile to the Lost River Diversion Channel; thence southeasterly approximately 1/4 mile along the northern boundary of the Lost River Diversion Channel; thence easterly approximately 3/4 mile along Joe Wright Road into Section 22, T39S, R9E; thence southeasterly approximately 1/8 mile on the eastern boundary of the Southern Pacific Right-of-Way; thence southeasterly approximately 1 mile along the western boundary of the Southern Pacific Right-of-Way across Section 22, T39S, R9E and Section 27, T39S, R9E to a point 440 yards south of the northern boundary of Section 27, T39S, R9E; thence easterly to Kingsley Field; thence southeasterly approximately 3/4 mile to the southern boundary of Section 26, T39S, R9E; thence east approximately 1/2 mile along the southern boundary of Section 26, T39S, R9E to a pond; thence north-northwesterly for 1/2 mile following the Klamath Falls City Limits; thence north 840 feet; thence east 1155 feet to Homedale Road; thence north along Homedale Road to a point 1/4 mile north of the southern boundary of Section 23, T39S, R9E; thence west 1/4 mile; thence north 1 mile to the Southside Bypass in Section 14, T39S, R9E; thence east 1/2 mile along the Southside Bypass to the eastern boundary of Section 14, T39S, R9E; thence north 1/2 mile; thence east 900 feet into Section 13, T39S, R9E; thence north 1320 feet along the USBR 1-C 1-A to the southern boundary of Section 12, T39S, R9E; thence north 500 feet to the USBR A Canal; thence southeasterly 700 feet along the southern border of the USBR A Canal back into Section 13, T39S, R9E; thence southeast 1600 feet to the northwest parcel corner of an easement for the Enterprise Irrigation District; thence east-northeast 2200 feet to the eastern boundary of Section 13, T39S, R9E; thence north to the southeast corner of Section 12, T39S, R9E; thence along the Enterprise Irrigation Canal approximately 1/2 mile to Booth Road; thence east 1/2 mile to Vale Road; thence north 1 mile to a point in Section 6, T39S, R10E that is approximately 1700 feet north of the southern boundary of Section 6, T39S, R10E; thence west approximately 500 feet; thence south approximately 850 feet; thence west approximately 200 feet; thence north approximately 900 feet; thence west approximately 1600 feet to the western boundary of Section 6, T39S, R10E; thence north approximately 1/2 mile to the southeast corner of Section 36, T38S, R9E, the point of beginning.

(12) "LaGrande UGB" means the area within the bounds beginning at the point where U.S. Interstate 84 (I-84) intersects Section 31, Township 2 South, Range 38 East; thence east along I-84 to the Union County Fairgrounds; thence north and then east on a line encompassing the Union County Fairgrounds to the intersection with Cedar Street; thence further east approximately 500 feet, encompassing two (2) residential properties; thence on a line south to the intersection with the northern bank of the Grande Ronde River; thence westerly along the northern bank of the Grande Ronde River to the intersection with the western edge of Mount Glenn Road and Riverside Park; thence north along the western edge of Mount Glenn Road and Riverside Park to the intersection with Fruitdale Road; thence east along Fruitdale Road and the northern boundary of Riverside Park to the eastern boundary of Riverside Park; thence south along the eastern boundary of Riverside Park to the north bank of the Grande Ronde River; thence on a line southeast to the intersection with the northern edge of I-84; thence easterly along the northern edge of I-84 to May Street; thence easterly along May Street to the intersection with State Highway 82; thence northeasterly along State Highway 82 to a point approximately 1/4 mile from the eastern edge of Section 4, T3S, R38E; thence south to the intersection with Section 9, T3S, R38E, and the south-

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ern edge of Buchanan Avenue; thence west along the southern edge of Buchanan Avenue to the intersection with the northern edge of I-84; thence on a line south to the southern edge of I-84; thence southeasterly along the southern edge of I-84 approximately 2500 feet; thence on a line due west approximately 1400 feet; thence on a line due south to the intersection with the Union Pacific Railroad Line; thence southeasterly along the Union Pacific Railroad Line to the intersection with Gekeler Lane; thence west along Gekeler Lane to the intersection with U.S. Highway 30; thence southeast along U.S. Highway 30 to the intersection with the western boundary of Section 15, T3S, R38E; thence on a line west following existing property boundaries approximately 2900 feet; thence on a line north following existing property boundaries approximately 250 feet; thence on a line east following existing property boundaries approximately 650 feet; thence north on a line to the intersection with Gekeler Lane; thence west along Gekeler Lane to the intersection with 20th Avenue; thence south along 20th Avenue to the intersection with Foothill Road; thence southeasterly along Foothill Road approximately 2900 feet; thence on a line west following existing property boundaries approximately 1250 feet; thence on a line south following existing property boundaries approximately 1250 feet; thence on a line west following existing property boundaries approximately 1250 feet; thence on a line north following existing property boundaries approximately 450 feet to the intersection with the southernmost part of the La Grande City Limits; thence westerly and northwesterly along the southernmost part of the La Grande City Limits approximately 1100 feet to the intersection with the 3000 foot elevation contour line; thence westerly following the 3000 foot elevation contour line and existing property boundaries approximately 2200 feet; thence on a line north following existing property boundaries approximately 1900 feet; thence on a line west following existing property boundaries approximately 500 feet; thence on a line north to the La Grande City Limits; thence west along the La Grande City Limits and following existing property boundaries approximately 650 feet; thence on a line south following existing property boundaries approximately 900 feet; thence on a line west following existing property boundaries approximately 1250 feet; thence on a line north to the intersection with the La Grande City Limits; thence west along the southern boundary of the La Grande City Limits to the intersection with the western boundary of the La Grande City Limits; thence north along the western boundary of the La Grande City Limits and following existing property lines approximately 500 feet; thence on a line west following existing property boundaries approximately 200 feet; thence on a line north following existing property boundaries approximately 700 feet; thence east to the first 3000 foot elevation contour line west of the La Grande City Limits; thence northerly following that 3000 foot elevation contour line to the intersection with Deal Canyon Road; thence easterly along Deal Canyon Road to the intersection with the western boundary of the La Grande City Limits; thence northerly along the western boundary of the La Grande City Limits to the intersection with U.S. Highway 30; thence northwesterly along U.S. Highway 30 and following existing property boundaries approximately 1400 feet; thence on a line west to the intersection with the western boundary of Section 6, T3S, R38E; thence north along the western boundaries of Section 6, T3S, R38E and Section 31, T2S, R38E to the point of beginning.

(13) "Lakeview UGB" means the area beginning at the corner common to sections 21, 22, 27, and 28, T39S, R20E; thence north on the section line between section 21 and 22 to the section corner common to section 15, 16, 21, and 22; thence west along the section line between section 21 and 16 to the section corner common to sections 16, 17, 20, and 21; thence north along the section line between section 16 and 17 approximately 3550 feet to the east branch of Thomas Creek; thence northwesterly along the east branch of Thomas Creek to the center line of Highway 140; thence east along the center line of Highway 140 to the section corner common to sections 8, 9, 16, and 17, T39S, R20E; thence north along the section line between sections 8 and 9 to the section corner common to sections 4, 5, 8, and 9, T39S, R20E; thence north along the section line between section 4 and 5 to the section corner common to section 4 and 5, T39S, R20E and sections 32 and 33, T38S, R20E; thence east along the section line between sections 4 and 33 to the section corner common to sections 3 and 4, T39S, R20E and sections 33 and 34, T38S, R20E; thence south along the eastern boundary of section 4 approximately 4,1318.6 feet; thence S 89 degrees, 11 minutes W 288.28 feet to the east right of way line of the old Paisley/Lakeview Highway; thence S 21 degrees, 53 minutes E along the eastern right of way of the old Paisley/Lakeview Highway 288.4 feet; thence S 78 degrees, 45 minutes W 1375 feet; thence S 3 degrees, 6 minutes, and 30 seconds W 200 feet; thence S 77 degrees, 45 minutes W 136 feet to the east right of way line of U.S. Highway 395; thence southeasterly along the east right of way line of U.S. Highway 395 53.5 feet;

thence N 77 degrees, 45 minutes E 195.6 feet; thence S 38 degrees, 45 minutes E 56.8 feet; thence S 51 degrees, 15 minutes W 186.1 feet to the east right of way of U.S. Highway 395; thence southeast along the eastern right of way line of U.S. Highway 395 2310 feet; thence N 76 degrees, 19 minutes 544.7 feet; thence S 13 degrees, 23 minutes, 21 seconds E 400 feet; thence N 63 degrees, 13 minutes E 243.6 feet to the western line of the old American Forest Products Logging Road; thence southeast along the old American Forest Products Logging Road to the western line of the northeast quadrant of the northwest quadrant of section 10, T39S, R20E; thence southeast to a point on the south line of the northeast quadrant of the northwest quadrant of Section 10, T39S, R20E (this point also bears N 89 degrees, 33 minutes E 230 feet from the center line of U.S. Highway 395); thence south on a line parallel to the east right of way line of U.S. Highway 395 to the south line of the northwest quadrant of section 10, T39S, R20E; thence south 491 feet to the east right of way of U.S. Highway 395; thence southeasterly following the east right of way of U.S. Highway 395 255 feet to the south line of the northeast quadrant of the northeast quadrant of the southwest quadrant of section 10, T39S, R20E; thence east along that south line to the center line of section 10, T39S, R20E; thence continuing east along the same south line to the eastern boundary of section 10, T39S, R20E; thence south along the eastern boundary of section 10 to the section corner common to sections 10, 11, 14, and 15, T39S, R20E; thence south along the section line between section 14 and 15 to the section corner common to sections 14, 15, 22, and 23, T39S, R20E; thence west along the section line between sections 15 and 22 to the northwest corner of the northeast quadrant of the northeast quadrant of section 22, T39S, R20E; thence south along the eastern line of the western half of the eastern half of section 22 to the southern boundary of section 22, T39S, R20E; thence west along the southern boundary of section 22 to the point of beginning.

(14) "Maintenance Area" means any area that was formerly nonattainment for a criteria pollutant but has since met EPA promulgated standards and has had a maintenance plan to stay within the standards approved by the EPA pursuant to 40 CFR 51.110 (July, 1993).

(15) "Medford-Ashland Air Quality Maintenance Area" (AQMA) means the area defined as beginning at a point approximately two and quarter miles northeast of the town of Eagle Point, Jackson County, Oregon at the northeast corner of Section 36, Township 35 South, Range 1 West (T35S, R1W); thence South along the Willamette Meridian to the southeast corner of Section 25, T37S, R1W; thence southeast along a line to the southeast corner of Section 9, T39S, R2E; thence south-southeast along line to the southeast corner of Section 22, T39S, R2E; thence South to the southeast corner of Section 27, T39S, R2E; thence southwest along a line to the southeast corner of Section 33, T39S, R2E; thence West to the southwest corner of Section 31, T39S, R2E; thence northwest along a line to the northwest corner of Section 36, T39S, R1E; thence West to the southwest corner of Section 26, T39S, R1E; thence northwest along a line to the southeast corner of Section 7, T39S, R1E; thence West to the southwest corner of Section 12, T39S, R1W, T39S, R1W; thence northwest along a line to southwest corner of Section 20, T38S, R1W; thence West to the southwest corner of Section 24, T38S, R2W; thence northwest along a line to the southwest corner of Section 4, T38S, R2W; thence West to the southwest corner of Section 6, T38S, R2W; thence northwest along a line to the southwest corner of Section 31, T37S, R2W; thence North and East along the Rogue River to the north boundary of Section 32, T35S, R1W; thence East along a line to the point of beginning.

(16) "Medford-Ashland CBD" means the area beginning at the intersection of Crater Lake Highway (Highway 62) south on Biddle Road to the intersection of Fourth Street, west on Fourth Street to the intersection with Riverside Avenue (Highway 99), south on Riverside Avenue to the intersection with Tenth Street, west on Tenth Street to the intersection with Oakdale Avenue, north on Oakdale Avenue to the intersection with Fourth Street, east on Fourth Street to the intersection with Central Avenue, north on Central Avenue to the intersection with Court Street, north on Court Street to the intersection with Crater Lake Highway (Highway 62) and east on Crater Lake Highway to the point of beginning, with extensions along McAndrews Road east from Biddle Road to Crater Lake Avenue, and along Jackson Street east from Biddle Road to Crater Lake Avenue.

NOTE: This definition also marks the area where indirect sources are required to have indirect source construction permits in the Medford area. See OAR 340-254-0040.

(17) "Medford UGB" means the area beginning at the line separating Range 1 West and Range 2 West at a point approximately 1/4 mile south of the northwest corner of Section 31, T36S, R1W; thence west approximately 1/2 mile; thence south to the north bank of Bear Creek; thence west to the south bank of Bear Creek; thence south to the intersection with the Medford Corporate Boundary; thence following the Medford Corporate

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Boundary west and southwesterly to the intersection with Merriman Road; thence northwesterly along Merriman Road to the intersection with the eastern boundary of Section 10, T36S, R2W; thence south along said boundary line approximately 3/4 mile; thence west approximately 1/3 mile; thence south to the intersection with the Hopkins Canal; thence east along the Hopkins Canal approximately 200 feet; thence south to Rossanley Drive; thence east along Rossanley Drive approximately 200 feet; thence south approximately 1200 feet; thence west approximately 700 feet; thence south approximately 1400 feet; thence east approximately 1400 feet; thence north approximately 100 feet; thence east approximately 700 feet; thence south to Finley Lane; thence west to the end of Finley Lane; thence approximately 1200 feet; thence west approximately 1300 feet; thence north approximately 150 feet; thence west approximately 500 feet; thence south to Highway 238; thence west along Highway 238 approximately 250 feet; thence south approximately 1250 feet to a point even with the end of Renault Avenue to the east; thence east approximately 2200 feet; thence south approximately 1100 feet to a point even with Sunset Court to the east; thence east to and along Sunset Court to the first (nameless) road to the south; thence approximately 850 feet; thence west approximately 600 feet; thence south to Stewart Avenue; thence west along Stewart Avenue approximately 750 feet; thence south approximately 1100 feet; thence west approximately 100 feet; thence south approximately 800 feet; thence east approximately 800 feet; thence south approximately 1000 feet; thence west approximately 350 feet to a point even with the north-south connector street between Sunset Drive and South Stage Road; thence south to and along said connecting road and continuing along South Stage Road to Fairlane Road; thence south to the end of Fairlane Road and extending beyond it approximately 250 feet; thence east approximately 250 feet; thence south approximately 250 feet to the intersection with Judy Way; thence east on Judy Way to Griffin Creek Road; thence north on Griffin Creek Road to South Stage Road; thence east on South Stage Road to Orchard Home Drive; thence north on Orchard Home Drive approximately 800 feet; thence east to Columbus Avenue; thence south along Columbus Avenue to South Stage Road; thence east along South Stage Road to the first road to the north after Sunnyview Lane; thence north approximately 300 feet; thence east approximately 300 feet; thence north approximately 700 feet; thence east to King's Highway; thence north along King's Highway to Experiment Station Road; thence east along Experiment Station Road to Marsh Lane; thence east along Marsh Lane to the northern boundary of Section 6, T38S, R1W; thence east along said boundary approximately 1100 feet; thence north approximately 1200 feet; thence east approximately 1/3 mile; thence north approximately 400 feet; thence east approximately 1000 feet to a drainage ditch; thence following the drainage ditch southeasterly approximately 500 feet; thence east to the eastern boundary of Section 31, T37S, R1W; thence south along said boundary approximately 1900 feet; thence east to and along the loop off of Rogue Valley Boulevard, following that loop to the Southern Pacific Railroad Line (SPRR); thence following SPRR approximately 500 feet; thence south to South Stage Road; thence east along South Stage Road to SPRR; thence southeasterly along SPRR to the intersection with the west fork of Bear Creek; thence northeasterly along the west fork of Bear Creek to the intersection with U.S. Highway 99; thence southeasterly along U.S. Highway 99 approximately 250 feet; thence east approximately 1600 feet; thence south to East Glenwood Road; thence east along East Glenwood Road approximately 1250 feet; thence north approximately 1/2 mile; thence west approximately 250 feet; thence north approximately 1/2 mile to the Medford City Limits; thence east along the city limits to Phoenix Road; thence south along Phoenix Road to Coal Mine Road; thence east along Coal Mine Road approximately 9/10 mile to the western boundary of Section 35, T37S, R1W; thence north to the midpoint of the western boundary of Section 35, T37S, R1W; thence west approximately 800 feet; thence north approximately 1700 feet to the intersection with Barnett Road; thence easterly along Barnett Road to the southeast corner of Section 27, T37S, R1W; thence north along the eastern boundary line of said section approximately 1/2 mile to the intersection with the 1800 foot contour line; thence east to the intersection with Cherry Lane; thence following Cherry Lane southeasterly and then northerly to the intersection with Hillcrest Road; thence east along Hillcrest Road to the southeast corner of Section 23, T37S, R1W; thence north to the northeast corner of Section 23, T37S, R1W; thence west to the midpoint of the northern boundary of Section 22, T37S, R1W; thence north to the midpoint of Section 15, T37S, R1W; thence west to the midpoint of the western boundary of Section 15, T37S, R1W; thence south along said boundary approximately 600 feet; thence west approximately 1200 feet; thence north approximately 600 feet; thence west to Foothill Road; thence north along Foothill Road to a point approximately 500 feet north of Butte Road; thence west approxi-

mately 300 feet; thence south approximately 250 feet; thence west on a line parallel to and approximately 250 feet north of Butte Road to the eastern boundary of Section 8, T37S, R1W; thence north approximately 2200 feet; thence west approximately 1800 feet; thence north approximately 2000 feet; thence west approximately 500 feet; thence north to Coker Butte Road; thence east along Coker Butte Road approximately 550 feet; thence north approximately 1250 feet; thence west to U.S. Highway 62; thence north approximately 3000 feet; thence east approximately 400 feet to the 1340 foot contour line; thence north approximately 800 feet; thence west approximately 200 feet; thence north approximately 250 feet to East Vilas Road; thence east along East Vilas Road approximately 450 feet; thence north approximately 2000 feet to a point approximately 150 feet north of Swanson Creek; thence east approximately 600 feet; thence north approximately 850 feet; thence west approximately 750 feet; thence north approximately 650 feet; thence west approximately 2100 feet; thence on a line southeast approximately 600 feet; thence east approximately 450 feet; thence south approximately 1600 feet; thence west approximately 2000 feet to the continuance of the private logging road north of East Vilas Road; thence south along said logging road approximately 850 feet; thence west approximately 750 feet; thence south approximately 150 feet; thence west approximately 550 feet to Peace Lane; thence north along Peace Lane approximately 100 feet; thence west approximately 350 feet; thence north approximately 950 feet; thence west approximately 1000 feet to the western boundary of Section 31, T36S, R1W; thence north approximately 1300 feet along said boundary to the point of beginning.

(18) "Nonattainment Area" means any area that has been designated as not meeting the standards established by the U.S. Environmental Protection Agency (EPA) pursuant to 40 CFR 51.52 (July, 1993) for any criteria pollutant.

(19) "O3" means Ozone.

(20) "Oakridge UGB" means the area enclosed by the following: Beginning at the northwest corner of Section 17, T21S, R3E and the city limits; thence south along the western boundary of Section 17, T21S, R3E along the city limits approximately 800 feet; thence southwesterly following the city limits approximately 750 feet; thence west along the city limits approximately 450 feet; thence northwesterly along the city limits approximately 450 feet; thence on a line south along the city limits approximately 250 feet; thence on a line east along the city limits approximately 100 feet; thence southwesterly along the city limits approximately 200 feet; thence on a line east along the city limits approximately 400 feet; thence on a line south along the city limits to the channel of the Willamette River Middle Fork; thence south-easterly up the Willamette River Middle Fork along the city limits approximately 7200 feet; thence exiting the Willamette River Middle Fork with the city limits in a northerly manner and forming a rough semicircle with a diameter of approximately one-half mile before rejoining the Willamette River Middle Fork; thence diverging from the city limits upon rejoining the Willamette River Middle Fork and moving southeasterly approximately 5600 feet up the Willamette River Middle Fork to a point on the river even with the point where Salmon Creek Road intersects with U.S. Highway 58; thence on a line east from the channel of the Willamette River Middle Fork across the intersection of Salmon Creek Road and U.S. Highway 58 to the intersection with the Southern Pacific Railroad Line; thence northerly along the Southern Pacific Railroad Line to the intersection with the northern boundary of Section 22, T21S, R3E; thence west along the northern boundary of Section 22, T21S, R3E to the intersection with Salmon Creek Road; thence on a line north to the intersection with the Southern Pacific Railroad Line; thence east along the Southern Pacific Railroad Line approximately 600 feet; thence on a line north to the intersection with High Prairie Road; thence on a line west approximately 400 feet; thence on a line north to the intersection with the northern boundary of Section 15, T21S, R3E; thence west along the northern boundary of Section 15, T21S, R3E to the intersection with the southeastern corner of Section 9, T21S, R3E; thence north along the eastern boundary of Section 9, T21S, R3E approximately 1300 feet; thence on a line west approximately 1100 feet; thence on a line south to the intersection with West Oak Road; thence northwesterly along West Oak Road approximately 2000 feet; thence on a line south to the intersection with the northern boundary line of the city limits; thence westerly and northwesterly approximately 8000 feet along the city limits to the point of beginning.

(21) "Particulate Matter" has the meaning given that term in OAR 340-200-0020(82).

(22) PM10 has the meaning given that term in OAR 340-200-0020(90).

(23) "PM2.5" has the meaning given that term in OAR 340-200-0020(91). (24) "Portland AQMA" means the area within the bounds begin-

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ning at the point starting on the Oregon-Washington state line in the Columbia River at the confluence with the Willamette River, thence east up the Columbia River to the confluence with the Sandy River, thence southerly and easterly up the Sandy River to the point where the Sandy River intersects the Clackamas County-Multnomah County line, thence west along the Clackamas County-Multnomah County line to the point where the Clackamas County-Multnomah County line is intersected by H. Johnson Road (242nd), thence south along H. Johnson Road to the intersection with Kelso Road (Boring Highway), thence west along Kelso Road to the intersection with Deep Creek Road (232nd), thence south along Deep Creek Road to the point of intersection with Deep Creek, thence southeasterly along Deep Creek to the confluence with Clackamas River, thence easterly along the Clackamas River to the confluence with Clear Creek, thence southerly along Clear Creek to the point where Clear Creek intersects Springwater Road then to Forsythe Road, thence easterly along Forsythe Road to the intersection with Bradley Road, thence south along Bradley Road to the intersection with Redland Road, thence west along Redland Road to the intersection with Ferguson Road, thence south along Ferguson Road to the intersection with Thayler Road, thence west along Thayler Road to the intersection with Beaver Creek Road, thence southeast along Beaver Creek Road to the intersection with Henrici Road, thence west along Henrici Road to the intersection with State Highway 213 (Mollala Avenue), thence southeast along State Highway 213 to the point of intersection with Beaver Creek, thence westerly down Beaver Creek to the confluence with the Willamette River, thence southerly and westerly up the Willamette River to the point where the Willamette River intersects the Clackamas County-Yamhill County line, thence north along the Clackamas County-Yamhill County line to the point where it intersects the Washington County-Yamhill County line, thence west and north along the Washington County-Yamhill County line to the point where it is intersected by Mount Richmond Road, thence northeast along Mount Richmond Road to the intersection with Patton Valley Road, thence easterly and northerly along Patton Valley Road to the intersection with Tualatin Valley State Highway, thence northerly along Tualatin Valley State Highway to the intersection with State Highway 47, thence northerly along State Highway 47 to the intersection with Dilley Road, thence northwesterly and northerly along Dilley Road to the intersection with Stringtown Road, thence westerly and northwesterly along Stringtown Road to the intersection with Gales Creek Road, thence northwesterly along Gales Creek Road to the intersection with Timmerman Road, thence northerly along Timmerman Road to the intersection with Wilson River Highway, thence west and southwest along Wilson River Highway to the intersection with Narup Road, thence north along Narup Road to the intersection with Cedar Canyon Road, thence westerly and northerly along Cedar Canyon Road to the intersection with Banks Road, thence west along Banks Road to the intersection with Hahn Road, thence northerly and westerly along Hahn Road to the intersection with Mountindale Road, thence southeasterly along Mountindale Road to the intersection with Glencoe Road, thence east-southeasterly along Glencoe Road to the intersection with Jackson Quarry Road, thence north-northeasterly along Jackson Quarry Road to the intersection with Helvetia Road, thence easterly and southerly along Helvetia Road to the intersection with Bishop Road, thence southerly along Bishop Road to the intersection with Phillips Road, thence easterly along Phillips Road to the intersection with the Burlington Northern Railroad Track, thence northeasterly along the Burlington Northern Railroad Line to the intersection with Rock Creek Road, thence east-southeasterly along Rock Creek Road to the intersection with Old Cornelius Pass Road, thence northeasterly along Old Cornelius Pass Road to the intersection with Skyline Boulevard, thence easterly and southerly along Skyline Boulevard to the intersection with Newberry Road, thence northeasterly along Newberry Road to the intersection with State Highway 30 (St. Helens Road), thence northeast on a line over land across State Highway 30 to the Multnomah Channel, thence east-southeasterly up the Multnomah Channel to the diffuence with the Willamette River, thence north-northeasterly down the Willamette River to the confluence with the Columbia River and the Oregon-Washington state line (the point of beginning).

(25) "Portland Metropolitan Service District Boundary" or "Portland Metro" means the boundary surrounding the urban growth boundaries of the cities within the Greater Portland Metropolitan Area. It is defined in the Oregon Revised Statutes (ORS) 268.125 (1989).

(26) "Portland Vehicle Inspection Area" means the area of the state included within the following census tracts, block groups, and blocks as used in the 1990 Federal Census. In Multnomah County, the following tracts, block groups, and blocks are included: Tracts 1, 2, 3.01, 3.02, 4.01, 4.02, 5.01, 5.02, 6.01, 6.02, 7.01, 7.02, 8.01, 8.02, 9.01, 9.02, 10, 11.01,

11.02, 12.01, 12.02, 13.01, 13.02, 14, 15, 16.01, 16.02, 17.01, 17.02, 18.01, 18.02, 19, 20, 21, 22.01, 22.02, 23.01, 23.02, 24.01, 24.02, 25.01, 25.02, 26, 27.01, 27.02, 28.01, 28.02, 29.01, 29.02, 29.03, 30, 31, 32, 33.01, 33.02, 34.01, 34.02, 35.01, 35.02, 36.01, 36.02, 36.03, 37.01, 37.02, 38.01, 38.02, 38.03, 39.01, 39.02, 40.01, 40.02, 41.01, 41.02, 42, 43, 44, 45, 46.01, 46.02, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60.01, 60.02, 61, 62, 63, 64.01, 64.02, 65.01, 65.02, 66.01, 66.02, 67.01, 67.02, 68.01, 68.02, 69, 70, 71, 72.01, 72.02, 73, 74, 75, 76, 77, 78, 79, 80.01, 80.02, 81, 82.01, 82.02, 83.01, 83.02, 84, 85, 86, 87, 88, 89, 90, 91, 92.01, 92.02, 93, 94, 95, 96.01, 96.02, 97.01, 97.02, 98.01, 98.02, 99.01, 99.02, 99.03, 100, 101, 102, 103.01, 103.02, 104.02, 104.04, 104.05, 104.06, 104.07; Block Groups 1, 2 of Tract 105; Blocks 360, 361, 362 of Tract 105; that portion of Blocks 357, 399 of Tract 105 beginning at the intersection of the Oregon-Washington State Line ("State Line") and the northeast corner of Block Group 1 of Tract 105, thence east along the State Line to the intersection of the State Line and the eastern edge of Section 26, Township 1 North, Range 4 East, thence south along the section line to the centerline of State Highway 100 to the intersection of State Highway 100 and the western edge of Block Group 2 of Tract 105. In Clackamas County, the following tracts, block groups, and blocks are included: Tracts 201, 202, 203.01, 203.02, 204.01, 204.02, 205.01, 205.02, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216.01, 216.02, 217, 218, 219, 220, 221.01, 221.02, 222.02, 223, 224, 225, 226, 227.01, 227.02, 228, 229, 230, 231, 232, 233, 234.01, 234.02, 235, 236, 237; Block Groups 1, 2 of Tract 241; Block Groups 1, 2, 3, 4 of Tract 242; Block Groups 1, 2 of Tract 243.02. In Yamhill County, the following tract is included: Tract 301, except those areas in Tract 301 that lie within the Newberg City Limits defined as of July 12, 1996, and the following blocks within Tract 301: 102B, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121D, 122B, 122C, 123, 126, and 127B. In Washington County the following tracts, block groups, and blocks are included: Tracts 301, 302, 303, 304.01, 304.02, 305.01, 305.02, 306, 307, 308.01, 308.02, 309, 310.03, 310.04, 310.05, 310.06, 311, 312, 313, 314.01, 314.02, 315.01, 315.04, 315.05, 315.06, 315.07, 315.08, 316.03, 316.04, 316.05, 316.06, 316.07, 317.02, 317.03, 317.04, 318.01, 318.02, 318.03, 319.01, 319.03, 319.04, 320, 321.01, 321.02, 322, 323, 324.02, 324.03, 324.04, 325, 326.01, 326.02, 328, 329, 330, 331, 332, 333; Block Groups 1, 2 of Tract 327; Block Group 1 of Tract 334; Block Group 2 of Tract 335; Block Group 1 of Tract 336. In Columbia County the following tracts, block groups, and blocks are included: Tract 9710.98; Block Groups 2, 3 of Tract 9709.98; Blocks 146B, 148, 152 of Tract 9709.98.

(27) "Rogue Basin" means the area bounded by the following line: Beginning at the NE corner of T32S, R2E, W.M., thence south along range line 2E to the SE corner of T39S; thence west along township line 39S to the NE corner of T40S, R7W; thence south to the SE corner of T40S, R7W; thence west to the SE corner of T40S, R9W; thence north on range line 9W to the NE corner of T39S, R9W; thence east to the NE corner of T39S, R8W; thence north on range line 8W to the SE corner of Section 1, T33S, R8W on the Josephine-Douglas County line; thence east on the Josephine-Douglas and Jackson-Douglas County lines to the NE corner of T32S, R1W; thence east along township line 32S to the NE corner of T32S, R2E to the point of beginning.

(28) "Salem-Keizer Area Transportation Study" or "SKATS" means the area within the bounds beginning at the intersection of U.S. Interstate Highway 5 (I-5) with Battle Creek Road SE and Wiltsey Road, south along I-5 to the intersection with the western boundary of Section 24, T8S, R3W; thence due south on a line to the intersection with Delaney Road; thence easterly along Delaney Road to the intersection with Sunnyside Road; thence north along Sunnyside Road to the intersection with Hylo Road SE; thence west along Hylo Road SE to the intersection with Liberty Road; thence north along Liberty Road to the intersection with Cole Road; thence west along Cole Road to the intersection with Bates Road; thence northerly and easterly along Bates Road to the intersection with Jory Hill Road; thence west along Jory Hill Road to the intersection with Stone Hill Avenue; thence north along Stone Hill Avenue to the intersection with Vita Springs Road; thence westerly along Vita Springs Road to the Willamette River; thence northeasterly downstream the Willamette River to a point adjacent to where the western boundary of Section 30, T7S, R3W intersects the Southern Pacific Railroad Line; thence westerly along the Southern Pacific Railroad Line to the intersection with State Highway 51; thence northeasterly along State Highway 51 to the intersection with Oak Grove Road; thence northerly along Oak Grove Road to the intersection with State Highway 22; thence west on State Highway 22 to the intersection with Oak Grove Road; thence north along Oak Grove Road to the intersection with Orchard Heights Road; thence east and north along Orchard Heights Road to the intersection with Eagle Crest Drive; thence northerly along Eagle



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Crest Drive to the intersection with Hunt Road; thence north along Hunt Road to the intersection with Fourth Road; thence east along Fourth Road to the intersection with Spring Valley Road; thence north along Spring Valley to the intersection with Oak Knoll Road; thence east along Oak Knoll Road to the intersection with Wallace Road; thence south along Wallace Road to the intersection with Lincoln Road; thence east along Lincoln Road on a line to the intersection with the Willamette River; thence northeasterly downstream the Willamette River to a point adjacent to where Simon Street starts on the East Bank; thence east and south along Simon Street to the intersection with Salmon; thence east along Salmon to the intersection with Ravena Drive; thence southerly and easterly along Ravena Drive to the intersection with Wheatland Road; thence northerly along Wheatland Road to the intersection with Brooklake Road; thence southeast along Brooklake Road to the intersection with 65th Avenue; thence south along 65th Avenue to the intersection with Labish Road; thence east along Labish Road to the intersection with the West Branch of the Little Pudding River; thence southerly along the West Branch of the Little Pudding River to the intersection with Sunnyview Road; thence east along Sunnyview Road to the intersection with 63rd Avenue; thence south along 63rd Avenue to the intersection with State Street; thence east along State Street to the intersection with 62nd Avenue; thence south along 62nd Avenue to the intersection with Deer Park Drive; thence southwest along Deer Park Drive to the intersection with Santiam Highway 22; thence southeast along Santiam Highway 22 to the point where it intersects the Salem Urban Growth Boundary (SUBG); thence following the southeast boundary of the SUBG generally southerly and westerly to the intersection with Wiltsey Road; thence west along Wiltsey Road to the intersection with I-5 (the point of beginning).

(29) "UGB" means Urban Growth Boundary.

(30) "Umpqua Basin" means the area bounded by the following line: Beginning at the SW corner of Section 2, T19S, R9W, on the Douglas-Lane County lines and extending due south to the SW corner of Section 14, T32S, R9W, on the Douglas-Curry County lines, thence easterly on the Douglas-Curry and Douglas-Josephine County lines to the intersection of the Douglas, Josephine, and Jackson County lines; thence easterly on the Douglas-Jackson County line to the intersection of the Umpqua National Forest boundary on the NW corner of Section 32, T32S, R3W; thence northerly on the Umpqua National Forest boundary to the NE corner of Section 36, T25S, R2W; thence west to the NW corner of Section 36, T25S, R4W; thence north to the Douglas-Lane County line; thence westerly on the Douglas-Lane County line to the starting point.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 18-1996, f. & cert. ef. 8-19-96; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0500; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 18-2011, f. & cert. ef. 12-21-11

## 340-204-0030

### Designation of Nonattainment Areas

The following areas are designated as Particulate Matter Nonattainment Areas:

(1) The Oakridge Nonattainment Area for PM10 is the Oakridge UGB as defined in OAR 340-204-0010.

(2) The Klamath Falls Nonattainment Area for PM2.5 is as follows: Townships and ranges defined by T37S R9E Sections 31-32. T38S R8E Sections 1-5, 8-16, 22-26, 35-36. T38S R9E Sections 5-8, 14-15, 17-36. T39S R8E Sections 1-2, 11-13, 24. T39S R9E Sections 1-27. T39S R10E Sections 3-10, 15-20, 29-30.

(3) The Oakridge Nonattainment Area for PM2.5 is defined as a line from Township 21 South, Range 2 East, Section 11 (northwest corner), east to Township 21 South, Range 3 East, Section 11 (northeast corner), south to Township 21 South, Range 3 East, Section 23 (southeast corner), west to Township 21 South, Range 2 East, Section 23 (southwest corner) connecting back to Township 21 South, Range 2 East, Section 11 (northwest corner).

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 18-1996, f. & cert. ef. 8-19-96; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0520; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 6-2001, f. & cert. ef. 7-1-01; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ

3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 18-2011, f. & cert. ef. 12-21-11

## 340-204-0040

### Designation of Maintenance Areas

The following areas are designated as Maintenance Areas:

(1) Carbon Monoxide Maintenance Areas:

(a) The Eugene Maintenance Area for Carbon Monoxide is the Eugene-Springfield AQMA as defined in OAR 340-204-0010;

(b) The Portland Maintenance Area for Carbon Monoxide is the Portland Metropolitan Service District as referenced in OAR 340-204-0010;

(c) The Medford Carbon Monoxide Maintenance Area is the Medford UGB as defined in OAR 340-204-0010;

**NOTE:** EPA maintenance plan approval and redesignation pending.

(d) The Grants Pass Carbon Monoxide Maintenance Area is the Grants Pass CBD as defined in OAR 340-204-0010;

(e) The Klamath Falls Carbon Monoxide Maintenance Area is the Klamath Falls UGB as defined in OAR 340-204-0010;

(f) The Salem Carbon Monoxide Maintenance Area is the Salem-Keizer Area Transportation Study as defined in OAR 340-204-0010.

(2) Ozone Maintenance Areas:

(a) The Medford Maintenance Area for Ozone is the Medford-Ashland AQMA as defined in OAR 340-204-0010;

(b) The Oregon portion of the Portland-Vancouver Interstate Maintenance Area for Ozone is the Portland AQMA, as defined in OAR 340-204-0010;

(c) The Salem Maintenance Area for Ozone is the Salem-Keizer Area Transportation Study as defined in OAR 340-204-0010.

(3) PM10 Maintenance Areas:

(a) The Grants Pass PM10 Maintenance Area is the Grants Pass UGB as defined in OAR 340-204-0010;

(b) The Klamath Falls PM10 Maintenance Area is the Klamath Falls UGB as defined in OAR 340-204-0010;

(c) The Medford-Ashland PM10 Maintenance Area is the Medford-Ashland AQMA as defined in OAR 340-204-0010;

**NOTE:** EPA maintenance plan approval and redesignation pending.

(d) The La Grande PM10 Maintenance Area is the La Grande UGB as defined in OAR 340-204-0010;

**NOTE:** EPA maintenance plan approval and redesignation pending.

(e) The Lakeview PM10 Maintenance Area is the Lakeview UGB as defined in OAR 340-204-0010.

**NOTE:** EPA maintenance plan approval and redesignation pending.

(f) The Eugene-Springfield PM10 Maintenance Area is the Eugene-Springfield UGB as defined in OAR 340-204-0010.

**NOTE:** EPA maintenance plan approval and redesignation pending.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 18-1996, f. & cert. ef. 8-19-96; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0530; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 18-2011, f. & cert. ef. 12-21-11

## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Corrections to 2012 Recreational Fisheries Rules for the Central Zone.

**Adm. Order No.:** DFW 160-2011(Temp)

**Filed with Sec. of State:** 12-20-2011

**Certified to be Effective:** 1-1-12 thru 4-30-12

**Notice Publication Date:**

**Rules Amended:** 635-018-0090

**Subject:** This amended rule corrects errors found in the 2012 *Oregon Sport Fishing Regulations for the Central Zone*. The *Special Regulations for the Hood River Basin* (Hood River Co.) mainstem and tributaries not listed, found on page 63 of the 2012 *Oregon Sport Fishing Regulations*, were printed incomplete. Modifications restore bait restrictions; restrictions for use of artificial flies and lures when angling for trout; and include a description of areas open for retention of adipose fin-clipped coho and adipose fin-clipped steelhead as well as.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

# ADMINISTRATIVE RULES

635-018-0090

## Inclusions and Modifications

(1) The **2012 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2012 Oregon Sport Fishing Regulations**.

(2) Hood River Basin (Hood River Co.) mainstem and tributaries not listed:

(a) Note: *Chinook salmon* angling closed entire river. Emergency regulations opening *Chinook* angling may be adopted after the printing of the 2012 Oregon Sport Fishing Regulations. Up-to-date changes can be obtained by calling 1-503-947-6000 or at our internet site: [www.dfw.state.or.us/resources/fishing/reg\\_changes/central.asp](http://www.dfw.state.or.us/resources/fishing/reg_changes/central.asp)

(b) Open for adipose fin-clipped *coho salmon* and adipose fin-clipped *steelhead* entire year, from mouth to mainstem confluence with the East Fork and the West Fork from the confluence with the mainstem upstream to the angling deadline 200 feet downstream of Punchbowl Falls.

(c) Catch and release only for trout, May 26-Oct. 31.

(d) Restricted to artificial flies and lures when angling for *trout* in all tributaries and in mainstem Hood River upstream from the confluence with the West Fork.

(e) Use of bait allowed for *salmon* and *steelhead*.

(f) All other catch limits and restrictions remain unchanged from those listed for Hood River in the 2012 Oregon Sport Fishing Regulations.

Stat. Auth.: ORS 496.138, 496.146, 497.121 and 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 and 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04, Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 59-2006(Temp), f. 7-10-06, cert. ef. 8-1-06 thru 10-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 18-2007(Temp), f. 3-22-07, cert. ef. 4-15-07 thru 7-31-07; DFW 55-2007(Temp), f. 7-6-07, cert. ef. 8-1-07 thru 10-31-07; Administrative correction 11-17-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 26-2008(Temp), f. 3-17-08, cert. ef. 4-15-08 thru 7-31-08; DFW 27-2008(Temp), f. 3-24-08, cert. ef. 5-1-08 thru 10-27-08; Administrative correction 11-18-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 16-2009(Temp), f. 2-25-09, cert. ef. 4-15-09 thru 6-30-09; DFW 61-2009(Temp), f. 6-1-09, cert. ef. 8-1-09 thru 10-31-09; DFW 104-2009(Temp), f. 8-28-09, cert. ef. 9-1-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 7-2010(Temp), f. 1-25-10, cert. ef. 4-1-10 thru 7-31-10; DFW 27-2010(Temp), f. 3-8-10, cert. ef. 4-15-10 thru 7-31-10; DFW 66-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 10-31-10; DFW 86-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 10-31-10; DFW 106-2010(Temp), f. 7-26-10, cert. ef. 8-1-10 thru 12-31-10; DFW 164-2010(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 16-2011(Temp), f. 2-16-11, cert. ef. 4-15-11 thru 7-31-11; DFW 17-2011(Temp), f. 2-17-11, cert. ef. 4-15-11 thru 7-31-11; DFW 42-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 93-2011(Temp), f. 7-13-11, cert. ef. 8-1-11 thru 10-31-11; DFW 123-2011(Temp), f. 9-2-11, cert. ef. 9-3-11 thru 12-31-11; DFW 160-2011(Temp), f. 12-20-11, cert. ef. 1-1-12 thru 4-30-12

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**Rule Caption:** Amend Rule to Correct the Dates for the April 2012 Youth Turkey Hunt.

**Adm. Order No.:** DFW 161-2011(Temp)

**Filed with Sec. of State:** 12-21-2011

**Certified to be Effective:** 12-21-11 thru 6-1-12

**Notice Publication Date:**

**Rules Amended:** 635-053-0035

**Subject:** Currently, the 2011–12 Game Bird regulations (page 15) lists the statewide season dates for the youth turkey hunt as April 8 and 9, 2012. The hunt dates should have been listed as April 7 and April 8, 2012. Through this temporary rules, we are amending the dates by adding Saturday, April 7, 2012. Thus, the statewide season will be April 7, 8, and 9, 2012. This will allow for three days of hunting for the youth turkey hunt.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

635-053-0035

## Wild Turkey

Notwithstanding the provisions of the 2011-12 Game Bird Regulations, the 2012 Youth Turkey Hunt (described on page 15) will be held on April 7, 8 and 9, 2012.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 21-1981, f. & ef. 6-29-81; FWC 32-1981, f. & ef. 8-28-81; FWC 43-1981, f. & ef. 11-30-81; FWC 59-1982, f. & ef. 8-30-82; FWC 46-1983, f. & ef. 9-19-83; FWC 51-1984, f. & ef. 9-5-84; FWC 64-1985, f. & ef. 10-2-85; FWC 58-1986, f. & ef. 9-17-86; FWC 83-1987, f. & ef. 9-22-87; FWC 81-1988, f. & cert. ef. 9-2-88; FWC 26-1989(Temp), f. & cert. ef. 4-11-89; FWC 106-1989, f. & cert. ef. 9-29-89; FWC 93-1990, f. & cert. ef. 9-4-90; FWC 99-1991, f. & cert. ef. 9-9-91; FWC 81-1992, f. & cert. ef. 8-26-92; FWC 44-1993, f. & cert. ef. 8-4-93; FWC 51-1993, f. & cert. ef. 8-25-93; FWC 58-1994, f. & cert. ef. 9-1-94; FWC 33-1996, f. & cert. ef. 6-7-96; FWC 45-1997, f. & cert. ef. 8-13-97; DFW 161-2011(Temp), f. & cert. ef. 12-21-11 thru 6-1-12

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**Rule Caption:** Establish Average Market Values of Food Fish for Determining Damages Related to Commercial Fishing Violations.

**Adm. Order No.:** DFW 162-2011(Temp)

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 1-1-12 thru 2-29-12

**Notice Publication Date:**

**Rules Amended:** 635-006-0232

**Subject:** Amended rule to establish the average market value of food fish species used to determine damages for commercial fishing violations in 2012.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

635-006-0232

## Damages for Commercial Fishing Violations

(1) For purposes of ORS 506.720 the following shall be the 2011 average market value of food fish species. For species not listed, the average market value shall be the price per pound paid to law enforcement officials for any fish or shellfish confiscated from the person being assessed damages, or the average price per pound paid for that species during the month in which the violation occurred, whichever is greater. Unless otherwise noted, the amount given is the price per pound and is based on round weight.

(a) FISH:

(A) Anchovy, Northern \$0.14.

(B) Cabezon \$3.48.

(C) Carp \$0.50 (2006 price).

(D) Cod, Pacific \$0.56.

(E) Flounder, arrowtooth \$0.10.

(F) Flounder, starry \$0.38.

(G) Greenling \$4.40.

(H) Grenadier \$0.11.

(I) Hagfish \$0.67.

(J) Hake, Pacific (Whiting) \$0.11.

(K) Halibut, Pacific, dressed weight with head on \$5.20.

(L) Herring, Pacific \$0.20.

(M) Lingcod \$1.21.

(N) Mackerel, jack \$0.11; Pacific \$0.10.

(O) Opah \$2.98 (2008 price).

(P) Pacific ocean perch, \$0.52.

(Q) Pollock, Walleye \$0.67 (2001 price).

(R) Rockfish:

(i) Black, \$2.10.

(ii) Blue, \$1.37.

(iii) Canary, \$0.56.

(iv) Darkblotched, \$0.63.

(v) Black and yellow, \$5.08.

(vi) Brown, \$3.25.

(vii) China, \$5.76.

(viii) Copper, \$3.20.

(ix) Gopher, \$4.03.

# ADMINISTRATIVE RULES

- (x) Grass, \$7.00 (2010 price).
- (xi) Quillback, \$3.62.
- (xii) Shelf, \$0.54.
- (xiii) Shortbelly, using trawl gear \$0.29 (2003 price), using line and pot gear \$1.96 (2008 price).
- (xiv) Slope, using trawl gear, \$0.46 using line and pot gear \$0.90.
- (xv) Tiger, \$3.59.
- (xvi) Vermilion, \$1.49.
- (xvii) Widow \$0.44.
- (xviii) Yelloweye, using trawl gear \$0.54, using line and pot gear \$0.98.
- (xix) Yellowtail, \$0.51.
- (S) Sablefish:
  - (i) Dressed weight, ungraded \$7.70, extra small \$4.93, small \$6.78, medium \$7.60 and large \$6.53.
  - (ii) Round weight, ungraded \$3.45, extra small \$1.76, small \$3.17, medium \$3.71 and large \$4.21.
- (T) Salmon, Chinook, ocean dressed weight: ungraded \$6.00, large \$5.94, medium \$5.81, and small \$5.47.
- (U) Salmon, coho, ocean dressed weight: mixed size \$1.65.
- (V) Salmon, pink, ocean dressed weight: ungraded, \$0.84.
- (W) Sanddab, Pacific \$0.54.
- (X) Sardine, Pacific \$0.14.
- (Y) Shad, American:
  - (i) Coast, ungraded, midwater trawl \$0.22.
  - (ii) Columbia, ungraded, gillnet, setnet, and dipnet \$0.32.
- (Z) Shark, blue \$0.21, Pacific sleeper \$0.62 (2000 price), shortfin mako \$1.50 (2009 price), sixgill \$0.05 (2007 price), soupfin \$0.20, spiny dogfish \$0.29 (2010 price), scalloped hammerhead \$0.12 (2001 price), silky \$0.18 (2001 price), thresher dressed weight \$1.50 (1995 price) and round weight \$0.60, and other species \$0.02.
- (AA) Skates and Rays \$0.35.
- (BB) Smelt, Eulachon (Columbia River), \$2.86 and other species \$0.20 (2010 price).
- (CC) Sole, butter \$0.32, curlfin (turbot) \$0.32, Dover \$0.42, English \$0.32, flathead \$0.31, petrale \$1.44, rex \$0.36, rock \$0.33 and sand \$0.94.
- (DD) Steelhead \$0.93.
- (EE) Sturgeon, green \$0.98 (2009 price) and white \$2.57.
- (FF) Surfperch \$1.15 (2009 price).
- (GG) Swordfish \$4.00 (2008 price).
- (HH) Thornyhead (Sebastolobus), longspine \$0.42 and shortspine \$0.60.
- (II) Tuna, albacore \$1.94, bluefin \$5.00, bigeye \$4.00 (2008 price), and yellowfin \$2.00.
- (JJ) Walleye \$2.00.
- (KK) Wolf-eel \$3.71.
- (LL) Wrymouth \$0.30.
- (b) CRUSTACEANS:
  - (A) Crab: box \$1.37, Dungeness bay \$3.26 and ocean \$2.74, rock \$1.55 and Tanner \$0.69 (2003 price).
  - (B) Crayfish \$1.65.
  - (C) Shrimp: brine \$0.82, coonstripe \$1.57 (2007 price), ghost (sand) \$24.38, mud \$1.24, pink \$0.51 (applied to the gross round weight of the confiscated pink shrimp reported on the fish receiving ticket) and spot \$9.45.
  - (D) Water flea (Daphnia) \$0.65 (2002 price).
- (c) MOLLUSKS:
  - (A) Abalone, flat \$21.09 (2008 price).
  - (B) Clams: butter \$0.44, cockle \$0.52, gaper \$0.48, Manila littleneck \$2.00 (2008 price), Nat. littleneck \$2.00 (2008 price), razor \$2.77 and soft-shell \$0.50 (2010 price).
  - (C) Mussels, ocean \$0.52.
  - (D) Octopus \$1.17.
  - (E) Scallop, rock \$0.70 (2005 price).
  - (F) Scallop, weathervane dressed weight (shucked) \$5.73 (2002 price) and round weight \$0.55 (2002 price).
  - (G) Squid, market \$0.17.
  - (H) Squid, other species \$0.24.
- (d) OTHER INVERTEBRATES:
  - (A) Jellyfish \$10.00 (2004 price).
  - (B) Sea cucumber \$0.30 (2005 price).
  - (C) Sea urchin, red \$0.53 and purple \$0.30 (2004 price).
  - (D) Sea stars \$1.00.
- (2) The Department may initiate civil proceedings to recover damages as authorized by ORS 506.720 where the value of any food fish unlawfully

taken exceeds \$300, except for food fish taken by trawl in the groundfish fishery where the trip limit has not been exceeded by more than 15%.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.720

Hist.: FWC 160, f. & ef. 11-25-77; FWC 18-1978, f. & ef. 4-7-78. Renumbered from 635-036-0605; FWC 33-1982, f. & ef. 6-2-82; FWC 9-1988, f. & cert. ef. 3-3-88; DFW 6-2003, f. 1-21-03, cert. ef. 2-1-03; DFW 3-2004, f. 1-14-04, cert. ef. 2-1-04; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2006, f. & cert. ef. 1-9-06; DFW 1-2007, f. & cert. ef. 1-12-07; DFW 2-2008, f. & cert. ef. 1-15-08; DFW 3-2009, f. & cert. ef. 1-13-09; DFW 5-2010, f. & cert. ef. 1-13-10; DFW 1-2011, f. & cert. ef. 1-10-11; DFW 162-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 2-29-12

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**Rule Caption:** Amend Rules Related to 2012 Oregon Sport Fishing Regulations.

**Adm. Order No.:** DFW 163-2011

**Filed with Sec. of State:** 12-27-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 7-1-2011

**Rules Amended:** 635-011-0100, 635-013-0003, 635-013-0004, 635-014-0080, 635-014-0090, 635-016-0080, 635-016-0090, 635-017-0080, 635-017-0090, 635-017-0095, 635-018-0080, 635-018-0090, 635-019-0080, 635-019-0090, 635-021-0080, 635-021-0090, 635-023-0080, 635-023-0090, 635-023-0095, 635-023-0125, 635-023-0128, 635-023-0130, 635-023-0134

**Subject:** Amended rules to adopt changes to the sport fishing regulations for finfish, shellfish, and marine invertebrates for 2012. Housekeeping and Technical corrections were made to ensure rule consistency.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-011-0100

### General Rule

It is *unlawful* to take any fish, shellfish, or marine invertebrates for personal use except as provided in these rules which include and incorporate the **2012 Oregon Sport Fishing Regulations** by reference. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2012 Oregon Sport Fishing Regulations**.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 11-1982, f. & ef. 2-9-82; FWC 2-1984, f. & ef. 1-10-84; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 153-2011(Temp), f. 11-7-11, cert. ef. 11-15-11 thru 5-12-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

## 635-013-0003

### Purpose and Scope

(1) The purpose of division 13 is to provide for management of sport salmon fisheries off the Oregon Coast over which the State has jurisdiction.

(2) This rule incorporates by reference, the annual ocean sport salmon specifications and management measures as adopted by the **Pacific Fishery Management Council** in its annual **Ocean Salmon Management Measures and Impacts**, as finalized in April 2010, and in addition to the extent they are consistent with these rules, Code of **Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**.

(3) This rule also incorporates by reference the 2012 Oregon Sport Fishing Regulations.

(4) A copy of the **Pacific Fishery Management Council referenced document** and the **Federal Regulations** may be obtained by contacting the **Pacific Fishery Management Council** at [www.pfmcouncil.org](http://www.pfmcouncil.org) or at 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

(5) To the extent not preempted by Federal law, these regulations apply within the State of Oregon's Fisheries Conservation Zone (out to fifty miles from shore).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 44-1984(Temp), f. & ef. 8-23-84; FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 52-1989(Temp), f. & cert. ef. 7-28-89; FWC 37-1990, f. & cert. ef. 5-1-90; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 38-2000, f. & cert. ef. 7-3-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05;

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DFW 25-2005, f. & cert. ef. 4-15-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; Administrative correction, 11-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 72-2010, f. & cert. ef. 5-25-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 34-2011, f. 4-27-11, cert. ef. 5-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

## 635-013-0004

### Inclusions and Modifications

(1) OAR 635-013-0005 through OAR 635-013-0009 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subparts A and H**, and the **2012 Oregon Sport Fishing Regulations**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**, and the **2012 Oregon Sport Fishing Regulations** contain requirements for sport salmon angling in the Pacific Ocean off the Oregon coast. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the published federal regulations and the **2012 Oregon Sport Fishing Regulations**. This means that persons must consult not only the federal regulations and the published sport fishing regulations but also the Department's web page to determine all applicable sport fishing regulations.

(3) This rule contains requirements that modify sport salmon angling regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean sport salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by **Federal Regulations (CFR, Title 50, Part 660, Subparts A and H)**.

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

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert. ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; DFW 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; DFW 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; Administrative correction 11-17-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; DFW 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; DFW 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; DFW 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; DFW 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; DFW 85-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; DFW 99-2002(Temp), f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; DFW 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-03 thru 12-31-03; DFW 78-2003(Temp), f. 8-14-03, cert. ef. 8-20-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 75-2004(Temp), f. 7-20-04, cert. ef. 7-23-04 thru 12-31-04; DFW 80-2004(Temp), f. 8-12-04, cert. ef. 8-13-04 thru 12-31-04; DFW 93-2004(Temp), f. 9-2-04, cert. ef. 9-4-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 81-2005(Temp), f. 7-25-05, cert. ef. 7-29-05 thru 12-31-05; DFW 103-2005(Temp), f. 9-7-05, cert. ef. 9-9-05 thru 12-31-05; DFW 106-2005(Temp), f. 9-14-05, cert. ef. 9-17-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 67-2006(Temp), f. 7-25-06, cert. ef. 8-11-06 thru 12-31-06; DFW 87-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 12-31-06; DFW 90-2006(Temp), f. 8-25-06, cert. ef. 8-26-06 thru 12-31-06; Administrative correction 1-16-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 80-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 12-31-07; DFW 81-2007(Temp), f. 8-31-07, cert. ef. 9-2-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 66-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 10-31-08; DFW 96-2008(Temp), f. & cert. ef. 8-15-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

## 635-014-0080

### Purpose and Scope

(1) The purpose of division 14 is to provide for management of sport fisheries in the Northwest Zone over which the State has jurisdiction.

(2) Division 14 incorporates by reference the **2012 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2012 Oregon Sport Fishing Regulations** in addition to division 11 and division 14 to determine all applicable sport fishing requirements for the Northwest Zone.

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

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru

## 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) 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) 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

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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.

(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 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef. 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-1-05, 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

## 635-016-0080

### Purpose and Scope

(1) The purpose of division 16 is to provide for management of sport fisheries in the Southwest Zone over which the State has jurisdiction.

(2) Division 16 incorporates by reference the **2012 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2012 Oregon Sport Fishing Regulations** in addition to division 11 and division 16 to determine all applicable sport fishing requirements for the Southwest Zone.

[Publications referenced are available from the agency.]

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

## 635-016-0090

### Inclusions and Modifications

(1) The **2012 Oregon Sport Fishing Regulations** provide requirements for the Southwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2012 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other requirements provided in the 2012 Oregon Sport Fishing Regulations, the following restrictions apply to angling in waters of the Southwest Zone:

(a) Within the Umpqua River Basin the following additional rules apply: Open for non adipose fin-clipped coho salmon in the Mainstem Umpqua River and Bay from the mouth to Scottsburg Bridge at RM 27.5 from September 15 through the earlier of November 30 or attainment of an adult coho quota of 1,300 non adipose fin-clipped coho. The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho, and no more than 2 total adult

# ADMINISTRATIVE RULES

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.

(b) Within the Coos River Basin the following additional rules apply:

(A) All waters of the South Fork Coos River upstream from the head of tidewater at Dellwood at RM 10.0 are closed for all salmon angling from August 1 through December 31 and closed for steelhead from August 1 through November 14; and

(B) Open for non adipose fin-clipped coho salmon upstream to the head of tide at Dellwood at RM 10.0 on the South Coos River and to the East Fork/West Fork Millicoma confluence from September 15 through the earlier of November 30 or attainment of an adult coho quota of 1,200 non adipose fin-clipped coho. 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, 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.

(c) Within the Coquille River Basin the following additional rules apply: Open for non adipose fin-clipped coho salmon in Coquille River and Bay upstream to the Highway 42S bridge (Sturdivant Park) at RM 24.0 from September 15 through the earlier of November 30 or attainment of an adult coho quota of 825 non adipose fin-clipped coho. 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, 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.

(d) Within the Tenmile Lakes Basin the following additional rules apply: Tenmile Lakes (Coos County) upstream from Hilltop Bridge are open for non adipose fin-clipped coho salmon from October 1 through the earlier of December 31 or attainment of an adult coho quota of 875 non adipose fin-clipped coho. 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, 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. Only one rod per angler may be used while angling for coho. Streams that empty into North and South Tenmile Lakes are not open to coho salmon angling, nor is the canal that connects North and South Tenmile Lakes.

(e) All waters of Floras Creek upstream of the County Road 124 bridge over Floras Creek at RM 5.0 are closed for Chinook salmon from August 1 through December 31.

(f) Within the Sixes River Basin the following additional rules apply:

(A) All waters of the Sixes River Basin that are open for Chinook salmon are limited to no more than 1 adult non fin-clipped Chinook salmon per day and 10 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with waters of the Elk River and Elk River Ocean Terminal Area. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31.

(B) Closed to Chinook salmon upstream of Edson Creek at RM 10.0 from August 1 through December 31.

(g) Within the Elk River Basin the following additional rules apply: All waters of the Elk River Basin that are open for Chinook salmon are limited to no more than 1 adult non fin-clipped Chinook salmon per day and 10 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with waters of the Sixes River and Elk River Ocean Terminal Area. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31.

(h) All waters of the Chetco River mainstem upstream of the power-line crossing at RM 2.2 are closed to angling from August 1 through November 4.

(i) All waters of the Winchuck River mainstem, including tidewater, are closed to angling from August 1 through November 4.

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

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; FWC 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; FWC 34-1998, f. & cert. ef. 5-4-98; FWC 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; FWC 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; FWC 70-1998, f. & cert. ef. 8-28-98; FWC 100-1998, f. 12-23-98, cert. ef. 1-1-99; FWC 36-1999, f. & cert. ef. 5-20-99; FWC 96-1999, f. 12-27-99, cert. ef. 1-1-00; FWC 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-

2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, cert. ef. 11-9-2002); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 127-2004, f. 12-22-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 24-2006(Temp), f. 4-25-06, cert. ef. 5-13-06 thru 10-31-06; DFW 37-2006(Temp), f. 6-2-06, cert. ef. 6-5-06 thru 12-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 47-2007(Temp), f. 6-18-07, cert. ef. 6-21-07 thru 10-31-07; DFW 56-2007(Temp), 7-6-07, cert. ef. 8-1-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 137-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 54-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 7-31-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 138-2008(Temp), f. 10-28-08, cert. ef. 11-1-08 thru 11-30-08; DFW 140-2008(Temp), f. 11-4-08, cert. ef. 11-5-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 57-2009(Temp), f. 5-27-09, cert. ef. 6-1-09 thru 7-31-09; DFW 77-2009(Temp), f. 6-29-09, cert. ef. 7-1-09 thru 7-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 113-2009(Temp), f. & cert. ef. 9-18-09 thru 12-31-09; DFW 141-2009(Temp), f. 11-4-09, cert. ef. 11-7-09 thru 12-21-09; DFW 143-2009(Temp), f. 11-17-09, cert. ef. 11-19-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 65-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 5-31-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 143-2010(Temp), f. 10-8-10, cert. ef. 10-10-10 thru 12-31-10; DFW 152-2010(Temp), f. 10-27-10, cert. ef. 10-30-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 31-2011(Temp), f. 4-18-11, cert. ef. 5-1-11 thru 10-27-11; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11; DFW 137-2011(Temp), 9-30-11, cert. ef. 10-1-11 thru 12-31-11; DFW 145-2011(Temp), f. 10-11-11, cert. ef. 10-12-11 thru 12-31-11; DFW 149-2011(Temp), f. 10-20-11, cert. ef. 10-22-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

## 635-017-0080

### Purpose and Scope

(1) The purpose of division 17 is to provide for management of sport fisheries in the Willamette Zone over which the State has jurisdiction.

(2) Division 17 incorporates by reference the **2012 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2012 Oregon Sport Fishing Regulations** in addition to division 11 and division 17 to determine all applicable sport fishing requirements for the Willamette Zone.

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

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-017-0105 - 635-017-0465; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

## 635-017-0090

### Inclusions and Modifications

(1) The **2012 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2012 Oregon Sport Fishing Regulations**.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Friday through Monday each week. All harvest is prohibited Tuesday through Thursday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

# ADMINISTRATIVE RULES

(f) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

[Publications: Publications referenced are available from the agency.]  
 Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119  
 Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129  
 Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02 cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. ef. 6-1-07; DFW 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; DFW 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-20-07; DFW 134-2007, f. 12-26-07, cert. ef. 1-1-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08; DFW 5-2008(Temp), f. 1-25-08, cert. ef. 2-1-08 thru 7-6-08; DFW 15-2008(Temp), f. 2-26-08, cert. ef. 3-1-08 thru 7-29-08; DFW 46-2008(Temp), f. 5-9-08, cert. ef. 5-12-08 thru 7-29-08; DFW 55-2008(Temp), f. 5-30-08, cert. ef. 6-2-08 thru 10-31-08; DFW 82-2008(Temp), f. 7-21-08, cert. ef. 7-29-08 thru 12-31-08; DFW 110-2008(Temp), f. 9-15-08, cert. ef. 9-17-08 thru 12-31-08; DFW 124-2008(Temp), f. 10-1-08, cert. ef. 10-2-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 9-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 8-15-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 74-2009(Temp), f. 6-25-09, cert. ef. 6-30-09 thru 7-2-09; Administrative correction 7-21-09; DFW 103-2009(Temp), f. 8-27-09, cert. ef. 9-1-09 thru 12-31-09; DFW 118-2009(Temp), f. & cert. ef. 9-28-09 thru 12-31-09; DFW 123-2009(Temp), f. & cert. ef. 10-5-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 61-2010, f. & cert. ef. 5-14-10; DFW 62-2010(Temp), f. 5-14-10, cert. ef. 5-22-10 thru 11-17-10; DFW 84-2010(Temp), f. 6-17-10, cert. ef. 6-18-10 thru 10-31-10; DFW 94-2010(Temp), f. & cert. ef. 7-1-10 thru 10-31-10; DFW 96-2010(Temp), f. 7-7-10, cert. ef. 7-8-10 thru 10-31-10; DFW 123-2010(Temp), f. 8-26-10, cert. ef. 9-1-10 thru 12-31-10; DFW 134-2010(Temp), f. 9-22-10, cert. ef. 9-23-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 158-2011(Temp), f. 12-14-11, cert. ef. 1-1-12 thru 4-30-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

## 635-017-0095 Sturgeon Season

(1) The 2012 Oregon Sport Fishing Regulations provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2012 Oregon Sport Fishing Regulations.

(2) The Willamette River downstream of Willamette Falls (including Multnomah Channel and the Gilbert River) is open to the retention of white sturgeon three days per week, Thursday, Friday, and Saturday during the period from February 17 until the harvest guideline is met.

(3) Bank angling is prohibited from the east shore of the Willamette River the entire year in the area beginning west of Highway 99E, at the northern-most extent of the parking area near the intersection of 8th Street and Highway 99E in Oregon City, approximately 290 feet downstream of the Oregon City/West Linn bridge (Hwy 43) and extending upstream

approximately 1715 feet to the retaining wall extending into the Willamette River at the NW corner of the Blue Heron Paper Mill.

(4) Only white sturgeon with a fork length of 38-54 inches may be retained. Retention of green sturgeon is prohibited all year in all areas.

(5) Angling for sturgeon, including catch-and-release, is prohibited seven days per week during May 1 through August 31 from Willamette Falls downstream to the I-205 Bridge.

[Publications: Publications referenced are available from the agency.]  
 Stat. Auth.: ORS 183.325, 506.109 & 506.119  
 Stats. Implemented: ORS 506.129 & 507.030  
 Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 74-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 7-2008, f. & cert. ef. 2-11-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 90-2010(Temp), f. 6-29-10, cert. ef. 7-5-10 thru 12-31-10; DFW 154-2010(Temp), f. & cert. ef. 11-8-10 thru 12-31-10; DFW 163-2010(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 10-2011(Temp), f. 2-10-11, cert. ef. 2-17-11 thru 6-29-11; DFW 22-2011(Temp), f. 3-16-11, cert. ef. 3-17-11 thru 6-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

## 635-018-0080 Purpose and Scope

(1) The purpose of division 18 is to provide for management of sport fisheries in the Central Zone over which the State has jurisdiction.

(2) Division 18 incorporates by reference the 2012 Oregon Sport Fishing Regulations. Therefore, persons must consult the 2012 Oregon Sport Fishing Regulations in addition to division 11 and division 18 to determine all applicable sport fishing requirements for the Central Zone.

[Publications: Publications referenced are available from the agency.]  
 Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119  
 Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129  
 Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-018-0105 - 635-018-0310; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

## 635-018-0090 Inclusions and Modifications

The 2012 Oregon Sport Fishing Regulations provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2012 Oregon Sport Fishing Regulations.

[Publications: Publications referenced are available from the agency.]  
 Stat. Auth.: ORS 496.138, 496.146, 497.121 and 506.119  
 Stats. Implemented: ORS 496.004, 496.009, 496.162 and 506.129  
 Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-27-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04; Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 59-2006(Temp), f. 7-

# ADMINISTRATIVE RULES

10-06, cert. ef. 8-1-06 thru 10-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 18-2007(Temp), f. 3-22-07, cert. ef. 4-15-07 thru 7-31-07; DFW 55-2007(Temp), f. 7-6-07, cert. ef. 8-1-07 thru 10-31-07; Administrative correction 11-17-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 26-2008(Temp), f. 3-17-08, cert. ef. 4-15-08 thru 7-31-08; DFW 27-2008(Temp), f. 3-24-08, cert. ef. 5-1-08 thru 10-27-08; Administrative correction 11-18-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 16-2009(Temp), f. 2-25-09, cert. ef. 4-15-09 thru 6-30-09; DFW 61-2009(Temp), f. 6-1-09, cert. ef. 8-1-09 thru 10-31-09; DFW 104-2009(Temp), f. 8-28-09, cert. ef. 9-1-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 7-2010(Temp), f. 1-25-10, cert. ef. 4-1-10 thru 7-31-10; DFW 27-2010(Temp), f. 3-8-10, cert. ef. 4-15-10 thru 7-31-10; DFW 66-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 10-31-10; DFW 86-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 10-31-10; DFW 106-2010(Temp), f. 7-26-10, cert. ef. 8-1-10 thru 12-31-10; DFW 164-2010(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 16-2011(Temp), f. 2-16-11, cert. ef. 4-15-11 thru 7-31-11; DFW 17-2011(Temp), f. 2-17-11, cert. ef. 4-15-11 thru 7-31-11; DFW 42-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 93-2011(Temp), f. 7-13-11, cert. ef. 8-1-11 thru 10-31-11; DFW 123-2011(Temp), f. 9-2-11, cert. ef. 9-3-11 thru 12-31-11; DFW 160-2011(Temp), f. 12-20-11, cert. ef. 1-1-12 thru 4-30-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

## 635-019-0080

### Purpose and Scope

(1) The purpose of division 19 is to provide for management of sport fisheries in the Northeast Zone over which the State has jurisdiction.

(2) Division 19 incorporates by reference the **2012 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2012 Oregon Sport Fishing Regulations** in addition to division 11 and division 19 to determine all applicable sport fishing requirements for the Northeast Zone.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-019-0105 - 635-019-0240 - See those rules for prior history; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

## 635-019-0090

### Inclusions and Modifications

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**.

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

Stat. Auth.: ORS 183.325, 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 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 9-23-10; 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

## 635-021-0080

### Purpose and Scope

(1) The purpose of division 21 is to provide for management of sport fisheries in the Southeast Zone, over which the State has jurisdiction.

(2) Division 21 incorporates by reference the **2012 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2012 Oregon Sport Fishing Regulations** in addition to division 11 and division 21 to determine all applicable sport fishing requirements for the Southeast Zone.

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

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-021-0105 - 635-021-0290; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

## 635-021-0090

### Inclusions and Modifications

The **2012 Oregon Sport Fishing Regulations** provide requirements for the Southeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2012 Oregon Sport Fishing Regulations**.

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

Stat. Auth.: ORS 183.325, 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 76-1994(Temp), f. & cert. ef. 10-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 55-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 56-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 54-2002(Temp), f. 5-24-02, cert. ef. 6-15-02 thru 12-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 80-2003(Temp), f. & cert. ef. 8-22-03 thru 9-30-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 101-2005(Temp), f. 8-31-05, cert. ef. 9-2-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 36-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; DFW 54-2007(Temp), f. 7-6-07, cert. ef. 7-14-07 thru 9-30-07; DFW 62-2007(Temp), f. 7-31-07, cert. ef. 8-1-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 51-2008(Temp), f. 5-16-08, cert. ef. 5-31-08 thru 9-1-08; DFW 74-2008(Temp), f. 7-3-08, cert. ef. 7-4-08 thru 9-1-08; DFW 77-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 53-2009(Temp), f. 5-18-09, cert. ef. 5-30-09 thru 9-1-09; DFW 62-2009(Temp), f. 6-2-09, cert. ef. 6-13-09 thru 9-1-09; DFW 79-2009(Temp), f. 6-30-09, cert. ef. 7-5-09 thru 9-1-09; Administrative correction 9-29-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 52-2010(Temp), f. 4-30-10, cert. ef. 5-1-10 thru 9-30-10; DFW 60-2010(Temp), f. 5-13-10, cert. ef. 5-22-10 thru 9-30-10; DFW 7-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 9-30-10; DFW 78-2010(Temp), f. 6-10-10, cert. ef. 6-11-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 50-2011(Temp), f. 5-16-11, cert. ef. 5-28-11 thru 9-1-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

## 635-023-0080

### Purpose and Scope

(1) The purpose of division 23 is to provide for management of sport fisheries in the Columbia River Zone and in the Snake River Zone over which the State has jurisdiction.

(2) Division 23 incorporates by reference the **2012 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2012 Oregon Sport Fishing Regulations** in addition to division 11 and division 23 to determine all applicable sport fishing requirements for the Columbia River Zone and the Snake River Zone.

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

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-023-0105 - 635-023-0120; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04;



# ADMINISTRATIVE RULES

DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

## 635-023-0090

### Inclusions and Modifications

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**.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-00, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64-2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02, cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02, cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03, cert. ef. 6-30-03 thru 12-26-03; DFW 72-2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 4-2004(Temp), f. 1-22-04, cert. ef. 2-1-04 thru 7-29-04; DFW 35-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 10-26-04; DFW 52-2004(Temp), f. 6-11-04, cert. ef. 6-25-04 thru 12-21-04; DFW 58-2004(Temp), f. 6-24-04, cert. ef. 6-27-04 thru 12-23-04; DFW 64-2004(Temp), f. 6-30-04, cert. ef. 7-3-04 thru 12-30-04; DFW 65-2004(Temp), f. 7-6-04, cert. ef. 7-11-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 118-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 5-31-05; DFW 128-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 5-31-05; Administrative correction 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 64-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 151-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 3-31-10; DFW 28-2010(Temp), f. 3-9-10, cert. ef. 3-11-10 thru 3-31-10; Administrative correction 4-21-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

## 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 8 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 7.

(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 14 through June 26; and

(c) July 1 through July 4 (or until guideline is met).

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 13, from June 27 through June 30, and July 5 through December 31.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon with a fork length of 38-54 inches may be retained.

(7) During the fishing periods as identified in subsections (4)(b) and (4)(c) 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 to a line crossing the Columbia River from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to Washington shore during 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. Saturday February 19, 2011 the retention of sturgeon in Bonneville Reservoir and tributaries is prohibited.

(10) 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.

(11) The retention of white sturgeon in the area identified in section (10) of this rule is prohibited August 1 through January 31.

(12) Retention of green sturgeon is prohibited all year in all areas.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 33-2009(Temp), f. 4-2-09, cert. ef. 4-13-09 thru 10-9-09; DFW 63-2009(Temp), f. 6-3-09, cert. ef. 6-6-09 thru 10-9-09; DFW 83-2009(Temp), f. 7-8-09, cert. ef. 7-9-09 thru 12-31-09; 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

# ADMINISTRATIVE RULES

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

## 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 March 31 from the mouth at Buoy 10 upstream to the I-5 Bridge 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 may be retained per day. Catch limits for jacks remain in effect as per the 2012 Oregon Sport Fishing Regulations.

(3) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point-Tongue Point line to McNary Dam from February 15 through 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. 4-21-11 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

## 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 31 the mainstem Columbia River is open to the retention of adipose fin-clipped jack and adult Chinook salmon

from the Astoria-Megler Bridge upstream to the Oregon/Washington border.

(b) The combined daily bag limit for adult salmon and steelhead is two fish. Only adipose fin-clipped fish may be retained.

[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

## 635-023-0130

### Fall 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)(A) Effective August 1 through December 31, in the mainstem Columbia River from a north-south line through Buoy 10 upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank, the combined bag limit for adult Chinook salmon, adipose fin-clipped coho salmon, and adipose fin-clipped steelhead is two fish per day of which only one may be a Chinook salmon; except:

(B) Retention of Chinook salmon is prohibited during September 1 through December 31;

(b)(A) Effective August 1 through December 31, in the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam, the combined bag limit for adult salmon and adipose fin-clipped steelhead is two fish per day of which only one may be a Chinook salmon; except:

(B) Retention of Chinook salmon is only allowed during August 1 through September 11 or until the harvest guideline is achieved, in the area bounded by a line projected from the Warrior Rock Lighthouse on the Oregon shore to Red Buoy #4 to a marker on the lower end of Bachelor Island, Washington, downstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162

Hist.: DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04 cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 108-2005(Temp), f. 9-15-05, cert. ef. 9-17-05 thru 12-31-05; DFW 112-2005(Temp), f. 9-28-05, cert. ef. 9-30-05 thru 12-31-05; DFW 123-2005(Temp), f. 10-18-05, cert. ef. 10-20-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 100-2006(Temp), f. & cert. ef. 9-14-06 thru 12-31-06; DFW 109-2006(Temp), f. 9-29-06, cert. ef. 9-30-06 thru 12-31-06; DFW 113-2006(Temp), f. 10-12-06, cert. ef. 10-13-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 92-2007(Temp), f. 9-18-07, cert. ef. 9-19-07 thru 12-31-07; DFW 96-2007(Temp), f. 9-21-07, cert. ef. 9-22-07 thru 12-31-07; DFW 101-2007(Temp), f. 9-28-07, cert. ef. 9-29-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 99-2008(Temp), f. 8-22-08, cert. ef. 8-25-08 thru 12-31-08; DFW 104-2008(Temp), f. 8-29-08, cert. ef. 8-31-08 thru 12-31-08; DFW 115-2008(Temp), f. & cert. ef. 9-18-08 thru 12-31-08; DFW 118-2008(Temp), f. 9-24-08, cert. ef. 9-25-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 133-2009(Temp), f. 10-20-09, cert. ef. 10-22-09 thru 12-31-09; 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 131-2010(Temp), f. 9-21-10, cert. ef. 9-22-10 thru 10-31-10; DFW 145-2010(Temp), f. 10-13-10, cert. ef. 10-15-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 100-2011(Temp), f. 7-27-11, cert. ef. 8-1-11 thru 12-31-11; DFW 127-2011(Temp), f. 9-14-11, cert. ef. 9-16-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

## 635-023-0134

### Snake River Fishery

The **2012 Oregon Sport Fishing Regulations** provide requirements for the Snake River Zone. However, additional regulations may be adopted

# ADMINISTRATIVE RULES

in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2012 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, 496.146 & 506.119  
Stats. Implemented: ORS 496.162 & 506.129  
Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 47-2005(Temp), f. 5-19-05, cert. ef. 5-21-05 thru 6-20-05; Administrative correction 7-20-05; DFW 31-2006(Temp), f. 5-18-06, cert. ef. 5-20-06 thru 6-19-06; Administrative correction 7-21-06; DFW 31-2007(Temp), f. 5-9-07, cert. ef. 5-11-07 thru 6-18-07; DFW 43-2007(Temp), f. 6-14-07, cert. ef. 6-19-07 thru 7-2-07; Administrative correction 2-8-08; DFW 43-2008(Temp), f. 4-25-08, cert. ef. 4-26-08 thru 7-20-08; DFW 64-2008(Temp), f. 6-18-08, cert. ef. 6-21-08 thru 7-31-08; Administrative correction 8-21-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 58-2009(Temp), f. 5-27-09, cert. ef. 5-30-09 thru 7-12-09; DFW 80-2009(Temp), f. 6-30-09, cert. ef. 7-1-09 thru 7-17-09; Administrative correction 7-21-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 42-2010(Temp), f. 4-13-10, cert. ef. 4-24-10 thru 7-31-10; DFW 107-2010(Temp), f. 7-26-10, cert. ef. 7-31-10 thru 8-4-10; Administrative correction, 8-18-10; DFW 119-2010(Temp), f. 8-18-10, cert. ef. 9-1-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 29-2011(Temp), f. 4-12-11, cert. ef. 4-23-11 thru 10-19-11; DFW 118-2011(Temp), f. 8-23-11, cert. ef. 9-1-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12

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**Rule Caption:** Amendments to Rules for Commercial and Recreational Groundfish Fisheries and Fish Dealer Records and Reports.

**Adm. Order No.:** DFW 164-2011

**Filed with Sec. of State:** 12-27-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 1-1-2011

**Rules Amended:** 635-004-0018, 635-004-0019, 635-004-0033, 635-006-0210, 635-006-0211, 635-006-0215, 635-039-0080, 635-039-0090

**Subject:** Amended rules to include: 2012 federal groundfish regulations incorporated into state rule; 2012 commercial nearshore groundfish harvest specifications; 2012 recreational groundfish regulations; and changes to regulations governing fish dealer records and reports. State rules governing marine commercial and recreational groundfish fisheries are based on rules adopted federally. The final federal rules governing 2012 groundfish fisheries are expected to be published before January 1, 2012. Changes to these rules, primarily for groundfish species, are needed to clarify legal processes for completing fish tickets and/or monthly remittance reports.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-004-0018

### Scope of Rules

Division 4 incorporates into Oregon Administrative Rules, by reference, the groundfish specifications and management measures for 2012 to the extent they are consistent with:

(1) **Code of Federal Regulations, Title 50 Part 660, Subparts C, D, E and F** (October 1, 2011 ed.) as amended;

(2) **Federal Register Vol. 76, No. 43**, dated May 11, 2011 (76 FR 27508);

(3) **Federal Register Vol. 76, No. 231**, dated December 1, 2011 (76 FR 74725);

(4) **Federal Register Vol. 76, No. 239**, dated December 13, 2011 (76 FR 77415); and

(5) **Federal Register Vol. 76, No. 245**, dated December 21, 2011 (76 FR 79122).

Therefore, persons must consult the Federal Regulations in addition to division 4 to determine all applicable groundfish fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone. A copy of the Federal Regulations may be obtained by contacting the National Oceanic and Atmospheric Administration's National Marine Fisheries Service at [www.nwr.noaa.gov](http://www.nwr.noaa.gov) or 7600 Sand Point Way NE, Seattle, WA 98115-0070.

Stat. Auth.: ORS 496.138 & 506.119  
Stats. Implemented: ORS 496.162 & 506.129  
Hist.: FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 71-1996, f. 12-26-96, cert. ef. 1-1-97; DFW 1-1998, f. & cert. ef. 1-9-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 133-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 128-2007, f. 12-13-07, cert. ef. 1-1-08; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12

## 635-004-0019

### Inclusions and Modifications

(1) OAR chapter 635, division 4, 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**.

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

## 635-004-0033

### Groundfish Restrictions

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

- (a) Minor Shelf Rockfish;
- (b) Minor Slope Rockfish;
- (c) Black and Yellow Rockfish;
- (d) Brown Rockfish;
- (e) Calico Rockfish;
- (f) China Rockfish;
- (g) Copper Rockfish;
- (h) Gopher Rockfish;
- (i) Grass Rockfish;
- (j) Kelp Rockfish;
- (k) Olive Rockfish;
- (l) Quillback Rockfish;
- (m) Treefish;
- (n) Black Rockfish;
- (o) Blue Rockfish;
- (p) Cabezon;
- (q) Canary Rockfish;
- (r) Greenling;
- (s) Tiger Rockfish;
- (t) Vermilion Rockfish;
- (u) Widow Rockfish;
- (v) Yelloweye Rockfish;
- (w) Yellowtail Rockfish;
- (x) Darkblotched Rockfish;
- (y) Pacific Ocean Perch;
- (z) Longspine Thornyhead;
- (aa) Shortspine Thornyhead;
- (bb) Arrowtooth Flounder;
- (cc) Dover Sole;
- (dd) Petrale Sole;
- (ee) Rex Sole;
- (ff) Other Flatfish;

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- (gg) Lingcod;
- (hh) Sablefish;
- (ii) Pacific Whiting.

(2) For the purpose of this rule, "Other nearshore rockfish" means: black and yellow (*Sebastes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. serripes*).

(3) For the purpose of this rule a "commercial harvest cap" is defined as the total fishery-related mortality for a given species, or species group, that may occur in a single calendar year in Oregon commercial fisheries. For 2012, the commercial harvest caps are:

- (a) Black rockfish, 139.2 metric tons.
- (b) Cabezon, 30.8 metric tons.

(4) For the purpose of this rule a "commercial landing cap" is defined as the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries. For 2012, the commercial landing caps are:

- (a) Black rockfish, 137.9 metric tons.
- (b) Black rockfish and blue rockfish combined of 141.9 metric tons.
- (c) Other nearshore rockfish, 14.3 metric tons.
- (d) Cabezon, 30.5 metric tons.
- (e) Greenling, 23.4 metric tons.

(5) For the purpose of this rule, the periods to which cumulative trip limits apply are: January through February (period 1); March through April (period 2); May through June (period 3); July through August (period 4); September through October (period 5); and November through December (period 6).

(6) For black and blue rockfish combined, no vessel may land more than:

- (a) 800 pounds in period 1;
- (b) 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.
- (7) In each period, no vessel may land more than:
  - (a) 700 pounds of other nearshore rockfish, combined;
  - (b) 1,500 pounds of cabezon; or
  - (c) 250 pounds of greenling species.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984 f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef. 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 31-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 82-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 12-31-05; DFW 86-2005(Temp), f. & cert. ef. 8-3-05 thru 12-31-05; DFW 119-2005(Temp), f. 10-10-05, cert. ef. 10-11-05 thru 12-31-05; DFW 135-2005(Temp), f. 11-30-05, cert. ef. 12-1-05 thru 12-31-05; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 50-2006(Temp), f. 6-28-06, cert. ef. 7-1-06 thru 12-27-06; DFW 83-2006(Temp), f. 8-10-06, cert. ef. 8-11-06 thru 2-6-07; DFW 108-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; DFW 133-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 83-2007(Temp), f. 8-31-07, cert. ef. 9-1-07 thru 12-31-07; DFW 120-2007(Temp), f. 10-30-07, cert. ef. 11-1-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 128-2007, f. 12-13-07, cert. ef. 1-1-08; Administrative Correction 1-24-08; DFW 70-2008(Temp), f. 6-26-08, cert. ef. 7-1-08 thru 12-27-08; DFW 123-2008(Temp), f. 9-30-08, cert. ef. 10-2-08 thru 12-31-08; DFW 154-2008(Temp), f. 12-29-08, cert. ef. 1-1-09 thru 6-29-09; DFW 21-2009(Temp), f. 2-26-09, cert. ef. 3-1-09 thru 8-27-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 75-2009(Temp), f. 6-26-09, cert. ef. 7-1-09 thru 12-28-09; DFW 127-2009(Temp), f. 10-8-09, cert. ef. 10-10-09 thru 12-31-09; DFW 155-2009, f. 12-28-09, cert. ef. 1-1-10; DFW 110-2010(Temp), f. 7-30-10, cert. ef. 8-1-10 thru 12-31-10; DFW 148-2010(Temp), f. & cert. ef. 10-15-10 thru 12-31-10; Administrative correction 1-25-11; DFW 77-2011(Temp), f. 6-28-

11, cert. ef. 7-5-11 thru 12-31-11; DFW 126-2011(Temp), f. 9-14-11, cert. ef. 9-15-11 thru 12-31-11; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12

## 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 Receiving Tickets are prenumbered in books of 50 tickets. 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. The Fish Receiving Ticket 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;
- (f) Fishing gear used by the fisher;
- (g) For salmon and Dungeness crab, zone or area of primary catch;
- (h) Species of food fish or shellfish received;
- (i) Pounds of each species 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(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;
- (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;

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- (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;
- (xlvi) 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 personal use.

(2) Except as provided in OAR 635-006-0212 and 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.

(3) 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, 506.119, 506.129, 508.530 & 508.535  
Stats. Implemented: ORS 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

## 635-006-0211

### Fish Receiving Ticket — Net Caught Groundfish

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:

- (1) Date of landing.
- (2) Boat name and federal document or State Marine Board number from which catch was made.
- (3) Port of first landing.
- (4) 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(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 635-006-0211(1)(i)(B) are exempt from fish ticket requirements when considered “weighbacks.”
- (5) Signature of the fisher delivering the catch.

Stat. Auth.: ORS 506.119, 506.129, 508.530 & 508.535  
Stats. Implemented: ORS 506.129, 508.025, 508.040 & 508.550  
Hist.: FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; 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

## 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.
  - (iii) Surimi — 6.25.
- (E) Razor Clams, shelled and cleaned — 2.0.
- (F) Scallops, shelled and cleaned — 12.2.
- (G) Thresher shark — 2.0.
- (H) Skates — 2.6.
- (I) Lingcod:
  - (i) Gilled and gutted — 1.1.
  - (ii) Gilled, gutted and headed — 1.5.
- (J) Spot prawn, tails — 2.24.
- (K) Groundfish, glazed:

(i) Conversion factors must be calculated for each landing for each species or species group categorized in OAR 635-004-0033 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 635-004-0033 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 percent.
- (C) Effective January 1, 2010 all other food fish and shellfish (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

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month. Landing fees are delinquent if not received or postmarked within 20 days after the end of the calendar month. A penalty charge of \$5 or five percent of the landing fees due, whichever is larger, shall be assessed along with a one percent per month interest charge on any delinquent landing fee payments.

Stat. Auth.: ORS 506.119 & 508.530  
Stats. Implemented: ORS 506.129, 508.535 & 508.550  
Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0140; FWC 48-1978, f. & ef. 9-27-78, Renumbered from 635-036-0585; FWC 17-1981(Temp), f. & ef. 5-22-81; FWC 25-1981(Temp), f. 7-8-81, ef. 7-15-81; FWC 27-1981, f. & ef. 8-14-81; FWC 1-1986, f. & ef. 1-10-86; FWC 4-1987, f. & ef. 2-6-87; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-92, FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; FWC 5-1993, f. 1-22-93, cert. ef. 1-25-93; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 118-2005(Temp), f. & cert. ef. 10-10-05 thru 12-31-05; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2008(Temp) f. & cert. ef. 7-10-08 thru 12-31-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 70-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 12-12-09; DFW 73-2009(Temp), f. 6-24-09, cert. ef. 6-25-09 thru 12-21-09; 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

## 635-039-0080

### Purpose and Scope

(1) The purpose of division 39 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 39 incorporates into Oregon Administrative Rules, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2012 Oregon Sport Fishing Regulations**;

(b) **Title 50 of the Code of Federal Regulations, Part 300, Subpart E** (October 1, 2011 ed.), as amended;

(c) **Title 50 of the Code of Federal Regulations, Part 660, Subpart G** (October 1, 2011 ed.), as amended;

(d) **Federal Register Vol. 76, No. 43**, dated May 11, 2011 (76 FR 27508);

(e) **Federal Register Vol. 76, No. 51**, dated March 16, 2011 (76 FR 14300); and

(f) **Federal Register Vol. 76, No. 339**, dated December 13, 2011 (76 FR 77415).

(3) Therefore, persons must consult all publications referenced in this rule in addition to division 11 and division 39 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

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

Stat. Auth.: ORS 496.138, 496.146, 506.119  
Stats. Implemented: ORS 496.162 & 506.129  
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12

## 635-039-0090

### Inclusions and Modifications

(1) The **2012 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2012 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "sport harvest cap" is defined as the amount that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year. For 2012 the sport harvest caps are:

(a) Black rockfish, 440.8 metric tons.

(b) Cabezon, 17.2 metric tons.

(3) For the purposes of this rule, "Other nearshore rockfish" means the following rockfish species: black and yellow (*Sebastes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and trefish (*S. serriceps*).

(4) For the purposes of this rule a "sport landing cap" is defined as the total landings for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2012 the sport landing caps are:

(a) Black rockfish and blue rockfish combined, 481.8 metric tons.

(b) Other nearshore rockfish, 13.6 metric tons.

(c) Greenling, 5.2 metric tons.

(5) In addition to the regulations for Marine Fish in the **2012 Oregon Sport Fishing Regulations**, the following apply for the sport fishery in the Marine Zone in 2012:

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit.

(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the **2012 Oregon Sport Fishing Regulations** in the Marine Zone, located under the category of Species Name, Marine Fish: 7 fish daily bag limit in aggregate (total sum or number), of which no more than one be a cabezon from April 1 through September 30. Retention of the following species is prohibited:

(A) Yelloweye rockfish;

(B) Canary rockfish; and

(C) Cabezon from January 1, 2012 through March 31, 2012 and from October 1, 2012 through December 31, 2012.

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species except Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).

(d) Retention of all marine fish listed under the category of Species Name, Marine Fish, except Pacific cod, sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humbug Mountain. Persons must also consult all publications referenced in OAR 635-039-0080 to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (5)(a), (5)(b) and (5)(c) including the following:

(A) Minimum length for lingcod, 22 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (5)(a), (5)(b) and (5)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except as provided in subsections (5)(a) and (5)(d), and ocean waters are closed for these species during April 1 through September 30, outside of the 30-fathom curve (defined by latitude and longitude) as shown on **Title 50 Code of Federal Regulations Part 660 Section 71**. A 20-fathom, 25-fathom, or 30-fathom curve, as shown on **Title 50 Code of Federal Regulations Part 660 Section 71** may be implemented as the management line as in-season modifications necessitate. In addition, the following management lines may be used to set area specific regulations for inseason action only:

(A) Cape Lookout (45°20'30" N latitude); and

(B) Cape Blanco (42°50'20" N latitude).

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in **Title 50 Code of Federal Regulations Part 660 Section 70** (October 1, 2011 ed.). Within the YRCA, it is *unlawful* to fish for, take, or retain species listed in subsections (5)(a), (5)(b) and (5)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (5)(a), (5)(b) and (5)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (5)(a), (5)(b) and (5)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

(6) Razor clams may be taken by hand, shovel, or cylindrical gun or tube. The opening of the gun/tube must be either circular or elliptical with the circular gun/tube opening having a minimum outside diameter of 4

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inches and the elliptical gun/tube opening having minimum outside diameter dimensions of 4 inches long and 3 inches wide.

[ED. NOTE: Tables referenced are available from the agency.]

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 10-2007, f. & cert. ef. 2-14-07; DFW 66-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 73-2008(Temp), f. 6-30-08, cert. ef. 7-7-08 thru 12-31-08; DFW 97-2008(Temp), f. 8-18-08, cert. ef. 8-21-08 thru 12-31-08; DFW 105-2008(Temp), f. 9-4-08, cert. ef. 9-7-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 7-2009(Temp), f. & cert. ef. 2-2-09 thru 7-31-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 110-2009(Temp), f. 9-10-09, cert. ef. 9-13-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 103-2010(Temp), f. 7-21-10, cert. ef. 7-23-10 thru 12-31-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 97-2011(Temp), f. & cert. ef. 7-20-11 thru 12-31-11; DFW 135-2011(Temp), f. 9-21-11, cert. ef. 10-1-11 thru 12-31-11; 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; DFW 164-2011, f. 11-27-11, cert. ef. 1-1-12

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**Rule Caption:** Amend rules regarding the authority to take or harass wildlife.

**Adm. Order No.:** DFW 165-2011(Temp)

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 12-30-11 thru 6-26-12

**Notice Publication Date:**

**Rules Amended:** 635-043-0051

**Subject:** In April 2011, the Commission approved language regarding law enforcement officers' authority to take or harass wildlife. In June, the rules was once again amended and the language from April was inadvertently omitted. This temporary rule will incorporate the language from April and June as intended.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

**635-043-0051**

**Authority to Take or Harass Wildlife**

(1) In accordance with ORS 496.012, 496.162, 497.298, 498.002, and 498.006, Department staff or their agents, and sworn law enforcement officers, may take or harass wildlife in the times, places and manners necessary for:

- (a) Scientific purposes pursuant to Department programs;
- (b) Protection against a threat to human safety;
- (c) Protection of land or property from damage;
- (d) Wildlife management purposes pursuant to Department programs;
- (e) Education and display purposes;
- (f) Rehabilitation of sick, injured or orphaned wildlife; and
- (g) Law enforcement activities.

(2) Harassment means acts that frighten or chase but do not kill wildlife.

(3) ORS 498.126(1) provides that a person may not hunt game mammals or game birds from or with the aid of an aircraft, nor transmit from an aircraft to a person not in the aircraft information regarding the location of any game mammals or game birds. ORS 498.126(4) provides an exception for the Department of Fish and Wildlife, and its agents, when conducting wildlife management activities necessary for scientific research or, in emergency situations, protecting human safety, wildlife species or property.

ORS 498.126(4)(b) requires definition of "emergency situation" and "necessary" by rule.

(a) "Emergency situation" means that the Department has determined that prompt action is required to implement a provision of a species management plan or administrative rule adopted by the Fish and Wildlife Commission.

(b) "Necessary" means that the Department has determined that the use of aircraft in a particular instance is the most efficient method of implementing a provision of a species management plan or administrative rule adopted by the Fish and Wildlife Commission.

Stat. Auth.: ORS 496

Stats. Implemented: ORS 496

Hist.: DFW 47-2001, f. & cert. ef. 6-13-01; DFW 12-2002, f. & cert. ef. 2-12-02; DFW 75-2010(Temp), f. & cert. ef. 6-2-10 thru 11-28-10; DFW 98-2010(Temp), f. & cert. ef. 7-9-10 thru 1-3-11; Administrative correction 1-25-11; DFW 36-2011, f. & cert. ef. 5-4-11; DFW 61-2011, f. & cert. ef. 6-3-11; DFW 165-2011(Temp), f. & cert. ef. 12-30-11 thru 6-26-12

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**Rule Caption:** Bonneville Dam Reservoir Recreational White Sturgeon Fishery.

**Adm. Order No.:** DFW 1-2012(Temp)

**Filed with Sec. of State:** 1-5-2012

**Certified to be Effective:** 1-5-12 thru 7-2-12

**Notice Publication Date:**

**Rules Amended:** 635-023-0095

**Subject:** This amended rule opens the recreational harvest of white sturgeon in the Bonneville Dam Reservoir and tributaries effective with the filing of this rule. This corrects a conflict between published sport fishing regulations and existing permanent rule for Columbia River sturgeon fisheries and allows retention of white sturgeon in the Bonneville Pool.

**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 8 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 7.

(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 14 through June 26; and

(c) July 1 through July 4 (or until guideline is met).

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 13, from June 27 through June 30, and July 5 through December 31.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon with a fork length of 38-54 inches may be retained.

(7) During the fishing periods as identified in subsections (4)(b) and (4)(c) 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 to a line crossing the Columbia River from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to Washington shore during 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.

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(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, 2011.

(9) 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.

(10) The retention of white sturgeon in the area identified in section (9) of this rule is prohibited August 1 through January 31.

(11) 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. 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

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**Rule Caption:** Set the 2012 Harvest Quota for the Commercial Roe Herring Fishery in Yaquina Bay.

**Adm. Order No.:** DFW 2-2012(Temp)

**Filed with Sec. of State:** 1-9-2012

**Certified to be Effective:** 1-9-12 thru 4-15-12

**Notice Publication Date:**

**Rules Amended:** 635-004-0027

**Subject:** Amended rule sets the 2012 harvest quota for the Yaquina Bay commercial roe herring fishery for the period January 1 through April 15, 2012 at 23 tons. The yearly harvest quota 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 described in OAR 635-500-0665(2). Only fishers with a limited entry permit issued pursuant to ORS 508.765 may participate in this fishery.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-004-0027

### Inland Waters Herring Season

There is no closed season for the commercial taking of herring in inland waters except:

(1) In all inland waters except Yaquina Bay, herring taken during the period January 1 through April 15 may only be sold for use as bait.

(2) In Yaquina Bay:

(a) The open season for the taking of herring is January 1 through December 31.

(b) The yearly harvest quota for the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 shall not exceed 20% of the available spawning biomass as established in the Yaquina River Basin Fish Management Operating Principles and Objectives described in OAR 635-500-0665(2). The available spawning biomass shall be determined by the ODFW Fish Division's Marine

Resources Program. The harvest quota for the Yaquina Bay commercial roe herring fishery during the period January 1 through April 15, 2012 is 23 tons. Only fishers with a limited entry permit issued pursuant to ORS 508.765 may participate in this fishery.

(c) The factor used to convert an equivalent amount of "whole fish" resource in the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 to the equivalent amount of herring eggs on kelp fishery is 0.2237.

(d) During the period January 1 through April 15 it is *unlawful* to:

(A) Fish commercially from midnight Friday through midnight Sunday with nets;

(B) Use any fishing gear or method of harvest for the taking of herring other than a purse seine with a maximum length of 50 fathoms (300 feet), defined as the maximum distance from the first to last pursing rings on the purse line; lampara net; hook and line "jigging;" or eggs-on-kelp method.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 50-1979, f. & cert. ef. 11-1-79; FWC 67-1980, f. & cert. ef. 12-3-80; FWC 4-1983, f. 1-28-83, cert. ef. 2-1-83; FWC 8-1983(Temp), f. & cert. ef. 2-15-83; FWC 8-1984(Temp), f. & cert. ef. 3-5-84; FWC 29-1984, f. & cert. ef. 7-3-84; FWC 9-1985(Temp), f. & cert. ef. 2-20-85; FWC 5-1986(Temp), f. & cert. 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

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**Rule Caption:** Establishes 2012 Seasons and Regulations for Game Mammals.

**Adm. Order No.:** DFW 3-2012

**Filed with Sec. of State:** 1-13-2012

**Certified to be Effective:** 2-1-12

**Notice Publication Date:** 9-1-2011

**Rules Amended:** 635-069-0000, 635-073-0000, 635-073-0065, 635-073-0070

**Subject:** Establish the 2012 hunting regulations for game mammals, including season dates, open areas, location of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunt regulations.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-069-0000

### Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting eastern Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2011 are listed in Tables 1 and 2 and are adopted and incorporated into OAR Chapter 635, Division 069 by reference.

(3) OAR chapter 635, division 069 incorporates, by reference, the requirements for hunting eastern Oregon deer set out in the document entitled "2012 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2012 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting eastern Oregon deer. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]

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

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 40-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 32-1999(Temp), f. & cert. ef. 5-4-99 thru 10-31-99; DFW 34-1999(Temp), f. & cert. ef. 5-12-99 thru 10-31-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 20-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 7-2003, f. 1-17-03, cert. ef. 2-1-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. 12-1-05, cert. ef. 2-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 124-2006, f. 12-7-06, cert. ef. 2-1-07; DFW



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42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 10-31-07, cert. ef. 2-1-08; DFW 60-2008, f. & cert. 6-12-08; DFW 8-2009, f. & cert. ef. 2-3-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 4-2010, f. 1-12-10, cert. ef. 2-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 7-2011, f. 1-31-11, cert. ef. 2-1-11; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 3-2012, f. 1-13-12, cert. ef. 2-1-12

## 635-073-0000

### Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas and other restrictions for bow and muzzleloader hunting and controlled deer and elk youth hunts; pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2012 for deer and elk bow and muzzleloader hunting and deer and elk youth hunts are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 073 by reference.

(3) OAR chapter 073 incorporates, by reference, the requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts set out in the document entitled "2012 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2012 Oregon Big Game Regulations," in addition to OAR chapter 635, to determine all applicable requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]

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

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 44-1988, f. & cert. ef. 6-13-88; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 17-1996, f. 4-10-96, cert. ef. 4-15-96; FWC 25-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 21-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. 12-1-05, cert. ef. 2-1-06; DFW 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 124-2006, f. 12-7-06, cert. ef. 2-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 10-31-07, cert. ef. 2-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 8-2009, f. & cert. ef. 2-3-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 4-2010, f. 1-12-10, cert. ef. 2-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 7-2011, f. 1-31-11, cert. ef. 2-1-11; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 3-2012, f. 1-13-12, cert. ef. 2-1-12

## 635-073-0065

### Early Western Oregon Bowhunting Seasons

(1) General Deer Bowhunting Seasons — Western Oregon.

(a) Open Season: August 25 — September 23, 2012;

(b) Bag Limit and Hunt Area: The bag limit is one buck deer having not less than a forked antler in the Alsea, Tioga, Dixon, Saddle Mountain, Scappoose, Siuslaw, Stott Mountain, Trask, Sixes, Powers, Evans Creek, Rogue, Chetco, Wilson, and Applegate units; the bag limit is one deer in the Indigo, McKenzie, Melrose, Santiam, and Willamette units.

(2) General Elk Bowhunting Seasons — Western Oregon.

(a) Open Season: August 25 — September 23, 2012;

(b) Bag Limit and Hunt Area: The bag limit is one legal bull elk in the Alsea, North Indigo, McKenzie, Trask, Powers, Chetco, Santiam and Stott Mountain units; the bag limit is one legal bull or antlerless elk in the, Applegate, Dixon, Evans Creek, South Indigo, Melrose, Rogue, Saddle Mountain, Scappoose, Siuslaw, Sixes, Trask, Willamette, and Wilson units.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: DFW 53-2004, f. & cert. ef. 6-16-04; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 10-31-07, cert. ef. 2-1-08; DFW 8-2009, f. & cert. ef. 2-3-09; DFW 4-2010, f. 1-12-10, cert. ef. 2-1-10; DFW 7-2011, f. 1-31-11, cert. ef. 2-1-11; DFW 3-2012, f. 1-13-12, cert. ef. 2-1-12

## 635-073-0070

### Early Eastern Oregon Bowhunting Seasons

(1) General Deer Bowhunting Seasons — Eastern Oregon.

(a) Open Season: August 25 — September 23, 2012;

(b) Bag Limit and Hunt Area: The bag limit is one buck deer having a visible antler in the Grizzly, Metolius, Upper Deschutes, Paulina, Sprague, Fort Rock, Heppner, Keno, Klamath, Falls, Interstate, Wagontire, Juniper, Beatys Butte, Owyhee, Malheur River, Silvies, Murderers Creek, Beulah, Fossil, Northside, Desolation, Ukiah, Starkey, Mt. Emily, Walla Walla, Wenaha, Minam, Catherine Creek, Sumpter, Lookout Mountain, Keating, Pine Creek, Imnaha, Snake River, Silver Lake, and Whitehorse

units (see exception below) and that part of the White River Unit within the Mt. Hood National Forest except:

(A) That part of the Whitehorse Unit south of Whitehorse Ranch Rd. and west of US Hwy 95 (Trout Creek Mts.), is closed to deer bowhunting during the general bowhunting season unless the hunter has a Trout Creek Mts. controlled bow deer tag.

(B) The Steens Mountain Unit shall be closed to all deer bowhunting unless the hunter has a valid, controlled Steens Mountain deer bow tag.

(C) The Maury Unit shall be closed to all deer bowhunting unless the hunter has a valid, controlled Maury deer bow tag.

(D) The Warner Unit shall be closed to all deer bowhunting unless the hunter has a valid, controlled North Warner or South Warner deer bow tag.

(E) The Chesnimnus Unit shall be closed to deer bowhunting during the general bowhunting season unless the hunter also has a Chesnimnus controlled bow elk tag (used or unused).

(F) The Sled Springs Unit shall be closed to deer bowhunting during the general bowhunting season unless the hunter also has a Sled Springs controlled bow elk tag (used or unused).

(G) The Ochoco Unit shall be closed to deer bowhunting during the general bowhunting season unless the hunter also has an Ochoco controlled bow elk tag (used or unused).

(H) Approximately 40 square miles of the Starkey Experimental Forest within the Starkey Unit shall be closed to all deer bowhunting unless the hunter has a valid controlled deer tag for the Experimental Forest.

(I) The bag limit is one deer in the Biggs, Columbia Basin (except: That portion of the Columbia Basin Unit described as follows shall be closed to all bowhunting: Beginning at Heppner; north and west State Highway 74 to Lexington; north and east on State Highway 207 to Butter Creek Junction; south on Butter Creek Road to Highway 74 at Vinson; west on Highway 74 to Heppner; point of beginning.), Hood, and Maupin units.

(2) General Elk Bowhunting Seasons — Eastern Oregon.

(a) Open Season: August 25 — September 23, 2012;

(b) Bag Limit and Hunt Area: The bag limit is one legal bull elk in the Metolius, Upper Deschutes, Fort Rock Unit West of Hwy 97, North Sumpter (see hunt 251A area description), Heppner, Keno, Klamath Falls, Interstate, Ukiah, Silver Lake, Sprague, Starkey, Desolation, Mt. Emily, Walla Walla, Wenaha, Catherine Creek, Minam, Keating, Snake River except:

(A) approximately 40 square miles of the Starkey Experimental Forest within the Starkey Unit shall be closed to all elk bowhunting unless the hunter has a valid controlled elk hunt tag for the Experimental Forest.

(B) The Chesnimnus Unit shall be closed to all elk bowhunting unless the hunter has a valid, controlled Chesnimnus elk bow tag.

(C) The Sled Springs Unit shall be closed to all elk bowhunting unless the hunter has a valid, controlled Sled Springs elk bow tag, the bag limit is one legal bull or antlerless elk.

(D) The Ochoco Unit shall be closed to all elk bowhunting unless the hunter has a valid, controlled Ochoco elk bow tag, the bag limit is one legal bull or antlerless elk.

(E) The Steens Mountain Unit shall be closed to elk bowhunting during the general bowhunting season unless the hunter also has a Steens Mountain controlled bow deer tag (used or unused), the bag limit is one legal bull or antlerless elk.

(F) The Maury Unit shall be closed to elk bowhunting during the general bowhunting season unless the hunter also has a Maury controlled bow deer tag (used or unused).

(G) The Warner Unit shall be closed to elk bowhunting during the general bowhunting season unless the hunter also has a North Warner or South Warner controlled bow deer tag (used or unused).

(H) The bag limit is one legal bull or antlerless elk in the Beatys Butte, Beulah, Biggs, Columbia Basin (except: That portion of the Columbia Basin Unit described as follows shall be closed to all bowhunting: Beginning at Heppner; north and west State Highway 74 to Lexington; north and east on State Highway 207 to Butter Creek Junction; south on Butter Creek Road to Highway 74 at Vinson; west on Highway 74 to Heppner; point of beginning.), Fort Rock East of Hwy 97, Fossil, Grizzly, Hood, Imnaha, Juniper, Lookout Mountain, Malheur River, Maupin, Murderers Creek, Northside, Owyhee, Paulina, Pine Creek, Silvies, South Sumpter (see hunt 251B1 area description), Wagontire, White River, and Whitehorse units.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-16-99; DFW 12-8-99, cert. ef. 1-1-00; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 57-2001, f. & cert. ef. 7-6-01; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 53-2005, f. &

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cert. ef. 6-14-05; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 10-31-07, cert. ef. 2-1-08; DFW 8-2009, f. & cert. ef. 2-3-09; DFW 4-2010, f. 1-12-10, cert. ef. 2-1-10; DFW 7-2011, f. 1-31-11, cert. ef. 2-1-11; DFW 3-2012, f. 1-13-12, cert. ef. 2-1-12

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

**Rule Caption:** Privacy Rules Setting Forth General Procedures Governing the Collection, Use and Disclosure of Protected Information.

**Adm. Order No.:** DHS11-2011

**Filed with Sec. of State:** 12-16-2011

**Certified to be Effective:** 12-16-11

**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 407-014-0015

**Rules Amended:** 407-014-0000, 407-014-0020, 407-014-0030, 407-014-0040, 407-014-0050, 407-014-0060, 407-014-0070

**Rules Repealed:** 407-014-0000(T), 407-014-0015(T), 407-014-0020(T), 407-014-0030(T), 407-014-0040(T), 407-014-0050(T), 407-014-0060(T), 407-014-0070(T)

**Subject:** These rules govern the collection, use and disclosure of protected information by the Department about individuals and to explain the rights and specific actions that individuals may take or request to be taken regarding the uses and disclosures of their protected information. The adoption and amendment of these rules also set forth Department requirements governing the use and disclosure of protected health information for purposes of HIPAA, 42 USC 1320-d through 1320d-8, Pub L 104-191, sec. 262 and 264, and the implementing HIPAA privacy rules, 45 CFR parts 160 and 164. Adoption of these rules will repeal the temporary rules, currently in effect since July 1, 2011.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

## 407-014-0000

### Definitions

The following definitions apply to OAR 407-014-0000 to 407-014-0070:

(1) "Administrative hearing" means an oral proceeding before an administrative law judge in a contested case hearing.

(2) "Authority" means the Oregon Health Authority.

(3) "Authorization" means permission from an individual or his or her personal representative giving the Department of Human Services (Department) authorization to obtain, release or use information about the individual from third parties for specified purposes or to disclose information to a third party specified by the individual.

(4) "Business associate" means an individual or entity performing any function or activity on behalf of the Authority, including the Department, involving the use or disclosure of protected health information (PHI) and is not a member of the Authority's workforce.

(a) For purposes of the definition of "business associate," "function or activity" includes but is not limited to program administration, claims processing or administration, data analysis, utilization review, quality assurance, billing, legal, actuarial, accounting, consulting, data processing, management, administrative, accreditation, financial services, and similar services for which the Authority may contract or obtain by interagency agreement, if access to PHI is involved.

(b) Business associates do not include licensees or providers unless the licensee or provider also performs some function or activity on behalf of the Authority.

(5) "Client" means an individual who requests or receives services from the Department. This includes but is not limited to applicants for or recipients of public assistance, minors and adults receiving protective services, individuals who are committed to the custody of the Department, children in the custody of the Department receiving services on a voluntary basis, and children committed to the custody of the Department.

(6) "Client information" means personal information relating to a client that the Department may maintain in one or more locations and in various forms, reports, or documents, or stored or transmitted by electronic media.

(7) "Collect" or "Collection" means the assembling of personal information through interviews, forms, reports, or other information sources.

(8) "Contract" means a written agreement between the Department and a person or entity setting forth the rights and obligations of the parties including but not limited to contracts, licenses, agreements, interagency agreements, and intergovernmental agreements.

(9) "Correctional institution" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program center operated by contract with the federal government, a state, or an Indian tribe for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody. "Other persons held in lawful custody" include juvenile offenders, adjudicated delinquents, aliens detained awaiting deportation, witnesses, or others awaiting charges or trial.

(10) "Corrective action" means an action that a business associate must take to remedy a breach or violation of the business associate's obligations under the business associate's contractual requirement, including but not limited to reasonable steps that must be taken to cure the breach or end the violation.

(11) "Covered entity" means health plans, health care clearinghouses, and health care providers who transmit any health information in electronic form in connection with a transaction that is subject to federal Health Insurance Portability and Accountability Act (HIPAA) requirements, as those terms are defined and used in the HIPAA regulations, 45 CFR parts 160 and 164.

(12) "De-identified data" means client information from which the Department or other entity has deleted, redacted, or blocked identifiers so the remaining information cannot reasonably be used to identify an individual.

(13) "Department" means the Department of Human Services.

(14) "Department workforce" means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for the Department, is under the direction and control of the Department, whether or not they are paid by the Department.

(15) "Disclose" means the release, transfer, relay, provision of access to, or conveying of client information to any individual or entity outside the Department.

(16) "Health care" means care, services, or supplies related to the health of an individual. Health care includes but is not limited to preventive, diagnostic, therapeutic, rehabilitative, maintenance, palliative care, counseling services, assessment, or procedures with respect to the physical or mental condition, or functional status of an individual, or that affects the structure or function of the body and the sale or dispensing of a drug, device, equipment, or other prescribed item.

(17) "Health care operations" means any activities of a covered entity to the extent that the activities are related to health care, Medicaid, or any other health care related programs, services, or activities administered by the covered entity and includes:

(a) Conducting quality assessment and improvement activities, including income evaluation and development of clinical guidelines;

(b) Population-based activities related to improving health or reducing health care costs, protocol development, case management and care coordination, contacting health care providers and patients with information about treatment alternatives, and related functions that do not include treatment;

(c) Reviewing the competence of qualifications of health care professionals, evaluating practitioner, provider, and health plan performance; and conducting training programs in which students and trainees in areas of health care learn under supervision to practice or improve their skills, accreditation, certification, licensing, or credentialing activities;

(d) Underwriting, premium rating, and other activities relating to the creation, renewal, or replacement of a contract for Medicaid or health care related services;

(e) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs, and disclosure to the Medicaid Fraud Unit pursuant to 43 CFR part 455.21;

(f) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the covered entity, including administration, development, or improvement of methods of payments or health care coverage; and

(g) Business management and general administrative activities of the covered entity, including but not limited to:

(A) Management activities relating to implementation of and compliance with the requirements of HIPAA;

(B) Customer service, including providing data analysis;

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(C) Resolution of internal grievances, including administrative hearings and the resolution of disputes from patients or enrollees regarding the quality of care and eligibility for services; and

(D) Creating de-identified data or a limited data set.

(18) "Health oversight agency" means an agency or authority of the federal government, a state, territory, political subdivision of a state or territory, Indian tribe, or a person or entity acting under a grant of authority from or by contract with the public agency, including employees or agents of the public agency or its contractors or grantees that is authorized by law to oversee the health care system or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant. When performing these functions, the Department acts as a health oversight agency for the purposes of these rules.

(19) "HIPAA" means the Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d et seq, and the federal regulations adopted to implement the Act.

(20) "Individual" means the person who is the subject of information collected, used, or disclosed by the Department.

(21) "Individually identifying information" means any single item or compilation of information or data that indicates or reveals the identity of an individual, either specifically (such as the individual's name or social security number), or from which the individual's identity can be reasonably ascertained.

(22) "Information" means personal information relating to an individual, a participant, or a Department client.

(23) "Inmate" means a person incarcerated in or otherwise confined in a correctional institution. An individual is no longer an inmate when released on parole, probation, supervised release, or is otherwise no longer in custody.

(24) "Institutional Review Board (IRB)" means a specially constituted review body established or designated by an entity in accordance with 45 CFR part 46 to protect the welfare of human subjects recruited to participate in biomedical or behavioral research. The IRB must be registered with the Office for Human Research Protection.

(25) "Law enforcement official" means an officer or employee of any agency or authority of the federal government, a state, territory, political subdivision of a state or territory, or Indian tribe who is empowered by law to:

(a) Investigate and conduct an official inquiry into a potential violation of law; or

(b) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

(26) "Licensee" means a person or entity that applies for or receives a license, certificate, registration, or similar authority from the Department to perform or conduct a service, activity, or function.

(27) "Minimum necessary" means the least amount of information, when using or disclosing confidential client information that is needed to accomplish the intended purpose of the use, disclosure, or request.

(28) "Participant" means individuals participating in Department population-based services, programs, and activities that serve the general population, but who do not receive program benefits or direct services received by a client. Examples of participants include individuals who contact Department hotlines or the ombudsman for general public information services.

(29) "Payment" means any activities undertaken by a covered entity related to a client to whom health care is provided in order to:

(a) Obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the Medicaid program or other publicly funded health care services; and

(b) Obtain or provide reimbursement for the provision of health care.

(30) "Payment activities" means:

(a) Determinations of eligibility or coverage, including coordination of benefits or the determination of cost sharing amounts, and adjudication of health benefit or health care claims;

(b) Risk adjusting amounts due which are based on enrollee health status and demographic characteristics;

(c) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance, and related health care data processing;

(d) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

(e) Utilization review activities, including pre-certification and pre-authorization of services, concurrent and retrospective review of services; and

(f) Disclosure to consumer reporting agencies related to collection of premiums or reimbursement including name and address, date of birth, payment history, account number, and name and address of the health care provider or health plan.

(31) "Personal representative" means a person who has authority to act on behalf of an individual in making decisions related to health care.

(32) "Protected Health Information (PHI)" means any individually identifiable health information, whether oral or recorded in any form or medium, that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual. Any data transmitted or maintained in any other form or medium by covered entities, including paper records, fax documents, all oral communications, or any other form, such as screen prints of eligibility information, printed e-mails containing identified individual's health information, claim or billing information, or hard copy birth or death certificates. PHI does not include school records that are subject to the Family Educational Rights and Privacy Act and employment records held in the Department's role as an employer.

(33) "Protected information" means any participant or client information that the Department may have in its records or files that must be safeguarded pursuant to federal or state law. This includes but is not limited to individually identifying information.

(34) "Provider" means a person or entity that may seek reimbursement from the Department as a provider of services to Department clients pursuant to a contract. For purposes of these rules, reimbursement may be requested on the basis of claims or encounters or other means of requesting payment.

(35) "Psychotherapy notes" means notes recorded in any medium by a health care provider who is a mental health professional documenting or analyzing the contents of conversations during a private counseling session, or group, joint, or family counseling session, when the notes are separated from the rest of the individual's record. Psychotherapy notes do not include medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of diagnosis, functional status, treatment plan, symptoms, prognosis, or progress to date.

(36) "Public health Agency" means a public agency or a person or entity acting under a grant of authority from or by contract with the public agency that performs or conducts one or more of the following essential functions that characterize public health programs, services, or activities:

(a) Monitor health status to identify community health problems;

(b) Diagnose and investigate health problems and health hazards in the community;

(A) Inform, educate, and empower people about health issues;

(B) Mobilize community partnerships to identify and solve health problems;

(C) Develop policies and plans that support individual and community health efforts;

(D) Enforce laws and regulations that protect health and ensure safety;

(E) Direct individuals to needed personal health services and assure the provision of health care when otherwise unavailable;

(F) Ensure a competent public health and personal health care workforce;

(G) Evaluate the effectiveness, accessibility, and quality of personal and population-based health services; and

(H) Perform research for new insights and innovative solutions to health problems.

(37) "Public health authority" means an agency or authority of the federal government, a state, territory, political subdivision of a state or territory, Indian tribe, or a person or entity acting under a grant of authority from or by contract with the public agency, including the employees or agents of the public agency, or its contractors, persons, or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

(38) "Re-disclosure" means the disclosure of information to a person, a Department program, a Department subcontracted entity, or other entity or person other than what was originally authorized.

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(39) "Research" means systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalized knowledge.

(40) "Required by law" means a duty or responsibility that federal or state law specifies that a person or entity must perform or exercise. Required by law includes but is not limited to court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or rules that require the production of information, including statutes or rules that require such information if payment is sought under a government program providing public benefits.

(41) "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party, consultation between health care providers relating to a patient, or the referral of a patient for health care from one health care provider to another.

(42) "Use" means the sharing of individual information within a Department program or the sharing of individual information between program staff and administrative staff that support or oversee the program.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0000 by DHSD 5-2009, f. & cert. ef. 7-1-09; DHSD 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; DHSD 11-2011, f. & cert. ef. 12-16-11

### 407-014-0015

#### Information Governed by the HIPAA Privacy Rules

(1) These rules address information that, among other things, may be PHI that is protected by the HIPAA Privacy Rules. For purposes of HIPAA Privacy Rules, the Authority is a covered entity, primarily because of its role as the state Medicaid and Children's Health Insurance Program.

(2) The Authority administers many aspects of the medical assistance program with the assistance of the Department, including but not limited to eligibility determinations for the medical assistance program and supervising the long-term and community-based services for seniors and people with disabilities. The Department also provides certain health care operations services for the Authority. In doing so, the Department is a business associate of the Authority. As a business associate of the Authority, the Department is authorized to use and disclose protected health information to perform or assist the Authority in the performance of its covered functions, in a manner consistent with these rules.

(3) These rules only apply to information maintained by the Department as a business associate of the Authority.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: DHSD 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; DHSD 11-2011, f. & cert. ef. 12-16-11

### 407-014-0020

#### Uses and Disclosures of Client or Participant Protected Information

(1) Uses and disclosures with individual authorization. The Department must obtain a completed and signed authorization for release of information from the individual, or the individual's personal representative, before obtaining or using protected information about an individual from a third party or disclosing protected information about the individual to a third party.

(a) Uses and disclosures must be consistent with what the individual has approved on the signed authorization form approved by the Department.

(b) An individual may revoke an authorization at any time. The revocation must be in writing and signed by the individual, except that substance abuse treatment patients may orally revoke an authorization to disclose information obtained from substance abuse treatment programs. No revocation shall apply to information already released while the authorization was valid and in effect.

(2) Uses and disclosures without authorization. The Department may use and disclose information without written authorization in the following circumstances:

(a) The Department may disclose information to individuals who have requested disclosure to themselves of their information, if the individual has the right to access the information under OAR 407-014-0030(6).

(b) If the law requires or permits the disclosure, and the use and disclosure complies with, and is limited to, the relevant requirements of the relevant law.

(c) For treatment, payment, and health care operations, the Department may disclose the following information:

(A) Activities involving the current treatment of an individual, for the Department or health care provider;

(B) Payment activities, for the Department, covered entity, or health care provider;

(C) Protected health information for the purpose of health care operations; and

(D) Substance abuse treatment information, if the recipient has a Qualified Service Organization Agreement with the Department.

(d) Psychotherapy notes. The Department may only use and disclose psychotherapy notes in the following circumstances:

(A) In the Department's supervised counseling training programs;

(B) In connection with oversight of the originator of the psychotherapy notes; or

(C) To defend the Department in a legal action or other proceeding brought by the individual.

(e) Public health activities.

(A) The Department may disclose an individual's protected information to appropriate entities or persons for governmental public health activities and for other purposes including but not limited to:

(i) A governmental public health authority that is authorized by law to collect or receive protected information for the purpose of preventing or controlling disease, injury, or disability, including but not limited to reporting disease, injury, and vital events such as birth or death, and conducting public health surveillance, investigations, and interventions;

(ii) An official of a foreign government agency that is acting in collaboration with a governmental public health authority;

(iii) A governmental public health authority, or other government authority that is authorized by law to receive reports of child abuse or neglect;

(iv) A person subject to the jurisdiction of the federal Food and Drug Administration (FDA), regarding an FDA-regulated product or activity for which that person is responsible for activities related to the quality, safety, or effectiveness of an FDA-regulated product or activity; or

(v) A person who may have been exposed to a communicable disease, or may be at risk of contracting or spreading a disease or condition.

(B) Where state or federal law prohibits or restricts use and disclosure of information obtained or maintained for public health purposes, the Department shall deny the use and disclosure.

(f) Child abuse reporting and investigation. If the Department has reasonable cause to believe that a child is a victim of abuse or neglect, the Department may disclose protected information to appropriate governmental authorities authorized by law to receive reports of child abuse or neglect (including reporting to the Department protective services staff if appropriate). If the Department receives information as the child protective services agency, the Department may use and disclose the information consistent with its legal authority and in compliance with any applicable state and federal regulations.

(g) Adult abuse reporting and investigation. If the Department has reasonable cause to believe that a vulnerable adult is a victim of abuse or neglect, the Department may disclose information, as required by law, to a government authority or regulatory agency authorized by law to receive reports of abuse or neglect including but not limited to a social service or protective services agency (which may include the Department) authorized by law to receive such reports. Vulnerable adults are adults age 65 or older and persons with disabilities. If the Department receives information as the social services or protective services agency, the Department may use and disclose the information.

(h) Health oversight activities. The Department may disclose information without authorization for health oversight activities including audits; civil, criminal, or administrative investigations, prosecutions, licensing or disciplinary actions; Medicaid fraud; or other necessary oversight activities.

(i) Administrative and court hearings, grievances, investigations, and appeals.

(A) The Department may use or disclose information for an investigation, administrative or court hearing, grievance, or appeal about an individual's eligibility or right to receive Department benefits or services.

(B) If the Department has obtained information in performing its duties as a health oversight agency, protective service entity, or public benefit program, the Department may use or disclose that information in an administrative or court hearing consistent with the other privacy requirements applicable to that program, service, or activity.

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(j) Court orders. The Department may disclose information for judicial or administrative proceedings in response to a court order, subpoena, discovery request, or other legal process. If a court orders the Department to conduct a mental examination pursuant to ORS 161.315, 161.365, 161.370, or 419B.352, or orders the Department to provide any other report or evaluation to the court, the examination, report, or evaluation shall be deemed to be required by law for purposes of HIPAA.

(k) Law enforcement purposes. For limited law enforcement purposes, the Department may report certain injuries or wounds; provide information to identify or locate a suspect, victim, or witness; alert law enforcement of a death as a result of criminal conduct; and provide information which constitutes evidence of criminal conduct on Department premises.

(A) The Department may provide client information to a law enforcement officer in any of the following situations:

(i) The law enforcement officer is involved in carrying out any investigation, criminal, or civil proceedings connected with administering the program from which the information is sought;

(ii) A Department employee may disclose information from personal knowledge that does not come from the client's interaction with the Department;

(iii) The disclosure is authorized by statute or administrative rule;

(iv) The information informs law enforcement of a death as a result of criminal conduct;

(v) The information constitutes evidence of criminal conduct on Department premises; or

(vi) The disclosure is necessary to protect the client or others, and the client poses a threat to his or her safety or to the safety of others.

(B) Except as provided in section (2)(k)(C) of this rule, the Department may give a client's current address, Social Security number, and photo to a law enforcement officer if the law enforcement officer makes the request in the course of official duty, supplies the client's name, and states that the client:

(i) Is a fugitive felon or is violating parole, probation, or post-prison supervision;

(ii) For all public assistance programs, has information that is necessary for the officer to conduct official duties, and the location or apprehension of the client is within the officer's official duties; or

(iii) For clients only in the SNAP program, has information that is necessary to conduct an official investigation of a fugitive felon or person violating parole, probation, or post-prison supervision.

(C) If domestic violence has been identified in the household, the Department may not release information about a victim of domestic violence unless a member of the household is either wanted as a fugitive felon or is violating parole, probation, or post-prison supervision.

(D) For purposes of this subsection, a fugitive felon is a person fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony.

(E) For purposes of this section, a law enforcement officer is an employee of the Oregon State Police, a county sheriff's department, or a municipal police department, whose official duties include arrest authority.

(I) Use and disclosure of information about deceased individuals.

(A) The Department may disclose individual information to a coroner or medical examiner for the purpose of identifying a deceased individual, determining cause of death, or other duties authorized by law.

(B) The Department may disclose individual information to funeral directors as needed to carry out their duties regarding the decedent. The Department may also disclose individual information prior to, and in anticipation of, the death.

(m) Organ or tissue donation. The Department may disclose individual information to organ procurement organizations or other entities engaged in procuring, banking, or transplanting cadaver organs, eyes, or tissue for the purpose of facilitating transplantation.

(n) Research. The Department may disclose individual information without authorization for research purposes, as specified in OAR 407-014-0060.

(o) Threat to health or safety. To avert a serious threat to health or safety the Department may disclose individual information if:

(A) The Department believes in good faith that the information is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

(B) The report is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

(p) National security and intelligence. The Department may disclose information to authorized federal officials for lawful intelligence, counter-intelligence, and other national security activities.

(q) Correctional institutions and law enforcement custody situations. The Department may disclose information to a correctional institution or a law enforcement official having lawful custody of an inmate or other person, for the limited purpose of providing health care or ensuring the health or safety of the person or other inmates.

(r) Emergency treatment. In case of an emergency, the Department may disclose individual information to the extent needed to provide emergency treatment.

(s) Government entities providing public benefits. The Department may disclose eligibility and other information to governmental entities administering a government program providing public benefits.

(3) Authorization not required if opportunity to object given. The Department may use and disclose an individual's information without authorization if the Department informs the individual in advance and gives the individual an opportunity to either agree or refuse or restrict the use and disclosure.

(a) These disclosures are limited to disclosure of information to a family member, other relative, close personal friend of the individual, or any other person named by the individual, subject to the following limitations:

(A) The Department may disclose only the protected information that directly relates to the person's involvement with the individual's care or payment for care.

(B) The Department may use and disclose protected information for notifying, identifying, or locating a family member, personal representative, or other person responsible for care of the individual, regarding the individual's location, general condition, or death. For individuals who had resided at one time at the state training center, OAR 411-320-0090(6) addresses family reconnection.

(C) If the individual is present for, or available prior to, a use and disclosure, the Department may disclose the protected information if the Department:

(i) Obtains the individual's agreement;

(ii) Provides the individual an opportunity to object to the disclosure, and the individual does not object; or

(iii) Reasonably infers from the circumstances that the individual does not object to the disclosure.

(D) If the individual is not present, or the opportunity to object to the use and disclosure cannot practicably be provided due to the individual's incapacity or an emergency situation, the Department may disclose the information if, using professional judgment, the Department determines that the use and disclosure is in the individual's best interests.

(b) Exception. For individuals referred to or receiving substance abuse treatment, mental health, or vocational rehabilitation services, the Department shall not use or disclose information without written authorization, unless disclosure is otherwise permitted under 42 CFR part 2, 34 CFR 361.38, or ORS 179.505.

(c) Personal representative. The Department must treat a personal representative as the individual for purposes of these rules, except that:

(A) A personal representative must be authorized under state law to act on behalf of the individual with respect to use and disclosure of information. The Department may require a personal representative to provide a copy of the documentation authorizing the person to act on behalf of the individual.

(B) The Department may elect not to treat a person as a personal representative of an individual if:

(i) The Department has a reasonable belief that the individual has been or may be subjected to domestic violence, abuse, or neglect by the person;

(ii) The Department, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

(4) Rediscovery. The Department must inform the individual that information held by the Department and authorized by the individual for disclosure may be subject to rediscovery and no longer protected by these rules.

(5) Specific written authorization. If the use or disclosure of information requires an authorization, the authorization must specify that the Department may use or disclose vocational rehabilitation records, alcohol and drug records, HIV/AIDS records, genetics information, and mental health or developmental disability records held by publicly funded providers.

(a) Pursuant to federal regulations at 42 CFR part 2 and 34 CFR 361.38, the Department may not make further disclosure of vocational

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rehabilitation and alcohol and drug rehabilitation information without the specific written authorization of the individual to whom it pertains.

(b) Pursuant to ORS 433.045 and OAR 333-012-0270, the Department may not make further disclosure of individual information pertaining to HIV/AIDS.

(c) Pursuant to ORS 192.531 to 192.549, the Department may not make further disclosure pertaining to genetic information.

(6) Verification of person or entity requesting information. The Department may not disclose information about an individual without first verifying the identity of the person or entity requesting the information, unless the Department workforce member fulfilling the request already knows the person or has already verified identity.

(7) Whistleblowers. The Department may disclose an individual's protected health information under the HIPAA privacy rules under the following circumstances:

(a) The Department workforce member believes in good faith that the Department has engaged in conduct that is unlawful or that otherwise violates professional standards or Department policy, or that the care, services, or conditions provided by the Department could endanger Department staff, individuals in Department care, or the public; and

(b) The disclosure is to a government oversight agency or public health authority, or an attorney of a Department workforce member retained for the purpose of determining the legal options of the workforce member with regard to the conduct alleged under section (7)(a) above; and

(c) Nothing in this rule is intended to interfere with ORS 659A.200 to 659A.224 describing the circumstances applicable to disclosures by the Department's workforce.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010 & 433.045

Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0020 by DHSD 5-2009, f. & cert. ef. 7-1-09; DHSD 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; DHSD 11-2011, f. & cert. ef. 12-16-11

## 407-014-0030

### Client Privacy Rights

(1) Rights of clients to access their information. Clients may access, inspect, and obtain a copy of information on their own cases in Department files or records, consistent with federal and state law.

(a) A client may request access by completing the Access to Records Request form, or by providing sufficient information to accomplish this request.

(b) Clients may request access to their own information that is kept by the Department by using a personal identifier such as the client's name or Department case number.

(c) If the Department maintains information in a record that includes information about other people, the client may see information only about himself or herself.

(d) If a person identified in the file is a minor child of the client, and the client is authorized under Oregon law to have access to the minor's information or to act on behalf of the minor for making decisions about the minor's care, the client may obtain information about the minor.

(e) If the requestor of information is recognized under Oregon law as a the client's guardian or custodian and is authorized under Oregon law to have access to the client's information or to act on behalf of the client for making decisions about the client's services or care, the Department shall release information to the requestor.

(f) For individuals with disabilities or mental illnesses, the named system in ORS 192.517, to protect and advocate the rights of individuals with developmental disabilities under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.) and the rights of individuals with mental illness under the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. 10801 et seq.), shall have access to all records defined in ORS 192.515.

(g) The Department may deny a client's access to their own PHI if federal law prohibits the disclosure. Clients may access, inspect, and obtain a copy of health information on their own case in Department files or records except for the following:

(A) Psychotherapy notes;

(B) Information compiled in reasonable anticipation of, or for use in civil, criminal, or administrative proceedings;

(C) Information that is subject to the federal Clinical Labs Improvement Amendments of 1988, or exempt pursuant to 42 CFR 493.3(a)(2);

(D) Information that the Department believes, in good faith, can cause harm to the client, participant, or to any other person; and

(E) Documents protected by attorney work-product privilege.

(h) The Department may deny a client access to information that was obtained under a promise of confidentiality from a person other than a health care provider to the extent that access would reveal the source of the information.

(i) The Department may deny a client access to information, if the Department gives the client a right to have the denial reviewed when:

(A) A licensed health care professional (for health information) or other designated staff (for other information) has determined, in the exercise of professional judgment, that the information requested may endanger the life or physical safety of the client or another person;

(B) The information makes reference to another person, and a licensed health care professional (for health information) or other designated staff (for other information) has determined, in the exercise of professional judgment, that the information requested may cause substantial harm to the client or to another person; or

(C) The request for access is made by the client's personal representative, and a licensed health care professional (for health information) or other designated staff (for other information) has determined, in the exercise of professional judgment, that allowing the personal representative access to the information may cause substantial harm to the client or to another person.

(j) If the Department denies access under section (1)(i) of this rule, the client may have the decision reviewed by a licensed health care professional (for health information) or other designated staff (for other information) not directly involved in making the original denial decision.

(A) The Department must promptly refer a client's request for review to the designated reviewer.

(B) The reviewer must determine, within the 30 or 60-day time limits stated in section (1)(k)(A) and (B) of this rule, whether to approve or deny the client's request for access.

(C) Based on the reviewer's decision, the Department shall:

(i) Promptly notify the client in writing of the reviewer's determination; and

(ii) If approved, take action to carry out the reviewer's determination.

(k) The Department must act on a client's request for access no later than 30 days after receiving the request, except as provided in this section and in the case of written accounts under ORS 179.505, which must be disclosed within five days.

(A) In cases where the information is not maintained or accessible to the Department on-site, and does not fall under ORS 179.505, the Department must act on the client's request no later than 60 days after receiving the request.

(B) If the Department is unable to act within the 30 or 60-day limits, the Department may extend this time period a maximum of 30 additional days, subject to the following:

(i) The Department must notify the client in writing of the reasons for the delay and the date by which the Department shall act on the request.

(ii) The Department shall use only one 30-day extension.

(l) If the Department grants the client's request, in whole or in part, the Department must inform the client of the access decision and provide the requested access.

(A) If the Department maintains the same information in more than one format or at more than one location, the Department may provide the requested information once.

(B) The Department must provide the requested information in a form or format requested by the client, if readily producible in that form or format. If not readily producible, the Department shall provide the information in a readable hard-copy format or other format as agreed to by the Department and the client.

(C) The Department may provide the client with a summary of the requested information, in lieu of providing access, or may provide an explanation of the information if access has been provided, if:

(i) The client agrees in advance; and

(ii) The client agrees in advance to pay any fees the Department may impose, under section (1)(L)(E) of this rule.

(D) The Department shall arrange with the client for providing the requested access in a time, place, and manner convenient for the client and the Department.

(E) If a client, or legal guardian or custodian, requests a copy, written summary, or explanation of the requested information, the Department may impose a reasonable cost-based fee, limited to the following:

(i) Copying the requested information, including the costs of supplies and the labor of copying;

(ii) Postage; and

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(iii) Staff time for preparing an explanation or summary of the requested information.

(m) If the Department denies access, in whole or in part, to the requested information, the Department must:

(A) Give the client access to any other requested client information, after excluding the information to which access is denied; and

(B) Provide the client with a timely written denial. The denial must:

(i) Be provided within the time limits specified in section (1)(k)(A) and (B) of this rule;

(ii) State the basis of the denial in plain language;

(iii) If the Department denies access under section (1)(i) of this rule, explain the client's review rights as specified in section (1)(j) of this rule, including an explanation of how the client may exercise these rights; and

(iv) Provide a description of how the client may file a complaint with the Department, and if the information is PHI, with the United States Department of Health and Human Services (DHHS), Office for Civil Rights, pursuant to section (7) of this rule.

(n) If the Department does not maintain the requested information, in whole or in part, and knows where the information is maintained (such as by a medical provider, insurer, other public agency, private business, or other non-Department entity), the Department must inform the client where to direct the request for access.

(2) Department Notice of Privacy Practices. The Department shall send clients notice about the Department's privacy practices as follows:

(a) The Department shall make available to each client a notice of Department privacy practices that describes the duty of the Department to maintain the privacy of PHI and include a description that clearly informs the client of the types of uses and disclosures the Department is permitted or required to make;

(b) The Department shall provide all clients in direct care settings a notice of Department privacy practices and shall request the client's signature on an acknowledgement of receipt form;

(c) If the Department revises its privacy practices, the Department shall make the revised notice available to all clients;

(d) The Department shall post a copy of the Department's Notice of Privacy Practices for public viewing at each Department worksite and on the Department website; and

(e) The Department shall give a paper copy of the Department's Notice of Privacy Practices to any individual upon request.

(3) Right to request restrictions on uses or disclosures. Clients may request restrictions on the use or disclosure of their information.

(a) The Department must comply with the restriction if:

(A) Except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and

(B) The protected health information pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.

(b) The Department is not required to agree to a restriction if the disclosure is:

(A) Required by law; or

(B) Not to a health plan for purposes of carrying out payment or health care operations.

(c) The Department may not deny a client's request to restrict the sharing of records of alcohol and drug treatment or records relating to vocational rehabilitation services with another Department program.

(d) The Department shall document the client's request, and the reasons for granting or denying the request, in the client's Department case file.

(e) If the client needs emergency treatment and the restricted protected information is needed to provide the treatment, the Department may use or disclose the restricted protected information to a provider, for the limited purpose of providing treatment. However, once the emergency situation subsides, the Department shall ask the provider not to redisclose the information.

(f) The Department may terminate its agreement to a restriction if:

(A) The client agrees to or requests the termination in writing;

(B) The client orally requests or agrees to the termination, and the Department documents the oral request or agreement in the client's Department case file; or

(C) With or without the client's agreement, the Department informs the client that the Department is terminating its agreement to the restriction. Information created or received while the restriction was in place shall remain subject to the restriction.

(4) Rights of clients to request to receive information from the Department by alternative means or at alternative locations. The Department must accommodate reasonable requests by clients to receive communications from the Department by alternative means, such as by mail, e-mail, fax, or telephone, and at an alternative location.

(a) The client must specify the preferred alternative means or location.

(b) The client may submit the request for alternative means or locations either orally or in writing.

(A) If the client makes a request in-person, the Department shall document the request and ask for the client's signature.

(B) If the client makes a request by telephone or electronically, the Department shall document the request and verify the identity of the client.

(c) The Department may terminate its agreement to an alternative location or method of communication if:

(A) The client agrees to or requests termination of the alternative location or method of communication in writing or orally. The Department shall document the oral agreement or request in the client's Department case file; or

(B) The Department informs the client that the Department is terminating its agreement to the alternative location or method of communication because the alternative location or method of communication is not effective. The Department may terminate its agreement to communicate at the alternative location or by the alternate method if:

(i) The Department is unable to contact the client at the location or by the method requested; or

(ii) The client fails to respond to payment requests, if applicable.

(5) Right of clients to request amendment of their information. Clients may request that the Department amend information about themselves in Department files.

(a) For all amendment requests, the Department shall have the client complete the approved Department form.

(b) The Department may deny the request or limit its agreement to amend.

(c) The Department must act on the client's request no later than 60 days after receiving the request. If the Department is unable to act within 60 days, the Department may extend this time limit by a maximum of 30 additional days, subject to the following:

(A) The Department must notify the client in writing, within 60 days of receiving the request, of the reasons for the delay and the date by which the Department shall act on the request; and

(B) The Department shall use only one 30-day extension.

(d) The program's medical director, a licensed health care professional designated by the program administrator, or a Department staff person involved in the client's case must review the request and any related documentation prior to making a decision to amend a health or medical record.

(e) A staff person designated by the Department shall review the request and any related documentation prior to making a decision to amend any information that is not a health or medical record.

(f) If the Department grants the request, in whole or in part, the Department shall:

(A) Make the appropriate amendment to the information or records, and document the amendment in the client's Department file or record;

(B) Provide notice to the client that the amendment has been granted, pursuant to the time limits under section (5)(c) of this rule;

(C) Obtain the client's agreement to notify other relevant persons or entities with whom the Department has shared or needs to share the amended information; and

(D) Inform and provide the amendment within a reasonable time to:

(i) Persons named by the client who have received the information and who need the amendment; and

(ii) Persons, that the Department knows have the information that is the subject of the amendment and who may have relied, or could foreseeably rely, on the information to the client's detriment.

(g) The Department may deny the client's request for amendment if:

(A) The Department finds the information to be accurate and complete;

(B) The information was not created by the Department;

(C) The information is not part of Department records; or

(D) The information would not be available for inspection or access by the client, pursuant to section (1)(g) and (h) of this rule.

(h) If the Department denies the amendment request, in whole or in part, the Department must provide the client with a written denial. The denial must:

(A) Be sent within the time limits specified in section (5)(c) of this rule;

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(B) State the basis for the denial, in plain language; and

(C) Explain the client's right to submit a written statement disagreeing with the denial and how to file the statement. If the client files a statement:

(i) The Department shall enter the written statement into the client's Department case file;

(ii) The Department may also enter a Department-written rebuttal of the client's written statement into the client's Department case file. The Department shall send a copy of any written rebuttal to the client;

(iii) The Department shall include a copy of the statement and any Department-written rebuttal with any future disclosures of the relevant information;

(iv) If a client does not submit a written statement of disagreement, the client may ask that if the Department makes any further disclosures of the relevant information, that the Department shall also include a copy of the client's original request for amendment and a copy of the Department written denial; and

(v) The Department shall provide information on how the client may file a complaint with the Department and, if the information is PHI, with DHHS, Office for Civil Rights.

(6) Rights of clients to request an accounting of disclosures of PHI. Clients may receive an accounting of disclosures of PHI that the Department has made for any period of time, not to exceed six years, preceding the request date for the accounting.

(a) For all requests for an accounting of disclosures, the client may complete the authorized Department form "Request for Accounting of Disclosures of Health Records," or provide sufficient information to accomplish this request.

(b) The right to an accounting of disclosures does not apply when the request is:

(A) Authorized by the client;

(B) Made prior to April 14, 2003;

(C) Made to carry out treatment, payment, or health care operations, unless these disclosures are made from an electronic health record;

(D) Made to the client;

(E) Made to persons involved in the client's care;

(F) Made as part of a limited data set in accordance with OAR 407-014-0070;

(G) Made for national security or intelligence purposes; or

(H) Made to correctional institutions or law enforcement officials having lawful custody of an inmate.

(c) For each disclosure, the accounting must include:

(A) The date of the disclosure;

(B) The name and address, if known, of the person or entity who received the disclosed information;

(C) A brief description of the information disclosed; and

(D) A brief statement of the purpose of the disclosure that reasonably informs the client of the basis for the disclosure, or, in lieu of a statement, a copy of the client's written request for a disclosure, if any.

(d) If, during the time period covered by the accounting, the Department has made multiple disclosures to the same person or entity for the same purpose, the Department may provide the required information for only the first disclosure. The Department need not list the same identical information for each subsequent disclosure to the same person or entity if the Department adds the following information:

(A) The frequency or number of disclosures made to the same person or entity; and

(B) The date of the most recent disclosure during the time period for which the accounting is requested.

(e) The Department must act on the client's request for an accounting no later than 60 days after receiving the request. If the Department is unable to act within 60 days, the Department may extend this time limit by a maximum of 30 additional days, subject to the following:

(A) The Department must notify the client in writing, within 60 days of receiving the request, of the reasons for the delay and the date by which the Department shall act on the request; and

(B) The Department shall use only one 30-day extension.

(f) The Department shall provide the first requested accounting in any 12-month period without charge. The Department may charge the client a reasonable cost-based fee for each additional accounting requested by the client within the 12-month period following the first request, if the Department:

(A) Informs the client of the fee before proceeding with any additional request; and

(B) Allows the client an opportunity to withdraw or modify the request in order to avoid or reduce the fee.

(g) The Department shall document the information required to be included in an accounting of disclosures, as specified in section (6)(c) of this rule, and retain a copy of the written accounting provided to the client.

(h) The Department shall temporarily suspend a client's right to receive an accounting of disclosures that the Department has made to a health oversight agency or to a law enforcement official, for a length of time specified by the agency or official, if the agency or official provides a written or oral statement to the Department that the accounting would be reasonably likely to impede their activities. If the agency or official makes an oral request, the Department shall:

(A) Document the oral request, including the identity of the agency or official making the request.

(B) Temporarily suspend the client's request to an accounting of disclosures; and

(C) Limit the temporary suspension to no longer than 30 days from the date of the oral request, unless the agency or official submits a written request specifying a longer time period.

(7) Filing a complaint. Clients may file a complaint with the Department or, if the complaint concerns a violation of the HIPAA Privacy or Security Rule, with DHHS, Office for Civil Rights.

(a) Upon request, the Department shall give clients the name and address of the specific person or office of where to submit complaints to DHHS.

(b) The Department may not intimidate, threaten, coerce, discriminate against, or take any other form of retaliatory action against any individual filing a complaint or inquiring about how to file a complaint.

(c) The Department may not require clients to waive their rights to file a complaint as a condition of providing treatment, payment, enrollment in a health plan, or eligibility for benefits.

(d) The Department shall designate staff to review and determine action on complaints filed with the Department.

(e) The Department shall document, in the client's Department case file, all complaints, the findings from reviewing each complaint, and the Department's actions resulting from the complaint. For each complaint, the documentation shall include a description of corrective action that the Department has taken, if any are necessary, or why corrective action is not needed.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0030 by DHSD 5-2009, f. & cert. ef. 7-1-09; DHSD 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; DHSD 11-2011, f. & cert. ef. 12-16-11

## 407-014-0040

### Minimum Necessary Standards

(1) The Department shall limit the use and disclosure of protected information to that which is reasonably necessary to accomplish the intended purpose of the use or disclosure which is referred to in these rules as the minimum necessary standard.

(2) This minimum necessary standard is not intended to impede essential Department activities.

(3) The minimum necessary standard applies:

(a) When using protected information within the Department;

(b) When disclosing protected information to a third party in response to a request; or

(c) When requesting protected information from another covered entity.

(4) The minimum necessary standard does not apply to:

(a) Disclosures to or requests by a health care provider for treatment;

(b) Disclosures made to the individual, including disclosures made in response to a request for access or an accounting;

(c) Disclosures made with a valid authorization;

(d) Disclosures made to DHHS for the purposes of compliance and enforcement of federal regulations under 45 CFR part 160 and required for compliance with 45 CFR part 164; or

(e) Uses and disclosures required by law;

(5) When requesting protected information about an individual from another entity, the Department shall limit requests to those that are reasonably necessary to accomplish the purposes for which the request is made. The Department shall not request a person's entire medical record unless the Department can specifically justify the need for the entire medical record.

Stat. Auth.: ORS 409.050

Stats. Implemented: 409.010



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Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0040 by DHSD 5-2009, f. & cert. ef. 7-1-09; DHSD 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; DHSD 11-2011, f. & cert. ef. 12-16-11

## 407-014-0050

### Business Associate

(1) The Department is a business associate of the Authority. The Authority is the single state Medicaid agency, but the Department performs or assists in the performance of key components of the medical assistance program under the supervision of the Authority including but not limited to eligibility determinations for the medical assistance program and supervising the long-term and community-based services for seniors and people with disabilities. The Department also provides certain health care operations services for the Authority. In doing so, the Department is a business associate of the Authority. As a business associate of the Authority, the Department is authorized to use and disclose protected health information to perform or assist the Authority in the performance of its covered functions. However, as a business associate, the Department is subject to the privacy requirements described in these rules.

(2) As a business associate of the Authority implementing the requirements of the medical assistance program, the Department may disclose an individual's PHI to its contractors or providers, and may allow its contractors or providers to create or receive an individual's PHI on behalf of the Department if the contract or agreement that complies with applicable federal and state law. In some limited circumstances, the Department may determine that the Department is a business associate of a covered entity. A business associate relationship with the Department requires additional contractual disclosure and privacy provisions that must be incorporated into the contract pursuant to 45 CFR part 164.504(e)(1).

(3) A contract with a business associate must comply with OAR 125-055-0100 to 125-055-0130 and the qualified service organization requirements in 42 CFR part 2.11.

Stat. Auth.: ORS 409.050

Stats. Implemented: 409.010

Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0050 by DHSD 5-2009, f. & cert. ef. 7-1-09; DHSD 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; DHSD 11-2011, f. & cert. ef. 12-16-11

## 407-014-0060

### Uses and Disclosures of Protected Information for Research Purposes

The Department may use and disclose an individual's information for research purposes as specified in this rule.

(1) All research disclosures are subject to applicable requirements of federal and state laws and rules including but not limited to 45 CFR part 46 and 21 CFR part 50.0 to 50.56, relating to the protection of human research subjects.

(2) The Department may use and disclose de-identified information or a limited data set for research purposes, pursuant to OAR 407-014-0070.

(3) The Department may use and disclose information regarding an individual for research purposes with the specific written authorization of the individual. The authorization must meet all requirements in OAR 407-014-0030, and may indicate an expiration date with terms such as "end of research study" or similar language. An authorization for use and disclosure for a research study may be combined with other types of written authorization for the same research study. If research includes treatment, the researcher may require an authorization for use and disclosure for the research as a provision of providing research related treatment.

(4) Notwithstanding section (3) of this rule, the Department may use and disclose an individual's information for research purposes without the individual's written authorization, regardless of the source of funding for the research, provided that:

(a) The Department obtains documentation that a waiver of an individual's authorization for release of information requirements has been approved by an IRB registered with the Office for Human Research Protection. Documentation required of an IRB when granting approval of a waiver of an individual's authorization for release of information must include all criteria specified in 45 CFR part 164.512(i)(2).

(b) A researcher may request access to individual information maintained by the Department in preparation for research or to facilitate the development of a research protocol in anticipation of research. The Department may determine whether to permit such use or disclosure, without individual authorization or use of an IRB, pursuant to 45 CFR part 164.512(i)(1)(ii).

(c) A researcher may request access to individual information maintained by the Department about deceased individuals. The Department may determine whether to permit such use or disclosure of information about

decedents, without individual authorization or use of an IRB, pursuant to 45 CFR part 164.512(i)(1)(iii).

(5) The Department may collect, use, or disclose information, without individual authorization, to the extent that the collection, use, or disclosure is required by law. When the Department uses information to conduct studies as required by law, no additional individual authorization is required nor does this rule require an IRB or privacy board waiver of authorization based on the HIPAA privacy rules.

(6) The Department may use and disclose information without individual authorization for studies and data analysis conducted for the Department's own quality assurance purposes or to comply with reporting requirements applicable to federal or state funding requirements in accordance with the definition of "health care operations" in 45 CFR part 164.501.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0060 by DHSD 5-2009, f. & cert. ef. 7-1-09; DHSD 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; DHSD 11-2011, f. & cert. ef. 12-16-11

## 407-014-0070

### De-identification of Client Information and Use of Limited Data Sets under Data Use Agreements

(1) The Department may use and disclose information as appropriate for the work of the Department, without further restriction, if the Department or another entity has taken steps to de-identify the information pursuant to 45 CFR part 164.514(a) and (b).

(2) The Department may assign a code or other means of record identification to allow the Department to re-identify the de-identified information provided that:

(a) The code or other means of record identification is not derived from or related to information about the individual and cannot otherwise be translated to identify the individual; and,

(b) The Department does not use or disclose the code or other means of record identification for any other purpose, and does not disclose the mechanism for re-identification.

(3) The Department may use and disclose a limited data set if the Department enters into a data use agreement with an entity requesting or providing the Department with a limited data set subject to the requirements of 45 CFR part 164.514(e).

(a) The Department may use and disclose a limited data set for the purposes of research. The Department may use limited data set for its own activities or operations if the Department has obtained a limited data set that is subject to a data use agreement.

(b) If the Department knows of a pattern of activity or practice of a limited data set recipient that constitutes a material breach or violation of a data use agreement, the Department shall take reasonable steps to cure the breach or end the violation. If such steps are unsuccessful, the Department shall discontinue disclosure of information to the recipient and report the problem to the appropriate authority.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0070 by DHSD 5-2009, f. & cert. ef. 7-1-09; DHSD 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; DHSD 11-2011, f. & cert. ef. 12-16-11

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**Rule Caption:** Department of Human Services' Cooperative Relationship with the Oregon Health Authority.

**Adm. Order No.:** DHSD 12-2011

**Filed with Sec. of State:** 12-27-2011

**Certified to be Effective:** 12-27-11

**Notice Publication Date:** 12-1-2011

**Rules Adopted:** 407-043-0020

**Rules Repealed:** 407-043-0020(T)

**Subject:** HB 2009 (2009) created the Oregon Health Authority and transferred to the Authority the Department of Human Services' (Department) divisions with respect to health and health care. The Department is adopting these operational and programmatic rules to assure continuity as a part of the operational transfer from functions previously performed by the Department as a result of HB 2009 (2009). Adoption of this rule will repeal the temporary rule in effect since July 1, 2011.

Among the functions transferred to the Authority is the medical assistance program. This rule provides for continuity in the relationship between the Department and the Authority when working

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together in the administration of the medical assistance program and that the Department and the Authority shall work cooperatively in the administration of the medical assistance program, including making determinations of eligibility and service need for medical assistance. This rule also explains that the Authority designated the Department as the operating agency for home and community-based waiver services and as an Organized Health Care Delivery System.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

## 407-043-0020

### Cooperative Relationship with Oregon Health Authority

(1) The Department of Human Services (Department) will cooperate and collaborate with Oregon Health Authority (Authority) in order to effectively coordinate services to individuals, families and communities and realize operational efficiencies in the administration of services that can be shared between them (“shared services”).

(2) In any Department rules, policies, or procedures that refer to the programs, functions, and duties that were formerly part of the Department that were transferred to the Authority, such reference shall be considered a reference to the Authority.

(3) The Department acknowledges that the Authority is the state Medicaid agency and the state Children’s Health Insurance Program agency, authorized by state statute to administer the medical assistance program. The Authority is also responsible for facilitating outreach and enrollment efforts to connect eligible individuals with all available publicly funded health programs.

(a) The Department and the Authority recognize that there are many points of interconnection between their programs and the individuals who receive services through these programs. In addition, there are areas of natural connection between the Department and the Authority based upon the former structure of the Department.

(b) The Department shall continue to work cooperatively with the Authority in the administration of the medical assistance program, including determinations of eligibility and service need for medical assistance. The Authority has designated the Department as the operating agency for the home and community-based waivers and as an Organized Health Care Delivery System.

(c) The Department and the Authority are authorized by state law to delegate to each other any duties, functions, and powers that they deem necessary for the efficient and effective operation of their respective functions. The Department and the Authority will work together to adopt rules to assure that medical assistance eligibility requirements, procedures, and determinations are consistent across both agencies. The Authority has authorized the Department to determine medical eligibility for medical assistance. Where that responsibility is given to the Department under ORS Chapter 411, the Department has delegated to the Authority the duties, functions and powers to make medical eligibility determinations in accordance with OAR 410-120-0006.

(d) Where statute establishes duties and functions of the Department or the Authority in relation to medical assistance as a public assistance program, the Department and the Authority will cooperate in the effective administration of the program.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 413.032

Hist.: DHS 3-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; DHS 12-2011, f. & cert. ef. 12-27-11

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**Rule Caption:** Amendments to Electronic Data Transmission (EDT) Rules.

**Adm. Order No.:** DHS 13-2011

**Filed with Sec. of State:** 12-27-2011

**Certified to be Effective:** 12-27-11

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 407-120-0100, 407-120-0112, 407-120-0114, 407-120-0150, 407-120-0200

**Rules Repealed:** 407-120-0100(T), 407-120-0112(T), 407-120-0114(T), 407-120-0150(T), 407-120-0200(T)

**Subject:** The Department of Human Services (Department) is amending these rules to ensure the Department’s EDT rules complement 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. Adoption

of these rules will repeal the temporary rules currently in effect since July 1, 2011.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

## 407-120-0100

### Definitions

The following definitions apply to OAR 407-120-0100 through 407-120-0200:

(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, 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 Department to provide for the delivery of services to covered individuals and that request to conduct electronic data transactions in relation to the contract.

(4) “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 Department, 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.

(5) “Confidential Information” means information relating to covered individuals which is exchanged by and between the Department, a provider, 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 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.”

(6) “Contract” means a specific written agreement between the Department and a provider, PHP, clinic, or allied agency that provides or manages the provision of services, goods, or supplies to covered individuals and where the Department and a provider, PHP, clinic, or allied agency may exchange data. A contract specifically includes, without limitation, a Department 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, a county financial assistance agreement, or any other applicable written agreement, interagency agreement, intergovernmental agreement, or grant agreement between the Department and a provider, PHP, clinic, or allied agency.

(7) “Covered Entity” means a health plan, health care clearing house, health care provider, or allied agency that transmits any health information in electronic form in connection with a transaction, including direct data entry (DDE), and who must comply with the National Provider Identifier (NPI) requirements of 45 CFR 162.402 through 162.414.

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(8) "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, PHP, clinic, or allied agency under the terms of a contract applicable to a governmental program for which the Department processes or administers data transmissions.

(9) "Data" means a formalized representation of specific facts or concepts suitable for communication, interpretation, or processing by individuals or by automatic means.

(10) "Data Transmission" means the transfer or exchange of data between the Department and a web portal or electronic data interchange (EDI) submitter by means of an information system which is compatible for that purpose and includes without limitation, web portal, EDI, electronic remittance advice (ERA), or electronic media claims (EMC) transmissions.

(11) "Department" means the Department of Human Services.

(12) "Department Network and Information Systems" means the Department'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 Department.

(13) "Direct Data Entry (DDE)" means the process using dumb terminals or computer browser screens where data is directly keyed into a health plan's computer by a provider or its agent, such as through the use of a web portal.

(14) "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 Department designates for EDI transactions. For purposes of these rules (OAR 407-120-0100 through 407-120-0200), EDI does not include electronic transmission by web portal.

(15) "Electronic Data Interchange Submitter" means an individual or entity authorized to establish the electronic media connection with the Department to conduct an EDI transaction. An EDI submitter may be a trading partner or an agent of a trading partner.

(16) "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.

(17) "Electronic Media Claims (EMC)" means an electronic media means of submitting claims or encounters for payment of services or supplies provided by a provider, PHP, clinic, or allied agency to a covered individual.

(18) "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 Department 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 PHPs, the remittance advice file contains information on the adjudication status of encounter claims submitted.

(19) "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.

(20) "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 Department.

(21) "HIPAA Transaction Rule" means the standards for electronic transactions at 45 CFR Part 160 and 162 (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.

(22) "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 equip-

ment using or storing Department information assets or confidential information.

(23) "Individual User Profile (IUP)" means Department forms used to authorize a user, identify their job assignment, and the required access to the Department's network and information system. It generates a unique security access code used to access the Department's network and information system.

(24) "Information Asset" means all information, also known as data, provided through the Department, regardless of the source, which requires measures for security and privacy of the information.

(25) "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.

(26) "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.

(27) "Mailbox" means the term used by the Department to indicate trading partner-specific locations on the Department's secure file transfer protocol (SFTP) server to deposit and retrieve electronic data identified by a unique Department assigned trading partner number.

(28) "Password" means the alpha-numeric codes assigned to an EDI submitter by the Department for the purpose of allowing access to the Department'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.

(29) "Personal Identification Number (PIN)" means the alpha-numeric codes assigned to web portal submitters by the Department for the purpose of allowing access to the Department'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.

(30) "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 Department on a case managed, prepaid, capitated basis under the Oregon Health Plan (OHP).

(31) "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 Department. A provider does not include billing providers as used in the Division of Medical Assistance (DMAP) general rules. DMAP billing providers are defined in these rules as agents, except for DMAP billing providers that are clinics.

(32) "Provider Enrollment Agreement" means an agreement between the Department and a provider for payment for the provision of covered services to covered individuals.

(33) "Registered Transaction" means each type of EDI transaction applicable to a trading partner that must be registered with the Department before it can be tested or approved for EDI transmission.

(34) "Security Access Codes" means the alpha-numeric codes assigned by the Department to the web portal submitter or EDI submitter for the purpose of allowing access to the Department'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.

(35) "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, PHP's, clinic's, or allied agency's name, identification number, and signature.

(36) "Standard" means a rule, condition, or requirement describing the following information for products, systems, or practices:

(a) Classification of components;

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- (b) Specification of materials, performance, or operations; or
- (c) Delineation of procedures.

(37) "Standards for Electronic Transactions" mean a transaction that complies with the applicable standard adopted by DHHS to implement standards for electronic transactions.

(38) "Submitter" means a provider, 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 Department's web portal.

(39) "Transaction" means the exchange of data between the Department and a provider using web portal access or a trading partner using electronic media to carry out financial or administrative activities.

(40) "Trade Data Log" means the complete written summary of data and data transmissions exchanged between the Department 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.

(41) "Trading Partner" means a provider, PHP, clinic, or allied agency that has entered into a trading partner agreement with the Department in order to satisfy all or part of its obligations under a contract by means of EDI, ERA, or EMC, or any other mutually agreed means of electronic exchange or transfer of data.

(42) "Trading Partner Agreement (TPA)" means a specific written request by a provider, PHP, clinic, or allied agency to conduct EDI transactions that governs the terms and conditions for EDI transactions in the performance of obligations under a contract. A provider, PHP, clinic, or allied agency that has executed a TPA will be referred to as a trading partner in relation to those functions.

(43) "User" means any individual or entity authorized by the Department to access network and information systems or information assets.

(44) "User Identification Security (UIS)" means a control method required by the Department 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.

(45) "Web Portal" means a site on the World Wide Web that typically provides secure access with personalized capabilities to its visitors and a pathway to other content designed for use with the Department's specific DDE applications.

(46) "Web Portal Submitter" means an individual or entity authorized to establish an electronic media connection with the Department to conduct a DDE transaction. A web portal submitter may be a provider or a provider's agent.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; Renumbered from 410-001-0100, DHSD 1-2008, f. & cert. ef. 2-1-08; DHSD 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; DHSD 13-2011, f. & cert. ef. 12-27-11

## 407-120-0112

### Scope and Sequence of Electronic Data Transmission Rules

(1) The Department communicates with and receives communications from its providers, 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 Department will exchange data electronically. Additional details may be provided in the Department'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 Department is responsible for payment or encounter submissions made to the Department 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 PHPs are required to use the 837 electronic formats;

- (b) Web portal access;
- (c) EDI submitter access; or
- (d) POS for pharmacy providers.

(4) Department informational updates, provider record updates, depository for PHP reports, or EDT as specified by the Department for contract compliance.

(5) Other Department network and information system access is governed by specific program requirements, which may include but is not limited to IUP access. Affected providers, PHPs, and allied agencies will 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 407-120-0170.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DHSD 13-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; DHSD 1-2008, f. & cert. ef. 2-1-08; DHSD 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; DHSD 13-2011, f. & cert. ef. 12-27-11

## 407-120-0114

### 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 will include a section describing the process that will permit the provider, once enrolled, to participate in DDE over the Internet using the secure Department web portal. This does not include providers enrolled through the use of the DMAP 3108 Managed Care Plan and FFS Non Paid Provider Application.

(2) When the provider number is issued by the Department, 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 Department 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 using the PIN are responsible for protecting the confidentiality and security of the PIN pursuant to OAR 407-120-0170.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DHSD 13-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; DHSD 1-2008, f. & cert. ef. 2-1-08; DHSD 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; DHSD 13-2011, f. & cert. ef. 12-27-11

## 407-120-0150

### Testing — EDI Transactions

(1) When a trading partner or authorized EDI submitter registers an EDI transaction with the Department, the Department may require testing before authorizing the transaction. Testing may include third party and business-to-business testing. An EDI submitter must be able to demonstrate its capacity to send and receive each transaction type for which it has registered. The Department will reject any EDI transaction if an EDI submitter either refuses or fails to comply with the Department testing requirements.

(2) The Department may require EDI submitters to complete compliance testing at an EDI submitter's expense for each transaction type if either the Department or an EDI submitter has experienced a change to hardware or software applications by entering into business-to-business testing.

(3) When third party or business-to-business testing is completed to the Department's satisfaction, the Department will notify an EDI submitter that it will register and accept the transactions in the production environment. This notification authorizes an EDI submitter to submit the registered EDI transactions to the Department for processing and response, as applicable. If there are any changes in the trading partner or EDI submitter authorization, profile data or EDI registration information on file with the Department, updated information must be submitted to the Department as required in OAR 407-120-0190.

(4) Testing will be conducted using secure electronic media communications methods.

(5) An EDI submitter may be required to re-test with the Department if the Department format changes or if the EDI submitter format changes.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; Renumbered from 410-001-0150, DHSD 1-2008, f. & cert. ef. 2-1-08; DHSD 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; DHSD 13-2011, f. & cert. ef. 12-27-11

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## 407-120-0200

### Department System Administration

(1) No individual or entity shall be registered to conduct a web portal or an EDI transaction with the Department except as authorized under these rules. Eligibility and continued participation as a provider, 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 407-120-0190, 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 Department.

(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 Department provider, PHP, clinic, or allied agency pursuant to a current valid contract; and

(b) A provider, 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 Department with essential profile information that the Department may use to confirm that a trading partner or EDI submitter is not otherwise excluded or disqualified from submitting EDI transactions to the Department.

(5) Nothing in these rules or a TPA prevents the Department 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 Department 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 Department program contracts or rules.

(8) For providers using the DDE submission system by the Department 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 Department program contracts or rules.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; Renumbered from 410-001-0200, DHSD 1-2008, f. & cert. ef. 2-1-08; DHSD 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; DHSD 13-2011, f. & cert. ef. 12-27-11

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

**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 29-2011

**Filed with Sec. of State:** 12-27-2011

**Certified to be Effective:** 12-28-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 413-020-0200, 413-020-0210, 413-020-0230, 413-020-0233, 413-020-0236, 413-020-0240, 413-020-0245, 413-020-0255

**Subject:** These rules about enhanced supervision and supervision planning are being changed because the Department is clarifying the structure in which decisions regarding level of care payments are made for guardianship assistance and adoption assistance. These rules are also being amended to fully implement the Fostering connection to Success and Increasing Adoptions Act of 2008 (122 Stat. 3949-3981) that provide for guardianship assistance payments and adoption assistance payments for eligible children up to age 21. These rules are also being amended to explain the Department's responsibility for decision-making in level of care payments. Most of these rule changes make permanent changes adopted by temporary rule on June 30, 2011.

OAR 413-020-0200 about the purpose of the Department's rules (OAR 413-020-0200 to 413-020-0255) regarding the Department's responsibilities regarding enhanced supervision is being amended to clarify the purpose of the rules.

OAR 413-020-0210 about the definitions of key terms used in these rules is being amended to add current and remove and revise outdated definitions of certain terms used throughout these rules.

OAR 413-020-0230 about the referral for and review of the CANS screening is being amended to restate the referral and review of CANS screenings for children and young adults in substitute care and children and young adults receiving or about to receive guardianship assistance or adoption assistance.

OAR 413-020-0233 about when a supervision plan is required is being amended to restate when a supervision plan is or is not required subsequent to determination that a child needs enhanced supervision.

OAR 413-020-0236 is being amended to restate the Department responsibilities for supervision plans and use of physical restraint.

OAR 413-020-0240 is being amended to restate the limitations and reporting requirements when a physical restraint is used.

OAR 413-020-0245 is being amended to restate the monitoring responsibilities of the Department when a child or young adult has a supervision plan.

OAR 413-020-0255 is being amended to restate training required for planned use of physical restraint.

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

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-020-0200

### Purpose

The purpose of these rules (OAR 413-020-0200 to 413-020-0255), is to describe the responsibilities of the Department to:

(1) Identify the supervision needs of a child or young adult in substitute care with a certified family;

(2) Develop a supervision plan describing the actions and activities provided by a certified family, the Department, and other individuals to meet the child or young adult's need for enhanced supervision;

(3) Describe the responsibilities of the certified family and the Department when physical restraint is used;

(4) Monitor the completion of behavior and crisis management training when physical restraint is included in a child or young adult's supervision plan; and

(5) Conduct a CANS screening during the negotiation of guardianship assistance pursuant to OAR 413-070-0900 through 413-070-0974 or negotiation of adoption assistance pursuant to OAR 413-130-0000 through 413-130-0130.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; CWP 3-2003, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 29-2011, f. 12-27-11, cert. ef. 12-28-11

# ADMINISTRATIVE RULES

## 413-020-0210

### Definitions

The following definitions apply to OAR 413-020-0200 to 413-020-0255:

(1) "Adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the pre-adoptive family or adoptive family of an eligible child or young adult, setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the pre-adoptive family or adoptive family and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(2) "Adoptive family" means an individual or individuals who have legalized a parental relationship to the child through a judgment of the court.

(3) "BRS" means Behavior Rehabilitation Services, a Medicaid funded program that provides behavioral intervention, counseling, or skill building services in a professional, shelter, or residential (including therapeutic foster care formerly referred to as proctor care) placement setting.

(4) "CANS screener" means an individual, who performs CANS screenings under the supervision of the Level of Care Manager, under a contract with the Department, and who annually completes the training in the use of the Oregon CANS Comprehensive Screening Tool with a documented reliability score of 0.70 or greater.

(5) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on a child or young adult's needs and strengths used for one or more of the following purposes:

(a) Identifying case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family;

(b) Determining the level of care payment while in substitute care with a certified family; and

(c) Determining the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(6) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which he or she resides, to a child or young adult in the care or custody of the Department.

(7) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing relative or foster care to a child or young adult in the care or custody of the Department, determines whether or not to recommend approval of the operation of a relative care or foster home, and monitors the compliance of a relative care or foster care home with Child Welfare certification rules.

(8) "Child" means a person under 18 years of age.

(9) "Department" means Department of Human Services, Child Welfare.

(10) "Enhanced supervision" means the additional support, direction, observation, and guidance necessary to promote and ensure the safety and well-being of a child or young adult when the child or young adult qualifies for a level of care payment.

(11) "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.

(12) "Guardian" means an individual who has been granted guardianship of the child through a judgment of the court.

(13) "Guardianship assistance" means assistance provided on behalf of an eligible child or young adult to offset the costs associated with establishing the guardianship and meeting the ongoing needs of the child or young adult. Guardianship assistance may be in the form of payments, medical coverage or reimbursement of nonrecurring guardianship expenses.

(14) "Guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the guardian of an eligible child or young adult setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the guardian and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(15) "Level of care payment" means the payment provided to an approved or certified family, a guardian, a pre-adoptive family or an adoptive family based on the child or young adult's need for enhanced supervision as determined by applying the CANS algorithm to the results of the CANS screening.

(16) "Mechanical restraint" means the use of any physical device to involuntarily restrain the movement of all or a portion of a child's body as a means of controlling his or her physical activities in order to protect the

child or other persons from injury. Mechanical restraint does not apply to movement restrictions stemming from medicinal, dental, diagnostic, or surgical procedures which are based on widely accepted, clinically appropriate methods of treatment by qualified professionals operating within the scope of their licensure.

(17) "Participating tribe" means a federally recognized Indian tribe in Oregon with a Title IV E agreement with the Department.

(18) "Physical restraint" means the act of restricting a child or young adult's voluntary movement as an emergency measure to manage and protect the child or young adult or others from injury when no alternate actions are sufficient to manage the child or young adult's behavior. Physical restraint does not include temporarily holding a child or young adult to assist him or her or assure his or her safety, such as preventing a child from running onto a busy street.

(19) "Potential guardian" means an individual who:

(a) Has been approved by the Department or participating tribe to be a child's guardian; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(20) "Pre-adoptive family" means an individual or individuals who:

(a) Has been selected to be a child's adoptive family; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(21) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(22) "Seclusion" means the involuntary confinement of a child alone in a specifically designed room from which the child is physically prevented from leaving.

(23) "Supervision plan" means a documented set of strategies that is developed to assist a relative caregiver or foster parent in providing the additional support, observation, direction, and guidance necessary to promote and ensure a child or young adult's safety and well-being.

(24) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; SCF 8-1997, f. 8-12-97, cert. ef. 8-25-97; CWP 3-2002, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 29-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-020-0230

### Referral for and Review of the CANS Screening

(1) The caseworker of the child or young adult must complete a CANS screening referral:

(a) Within the first 20 days of a child's initial placement in substitute care with a certified family;

(b) Unless subsection (d) of this section applies, ten months from the date of the most recent CANS screening and annually thereafter when the child or young adult has continuously lived with a certified family and the certified family has received a level of care payment; and

(c) Unless subsection (d) of this section applies, five business days after a child or young adult, whose initial placement in substitute care was a BRS placement, moves to the home of a certified family.

(d) When a child's permanency plan is adoption or guardianship and the caseworker has submitted an adoption assistance application or a guardianship assistance application, the caseworker must consult with the Adoption Assistance and Guardianship Assistance Unit prior to submitting a referral.

(2) After consultation with and approval of a supervisor, the caseworker of a child or young adult may complete and submit to the Level of Care Manager a CANS screening referral under any of the following circumstances unless subsection (1)(d) of this rule applies:

(a) When a child or young adult currently living with a certified family has never had a CANS screening and is currently exhibiting ongoing behavior or functioning that may indicate the need for enhanced supervision and a level of care payment;

(b) When a child or young adult returns to a placement with a certified family after a BRS placement of six months or longer;

(c) When a child or young adult is living with a certified family and the certified family has observed ongoing, documented changes in behavior or functioning which --

(A) Have not improved after a revision of the supervision actions and activities provided by the certified family and other individuals; or

# ADMINISTRATIVE RULES

(B) Endanger the safety of the child or young adult or the safety of others.

(3) An adoption assistance coordinator or guardianship assistance coordinator may complete and submit a CANS screening referral to the Level of Care Manager under the following circumstances:

(a) Written documentation of the current behavior and functioning of the child or young adult has been submitted to the adoption assistance and guardianship assistance coordinator by one of the following individuals:

(A) An adoptive family of the child or young adult, regardless of whether there has been a previous CANS screening;

(B) A child's pre-adoptive family when the child is not in the legal custody of the Department;

(C) A guardian of the child or young adult, regardless of whether there has been a previous CANS screening; or

(D) A potential guardian of the child or young adult who has been approved by a participating tribe.

(b) The written documentation submitted under subsection (a) of this section demonstrates ongoing behavior or functioning indicating the need for enhanced supervision and a level of care payment, and one of the following apply:

(A) A CANS screening has never been completed;

(B) A CANS screening has not been completed within the past twelve months; or

(C) The child or young adult exhibits a significant, ongoing change in behavior since the CANS screening that was completed within the 12 month period following the previous CANS screening.

(4) The Level of Care Manager, within five business days of receipt of a CANS screening referral submitted under section (2) or (3) of this rule:

(a) May approve a CANS screening after reviewing the referral, if the child or young adult's behavior and functioning, as described in the referral, indicates a CANS screening is needed to assess the need for enhanced supervision and a level of care payment;

(b) Must notify the individual who submitted the CANS screening referral whether a CANS screening has been approved and the basis for the decision; and

(c) Must send an approved CANS screening referral to a CANS screener.

(5) A CANS screener, upon receipt of the CANS screening referral submitted under section (1) or section (4) of this rule must:

(a) Review the referral information;

(b) Contact the caseworker, when the child is in substitute care, to gather information about the child or young adult's strengths and needs;

(c) Contact the certified family, pre-adoptive family, adoptive family, potential guardian identified by a participating tribe, or guardian of the child or young adult and gather information about the child or young adult's strengths and needs;

(d) Contact the child or young adult and other individuals who provide services to the child or young adult as appropriate and gather sufficient information to understand the child or young adult's strengths and needs to complete the CANS screening; and

(e) When a child or young adult has current suicidal ideation or intent:

(A) Notify the child or young adult's caseworker or adoption or guardianship assistance coordinator and, if applicable, notify the pre-adoptive family, adoptive family, potential guardian, or guardian; and

(B) Immediately develop a supervision plan with the certified family when the child or young adult is in substitute care with a certified family.

(6) After the CANS screener has gathered information regarding the child or young adult's strengths and needs, as described in subsections (5)(a)-(d), the CANS screener rates each element of a child or young adult's behavior and functioning on a scale of zero to three, in a manner consistent with the principles of the Child and Adolescent Needs and Strengths Comprehensive Screening Tool appropriate for the child or young adult's age. The CANS screener documents the appropriate rating for each element and provides written explanation for any rating of either 2 or 3 on an element that is a need and any rating of 0 or 1 on an element that is a strength.

(a) When the child is five years old or younger, the CANS screener rates the child using the DHS 9601 - Child and Adolescent Needs and Strengths Comprehensive Screening Tool Ages Birth through Five, dated August 2009, and revised in June 2011, which by reference is incorporated in OAR 413-090-0010(2)(f)(A).

(b) When the child or young adult is six years old or older, the CANS screener rates the child or young adult using the DHS 9602 - Child and Adolescent Needs and Strengths Comprehensive Screening Tool ages Six through Twenty dated July, 2009, and revised in June 2011, which by reference is incorporated in OAR 413-090-0010(2)(f)(B).

(c) The Department maintains these documents on the Department's website. Printed copies of these documents may be obtained by contacting the Department of Human Services, Children, Adults and Families, ATTN: Level of Care Manager, 500 Summer Street NE, E-93, Salem, OR 97301.

(7) The CANS screener must complete the activities in sections (5) and (6) and submit the CANS screening results to the Level of Care Manager within fifteen business days following the receipt of the referral.

(8) Within ten business days of the receipt of the CANS screening results, the Level of Care Manager or designee:

(a) Reviews the CANS screening results;

(b) Contacts the CANS screener when results appear inconsistent with the referral information or documentation of a child or young adult's strengths and needs and may instruct the CANS screener to:

(A) Gather additional information;

(B) Reapply the CANS ratings; and

(C) Resubmit the CANS screening results.

(c) Approves the CANS screening results unless subsection (b) applies; and

(d) Applies the CANS algorithm which by reference is incorporated in OAR 413-090-0010(2)(f)(C) to the approved CANS screening results to determine whether:

(A) The child or young adult living with a certified family is eligible for a level of care payment and requires enhanced supervision; or

(B) The child or young adult eligible for adoption assistance or guardianship assistance is eligible for a level of care payment.

(9) The Level of Care Manager may approve a revision of the ratings of an approved CANS screening when new or different information relevant to the correct application of the CANS screening has been presented:

(a) In preparation for a contested case hearing requested under OAR 413-010-0500(2)(a)-(c):

(b) During an informal conference under OAR 413-010-0520; or

(c) During the renegotiation of an adoption assistance agreement under OAR 413-130-0075 or a guardianship assistance agreement under OAR 413-070-0969.

(10) The Level of Care Manager or designee sends the CANS screening results to the following individuals:

(a) The child or young adult's caseworker and the certified family, with whom the child or young adult is living, on behalf of the child or young adult; or

(b) The adoption assistance and guardianship assistance coordinator and child or young adult's pre-adoptive family, adoptive family, guardian or the potential guardian identified by a participating tribe.

(11) When the caseworker receives a child or young adult's CANS screening results, the caseworker must:

(a) Contact the certified family to review the CANS screening results;

(b) When the CANS screening results indicated the child or young adult currently has suicidal ideation or intent, review the supervision plan developed during the CANS screening no later than one business day after the receipt of the CANS screening results to determine whether the plan continues to be appropriate;

(c) Incorporate the needs and strengths identified in the CANS screening into the case plan; and

(d) Determine whether a supervision plan must be developed, modified, or terminated under OAR 413-020-0233 and 413-020-0236.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; CWP 3-2002, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 29-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-020-0233

### When a Supervision Plan is Required

(1) The caseworker must develop a supervision plan with the certified family with whom the child or young adult lives within 30 days of:

(a) The receipt of the CANS screening results that indicates enhanced supervision is necessary to maintain the safety and support the well-being of the child or young adult and the child or young adult qualifies for a level of care payment; or

(b) When a child or young adult who has enhanced supervision needs and is receiving a level of care moves from one certified family to another certified family.

(2) A supervision plan is not required for a level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

# ADMINISTRATIVE RULES

Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 29-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-020-0236

### Development, Documentation, and Termination of a Supervision Plan

(1) After the caseworker has reviewed the CANS screening results for a child or young adult living with a certified family that indicates the child or young adult has enhanced supervision needs and qualifies for a level of care payment, the caseworker must:

(a) Contact the certified family to explain the supervision needs identified in the CANS screening results; and

(b) During a meeting with the certified family, the child or young adult, as appropriate, and others who may participate in a supervision plan, explain the supervision requirements necessary to maintain the safety and support the well-being of the child or young adult and develop a supervision plan that meets the supervision needs of the child or young adult.

(A) If the child or young adult qualifies for Level 1 (moderate needs), the supervision plan must require the certified family to provide an environment with the additional support, direction, observation, and guidance from the certified family necessary to ensure a child or young adult's safety and well-being, beyond the level of supervision that typically is required for a child or young adult of the same age.

(B) If the child or young adult qualifies for Level 2 (intermediate needs), the supervision plan must require the certified family to provide a structured environment, additional support, direction, observation, and guidance necessary to ensure a child or young adult's safety and well-being, beyond the level of supervision that typically is required for a child or young adult of the same age.

(C) If the child or young adult qualifies for Level 3 (advanced needs), the supervision plan must require the certified family to provide a highly structured environment, additional support, direction, observation, and guidance necessary to ensure a child or young adult's safety and well-being, beyond the level of supervision that typically is required for a child or young adult of the same age.

(2) The supervision plan must include:

(a) The supervision actions or activities that are to be provided by the certified family and other individuals to meet the child or young adult's identified needs. Examples of appropriate supervision actions or activities may include, but are not limited to: proactive use of space, use of routine, structure of the environment, positive reinforcement, and de-escalation techniques;

(b) The actions and assistance the Department will provide to support the certified family in addressing the supervision needs of the child or young adult and to maintain the child or young adult in the home;

(c) The actions the child or young adult will take to support the supervision plan;

(d) The persons responsible for monitoring the child or young adult's supervision needs and the supervision actions and activities;

(e) How the persons responsible for monitoring the child or young adult's supervision needs and the supervision actions and activities are to communicate with each other; and

(f) A requirement that the supervision plan be reviewed during the first face-to-face contact described in OAR 413-080-0059(1)(c) after the date the supervision plan is signed by the individuals identified in section (3) of this rule.

(3) The supervision plan must be signed by:

(a) The caseworker;

(b) The certified family;

(c) The child or young adult, if able; and

(d) Any other individuals who are to provide specific actions or activities in the supervision plan.

(4) The supervision plan must be approved by the caseworker's supervisor.

(5) A supervision plan may include physical restraint as a supervision action or activity only if the certified family has completed the physical restraint training requirements described in OAR 413-020-0240.

(6) A supervision plan that authorizes a certified family to use physical restraint must:

(a) Focus on intervention strategies that are designed to modify a child or young adult's behavior without the need for physical restraint;

(b) Explain that a physical restraint is to be used only when the child or young adult's behavior poses an imminent danger to self or others, and when no alternate actions are sufficient to stop a child or young adult's behavior;

(c) Be approved by the Child Welfare program manager; and

(d) Require the certified family:

(A) To document and report the circumstances of each use of physical restraint in writing as soon as reasonably possible after the use of physical restraint on a form approved by the Department, which explains:

(i) The behavior that required the use of physical restraint;

(ii) The specific attempts to stop the child or young adult's behavior without the use of physical restraint;

(iii) The time the physical restraint started; and

(iv) The time the physical restraint ended.

(B) To orally report to the child or young adult's caseworker or the caseworker's supervisor within one business day of the physical restraint; and

(C) To submit the documentation required in paragraph (A) of this subsection to the child or young adult's caseworker within two business days after the use of physical restraint.

(7) The caseworker must provide a copy of the signed supervision plan to the certified family and the certified family's certifier, and file a copy in the Department's information system.

(8) When a child or young adult has a supervision plan and the CANS screening results indicate that the child or young adult no longer has enhanced supervision needs and no longer qualifies for a level of care payment, the caseworker must:

(a) Terminate the supervision plan;

(b) Document in the Department's information system the date the supervision plan terminated and the reason the plan terminated; and

(c) Notify the certified family and the certified family's certifier that the supervision plan terminated and the reason the plan terminated.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 29-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-020-0240

### Use of Physical Restraint

(1) A physical restraint may be used by a certified family when the behavior of a child or young adult places the child or young adult or others in imminent risk of harm and only when:

(a) Good judgment indicates that a physical restraint may safely be implemented; and

(b) The certified family has received the individual Behavior and Crisis Management Training in physical restraint specific to the supervision needs of the child or young adult by Department trained staff.

(2) Physical restraint must be implemented with the least force necessary to prevent the risk of harm to self or others and should end as soon as the risk of harm no longer exists.

(3) If the behavior of a child or young adult places the child or young adult or others in imminent risk of harm, and good judgment indicates that a physical restraint cannot be implemented safely, the certified family must call the local law enforcement agency to request intervention. The certified family must:

(a) Orally report the incident to the caseworker and the caseworker's supervisor as soon as reasonably possible;

(b) Document the incident in writing on a form approved by the Department; and

(c) Submit the completed form to the caseworker within two business days.

(4) If the child or young adult is injured during the incident, whether or not a physical restraint is used, the certified family immediately must notify the Department's emergency 24-hour contact.

(5) A certified family may not use mechanical restraint or seclusion of a child or young adult in an emergency or at any other time as a supervision action or activity.

(6) Notwithstanding the training required in OAR 413-020-0255, when a situation arises and the behavior of a child or young adult places the child or young adult or another individual in imminent risk of harm and if good judgment indicates that a physical restraint may safely be implemented, the certified family may use a physical restraint even when:

(a) The certified family has not attended Behavior and Crisis Management Training; or

(b) The child or young adult does not have a supervision plan.

(c) If physical restraint is used under this section, the certified family must document and report the incident in accordance with the requirements of OAR 413-020-0236(6)(c).

Stat. Auth.: ORS 418.005



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Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; SOSCF 8-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 3-2002, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 29-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-020-0245

### Responsibilities in Monitoring a Child or Young Adult's Supervision in a Certified Family

(1) During each face-to-face contact described in OAR 413-080-0059, in addition to assessing the safety of the child or young adult, the caseworker must determine:

(a) Whether the certified family is meeting the supervision needs of the child or young adult.

(b) Whether the supervision needs of the child or young adult have changed.

(c) If there is a current supervision plan, whether the supervision actions and activities described in the supervision plan are effective in meeting the child or young adult's supervision needs.

(2) If, after assessing the safety of the child or young adult as described in OAR 413-080-0059(2)(a), the caseworker determines that the child or young adult currently is safe in the home but his or her supervision needs are not being met, the caseworker must:

(a) Consult with the certified family's certifier or the certifier's supervisor to determine if available resources or training are able to provide the additional support the certified family may need to meet the child or young adult's supervision needs;

(b) If there is a current supervision plan for the child or young adult, determine whether the supervision plan should be revised, and if so, meet with the certified family to revise the plan; and

(c) Determine whether there has been an observed, ongoing change in a child or young adult's behavior or functioning such that the observed changes must be documented and submitted with a CANS screening under referral OAR 413-020-0230(2).

(3) The caseworker documents the monitoring activities described in this rule in the Department's information system.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 29-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-020-0255

### Training and the Planned Use of Physical Restraint

(1) The Department has approved and schedules Behavior and Crisis Management Training as the standard training curriculum for any certified family who requires training on crisis management. The training curriculum focuses on strengthening a certified family's supervision skills.

(2) Before implementing a supervision plan that authorizes a certified family to use physical restraint, the caseworker must:

(a) Consult with the certifier to confirm that the certified family has completed Behavior and Crisis Management Training; and

(b) Contact the Level of Care Manager to schedule the certified family to receive Behavior and Crisis Management Training, by Department-trained staff, in physical restraint specific to the supervision needs of the child or young adult.

(3) A foster care coordinator or designee may approve comparable behavior and crisis management training obtained by a certified family for a specific child or young adult in place of Behavior and Crisis Management Training if:

(a) The training was selected by a school district and used in the school; or

(b) The training was approved by the Department of Human Services, Addictions and Mental Health Division and used in a Children's Intensive Mental Health Treatment Services program.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 29-2011, f. 12-27-11, cert. ef. 12-28-11

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 30-2011

**Filed with Sec. of State:** 12-27-2011

**Certified to be Effective:** 12-28-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 413-070-0900, 413-070-0905, 413-070-0909, 413-070-0917, 413-070-0919, 413-070-0925, 413-070-0934, 413-070-0939, 413-070-0944, 413-070-0949, 413-070-0959, 413-070-0964, 413-070-0969, 413-070-0970, 413-070-0974

**Rules Repealed:** 413-070-0929, 413-070-0979

**Subject:** OAR 413-070-0900 about the purpose is being amended to clarify the rule and to indicate that the rules now cover guardianship assistance that may be extended for certain young adults.

OAR 413-070-0905 about definitions of certain terms used in the guardianship assistance rules is being amended to add current and remove or revise outdated definitions of certain terms used through-out these rules.

OAR 413-070-0909 about funding of guardianship assistance is being amended to explain and update the funding sources for guardianship assistance, and indicate that new guardianship assistance will not be available for non-relative guardians.

OAR 413-070-0917 about eligibility is being amended to describe federal changes regarding establishment of guardianship assistance for a child placed outside of the United States, correct references, clarify caseworker duties regarding guardianship, set out sibling eligibility for guardianship assistance purposes, and describe the conditions for an extension of guardianship assistance on behalf of certain young adults. The temporary rule currently in place will be changed in the permanent rule to clarify the condition under which a child who is turning 18 and has a developmental disability may qualify for an extension of guardianship assistance.

OAR 413-070-0919 about eligibility and requirements for a child or young adult in the care or legal custody of a participating tribe is being amended to correct references, update terminology, and clarify requirements for child placement.

OAR 413-070-0925 about eligibility of a potential guardian is being amended to implement new federal education requirements for guardianship assistance and to remove what is now stated in Child Welfare Policy I-E.3.6.1, Guardianship as a Permanency Plan, OAR 413-070-0665(2).

OAR 413-070-0929 about determination of permanency plan for guardianship is being repealed because this topic is now covered in Child Welfare Policy I-E.3.6.1, Guardianship as a Permanency Plan, OAR 413-070-0651 to 413-070-0670.

OAR 413-070-0934 about application requirements and responsibilities is being amended to clarify Department responsibilities and situations that might delay the negotiation of guardianship assistance base rate.

OAR 413-070-0939 about guardianship assistance payments, medical assistance, and nonrecurring guardianship expenses is being amended to clarify and describe the guardianship assistance negotiation and review process. This rule is also being amended to describe requirements for medical assistance and social services, nonrecurring guardianship expenses, and overpayment responsibilities.

OAR 413-070-0944 about legal expenses of a guardian is being amended to clarify the legal expenses that are not authorized for reimbursement by the Department. This rule is also being amended to remove language about funding establishment of a guardianship because the topic is now covered in OAR 413-070-0949.

OAR 413-070-0949 about guardianship assistance agreement requirements is amended to more clearly explain what must be included in a guardianship assistance agreement and to indicate how this rule applies to young adults. The temporary rule currently in place will be changed in the permanent rule to indicate that guardianship assistance can continue when a child or young adult moves out of the guardian's home for school or work if the guardianship assistance agreement so states.

OAR 413-070-0959 about court order of guardianship and OAR 413-070-0964 about changes guardians must report and annual

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reports guardian must provide are being amended to update and clarify these rules.

OAR 413-070-0964 about information guardians must report to the Department (and which was not amended by temporary rule) is being amended to clarify the circumstances and occurrences that a guardian needs to report to the Department.

OAR 413-070-0969 about renegotiation of a guardianship assistance agreement is being amended to update terminology and clarify the renegotiation process.

OAR 413-070-0970 about guardianship social support services is being amended to cover only topics that need to be in a rule.

OAR 413-070-0974 about review, adjustment, suspension, and termination of guardianship assistance is being amended to clarify the conditions under which guardianship assistance may be reviewed by the Department and how changes or termination of that agreement are made. This rule is also being amended to set out how this rule applies to a young adult who has an extension of guardianship assistance. The temporary rule currently in place will be changed in the permanent rule to more fully explain the conditions under which a guardianship assistance agreement may be reviewed, adjusted, suspended, terminated, and expire.

OAR 413-070-0979 about the guardianship assistance review committee and appeals procedure is being repealed because this topic is now covered in OAR 413-070-0939.

These rules are also being amended to make permanent the temporary rule changes adopted June 30, 2011.

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

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-070-0900

### Purpose

(1) The purpose of these rules, OAR 413-070-0900 to 413-070-0974, is to describe Department criteria for program eligibility and receipt of guardianship assistance for:

(a) A child in the care or custody of the Department or a participating tribe;

(b) A young adult on whose behalf an initial guardianship assistance agreement was entered into when the young adult was a child of age 16 or 17; or

(c) A young adult who qualifies for disability services and on whose behalf an initial guardianship assistance agreement was entered into when the young adult was a child.

(2) The State of Oregon is not responsible for guardianship assistance for a child or young adult placed for guardianship in Oregon by a public child welfare agency other than the Department.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 24-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-070-0905

### Definitions

The following definitions apply to OAR 413-070-0900 to 413-070-0974:

(1) “Base rate payment” means a payment to the foster parent or relative caregiver for the costs of providing the child or young adult with the following:

(a) Food — including the cost to cover a child or young adult’s special or unique nutritional needs;

(b) Clothing — including purchase and replacement;

(c) Housing — including maintenance of household utilities, furnishings, and equipment;

(d) Daily supervision — including teaching and directing to ensure safety and well-being at a level which is appropriate based on the child or young adult’s chronological age;

(e) Personal incidentals — including personal care items, entertainment, reading materials, and miscellaneous items; and

(f) The cost of providing transportation — including local travel associated with expenditure for gas and oil, and vehicle maintenance and repair

associated with transportation to and from extracurricular, child care, recreational, and cultural activities.

(2) “CANS screening” means Child and Adolescent Needs and Strengths screening, a process of gathering information on a child or young adult’s needs and strengths used for one or more of the following purposes:

(a) Identifying case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family;

(b) Determining the level of care payment while in substitute care with a certified family; and

(c) Determining the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(3) “Child” means a person under 18 years of age.

(4) “Department” means the Department of Human Services, Child Welfare.

(5) “Enhanced supervision” means the additional support, direction, observation, and guidance necessary to promote and ensure the safety and well-being of the child or young adult when the child or young adult qualifies for a level of care payment.

(6) “Guardian” means an individual who has been granted guardianship of a child through a judgment of the court.

(7) “Guardianship assistance” means assistance on behalf of an eligible child or young adult to offset the costs associated with establishing the guardianship and meeting the ongoing needs of the child or young adult. Guardianship assistance may be in the form of a payment, medical coverage, or reimbursement of guardianship expenses.

(8) “Guardianship assistance agreement” means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the guardian and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(9) “Guardianship assistance agreement only” means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian of an eligible child or young adult, when the potential guardian or guardian is not receiving a guardianship assistance payment or medical coverage at the time of the agreement but may request it at a later date.

(10) “Guardianship assistance base rate” means the portion of the guardianship assistance payment that is negotiated with the potential guardian or guardian and cannot exceed the amount of the Oregon foster care base rate payment for the child or young adult’s age.

(11) “Guardianship assistance payment” means a monthly payment made by the Department to the guardian on behalf of the eligible child or young adult.

(12) “Guardianship Assistance Review Committee” means a committee composed of local and central office staff who have expertise in the area of guardianship.

(13) “Level of care payment” means the payment provided to an approved or certified family, a guardian, a pre-adoptive family, or an adoptive family based on the child or young adult’s need for enhanced supervision as determined by applying the CANS algorithm to the results of the CANS screening.

(14) “Nonrecurring guardianship assistance agreement” means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian of an eligible child for a one-time payment to reimburse the guardian for the reasonable and necessary expenses incurred in legally finalizing the guardianship.

(15) “Nonrecurring guardianship expenses” means a one-time payment of up to \$2,000 per child which the Department will make to a guardian to assist with the reasonable and necessary expenses associated with obtaining legal guardianship of an eligible child.

(16) “Parent” means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. “Parent” also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

(17) “Participating tribe” means a federally recognized Indian tribe in Oregon with a Title IV E agreement with the Department.

(18) “Permanency Committee” means a group of individuals who are responsible for making a recommendation regarding a permanency plan or

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potential permanency resource when the child or young adult likely is not returning to his or her parent.

(19) "Potential guardian" means an individual who:

(a) Has been approved by the Department or participating tribe to be a child's guardian; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(20) "Registered Domestic Partner" means an individual joined in a domestic partnership that is registered with a county clerk in accordance with ORS 106.300 to 106.340.

(21) "Relative" means:

(a) An individual with one of the following relationships to the child or young adult through the child or young adult's parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by death or divorce. To be considered a relative under this paragraph, the child or young adult must have had a relationship with the spouse prior to the child or young adult entering substitute care.

(F) For the purposes of an international adoption, relative means an individual described in paragraphs (A) to (D) of this subsection.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or customs of the child or young adult's tribe if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children," (OAR 413-070-0300 to OAR 413-070-0380).

(C) A stepparent described in OAR 413-100-0020(25)(e) or a former stepparent if the child or young adult had a relationship with the former stepparent prior to the child or young adult entering substitute care; a stepbrother, or a stepsister.

(D) The Registered Domestic Partner of the child or young adult's parent or former Registered Domestic Partner of the child or young adult's parent if the child or young adult had a relationship with the former domestic partner prior to the child or young adult entering substitute care.

(E) The adoptive parent of a child or young adult's sibling.

(F) The unrelated legal or biological father or mother of a child's half-sibling when the child's half-sibling is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the child or young adult's family, or an individual who self-identifies, related to the child or young adult through the child or young adult's parent by blood, adoption, or marriage to a degree other than an individual specified as a child or young adult's relative in paragraphs (A) to (D) of subsection (a) of this section.

(d) An individual, although not related by blood, adoption, or marriage, identified as:

(A) A member of the family by the child or young adult or the child or young adult's family; and

(B) Who had an emotionally significant relationship with the child or young adult or the child or young adult's family prior to the time the Department placed the child in substitute care.

(e) For the purposes of these rules, OAR 413-070-0900 to 413-070-0974:

(A) A stepparent is considered a parent and is not a relative under these rules unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the child's adoptive or biological parent has been terminated by divorce or death:

(B) A foster parent may be considered a relative under these rules when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanency plan of guardianship;

(iii) The foster parent has cared for the child for at least the past 12 consecutive months; and

(iv) A Permanency Committee has recommended the foster parent for consideration as a guardian.

(22) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the children or young adults' legal or biological parents; or

(c) Through a legal or biological parent who is the Registered Domestic Partner of the children or young adults' legal or biological parent.

(23) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(24) "Substitute caregiver" means a relative caregiver, foster parent, or provider authorized to provide care to a child or young adult in the legal or physical custody of the Department.

(25) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 1-2010(Temp), f. & cert. ef. 2-1-10 thru 6-14-10; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 24-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-070-0909

### Funding of Guardianship Assistance

(1) Non-relative guardianship assistance established under the Title IV-E Waiver Project implemented July 1, 1997 under the Adoption and Safe Families Act of 1997 was funded by Title IV-E waiver funds until January 1, 2011. As of that time, Oregon general funds provided monies for non-relative guardianship assistance established under the waiver. Funding is no longer available for the establishment of new non-relative guardianship assistance, except as described in section (2) of this rule.

(2) When grandparents or other approved relatives make a permanent commitment to and assume legal guardianship of a child for whom they have cared as a substitute caregiver, the Department provides guardianship assistance as described in these rules (OAR 413-070-0900 to 413-070-0974).

(3) Effective January 1, 2009, guardianship assistance for Title IV-E children or young adults is funded in part with Title IV-E funds as authorized by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351).

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-070-0917

### Eligibility

(1) Eligibility: Child.

(a) Guardianship assistance will not be established for a child placed outside of the United States or a territory or possession thereof.

(b) A guardianship assistance agreement must be signed by the potential guardian and a Department representative before guardianship has been legally established by a state or participating tribal court.

(c) To be eligible for guardianship assistance, a child must meet all of the following:

(A) Be a United States citizen or qualified alien as described in OAR 413-100-0210(2) and in 8 USC 1641(b) or (c).

(B) Be removed from his or her home pursuant to a voluntary placement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child.

(C) The Department or participating tribe has determined that neither return home nor adoption is an appropriate permanency option for the child.

(D) Be eligible for Title IV-E foster care maintenance payments during a six consecutive month period during which the child resided in the home of the potential guardian who was fully licensed, certified, or approved by the state or a participating tribe as meeting the licensure or certification requirements for a foster family home in the state where the home

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is located. The Department determines a child's eligibility for a Title IV-E maintenance payment under Child Welfare Policy I-E.6.1, "Title IV-E Foster Care, Adoption Assistance and Guardianship Assistance Eligibility", OAR 413-100-0000 to 413-100-0345.

(E) Be in the Department's or participating tribe's legal custody for a minimum of:

(i) Six months, if the potential guardian is the child's relative as defined by OAR 413-070-0905(21)(a) through (d); or

(ii) Twelve months, if the potential guardian is a substitute caregiver who meets the definition of a relative under OAR 413-070-0905(21)(e)(B).

(F) Demonstrate a strong attachment to the potential guardian.

(G) Be consulted regarding the guardianship arrangement when the child has attained 14 years of age.

(2) When guardianship as a permanency plan has been approved, the caseworker must document each of the following in the child's case plan:

(a) How the child meets the eligibility requirements;

(b) The steps the Department has taken to determine that return to the home or adoption is not appropriate;

(c) The efforts the Department has made to discuss adoption with the child's relative caregiver and the reasons why adoption is not an option;

(d) The efforts the Department has made to discuss kinship guardianship with the child's parent or parents or the reasons why efforts were not made;

(e) The reason why a permanent placement with a potential relative guardian and receipt of a kinship guardian assistance payment is in the child's best interests; and

(f) The reasons for any separation of siblings during placement. If the child's placement with the potential relative guardian does not include siblings, the case plan must also include a description of the reasons why the child is separated from siblings during placement.

(3) Extension of Guardianship Assistance for a Young Adult.

(a) The Department may approve an extension of a guardianship assistance agreement for an individual under the age of 21 when the individual reaches the age of 18 on or after October 1, 2011 and meets paragraph (A) of this subsection, or when the individual reaches the age of 18 on or after June 30, 2011 and meets paragraph (B) of this subsection.

(A) An initial guardianship assistance agreement is entered into on behalf of a child and at the time of the child's 18th birthday, he or she:

(i) Qualifies as an individual with a developmental disability as determined by the Oregon Department of Human Services, Developmental Disabilities Services;

(ii) Qualifies as an individual with a developmental disability as determined by the equivalent developmental disability program if living in a state other than Oregon; or

(iii) Qualifies for Supplemental Security Income (SSI) as determined by the Social Security Administration.

(B) An initial guardianship assistance agreement is entered into on behalf of a child who is age 16 or 17 when the child, upon reaching the age of 18, is:

(i) Completing secondary school (or equivalent);

(ii) Enrolled in post-secondary or vocational school;

(iii) Participating in a program or activity that promotes or removes barriers to employment;

(iv) Employed for at least 80 hours a month; or

(v) Determined incapable of any of the above due to a documented medical condition, physical disability, or mental disability.

(b) In order for the extension of guardianship assistance as described in paragraph (a)(A) of this section to continue on behalf of a young adult, the guardian or potential guardian must submit to the Department, upon request and before the child's 18th birthday, documentation from the agency making the determination described in subparagraphs (a)(A)(i) to (iii) of this section.

(c) If an individual does not meet the requirements under subsection (a) of this section or the guardian or potential guardian does not submit the documentation before the individual's 18th birthday as required in subsection (b) of this section, the Department may not approve an extension of a guardianship assistance agreement.

(d) An extension of guardianship assistance approved pursuant to subsection (a) of this section will continue until the young adult turns 21 years old.

(e) In order for the extension of guardianship assistance as described in paragraph (a)(B) of this section to continue on behalf of a young adult, the guardian must submit to the Department, upon request:

(A) Proof that the young adult continues to be enrolled in a secondary, post-secondary, vocational school, or a program or activity that promotes or removes barriers to employment;

(B) Proof that the young adult is employed for at least 80 hours a month; or

(C) Verification from a medical or mental health professional that the young adult is incapable of attending school or obtaining employment due to a medical condition.

(f) The Department will review the eligibility of the young adult for continued guardianship assistance when an extension of guardianship assistance has been granted under subsection (a) of this section:

(A) At least annually; or

(B) When information is received that indicates the young adult may no longer be eligible for guardianship assistance or may be eligible for guardianship assistance in a different amount.

(g) The guardian must notify the Department, orally or in writing, of any changes in circumstances that may make the young adult:

(A) Ineligible for guardianship assistance; or

(B) Eligible for guardianship assistance in a different amount.

(4) Siblings. Each sibling of a child or young adult eligible for guardianship assistance is also eligible for guardianship assistance, without meeting the eligibility requirements set forth in paragraphs (1)(c)(B) to (F) of this rule, when:

(a) The sibling is placed in a guardianship with the same potential guardian or guardian, whether the siblings are placed at the same time or not; and

(b) The potential guardian or guardian and the Department agree that both of the following are appropriate:

(A) Placing the child's sibling in the home of the potential guardian or guardian; and

(B) Guardianship as a permanency plan for the sibling.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 24-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-070-0919

### Eligibility and Requirements for a Child or Young Adult in the Care or Custody of a Participating Tribe

(1) In addition to guardianship assistance program criteria under these rules, OAR 413-070-0900 to 413-070-0974, the following requirements apply to a child in the care or custody of a participating tribe:

(a) The child must be placed in a foster home approved by the participating tribe that meets the certification and licensing standards of the participating tribe; and

(b) The participating tribe must document how continued placement with the potential guardian is in the best interests of the child and meets the child's needs for safety and permanency.

(2) The participating tribe must:

(a) Conduct and prepare a written home study of the guardian;

(b) Have a current Title IV-E agreement with the Department which includes participation in the guardianship assistance program;

(c) Notify the Adoption Assistance and Guardianship Assistance Unit within 30 days after reestablishing custody of a child or young adult in a guardianship placement established under these rules, OAR 413-070-0900 to 413-070-0974; and

(d) Provide the Adoption Assistance and Guardianship Assistance Unit with a copy of the court order terminating the guardianship within 30 days of the termination, when applicable.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-070-0925

### Eligibility: Prospective Guardian

The Department may approve a potential guardian for guardianship assistance when the potential guardian:

(1) Meets the requirements of Child Welfare Policy I-E.3.6.1, "Guardianship as a Permanency Plan", OAR 413-070-0665(2); and

(2) Agrees to ensure that, if the child has attained the minimum age for compulsory attendance under the law of the state of residence but has not completed secondary school, the child is:

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- (a) Enrolled in an elementary or secondary school as determined by the law of the state of residence;
- (b) Home schooled in accordance with the law of the state of residence;
- (c) Enrolled in an independent study program in accordance with the law of the state of residence; or
- (d) Incapable of attending school due to a documented medical condition.

Stat. Auth.: ORS 418.005 & 418.340  
Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340  
Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 1-2010(Temp), f. & cert. ef. 2-1-10 thru 6-14-10; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 24-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-070-0934

### Application Requirements

(1) Except as described in subsections (a) — (c) of this section, the Adoption Assistance and Guardianship Assistance Unit must begin negotiation of the guardianship assistance agreement no later than 60 days after receipt of the completed guardianship assistance application.

(a) The Department may delay negotiation of the guardianship assistance base rate when the child is due for an updated CANS screening, a new CANS screening is warranted, or a CANS screening is in process or completed but a decision is pending regarding the level of care payment under OAR 413-020-0230.

(b) When there are extenuating circumstances regarding the child or family, the Department may delay negotiation following a request by the caseworker, guardian, or potential guardian.

(c) When a guardianship assistance application is delayed, the Adoption Assistance and Guardianship Assistance Unit must begin negotiation of the guardianship assistance base rate no later than 30 days from receipt of the final decision regarding the level of care payment.

(2) A guardianship assistance application is considered complete when the Adoption Assistance and Guardianship Assistance Unit has received a signed application and all supporting documentation.

Stat. Auth.: ORS 418.005, & 418.340  
Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340  
Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; Suspended by CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0965, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 24-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-070-0939

### Guardianship Assistance Payments, Medical Assistance, and Nonrecurring Guardianship Expenses

(1) When a guardianship assistance payment or medical assistance is not being provided, a potential guardian or guardian may enter into a guardianship assistance agreement only.

(2) The monthly guardianship assistance payment may not exceed the total of:

- (a) The guardianship assistance base rate; and
- (b) When applicable, the level of care payment determined by the CANS screening conducted under OAR 413-020-0230.

(3) The monthly guardianship assistance base rate:

(a) Is determined through discussion and negotiation between the Department and the potential guardian or guardian.

(b) May not exceed the current foster care base rate payment the child or young adult would be eligible to receive in foster care as determined by OAR 413-090-0010(1)(b).

(c) Is negotiated between the potential guardian of a child or guardian of a child or young adult and the Department, taking into consideration relevant factors which include, but are not limited to:

- (A) The ordinary and special needs of the child or young adult.
- (B) The services and goods required to meet the needs of the child or young adult.

(C) The cost of the services and goods required to meet the needs of the child or young adult.

(D) The circumstances of the potential guardian or guardian and their ability to provide the required services and goods for the child or young adult.

(E) The resources available to the potential guardian or guardian such as medical coverage, private health insurance, public education, other income sources, and community resources.

(F) A guardianship assistance payment may be reduced when other sources of income are received by the potential guardian or guardian or the child or young adult.

(d) Is intended to combine with the resources of the potential guardian or guardian to provide for the needs of the child or young adult.

(4) When, during negotiation of the guardianship assistance base rate payment, the Adoption Assistance and Guardianship Assistance Coordinator and the potential guardian or the guardian are unable to reach agreement, the Adoption Assistance and Guardianship Assistance Coordinator, the potential guardian, or the guardian may request a review by the Guardianship Assistance Review Committee. When a review is requested:

(a) An Adoption Assistance and Guardianship Assistance Coordinator must:

(A) Prepare documentation for the scheduled Guardianship Assistance Review Committee;

(B) Notify the potential guardian or guardian and the assigned caseworkers of the date of the committee; and

(C) Attend and participate in the Guardianship Assistance Review Committee.

(b) The potential guardian or guardian may provide written documentation to the Adoption Assistance and Guardianship Assistance Coordinator for review and consideration by the Guardianship Assistance Review Committee.

(c) The caseworker for the potential guardian and the caseworker for the child may participate in a Guardianship Assistance Review Committee meeting and may present information and respond to questions. The caseworkers may not participate in the deliberations of the Guardianship Assistance Review Committee.

(d) The Guardianship Assistance Review Committee members must:

(A) Consider written documentation provided by the potential guardian or guardian, caseworkers, and the Adoption Assistance and Guardianship Assistance Coordinator.

(B) Review materials submitted to the Guardianship Assistance Review Committee, deliberate, and make a recommendation regarding the guardianship assistance base rate.

(e) At the conclusion of the Guardianship Assistance Review Committee, the Adoption Assistance and Guardianship Assistance Coordinator must:

(A) Document the recommendation of the Guardianship Assistance Review Committee; and

(B) Submit the recommendation to the Assistant Adoption Program Manager or designee within one business day of the Guardianship Assistance Review Committee meeting.

(f) The Assistant Adoption Program Manager or designee must:

(A) Attend the Guardianship Assistance Review Committee and may ask clarifying questions, but does not participate in the deliberation or recommendation of the Guardianship Assistance Review Committee; and

(B) Make a decision and provide written notification of the decision regarding the guardianship assistance base rate to the Adoption Assistance and Guardianship Assistance Coordinator within one business day of receipt of the documentation from the Guardianship Assistance Review Committee.

(g) The Adoption Assistance and Guardianship Assistance Coordinator must notify the potential guardian or guardian of the Assistant Adoption Program Manager or designee's decision, including a written notice, within ten business days of the decision.

(5) A potential guardian or guardian unsatisfied with the guardianship assistance base rate decision of the Assistant Adoption Program Manager or designee under paragraph (4)(f)(B) of this rule may submit a written request for review of the decision by the Adoption Program Manager or designee within 14 days of the written notice in subsection (4)(g) of this rule.

(6) The Adoption Program Manager or designee must complete each of the following actions.

(a) Review and consider:

(A) The materials submitted to the Guardianship Assistance Review Committee;

(B) The recommendation of the committee;

(C) The decision made by the Assistant Adoption Program Manager or designee following the review committee recommendation; and

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(D) The information presented by the potential guardian or guardian in the request submitted under section (5) of this rule.

(b) Make a decision within 60 days of the date of the request for review.

(c) Provide written notification to the potential guardian or guardian and the Adoption Assistance and Guardianship Assistance Coordinator within ten business days of the decision in subsection (b) of this section.

(7) The monthly level of care payment:

(a) Is determined based on the results of a CANS screening conducted under OAR 413-020-0230.

(b) Cannot exceed the amount of the level of care payment set forth in OAR 413-090-0010(2)(g).

(c) Is included in the guardianship assistance payment when the child or young adult qualifies for a level of care payment and when requested by the potential guardian or guardian.

(8) When a potential guardian or guardian is unsatisfied with the final guardianship assistance offer from the Department, consisting of the guardianship assistance base rate and, when applicable, a level of care payment, the potential guardian or guardian has the right to a contested case hearing under Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535.

(9) An initial guardianship assistance payment begins on the date the state or tribal court legally establishes the guardianship provided there is a written guardianship assistance agreement signed by all parties.

(10) A guardianship assistance payment to a guardian for the child or young adult is inalienable, not assignable or transferable, and exempt from execution, levy, attachment, garnishment, and other legal process under the laws of Oregon, as long as the payment can be identified as a guardianship assistance payment and is kept separate from other money in the guardian's possession.

(11) The guardian may apply to be the designated payee for any benefit the child or young adult receives if the benefit program allows such application.

(12) Medical assistance and social services.

(a) A child or young adult who is the subject of a guardianship assistance agreement funded by Title IV-E funds as authorized by the Fostering Connection to Success and Increasing Adoptions Act of 2008 (Public Law 110-351) is categorically eligible for medical assistance through Title XIX and social services under Title XX when:

(A) The guardianship is in effect; and

(B) A guardianship assistance payment is being made to the guardian.

(b) A child or young adult who is not eligible for Title XIX medical assistance is eligible for medical assistance under Child Welfare Policy I-E.6.2, "Title XIX and General Assistance Medical Eligibility", OAR 413-100-0400 to 413-100-0610 when:

(A) The child or young adult resides in Oregon; or

(B) The child or young adult resides outside of Oregon but in the United States or a territory or possession thereof and is not able to obtain medical assistance in his or her place of residence.

(c) Medical assistance is not provided for a child or young adult who resides outside of the United States or a territory or possession thereof.

(13) Nonrecurring guardianship expenses.

(a) The Department will reimburse a guardian up to \$2,000 per eligible child for approved nonrecurring guardianship expenses, including but not limited to:

(A) The cost of a home study;

(B) Court costs;

(C) Attorney fees;

(D) Physical and psychological examinations required for the guardianship; and

(E) Travel to visit with the child prior to placement.

(b) Payment for nonrecurring guardianship expenses may not duplicate expenses covered by the Interstate Compact for Placement of Children or another resource available to the potential guardian.

(c) Documentation of nonrecurring guardianship expenses is required and must be submitted prior to execution of the nonrecurring guardianship assistance agreement. The nonrecurring guardianship assistance agreement, indicating the nature and amount of the nonrecurring guardianship expenses, must be signed by the potential guardian and a Department representative prior to the establishment of the guardianship.

(d) Payment for nonrecurring guardianship expenses is made when the Department receives the court order establishing the guardianship.

(14) Overpayment.

(a) If the Department issues a guardianship assistance payment on behalf of a child or young adult after the date the guardianship assistance

agreement automatically expires, the Department may seek reimbursement of the overpayment and the guardian must repay the Department.

(b) If the guardian fails to comply with any provisions of the guardianship assistance agreement, including failing to notify the Department of any of the events or circumstances described in OAR 413-070-0964 and 413-070-0974(2), the Department may collect any guardianship assistance payment or medical assistance which the Department would not have provided had the guardian complied with the provisions of the guardianship assistance agreement.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0930, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 1-2010(Temp), f. & cert. ef. 2-1-10 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 24-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-070-0944

### Legal Expenses of a Guardian

The Department may not authorize payment for legal services provided:

(1) For the potential guardian or guardian in connection with a contested case hearing; or

(2) To defend or retain a guardianship upon challenge by another party once a guardianship is established.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0960, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-070-0949

### Guardianship Assistance Agreement Requirements

(1) Before a guardian may receive guardianship assistance, there must be a negotiated written guardianship assistance agreement between the Department and the potential guardian or guardian signed by all parties prior to the court order establishing the legal guardianship.

(2) The guardianship assistance agreement must include each of the following:

(a) A statement indicating that a guardianship assistance agreement remains in effect without regard to the state of residency of the guardian.

(b) The effective date of the initial guardianship assistance agreement is the date of the court order of guardianship.

(c) That the Department will pay the nonrecurring guardianship expenses associated with obtaining legal guardianship of the child, to the extent the nonrecurring guardianship expenses do not exceed \$2,000 per child.

(d) That the child or young adult for whom the Department is providing a guardianship assistance payment remains eligible for medical assistance provided:

(A) The guardianship remains in effect;

(B) A payment is being made; and

(C) The child or young adult is placed in the United States, a territory or possession thereof.

(e) Information regarding garnishment of guardianship assistance payments as set forth in OAR 413-070-0939(10).

(f) That the guardian agrees to comply with the reporting requirements under OAR 413-070-0964.

(g) That the guardian understands that a guardianship assistance agreement may be reviewed and the guardianship assistance may be adjusted, suspended, or terminated under OAR 413-070-0974.

(h) A statement indicating that the guardian understands that the provisions of ORS 192.520 allow the Oregon Health Plan (OHP) and the OHP managed care plans without the authorization of the guardian, child, or young adult to exchange the following protected health information for the purpose of treatment activities related to the behavioral or physical health of the child or young adult when the child or young adult is the recipient of OHP services:

(A) The name and Medicaid recipient number of the child or young adult;

(B) The name of the hospital or medical provider of the child or young adult;

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- (C) The Medicaid number of the hospital or medical provider;
- (D) Each diagnosis for the child or young adult;
- (E) Each treatment activity's date of service;
- (F) Each treatment activity's procedure or revenue code;
- (G) The quantity of units or services provided; and
- (H) Information about medication prescription and monitoring.

(i) The amount of the guardianship assistance and the manner in which it is to be provided.

(j) The basis and requirements for periodic changes in the guardianship assistance payment, in consultation with the guardian, based on the circumstances of the guardian and the needs of the child or young adult.

(k) The additional services and assistance for which the child or young adult and guardian are eligible under the agreement and the procedure by which the guardian may apply for such services.

(l) When the Department has agreed to include such language, that the Department may continue to provide guardianship assistance for a child or young adult when child or young adult moves out of the home of the guardian to attend college or live independently.

(3) The Department must provide the guardian with a copy of the guardianship assistance agreement.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0935, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 1-2010(Temp), f. & cert. ef. 2-1-10 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 24-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-070-0959

### Court Order of Guardianship

(1) Guardianship assistance may only be provided for a legal guardianship established under ORS 419B.365 or 419B.366, as provided under ORS 419B.367 to 419B.369, or as provided by the statutory code or laws of a participating tribe.

(2) The Department or participating tribe may not pursue a court order establishing an assisted guardianship until a guardianship assistance agreement between the Department and the potential guardian has been signed by all parties.

(3) The Department or participating tribe, through counsel if the child is in the legal custody of the Department, must move the court for an order establishing the guardianship and, when the child is in the legal custody of the Department or participating tribe, directing one of the following:

(a) Termination of Department or participating tribe's legal custody and dismissal of the Department or participating tribe as a party to the case; or

(b) If the child has been committed permanently to the Department, an order setting aside the order of permanent commitment and relieving the Department of responsibility for the care, placement, and supervision of the child.

(4) The Department may not provide guardianship assistance if the court establishes guardianship but orders the Department or participating tribe to continue supervision of the child or guardian.

(5) The guardian is not eligible for payments provided under Child Welfare Policies I-E.5.1, "Foster Care Payments for a Child or Young Adult Living with a Certified Family or Living Independently", OAR 413-090-0000 to 413-090-0050 and I-E.5.1.2, "Personal Care Services", OAR 413-090-0100 to 413-090-0210 once the guardianship is effective and the Department's or participating tribe's custody of the child is dismissed by court order.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0937, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-070-0964

### Changes That Must be Reported and Annual Report

(1) A guardian receiving guardianship assistance must immediately report, orally or in writing, to the Adoption Assistance and Guardianship Assistance Unit any changes in circumstances of the child, young adult, or guardian that makes the child or young adult ineligible for guardianship assistance including when:

(a) The child or young adult:

(A) Is emancipated;

(B) Dies;

(C) Marries; or

(D) Is adopted.

(b) The court:

(A) Vacates the guardianship; or

(B) Terminates wardship over the child or young adult, unless the guardianship is a tribal court guardianship and the guardianship remains in effect under tribal law.

(2) A guardian receiving a guardianship assistance payment must immediately report, orally or in writing, to the Department's Adoption Assistance and Guardianship Assistance Unit any changes in circumstances of the child, young adult, or guardian that may make the child or young adult ineligible for guardianship assistance including when:

(a) The child or young adult:

(A) Is out of the home of a guardian for more than a thirty day period or, if more than one guardian, is out of the home of both guardians for more than a thirty day period;

(B) Has a change in needs including but not limited to eligibility for a change in the level of care payment based on a new CANS screening;

(C) Is placed in substitute care;

(D) Is no longer receiving financial support from a guardian or, if there is more than one guardian, both guardians;

(E) Is incarcerated for more than three consecutive months; or

(F) Has a change in any benefit received other than tribal dividend payments.

(b) A guardian is, or if more than one guardian, both guardians are:

(A) No longer legally responsible for the financial support of the child or young adult;

(B) No longer responsible for the child or young adult; or

(C) No longer providing support to the child or young adult.

(c) A guardian seeks to terminate or modify the guardianship.

(d) The court:

(A) Modifies the guardianship, or

(B) Awards child custody or guardianship to another individual.

(3) A guardian receiving a guardianship assistance payment must immediately report, orally or in writing, to the Adoption Assistance and Guardianship Assistance Unit the following:

(a) When there are two guardians and one guardian dies, the surviving guardian must notify the Department.

(b) When there is a change in address.

(c) When a guardian, child, or young adult is planning to move from his or her state of residency.

(4) The guardian, within 30 days after each annual anniversary of the court appointment of guardianship, must file a written report with the court and submit a copy of the report to the Adoption Assistance and Guardianship Assistance Unit.

(5) When the court does not require an annual report under section (4) of this rule as part of the appointment of guardianship, the Department requires the guardian to submit an annual report to the Adoption Assistance and Guardianship Assistance Unit within 30 days after each anniversary of the appointment of guardianship.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 19-2003(Temp), f. & cert. ef. 1-23-03 thru 6-20-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0945 & 413-070-0955, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 1-2010(Temp), f. & cert. ef. 2-1-10 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 24-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-070-0969

### Renegotiation of a Guardianship Assistance Agreement

(1) A potential guardian or guardian may request that the Department consider renegotiation of the guardianship assistance agreement. The request for renegotiation must:

(a) Be in writing in a format provided by the Department to the potential guardian or guardian;

(b) Document changes in the circumstances of the potential guardian or guardian, when applicable;

(c) Document the needs of the child or young adult;

(d) Provide information about the financial expenses of the potential guardian or guardian in meeting the needs of the child or young adult;

# ADMINISTRATIVE RULES

(e) Provide information about the expenses required to meet the needs of the child or young adult; and

(f) Provide additional documentation of the child or young adult's current behaviors when the child or young adult meets the eligibility requirements for consideration of a level of care payment under OAR 413-020-0230 and the potential guardian or guardian is requesting a level of care payment.

(2) Renegotiation of the guardianship assistance base rate will be conducted as described in OAR 413-070-0939(2) and (3).

(3) Referrals for CANS screenings are described in OAR 413-020-0230.

(4) The Department may require a renegotiation of the guardianship assistance agreement when the Department determines that the child or young adult is eligible for guardianship assistance in a different amount, as described in OAR 413-070-0974.

(5) A new guardianship assistance agreement must be signed by all parties each time a new guardianship assistance payment is agreed upon by the potential guardian or guardian and the Department.

(6) Unless section (7) of this rule applies, the Department may authorize a renegotiated guardianship assistance payment increase or decrease beginning on a date no earlier than the first day of the month in which the Department receives the written request for renegotiation.

(7) The Department may approve up to twelve months of retroactive payments unless a contested case hearing was requested and a subsequent decision necessitates a payment of more than twelve months. The decision includes any decision by the Department including:

- (a) A final order;
  - (b) A stipulated final order;
  - (c) A settlement agreement; or
  - (d) Any other agreement resulting in withdrawal of the contested case.
- Stat. Auth.: ORS 418.005 & 418.340  
Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340  
Hist.: CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-070-0970

### Guardianship Social Support Services

The guardian or child in an assisted guardianship may request family support services as described in Child Welfare Policy I-B.2.3.1, "Family Support Services", OAR 413-030-0000 to 413-030-0030 from the Department.

Stat. Auth.: ORS 418.005 & 418.340  
Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340  
Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; Suspended by CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-070-0974

### Review, Adjustment, Suspension, Expiration, and Termination of Guardianship Assistance

(1) The Department may review a guardianship assistance agreement when the Department:

(a) Receives information indicating that the child or young adult may no longer be eligible for guardianship assistance or may be eligible for guardianship assistance in a different amount, including when the Department receives information regarding any of the circumstances described in OAR 413-070-0964;

(b) Determines, when the child or young adult is not residing in the home of the guardian, that a periodic review of the guardianship assistance agreement is required;

(c) Receives information that indicates a review is necessary based on a change in the needs of the child or young adult or circumstances of the family;

(d) Receives information that the young adult no longer meets the requirements for continued assistance, if the Department has agreed to extend guardianship assistance under OAR 413-070-0917(3); or

(e) Determines that the guardian has not complied with the requirements of the guardianship assistance agreement.

(2) Department review of a guardianship assistance agreement may result in a renegotiation, suspension, adjustment, or termination of the guardianship assistance agreement or guardianship assistance payments.

(3) Guardianship assistance may be adjusted at any time by mutual agreement between the guardian and the Department.

(4) When there is an across-the-board reduction or increase in the base rate payment or level of care payment that the child or young adult would be eligible to receive if the child or young adult were in foster care, the Department may, after a case-by-case review and without concurrence of the guardian, adjust the monthly guardianship assistance payment to an amount that does not exceed the new foster care payment the child or young adult would be eligible to receive if currently in foster care, as follows:

(a) In the case of a reduction, only those payments that exceed the amount the child or young adult would be eligible for if currently in foster care would be reduced, and the reduction would only be to the amount that the child or young adult would be eligible to receive if currently in foster care.

(b) In the case of an increase, the Department, considering the needs of the child or young adult and the circumstances of the guardian, may increase the guardianship assistance payment to an amount that does not exceed the new foster care payment the child or young adult would receive if currently in foster care.

(5) If, upon review under section (1) of this rule or an adjustment under section (4) of this rule, the Department intends to adjust guardianship assistance without the concurrence of the guardian, the Department will provide the guardian and the child or young adult with written notice as described in Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535.

(6) Unless terminated under sections (7) or (8) of this rule, the guardianship assistance agreement and the Department's obligation to provide guardianship assistance expires automatically on the date any of the following events occur:

(a) When the child:

(A) Reaches the age of 18 or, when an extension has been granted under OAR 413-070-0917(3), under the age of 21 as documented in the guardianship assistance agreement;

(B) Is emancipated;

(C) Dies;

(D) Marries;

(E) Is adopted; or

(F) No longer meets the requirements for continued guardianship assistance if the Department has agreed to continue guardianship assistance under OAR 413-070-0917(3).

(b) A guardian dies, or if more than one guardian, both die.

(c) The court:

(A) Vacates the guardianship order or otherwise terminates the guardianship;

(B) Terminates wardship over the child or young adult, unless the guardianship is a tribal court guardianship and the guardianship remains in effect under tribal law; or

(C) Appoints another individual as guardian of the child or young adult.

(7) Guardianship assistance may be suspended at any time by mutual agreement between the Department and the guardian.

(8) After a review and on a case-by-case basis, the Department may terminate a guardianship assistance agreement upon ten days written notice to the potential guardian or guardian when the Department determines that:

(a) The potential guardian or guardian is no longer responsible for the child or young adult;

(b) The potential guardian or guardian is no longer providing support to the child or young adult; or

(c) The child or young adult is no longer eligible for guardianship assistance or is eligible for guardianship assistance in a different amount.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0940, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 1-2010(Temp), f. & cert. ef. 2-1-10 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 24-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 31-2011

**Filed with Sec. of State:** 12-27-2011

**Certified to be Effective:** 12-28-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 413-070-0063



# ADMINISTRATIVE RULES

**Subject:** OAR 413-070-0063 is being amended to clarify the definition of the term relative as used in rules that set out the Department's responsibility to search for and engage a child or young adult's relatives. This amendment also aligns the definition with the definition of the term "relative" used in other child welfare rules, and makes permanent changes to this rule adopted by temporary rule on June 30, 2011. In addition, the above rule may also be changed to reflect new Department terminology and to correct formatting and punctuation.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-070-0063

### Definitions

The following definitions apply to OAR 413-070-0060 to 413-070-0093:

(1) "Caregiver relationship" means a relationship between a person and a child that meets the requirements of the following subsections:

(a) The relationship has existed for the 12 months immediately preceding the initiation of a dependency proceeding, at least six months during a dependency proceeding, or half of the child's life if the child is less than six months of age.

(b) The person had physical custody of the child or resided in the same household as the child and provided the child on a daily basis with the love, nurturing, and other necessities required to meet the child's psychological and physical needs.

(c) The child depended on the relationship to meet the child's needs.

(d) A caregiver relationship does not include a relationship between a child and a person who is the unrelated foster parent of the child unless the relationship continued for a period of at least twelve consecutive months.

(2) "Certificate of approval" means a document that the Department issues to approve the operation of a child-specific relative caregiver home, child-specific foster home, pre-adoptive home, or a regular foster home.

(3) "Child" means a person under 18 years of age.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "Designee" means a person who the designator directly and immediately supervises or a person with equal or greater management responsibility than the designator.

(6) "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.

(7) "Indian child" is any unmarried person under 18 years of age who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(9) "Registered domestic partner" means an individual joined in a domestic partnership that has been registered by a county clerk in accordance with ORS 106.300 to 106.340.

(10) "Relative" means:

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a relative under this paragraph, the child or young adult must have had a relationship with the spouse prior to the child or young adult entering substitute care.

(F) For the purposes of an international adoption, relative means an individual described in paragraphs (A) to (D) of this subsection.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380.

(C) A stepparent described in OAR 413-100-0020(25)(e) or former stepparent if the child or young adult had a relationship with the former stepparent prior to the child or young adult entering substitute care; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to entering substitute care.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a relative in paragraphs (A) to (D) of subsection (a) of this section.

(d) An individual, although not related by blood, adoption, or marriage identified as:

(A) A member of the family by the child or young adult or by the family of the child or young adult; and

(B) An individual who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the time the Department placed the child in substitute care.

(e) For eligibility for the Guardianship Assistance program:

(A) A stepparent is considered a parent and is not a relative for the purpose of eligibility for Guardianship Assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the child's adoptive or biological parent has been terminated by divorce or death.

(B) A foster parent may only be considered a relative for the purpose of eligibility for Guardianship Assistance and only when the requirements of all of the following subparagraphs are met:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanency plan of guardianship;

(iii) The foster parent has cared for the child for at least the past 12 consecutive months; and

(iv) The Department has approved the foster parent for consideration as a guardian.

(11) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(12) "Relative search" means the efforts of the Department to identify, locate, and document the contact with a child or young adult's relatives.

(13) "Safety service provider" means a participant in a protective action or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety.

(14) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the children or young adult's legal or biological parents; or

(c) Through a legal or biological parent who is the registered domestic partner of the children or young adults' legal or biological parent.

(15) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(16) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192)

# ADMINISTRATIVE RULES

Hist.: SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999, f. & cert. ef. 4-29-99; SOSCF 3-2001(Temp) f. & cert. ef. 1-24-01 thru 7-22-01; SOSCF 34-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 10-2010, f. & cert. ef. 7-1-10; CWP 10-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 31-2011, f. 12-27-11, cert. ef. 12-28-11

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 32-2011

**Filed with Sec. of State:** 12-27-2011

**Certified to be Effective:** 12-28-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 413-100-0135, 413-100-0150

**Subject:** These rule changes are part of the implementation of PL 110-351 Fostering Connections to Success and Increasing Adoptions Act of 2008 (122 Stat. 3949 - 3981) for Title IV-E eligibility. OAR 413-100-0135 is being amended to clarify the removal and specified relative criteria as it applies to children ages 0 through 17, and to young adults, ages 18 through 20. OAR 413-100-0150 is being amended to explain that OASDI means Old-Age, Survivors, and Disability Insurance (OASDI) so the rule can be better understood by Department staff or the public. These rule changes make permanent changes adopted by temporary rule on June 30, 2011.

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

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-100-0135

### Eligibility Determinations — Living with a “Specified Relative” and “Removal”

(1) Specified Relative Requirements. To meet Title IV-E eligibility requirements the child or young adult, at the time of the child’s removal from his or her home, must have been living with and removed from the same specified relative, as defined in OAR 413-100-0020.

(2) Removal Requirements for a child age 17 or younger. To meet Title IV-E eligibility requirements, the child’s removal from the home must occur pursuant to:

(a) A voluntary custody agreement or voluntary placement agreement, signed by a parent or specified relative, that results in the “physical” or “constructive” removal of the child from the home; or

(b) A judicial order that requires the child’s “physical” or “constructive” removal from the parent or specified relative and gives the Department responsibility for the placement and care of the child.

(3) Removal Requirements for a young adult age 18, 19 or 20. To meet Title IV-E eligibility requirements, the young adult’s removal from the home must occur pursuant to:

(a) Court ordered removal prior to age 18. A judicial order that requires the child’s “physical” or “constructive” removal from the parent or specified relative and gives the Department responsibility for the placement and care of the child. No new court ordered removal is required at the age of 18 or older to remain eligible for Title IV-E foster care maintenance payments, as long as the young adult remains in continuous foster care.

(b) A voluntary placement agreement prior to age 18, signed by a parent or specified relative, that results in the “physical” or “constructive” removal of the child from the home. No new voluntary placement agreement is required after the young adult attains the age of 18 for Title IV-E purposes as long as the young adult remains in continuous foster care.

(4) Removal Home Requirements. Effective June 9, 2006, for Title IV-E eligibility purposes, the child’s removal home must meet the requirements of one of the following subsections:

(a) Physical Removal. The Department considers a child’s removal a physical removal when the judicial order or the signing of a voluntary custody or voluntary placement agreement results in the removal of the child from the physical custody of the parent or specified relative and gives the Department responsibility for the placement and care of the child.

(b) Constructive Removal. The Department considers a child’s removal a constructive removal:

(A) When the child is living in the home of an interim caretaker (relative or non-relative) at the time of removal but the child lived with a parent or specified relative within the six months prior to the judicial order, voluntary custody agreement, or voluntary placement agreement which resulted in the constructive removal of the child from the parent or specified relative and gave the Department responsibility for the placement and care of the child; or

(B) When the parent or specified relative and the child live in another relative’s home, the Department considers the child’s removal a constructive removal from the parent or specified relative if:

(i) The parent or specified relative moves out of the home within the six months prior to the removal;

(ii) The child remains in the relative’s home; and

(iii) Within six months of the date the parent or specified relative left the relative’s home there is a judicial order or voluntary custody or placement agreement that results in the removal of the child from the parent or specified relative and gives the Department responsibility for the placement and care of the child.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050, 418.005 & 418.625

Hist.: SOSCF 20-2000(Temp), f. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 1-2007(Temp), f. & cert. ef. 2-7-07 thru 8-6-07; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 14-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 32-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-100-0150

### Parental Deprivation

(1) The continued absence of one or both birth or adoptive parents, or a stepparent from the home constitutes the basis for deprivation of parental support or care.

(2) Deprivation of parental support in relation to the home from which the child is removed exists when:

(a) Death of a parent. Either parent of a child is deceased.

(b) Continued absence of the parent from the home. There is a Continued Absence of one or both parents when:

(A) One or both parents are out of the home and the nature of this absence is such as to either interrupt or terminate the parent’s functioning as a provider of maintenance, physical care, or guidance for the child;

(B) There is evidence of continued absence of over 30 days duration; or

(C) Predictable absence due to divorce, legal separation, incarceration, or other verified and documented circumstances.

(c) Physical or mental incapacity. Incapacity is documented as parental deprivation in a one-parent or two-parent household as follows:

(A) One or both parents’ receipt of Supplemental Security Income (SSI) or being found eligible for Old-Age, Survivors, and Disability Insurance (OASDI) or SSI based on disability or blindness;

(B) One or both parents receive Social Security Benefits (SSB) based on disability or blindness; or

(C) One or both parents have a physical or mental defect, illness, or impairment that is expected to last at least 30 days, is supported by competent medical testimony, and substantially reduces or eliminates the parent’s ability to support or care for the child.

(d) Unemployment or underemployment may be documented as parental deprivation in a two-parent household if each parent meets one of the following criteria:

(A) Is working less than 100 hours per month; or

(B) Has a temporary one-month increase to over 100 hours, but:

(i) Worked less than 100 hours in each of the two previous months; and

(ii) Is expected to work less than 100 hours in the following month.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050, 412.144 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 14-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 32-2011, f. 12-27-11, cert. ef. 12-28-11

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 33-2011

**Filed with Sec. of State:** 12-27-2011

**Certified to be Effective:** 12-28-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 413-100-0900, 413-100-0905, 413-100-0910, 413-100-0915, 413-100-0920, 413-100-0925, 413-100-0930, 413-100-0940

# ADMINISTRATIVE RULES

**Subject:** OAR 413-100-0905 defining certain terms used in rules about educational services for a child or young adult in substitute care is being changed to define the term “child”

OAR 413-100-0915 about ensuring the enrollment of a child or young adult in substitute care in school or an educational setting is being amended to clarify the approval process for international study, clarify who has responsibilities for decision making on a child’s school or educational setting, and clarify the Department’s responsibilities to maintain a child in full time attendance in school, except for medical reasons, under Chapter 581 of the Oregon Administrative Rules.

OAR 413-100-0925 about consent for special education services for a child or young adult in substitute care is being amended to clarify authority to consent to special education services for a young adult.

OAR 413-100-0930 about the right to a child’s education records for a child in substitute care is being amended to clarify the protections for special education records.

The above rules are also being amended to make permanent changes adopted by temporary rules on June 30, 2011. These rules along with OAR 413-100-0900, 413-100-0910, 413-100-0920, and 413-100-0940 are also being amended to identify defined terms.

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

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-100-0900

### Purpose

The purpose of these rules, OAR 413-100-0900 to 413-100-0940, is to describe the activities required to:

(1) Ensure that regular education and special education services are provided to promote academic achievement of a *child* or young adult in the care and custody of the Department; and

(2) Ensure that public preschool education, early intervention education programs, and appropriate post-secondary education or training opportunities are explored for an eligible child or young adult in the care or custody of the Department.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 33-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-100-0905

### Definitions

The following definitions apply to OAR 413-100-0900 to 413-100-0940:

(1) “CASA” means Court Appointed Special Advocate, a volunteer who is appointed by the court, is a party to the juvenile proceeding, and is an advocate for the child pursuant to ORS 419A.170.

(2) “Child” means a person under 18 years of age.

(3) “Department” means the Department of Human Services, Child Welfare.

(4) “GED” means a General Educational Development certificate issued pursuant to ORS 326.550.

(5) “Homeless individual” for the purposes of the McKinney-Vento Homeless Education Act means children and youth who have a right to public school enrollment and are awaiting foster care placement or are in temporary foster settings awaiting permanent placement under ORS 339.115(7).

(6) “IEP team” means the participants who determine whether the child is a child with a disability and who develop the individualized education program (IEP) for the child as described under OAR 581-015-2000(15) and 581-015-2210(1).

(7) “Parent”, except as provided otherwise in OAR 413-100-0930, means the biological or adoptive mother or the biological, legal, or adoptive father of the child.

(8) “Special education,” as defined in OAR 581-015-2000(33), means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction in the classroom, instruction in the home, and instruction in hospitals, institutions, special schools, and other settings. The term includes specially designed instruction in physical education, speech language services, vocational education, travel training, and orientation and mobility services.

(9) “Special education services” means assistance provided to a child with a disability to meet the child’s unique needs and includes instruction in the classroom, in the home, and in hospitals, institutions, special schools, and other settings.

(10) “Substitute caregiver” means a relative caregiver, foster parent, or provider who is authorized to provide care to a child who is in the legal or physical custody of the Department.

(11) “Surrogate” means an individual who has been appointed to safeguard a child’s rights in the special education decision-making process. The individual may be appointed pursuant to applicable Department of Education administrative rules and statutes or by the juvenile court.

(12) “Young adult” means a person aged 18 through 20 years.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.010, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 15-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 33-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-100-0910

### Role of the Department in the Education of a Child or Young Adult

The Department promotes the academic achievement of a child or young adult by participating as a member of the team that performs the academic assessment, planning, and goal setting for the child or young adult. The caseworker works collaboratively with the parent or legal guardian whenever appropriate; the local school district and school officials; the substitute caregiver; the surrogate, if one is appointed; the CASA and attorney of the child or young adult; local Department of Education District Homeless Liaison; and service providers involved in the case plan of the child or young adult, as appropriate, in order to ensure school enrollment and promote academic achievement.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 33-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-100-0915

### Ensure a Child or Young Adult’s Enrollment in School or Educational Setting

(1) When a child or young adult is in substitute care, the child’s caseworker must arrange school enrollment and educational services under the following requirements.

(a) Preferred school or educational setting when a child first enters substitute care and at each placement move while the child or young adult remains in substitute care. The preferred school or educational setting when a child first enters substitute care is the school or educational setting the child attended prior to entry into substitute care unless:

(A) Remaining in the same school or educational setting is not in the best interest of the child; and

(B) Continuing to attend the same school or educational setting is not consistent with the ongoing safety plan or jeopardizes the child’s safety.

(b) Consideration of continuity of previous school placement when a child is in substitute care. A child who meets the definition of a homeless individual under the McKinney-Vento Homeless Education Act must be referred to the local Department of Education District Homeless Liaison, and may qualify for services available through the Act.

(2) Responsibility for ensuring school enrollment. The caseworker must ensure a child or young adult in the Department’s care or custody is enrolled in a school or educational setting, through eligibility established under ORS 339.115.

(3) Responsibility for school or educational setting placement decisions. The juvenile court makes the finding whether it is in the child’s or young adult’s best interest to continue to attend the school that the child or young adult attended prior to placement in substitute care by the Department. The child or young adult shall be considered a resident of the school district the child or young adult attended prior to placement and may continue to attend the school the child or young adult attended prior to placement through the highest grade level of the school, in accordance with ORS 339.133.

(a) A caseworker must consider recommendations from the child’s or young adult’s parents or legal guardian, attorney, CASA, school, and surrogate, if one has been appointed, and substitute caregiver in making the decision on school enrollment.

(b) The child’s or young adult’s IEP team makes the decision regarding special education services provided to the child or young adult when the child or young adult is receiving or eligible to receive special education services.

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(c) The young adult makes the decision regarding educational services and school placement when educational rights have been passed to the young adult.

(d) When a child is in the care or custody of the Department under a Voluntary Placement Agreement, the parent or legal guardian retains legal authority over the child and continues to be responsible to exercise and perform all parental duties and legal responsibilities except those that the parent or legal guardian specifically delegates to the Department by the signed agreement.

(4) Regardless of the authority to make school or educational placement setting decisions in section (3) of this rule, the caseworker must ensure the school or educational setting is consistent with the ongoing safety plan of the child or young adult.

(5) Additional responsibilities when a private school, charter school, alternative school, or international study program is considered.

(a) Private School. Except as provided in subsections (3)(c)-(d) of this rule, when considering the enrollment of the child or young adult in a private school, the caseworker must:

(A) Ensure that enrollment would be consistent with the child's or young adult's permanency plan;

(B) Determine whether the school is accredited in the state in which the school is located;

(C) Verify that an entity or person other than the Department will pay all costs except those approved under OAR 413-100-0935;

(D) Consider the religious affiliation of the child or young adult and the parent or legal guardian when considering enrollment in a religiously-affiliated private school;

(E) Consider recommendations from the child's or young adult's parents, attorney, CASA, and substitute caregiver; and

(F) Obtain approval from the Child Welfare program manager.

(b) Charter school or alternative school. Except as provided in subsections (3)(c)-(d) of this rule, when considering the enrollment of a child or young adult in a charter school or alternative school, the caseworker must:

(A) Ensure that enrollment would be consistent with the child's or young adult's permanency plan;

(B) Verify that the charter school is approved by the local school district board or the Oregon Department of Education;

(C) Consider recommendations from the child's or young adult's parents, attorney, CASA, and substitute caregiver; and

(D) Obtain approval from the Child Welfare program manager.

(c) International study program. Except as provided in subsections (3)(c)-(d) of this rule, when considering enrolling a child or young adult in an international study program, the caseworker must:

(A) Ensure that enrollment is consistent with the child's or young adult's permanency plan;

(B) Verify that the international study program is accredited;

(C) Consider recommendations from the child's or young adult's parents, attorney, CASA, and substitute caregiver;

(D) Obtain approval from the Child Welfare program manager, the District Manager, the Diversity and International Affairs Manager; and

(E) Obtain approval of the juvenile court.

(6) Additional responsibilities when considering a GED program. Except as provided in subsections (3)(c)-(d) of this rule, when considering a GED program for the child or young adult, whether the program is held at a public school or at a location other than a public school, the caseworker must:

(a) Determine, that obtaining a GED meets the child's or young adult's educational needs better than obtaining a high school diploma;

(b) Verify that a GED program is consistent with the child's or young adult's case plan;

(c) Consider recommendations from the child's or young adult's parents, attorney, CASA, and substitute caregiver; and

(d) Obtain approval from the Child Welfare program manager.

(7) Additional responsibilities when considering home schooling. Except as provided in subsections (3)(c)-(d) of this rule, when considering home schooling for the child or young adult in the substitute caregiver's home, the caseworker must:

(a) Determine that a home schooling environment would not interfere with the child's or young adult's social development;

(b) Determine that home schooling would promote inclusion in the substitute caregiver's home;

(c) Determine that a home school environment is consistent with the child's or young adult's permanency plan;

(d) Determine that the child's or young adult's enrollment in a home school program is permitted by state law in another state if the child or young adult is placed in another state through the Interstate Compact on the Placement of Children;

(e) Obtain the approval of the child's or young adult's parent, as defined in OAR 413-100-0905(7), or guardian for the substitute caregiver to act as a private teacher;

(f) Verify the substitute caregiver has provided written notification to the education service district of intent to provide home schooling;

(g) Obtain the approval of the Child Welfare program manager; and

(h) Obtain the approval of the juvenile court.

(8) Transportation to school. After the school or educational setting has been determined, the caseworker must assess the school district's available transportation options and, if school district transportation is unavailable, select and arrange the most reliable, safe, cost-effective transportation option to transport the child or young adult to and from the school or educational setting.

(9) Once a school or educational setting has been selected for a child or young adult, the caseworker must notify the school or educational setting that the child or young adult is in the legal custody of the Department and may provide information about the reason the child or young adult is in substitute care to the staff of the school or educational setting only when providing such information to a particular staff person is necessary for the child's or young adult's education planning or to ensure the safety of the child, young adult, or others in the school with whom the child or young adult has contact.

(10) Unless a child or young adult has achieved high school graduation or is incapable of attending school for a medical reason, the Department will ensure school enrollment under Chapter 581 of Oregon Administrative Rules for a child or young adult in the custody of the Department.

(11) The caseworker must document in the case plan of the child or young adult all of the following:

(a) Information about the current school or educational setting of the child or young adult.

(b) All schools or educational settings the child or young adult has attended since the date the child or young adult has been in the custody of the Department.

(c) The length of time the child or young adult has spent in each school or educational setting.

(d) The number of high school credits each child or young adult 14 years of age or older has earned.

(e) The child's surrogate, if one has been appointed.

(f) The reason for any change in the child's or young adult's school or educational setting.

(g) Information regarding the child's or young adult's educational records, which may include but is not limited to:

(A) Report cards;

(B) Transcripts;

(C) Individual Education Plan;

(D) A 504 plan, developed under the provisions of Section 504 of the Rehabilitation Act of 1973; and

(E) A transition plan.

(h) The basis the child or young adult is incapable of attending school under section (10) of this rule should that section apply.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.010, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 15-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 33-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-100-0920

### Consent for School Activities

Once the Department has determined the child's or young adult's school or educational setting, the substitute caregiver may give permission for the child or young adult to attend school-related activities such as, but not limited to, school enrollment, field trips within the state of Oregon, routine social events, sporting events, and cultural events.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 33-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-100-0925

### Consent for Special Education Services

(1) When a child or young adult is in the care and custody of the Department, and there is reason to believe the child has a disability under the Individuals with Disabilities Education Act, 20 USC §§ 1400 et seq., or

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the Oregon Department of Education administrative rules regarding special education (OAR 581, Division 15), the caseworker must identify who is the parent or surrogate making educational decisions for the child or young adult.

(2) If a surrogate has not been appointed, or if more than one person is qualified to make special education decisions for the child or young adult, the caseworker may ask the court to determine the education decision maker. Persons who qualify to make educational decisions include:

- (a) The biological or adoptive parent of the child or young adult.
- (b) A foster parent or relative caregiver of the child or young adult.
- (c) A legal guardian.

(d) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child or young adult lives, or a person who is legally responsible for the welfare of the child or young adult.

(3) When a child or young adult with a disability is being considered for home schooling, in addition to the requirements of OAR 413-100-0915, the caseworker must:

(a) Ensure the surrogate of the child or young adult has approved home schooling; and

(b) Ensure the surrogate participates in the special education planning for the child or young adult in the home school environment.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 15-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 33-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-100-0930

### Rights to a Child's Education Records

(1) The Family Educational Rights and Privacy Act (FERPA), 20 USC § 1232g, protects the authority of parents to review their minor children's education records, limit the records' release without written consent by the parents, and correct errors in those records. 34 CFR 99.3, one of FERPA's implementing regulations, defines "parent" as "a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian." Under this definition, a Department employee may act as a "parent," for FERPA purposes, if the Department is the legal guardian of the child.

(2) A Department employee may demonstrate his or her authority to exercise the FERPA rights of a child's parent by providing the educational agency or institution with evidence that the Department is the legal guardian of the child, which may include a juvenile court order appointing the Department as the legal guardian of the child.

(3) This rule does not apply to the special education records for a student who is eligible for special education services or is suspected of being eligible for special education services under the Individuals with Disabilities Education Act, 20 USC §§ 1400 et seq., or the Oregon Department of Education administrative rules regarding special education (OAR 581, Division 015). To receive these records, a Department employee may:

(a) Receive information from the school of a child's personally identifiable information in connection with a child protective services (CPS) investigation under OAR 581-021-0380;

(b) Be advised by the school of a child's disabling conditions prior to an interview with the child during the course of a CPS assessment under ORS 419B.045;

(c) Seek a court order to obtain the special education records; or

(d) Seek a release of information to obtain the special education records from a child's or young adult's parent, guardian, surrogate, or a young adult whose special education rights have been passed to the student.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 326.575, 336.187, 409.010, 418.005, 419B.045, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 15-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 33-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-100-0940

### Early Education and Post-Secondary Education

(1) The caseworker must ensure that an eligible child in the care or custody of the Department has the same access to public preschool education and early intervention education programs as eligible children not in the care or custody of the Department. In meeting this obligation, the caseworker must ensure a child victim under three years old has been referred to an early intervention education program.

(2) The caseworker must ensure that a child or young adult in the care or custody of the Department has access to the information and resources

available to explore post-secondary education and training opportunities. In meeting this obligation the caseworker must include education in any child's or young adult's plan for transition to independent living.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 33-2011, f. 12-27-11, cert. ef. 12-28-11

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 34-2011(Temp)

**Filed with Sec. of State:** 12-27-2011

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**Notice Publication Date:**

**Rules Amended:** 413-120-0420, 413-120-0460

**Rules Suspended:** 413-120-0470

**Subject:** OAR 413-120-0420 and 413-120-0460 are being amended and 413-120-0470 is being suspended to bring the rules about background check requirements for relative caregivers, foster parents, adoptive parents, and other persons in household into alignment with the new certification rules with respect to the background check requirements for respite providers and the contested case hearing rights of applicants who have been denied.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-120-0420

### Definitions

For purposes of these rules (OAR 413-120-0400 to 413-120-0470):

(1) "Adoption applicant" is an individual who applies for adoption approval.

(2) "Agency agreement" means a written agreement between the Oregon State Police and a Criminal Justice or designated agency as defined by ORS 181.010 authorized to receive criminal offender information, specifying the terms and conditions of accessing and receiving Oregon computerized criminal history information to assure compliance with state and federal regulations.

(3) "Battery" means the use of physical force to injure, damage, or abuse or to cause offensive physical contact.

(4) "CAF" means the Children, Adults, and Families Division of DHS.

(5) "Child" means an individual under the age of 18.

(6) "Computerized Criminal History (CCH) System" means the administration and maintenance of on-line computer files of significant criminal offender information by OSP.

(7) "Contested case hearing" means a hearing conducted under ORS Chapter 183 and applicable administrative rules.

(8) "Criminal offender information" is defined in ORS 181.010(3) and includes records, fingerprints and photographs, received, compiled and disseminated by OSP for purposes of identifying criminal offenders and alleged offenders, as to such individuals' records of arrests, the nature and disposition of criminal charges, including sentencing, confinement and release, and includes the OSP Computerized Criminal History System.

(9) "Designated agency" means any DHS unit required to access Oregon criminal offender information for the following purposes: to implement a federal or state statute, executive order or administrative rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on criminal conduct; for agency employment or licensing purposes; or for other demonstrated and legitimate needs when designated by order of the Governor.

(10) "DHS" means the Department of Human Services, which accesses criminal offender information as a designated agency or a criminal justice agency, and requests fingerprint-based criminal offender information from the FBI and OSP on certain individuals or programs who provide care or treatment to children as regulated by DHS.

(11) "FBI" means the Federal Bureau of Investigation.

(12) "Fingerprint-based criminal offender information" means criminal offender information compiled and maintained by OSP Bureau of Criminal Identification regarding individuals who have been arrested for crimes where law enforcement agencies have submitted fingerprints and other identifying data as required by ORS 181.515 or federal statutes, or as deemed appropriate by the submitting law enforcement agency for the purpose of identification.

(13) "Foster parent" means an individual who operates a home that has been approved by DHS to provide care for an unrelated child or young adult placed in the home by DHS.

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(14) "Information required" means all information requested by DHS for processing criminal record checks, including fingerprint checks.

(15) "National crime information databases" means the National Crime Information Center and its incorporated criminal history databases managed by the FBI.

(16) "OSP" means the Oregon State Police.

(17) "Other person in household" means:

(a) An individual 18 years of age or older who is living in the home, and is not a child or young adult as defined by this rule;

(b) An individual providing relief or respite care whether paid or unpaid; or

(c) A member of the household under 18 years of age if there is reason to believe that member may pose a risk to children placed in the home.

(18) "Private adoption agency" means an agency licensed by the State of Oregon to provide adoption services within the state and which contracts with DHS to study adoptive parents seeking to adopt children in the custody of DHS.

(19) "Relative caregiver" means an individual who operates a home that has been approved by DHS to provide care for a related child or young adult who is placed in the home by DHS.

(20) "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 the child or young adult in the home of the respite provider or certified family. Respite care must be less than 14 consecutive days.

(21) "Subject individual" means an individual who:

(a) Applies to adopt a child in the custody of DHS as described in Child Welfare Policies I-G.1.3, "Adoption Applications", OAR 413-120-0190 to 413-120-0240 and I-G.2.1, "Minimum Standards for Adoptive Homes", OAR 413-120-0300 to 413-120-0310;

(b) Applies to be a foster parent, relative caregiver, or pre-adoptive parent as described in Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0401; or

(c) Is an other person in household as described in this rule.

(22) "Violence" means the use of physical force to injure, damage, or abuse.

(23) "Young adult" means an individual aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010 - 181.560 & 418.016

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 1-2000(T), f. & cert. ef. 1-14-00 thru 7-12-00; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 3-2008, f. & cert. ef. 5-15-08; CWP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 1-2009, f. & cert. ef. 2-2-09; CWP 34-2011(Temp), f. 12-27-11, cert. ef. 12-28-11 thru 6-25-12

## 413-120-0460

### Procedures

(1) Any subject individual applying to be a relative caregiver, foster or adoptive parent, or an other person in household must consent to a criminal offender information records check at the time of application. After an initial certification, a relative caregiver, foster parent, or other person in household of a foster parent or relative caregiver must consent to a criminal offender information records check prior to re-certification every two years. An adoption applicant and other person in household must consent to a criminal offender information records check once a year after the initial criminal records check is completed. Each applicant must be notified of this requirement at the time they apply for a certificate of approval or adoption approval. Criminal offender information records check consent forms must contain a notice that an applicant for a certificate of approval, or adoption approval and an other person in household are subject to a fingerprint-based criminal offender records check of national crime information databases that is conducted as required by ORS 181.537, ORS 181.557, and sections (5) and (6) of this rule.

(2) An adoptive applicant approved as a relative caregiver or foster or adoptive parent and who has submitted to a criminal offender information records check within the 12 months preceding the date on which he or she applied to adopt may be exempt from a new criminal offender information records check.

(3) DHS may not issue a certificate of approval for relative or foster care or approve an adoption home if a subject individual refuses to be fingerprinted when required. DHS may deny a certificate of approval for a relative caregiver or foster parent, or approval as an adoptive parent if a sub-

ject individual makes a false statement about having been arrested for or convicted of any crime or crimes.

(4) A subject individual must provide all information required for a criminal offender information records check, including fingerprints where required, on forms and fingerprint cards provided by DHS and according to procedures established by DHS, including:

(a) A properly completed and signed DHS Form CF 1011F from the subject individual;

(b) If the subject individual acknowledges a prior arrest or conviction for a crime listed in these rules (OAR 413-120-0400 to 413-120-0470), an explanation of the relationship between the facts that support the arrest or conviction and all intervening circumstances and written authorization for DHS to verify the information; and

(c) A completed FBI fingerprint card (FD 258) with red overprinting in the reason fingerprinted block from the subject individual when required.

(5) As part of the consent to a criminal offender information records check, DHS may request a subject individual to consent to the use of his or her social security number in conducting the criminal offender information records check. A subject individual indicates consent by signature.

(6) DHS must obtain and forward a fingerprint card to request criminal offender information on a subject individual from OSP and the FBI as follows:

(a) At the time of initial application DHS must obtain a fingerprint card from any subject individual applying to be a relative caregiver, foster or adoptive parent, or an other person in household, and DHS must initiate a fingerprint-based criminal offender records check of national crime information databases.

(b) If a subject individual is arrested or convicted for a crime within the certification period of a currently certified home, and the home remains certified after the arrest or conviction, DHS must obtain a fingerprint card and initiate a fingerprint-based criminal offender records check of national crime information databases prior to re-certification.

(c) If a subject individual lives outside of Oregon for more than 60 consecutive days within the certification period of a currently certified home, DHS must obtain a fingerprint card and initiate a fingerprint-based criminal offender records check of national crime information databases prior to re-certification.

(d) An other person in household, as defined in OAR 413-120-0420, not in the home at the time of certification, is subject to a fingerprint-based criminal offender records check at the time he or she is identified as an other person in household. DHS must obtain a fingerprint card and initiate a fingerprint-based criminal offender records check of national crime information databases prior to re-certification.

(e) Notwithstanding subsections (a) - (c) of this section, when the subject individual is a prospective respite care provider, the required criminal offender information records check on the subject individual must include a fingerprint-based check of national crime information databases only if one or more of the following circumstances exist:

(A) The prospective respite provider has resided outside of Oregon for 60 or more consecutive days within the last five years preceding the date on which he or she provides written consent for DHS to conduct a criminal offender information records check.

(B) As a result of the DHS review of other criminal records, the prospective respite provider's own disclosure, or by any other means, it is known that the prospective respite provider has a history of criminal convictions or arrests.

(C) DHS has determined that a fingerprint-based check of national crime information databases is warranted due to uncertainty about the true identity of the prospective respite provider or any other concern on the part of DHS.

(f) In the absence of any of the circumstances described in paragraphs (e)(A) - (e)(C) of this section, a fingerprint-based check of national crime information databases is not required; however DHS must complete a statewide check of the Oregon Law Enforcement Data System (LEDS) before the prospective respite provider can provide respite care. If a fingerprint-based check of national crime information databases is required due to the existence of any of the circumstances described in paragraphs (e)(A) - (e)(C) of this section, the prospective respite provider may provide respite care prior to completion of the required fingerprint-based check, at the discretion of DHS and only after DHS has completed the required LEDS check.

(7) DHS may grant an exception to the fingerprint requirement of this rule if DHS determines that the subject individual is unable to submit fingerprints due to a physical or mental condition that makes compliance impossible or presents an undue safety risk to applicant or staff. To grant an

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exception, the Criminal History Exception Request Form (DHS 1011D) must be signed by the District Manager or designee.

(8) No applicant may be issued or may retain a certificate of approval as a relative caregiver or a foster parent, or approval as an adoptive parent unless the following criminal offender information safety standards are met:

(a) Completion of a documented check of Oregon LEDS;

(b) Authorization and initiation of the other requirements to complete the criminal offender information records check process, including a fingerprint-based criminal offender check of national crime information databases when required for a subject individual;

(c) Granting of an exception for approval as required and authorized by OAR 413-120-0450 for any criminal convictions either acknowledged by the applicant or reported by the criminal offender information system; and

(d) Reconsideration of the approval upon receipt of any criminal history information not available at the time of previous approval.

(9) DHS reviews the criminal offender information, including fingerprint-based criminal offender information when obtained, of a subject individual. The assessment of fitness, based on the criminal offender information, that reflects the decision-making criteria, must be documented and filed in the relative caregiver, foster home, or adoption home record. The LEDS, OSP, and FBI reports may not be filed in these records and must be destroyed within 90 days.

(10) A subject individual determined not fit to be approved as an adoptive resource pursuant to these rules must be denied approval for adoption of a child in the custody of DHS.

(11) Unless an exception for approval is granted under these rules DHS must revoke a certificate of approval for a foster parent or relative caregiver, deny a renewal application, or remove from consideration for child placement an approved relative caregiver, family foster home, or approved adoption applicant if a subject individual is convicted of a crime in Oregon or any other jurisdiction since the time of the last approval.

(12) If DHS determines that the subject individual is not fit to be certified or approved as a relative caregiver or foster or adoptive parent based on criminal offender information or a false statement related to criminal offender information in the application, unless the subject individual voluntarily withdraws from the process, the Child Welfare field office must notify the subject individual 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, D.C., 20537-9700; and

(c) May appeal DHS's determination of unfitness or indicate an intent to challenge information in the OSP or FBI report by requesting a contested case hearing pursuant to ORS chapter 183 and OAR Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535 provided that DHS receives the request for a contested case hearing in writing within 30 days from the date of mailing the notice.

(13) Upon the determination of DHS that an applicant for relative care, foster care, or adoption of a child in the custody of DHS under Child Welfare rules is not fit based on the criminal offender information or false statement of criminal offender information of another person in household, the certifier, adoption worker, or private agency adoption worker must inform --

(a) The other person in household whose record was reviewed of the right to inspect and challenge the subject individual's Oregon criminal offender information through OSP procedures as adopted per ORS 181.555(3) and OAR 257-010-0035 and the person's rights under ORS 181.557(2)(b);

(b) The other person in household whose record was reviewed of the right to challenge the accuracy or completeness of any entry on the subject individual's criminal records provided by the FBI by filing a challenge with the Assistant Director of the FBI Identification Division, Washington, D.C., 20537-9700; and

(c) The relative caregiver, foster parent, or adoption applicant whose approval is affected by the other person in household's criminal offender information or false statement about criminal offender information, via certified mail, that:

(A) Based on the other person in household's criminal offender information or false statement about criminal offender information, DHS may not certify or approve the relative caregiver, foster parent, or adoption appli-

cant as long as the other person in household remains in the home or provides care to a child in the home; and

(B) The relative caregiver, foster parent, or adoption applicant may appeal in a contested case hearing the DHS determination of unfitness based on the criminal offender information or false statement of criminal offender information concerning another person in household, provided that DHS receives the applicant's request for a contested case hearing in writing within 30 days from the date of mailing the notice to the applicant.

(14) 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 a denial or revocation of a Certificate of Approval or a denial of approval to adopt, 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 418.005

Stats. Implemented: ORS 181.537, 181.010 - 181.560 & 418.016

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 1-2000(T), f. & cert. ef. 1-14-00 thru 7-12-00; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 3-2008, f. & cert. ef. 5-15-08; CWP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 1-2009, f. & cert. ef. 2-2-09; CWP 34-2011(Temp), f. 12-27-11, cert. ef. 12-28-11 thru 6-25-12

## 413-120-0470

### Rights for Review and Contested Case Hearings

(1) Contested case hearings are conducted by the Office of Administrative Hearings (OAH) under ORS Chapter 183 and OAR 137-003-0501 to 137-003-0700. Relative care, foster care, or adoption applicants have the right to appeal a decision made by DHS under its rules that the applicant is not fit for approval for placement of a child in the custody of DHS based on an authorized criminal offender information records check, or a false statement concerning a criminal offender information records check of the applicant or other person in household. An applicant must notify DHS in writing of the request for a contested case hearing within 30 calendar days after the notice is mailed by DHS to the applicant.

(2) DHS and OAH have no jurisdiction in a contested case hearing over allegations that the criminal offender information received from OSP or the FBI is inaccurate, incomplete, or maintained in violation of any federal or state law.

(3) DHS is entitled to rely on the criminal offender information supplied by OSP and the FBI until OSP or the FBI notifies DHS that the information has been changed or corrected. If an applicant has timely requested a contested case hearing, DHS will refer the matter to OAH for a hearing after the subject individual has been afforded a reasonable time to correct or complete the record, or has declined to do so.

(4) Prior to a contested case hearing being referred to OAH, DHS will convene an informal conference between DHS, the subject individual and his or her legal representative, if any, to review all available information and determine the need for a contested case hearing. At this informal conference, the subject individual must verify whether he or she has exercised his or her right to inspect or challenge the criminal offender information record or records or has declined to do so.

(5) To preserve the confidentiality of the records and the privacy of the subject individual, any contested case hearing under this rule will not be open to the public.

(6) The issues at a contested case hearing under this rule must be limited to the following matters:

(a) Whether the subject individual made a false statement in the application about a conviction or an arrest, has refused to consent to the criminal records check, or refused to be fingerprinted.

(b) Whether the subject individual has been convicted of a crime described in OAR 413-120-0450(4).

(c) If the subject individual has been convicted of any crime, other than those described in OAR 413-120-0450(4):

(A) The DHS determination that the behavior which resulted in the conviction is relevant to qualification to provide care as a relative caregiver, foster or adoptive parent, or fitness to be an other person in household; and

(B) The relationship between the facts supporting the conviction and the intervening circumstances as affecting the qualification to provide care as a relative caregiver, foster or adoptive parent, or fitness to be an other person in household.

(d) The relationship between the behavior that led to an arrest or arrests as affecting the qualification to provide care as a relative caregiver, foster or adoptive parent, or fitness to be an other person in household.

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(7) A fingerprint card required for evidence in a contested case hearing must be destroyed by DHS when the contested case hearing procedure and any judicial review are concluded and final.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010 - 181.560 & 409.015

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 3-2008, f. & cert. ef. 5-15-08; CWP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 1-2009, f. & cert. ef. 2-2-09; Suspended by CWP 34-2011(Temp), f. 12-27-11, cert. ef. 12-28-11 thru 6-25-12

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 35-2011

**Filed with Sec. of State:** 12-27-2011

**Certified to be Effective:** 12-28-11

**Notice Publication Date:** 10-1-2011

**Rules Adopted:** 413-130-0015, 413-130-0055

**Rules Amended:** 413-130-0000, 413-130-0010, 413-130-0020, 413-130-0040, 413-130-0050, 413-130-0070, 413-130-0075, 413-130-0080, 413-130-0090, 413-130-0100, 413-130-0110, 413-130-0125, 413-130-0130

**Rules Repealed:** 413-130-0045, 413-130-0060, 413-130-0115

**Rules Ren. & Amend:** 413-130-0030 to 413-130-0077

**Subject:** OAR 413-130-0000 is being amended to clarify the purposes of the rules about adoption assistance and to explain when adoption assistance may be extended for certain young adults.

OAR 413-130-0010 is being amended to add current and revise or remove outdated definitions of terms used throughout the rules about adoption assistance.

OAR 413-130-0015 is being adopted to describe the methods of funding for adoption assistance (state or federal funds) and how the Department responds to adoption assistance applications when neither are available.

OAR 413-130-0020 about special needs determination for adoption assistance eligibility is being amended to clarify the special needs determination requirements.

OAR 413-130-0030 about eligibility for nonrecurring expenses is being renumbered to OAR 413-130-0077.

OAR 413-130-0040 about eligibility for an adoption assistance payment is being amended to revise its description of federal requirements. This rule is also being amended to revise its description of when state-funded adoption assistance may be provided for children.

OAR 413-130-0045 about the connection between a child's immigrant status and adoption assistance is being repealed. This topic is being covered in OAR 413-130-0040.

OAR 413-130-0050 is being amended to revise the description of adoption assistance application requirements and responsibilities and give timelines for the negotiation process of adoption assistance base rate.

OAR 413-130-0055 is being adopted to implement HB 2052 (2011), which implements the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, allowing extension of adoption assistance for certain young adults. This rule is also being amended to clarify the conditions under which a child who is turning 18 may be eligible to extend adoption assistance and to explain how a child with a developmental disability may qualify for an extension of adoption assistance.

OAR 413-130-0060 about written agreements between the Department and adoptive or pre-adoptive families when there is no current need for adoption assistance benefits is being repealed because the topic is now covered in OAR 413-130-0070.

OAR 413-130-0070 is being amended to revise the policies about the negotiation of adoption assistance base rate, level of care requirements, and the review process when an agreement cannot be reached during negotiation.

OAR 413-130-0075 is being amended to update terminology and clarify the conditions under which a pre-adoptive family or adoptive

family can request a renegotiation of an adoption assistance agreement.

OAR 413-130-0077 is being renumbered from OAR 413-130-0030 and amended to comply with federal requirements regarding citizenship or residency in the U.S. for an adopted child to receive nonrecurring adoption expenses.

OAR 413-130-0080 is being amended to update terminology and references, and clarify the expenses that the Department will reimburse for nonrecurring expenses.

OAR 413-130-0090 is being amended to clarify Department authorization of a special payment for unanticipated short-term costs directly related to the special needs of a child or young adult.

OAR 413-130-0100 about medical assistance and social services is being amended to remove topics now covered in Child Welfare Policy I-E.6.2, "Title XIX and General Assistance Medical Eligibility", OAR 413-100-0400 to 413-100-0610.

OAR 413-130-0110 is being amended to reorganize and make the rule easier to understand. It also sets out new federal education requirements for adoption assistance and the policies about changes of payees and overpayments.

OAR 413-130-0115 about the adoption assistance review committee and appeals procedure is being repealed because this topic is now covered in OAR 413-130-0070.

OAR 413-130-0125 is being amended to state when adjustments may and may not be made to adoption assistance. This rule also sets out the policy about automatic expiration of an adoption assistance agreement. This rule is also being amended to state how an adoption assistance payment may be modified by an across-the-board increase or reduction.

OAR 413-130-0130 is being amended to clarify the conditions under which the Department may consider adoption applications after a judgment of adoption has been issued.

Most of these rule changes make permanent temporary rule changes adopted June 30, 2011.

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

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-130-0000

### Purpose

(1) The purpose of these rules (OAR 413-130-0000 to 413-130-0130) is to describe the criteria for program eligibility and the types of adoption assistance that may be established for --

(a) A child in the legal custody of:

(A) The Department;

(B) A participating tribe; or

(C) A licensed adoption agency in Oregon.

(b) A child relinquished by a parent directly to a pre-adoptive family residing in Oregon.

(2) These rules do not include criteria for program eligibility for adoption assistance for a child placed for adoption in Oregon by another public child welfare agency, as adoption assistance is the responsibility of the sending state.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 35-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-130-0010

### Definitions

The following definitions apply to OAR 413-130-0000 to 413-130-0130:

(1) "Adoption assistance" means assistance provided on behalf of an eligible child or young adult to offset the costs associated with adopting and meeting the on-going needs of the child or young adult. Adoption assistance may be in the form of payments, medical coverage, reimbursement of nonrecurring expenses, or special payments.

(2) "Adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the pre-adoptive family or adoptive family of an eligible child or young adult, setting forth the assistance the Department is to provide on behalf of the



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child or young adult, the responsibilities of the pre-adoptive family or adoptive family and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(3) "Adoption assistance agreement only" means a written agreement, binding on the parties to the agreement, between the Department and the pre-adoptive family or adoptive family of an eligible child or young adult, when the pre-adoptive family or adoptive family is not receiving an adoption assistance payment or medical coverage at the time of the agreement but may request it at a later date.

(4) "Adoption assistance base rate" means the portion of the adoption assistance payment that is negotiated with a pre-adoptive family or an adoptive family and cannot exceed the amount of the Oregon foster care base rate payment for the child's or young adult's age.

(5) "Adoption assistance payment" means a monthly payment made by the Department to the pre-adoptive family or adoptive family on behalf of an eligible child or young adult.

(6) "Adoption Assistance Review Committee" means a committee composed of local and central office staff with expertise in the area of adoption.

(7) "Adoptive family" means an individual or individuals who have legalized a parental relationship to the child who joined the family through a judgment of the court.

(8) "Applicable child" has the same meaning as in OAR 413-100-0335.

(9) "Base rate payment" means a payment to the foster parent or relative caregiver for the costs of providing the child or young adult with the following:

(a) Food — including the cost to cover a child's or young adult's special or unique nutritional needs;

(b) Clothing — including purchase and replacement;

(c) Housing — including maintenance of household utilities, furnishings, and equipment;

(d) Daily supervision — including teaching and directing to ensure safety and well-being at a level which is appropriate based on the child's or young adult's chronological age;

(e) Personal incidentals — including personal care items, entertainment, reading materials, and miscellaneous items; and

(f) The cost of providing transportation — including local travel associated with expenditure for gas and oil, and vehicle maintenance and repair associated with transportation to and from extracurricular, child care, recreational, and cultural activities.

(10) "CANS screening" means Child and Adolescent Needs and Strength screening, a process of gathering information on a child's or young adult's needs and strengths used for one or more of the following purposes:

(a) Identifying case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family; and

(b) Determining the level of care payment while in substitute care with a certified family; and

(c) Determining the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(11) "Child" means a person under 18 years of age.

(12) "Department" means the Department of Human Services, Child Welfare.

(13) "Enhanced supervision" means the additional support, direction, observation, and guidance necessary to promote and ensure the safety and well-being of a child or young adult when the child or young adult qualifies for a level of care payment.

(14) "Legally free" means that, with respect to a child, the legal rights of all parents with legal standing have been judicially terminated, voluntarily relinquished, or otherwise terminated by operation of law, thus allowing for the child to be adopted.

(15) "Level of care payment" means the payment provided to an approved or certified family, a guardian, a pre-adoptive family, or an adoptive family based on the child's or young adult's need for enhanced supervision as determined by applying the CANS algorithm to the results of the CANS screening.

(16) "Licensed adoption agency" means an adoption agency licensed by the state of Oregon to place children for adoption, or an adoption agency that holds a license from another state and is authorized under the laws of that state to place children for adoption.

(17) "Nonrecurring adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the pre-adoptive family of an eligible child for a one-time payment to reimburse the adoptive family for the reasonable and necessary

expenses incurred in legally finalizing the adoption of a child who has been determined to have special needs.

(18) "Nonrecurring expenses" mean a one-time payment up to \$1,500 per child, which the Department will pay to an adoptive family to assist with the reasonable and necessary expenses incurred in legally finalizing the adoption of an eligible child.

(19) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

(20) "Participating tribe" means a federally recognized Indian tribe in Oregon with a Title IV-E agreement with the Department.

(21) "Pre-adoptive family" means an individual or individuals who:

(a) Has been selected to be the child's adoptive family; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(22) "Qualified alien" has the same meaning as in OAR 413-100-0210(2) and 8 USC 1641(b).

(23) "Qualified vendor attorney" means an attorney who has a price agreement with the Department to process the adoption of a child who is eligible for adoption assistance.

(24) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(25) "Special payment" means a payment for unanticipated short-term costs which are directly related to the special needs of the child or young adult or are essential to the welfare of the child or young adult, and are not covered by another resource available to the adoptive family.

(26) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(27) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 23-2005(Temp), f. 12-30-05, cert. ef. 1-1-06; CWP 16-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 25-2011(Temp), f. 9-30-11, & cert. ef. 10-1-11 thru 12-27-11; CWP 35-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-130-0015

### Funding for Adoption Assistance

(1) The Department makes efforts to establish Title IV-E adoption assistance eligibility under Child Welfare Policy I-E.6.1, "Title IV-E Foster Care, Adoption Assistance, and Guardianship Assistance Eligibility", OAR 413-100-0335 to access federal reimbursement for adoption assistance.

(2) A child determined to have special needs under OAR 413-130-0020 who is ineligible for Title IV-E funded adoption assistance is eligible for state funded adoption assistance as described in OAR 413-130-0040. Administration of state funded adoption assistance is dependent upon the availability of such funds.

(3) When all available state funds are obligated, the Department must continue to:

(a) Accept new applications;

(b) Accept requests to adjust an adoption assistance payment; and

(c) Establish a waiting list.

(4) As state funds become available, an adoption assistance payment may be made according to the date that the adoption assistance agreement is signed by all parties. The adoption assistance agreement may be retroactive for up to twelve months only when a foster care base rate payment, level of care payment, or personal care service payment was not made on behalf of the child.

(5) When state funds are unavailable and a new adoption assistance application is received, the pre-adoptive family may sign an adoption assistance agreement only to prevent delay in finalizing the adoption, with the understanding that adoption assistance may be requested at a later date.

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Stat. Auth.: ORS 418.005, 418.340  
Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340  
Hist.: CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 35-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-130-0020

### Special Needs Determination for Adoption Assistance Eligibility

(1) In order to be eligible for adoption assistance, funded through either federal or state funds, a child must be determined to have special needs.

(2) The Department must make the determination that the child has special needs under each of the following subsections:

(a) The child cannot or should not be returned to the home of his or her parent or parents. This decision is based on one of the following paragraphs:

(A) An order from a court of competent jurisdiction terminating parental rights.

(B) The existence of a petition for termination of parental rights.

(C) A voluntary relinquishment of parental rights for a child under the jurisdiction of the court, in the custody of the Department, or in a subsequent adoption when there was an adoption assistance agreement in place during the prior adoption.

(D) A voluntary relinquishment of parental rights and a judicial determination that remaining in the home of a specified relative as defined in Child Welfare Policy I-E.6.1, "Title IV-E Foster Care, Adoption Assistance, and Guardianship Assistance Eligibility", OAR 413-100-0020 would be contrary to the welfare of the child. The request for the judicial determination must be filed within six months of the time the child last lived with the specified relative.

(E) For a child who can be adopted in accordance with state or tribal law without a termination of parental rights or voluntary relinquishment of parental rights, the valid reason why the child cannot or should not be returned to the home of his or her parents.

(F) In the case of an orphan, verification of the death of the parent or parents.

(b) The child has at least one of the following factors or conditions that make adoptive placement difficult to achieve:

(A) A documented medical, physical, mental, emotional condition or other clinically diagnosed disability, or a documented history of abuse or neglect or other identified predisposing factor that places the child at significant risk for future problems that need treatment;

(B) Is a member of a sibling group which will be placed together and is difficult to place because there are three or more children, or if in a sibling group of two, at least one of the children is six years of age or older;

(C) Is a member of an ethnic, racial, or cultural minority (such as African American, Hispanic, Asian, Indian, or Pacific Islander); or

(D) Is eight years of age or older.

(3) A reasonable but unsuccessful effort to place the child with an appropriate adoptive family for adoption without adoption assistance has been made, unless such an effort is not in the best interest of the child for reasons including placement with a relative or another person with whom the child has an established significant relationship.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 25-2011(Temp), f. 9-30-11, & cert. ef. 10-1-11 thru 12-27-11; CWP 35-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-130-0040

### Eligibility for Adoption Assistance Payments

(1) In determining eligibility for an adoption assistance payment, the Department may not impose an income eligibility requirement for the pre-adoptive family or adoptive family.

(2) To be eligible for a Title IV-E funded adoption assistance payment, a child must meet all of the following requirements.

(a) Be a citizen of the United States or a qualified alien as described in OAR 413-100-0210(2) and in 8 USC 1641(b) or (c).

(b) When the child is a qualified alien and is placed with a pre-adoptive parent who is an unqualified alien, the child must meet the five year residency requirement set forth in The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193.

(c) Be determined eligible for Title IV-E adoption assistance under OAR 413-100-0335.

(3) A licensed adoption agency, participating tribe, or another individual applying to receive adoption assistance on behalf of a child deter-

mined to have special needs must make all requested efforts to assist the Department in establishing Title IV-E eligibility.

(4) Except as provided in section (5) of this rule, a child determined to be ineligible for a Title IV-E adoption assistance payment is eligible for a state-funded adoption assistance payment when the child meets all of the following criteria.

(a) Is in the legal custody of:

(A) The Department;

(B) A participating tribe; or

(C) A licensed adoption agency and the child is placed with a family residing in Oregon.

(b) Is not eligible for or receiving adoption assistance for the same child through another state.

(c) Is determined to have special needs in accordance with OAR 413-130-0020.

(d) Meets the requirements in section (6) of this rule.

(5) A child relinquished by a parent directly to a family residing in Oregon who is not eligible for a Title IV-E funded adoption assistance payment is only eligible for a state funded adoption assistance payment when-

(a) A state funded adoption assistance agreement was previously in effect on behalf of the child;

(b) The pre-adoptive family or adoptive family is not eligible for or receiving adoption assistance for the same child through another state;

(c) The child is in a subsequent adoption; and

(d) The child meets the requirements in section (6) of this rule.

(6) In addition to the eligibility requirements in section (4) or (5) of this rule, a child must also be a citizen of the United States to receive a state funded adoption assistance payment when the child is being brought into the United States for the purpose of adoption or being placed outside of the United States, or a territory or possession thereof.

(7) When an adopted child becomes legally free for re-adoption due to the voluntary relinquishment of parental rights, the termination of the rights of the legal parent or parents, or the death of the legal parent or parents:

(a) The child must be determined to have special needs under OAR 413-130-0020 at the time the child again becomes available for adoption; and

(b) The determination of funding eligibility of the adopted child for adoption assistance remains as it was the last time the child was determined eligible for adoption assistance.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 11-1999(Temp), f. & cert. ef. 6-3-99 thru 11-30-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 25-2011(Temp), f. 9-30-11, & cert. ef. 10-1-11 thru 12-27-11; CWP 35-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-130-0050

### Adoption Assistance Application Requirements and Responsibilities

(1) A licensed adoption agency recommending adoption assistance for a pre-adoptive family must verify and document that recruitment efforts under OAR 413-130-0020(2)(c) were made for the child.

(2) A pre-adoptive family under OAR 413-130-0040(5) may contact the Adoption Assistance and Guardianship Assistance Unit for help in submitting a written adoption assistance application directly to the Department.

(3) A pre-adoptive family of a child in the custody of the Department must notify the Department in writing if they choose not to accept any form of adoption assistance.

(4) An adoption assistance application is considered complete when the Adoption Assistance and Guardianship Assistance Unit has received a signed adoption assistance application form and all supporting documentation.

(5) Except as described in subsections (a) to (c) of this section, the Adoption Assistance and Guardianship Assistance Unit must begin negotiation of the adoption assistance agreement no later than 60 days after receipt of a completed adoption assistance application submitted for a legally free child in the home of an approved pre-adoptive family.

(a) The Department may delay negotiation of the adoption assistance base rate for a completed application when the child is due for an updated CANS screening, a new CANS screening is warranted, or a CANS screening is in process or completed but a decision is pending regarding the level of care payment.

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(b) The Department may delay negotiation following a request by the caseworker, the pre-adoptive family, or adoptive family when there are extenuating circumstances regarding the child or family.

(c) When negotiation is delayed under subsections (a) or (b) of this section, the Adoption Assistance and Guardianship Assistance Unit must begin negotiation of the adoption assistance base rate no later than 30 days from receipt of the final decision regarding the level of care payment.

Stat. Auth.: ORS 418.005, 418.340  
Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340  
Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 25-2011(Temp), f. 9-30-11, & cert. ef. 10-1-11 thru 12-27-11; CWP 35-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-130-0055

### Extension of Adoption Assistance for a Young Adult

(1) The Department may approve an extension of an adoption assistance agreement for an individual under the age of 21 when the individual reaches the age of 18 on or after October 1, 2011 and meets subsection (a) or (b) of this section.

(a) An initial adoption assistance agreement was entered into on behalf of a child, and at the time of his or her 18th birthday, he or she:

(A) Qualifies as an individual with a developmental disability as determined by the Oregon Department of Human Services, Developmental Disabilities Services;

(B) If living in a state other than Oregon, qualifies as an individual with a developmental disability as determined by the equivalent developmental disability program in that state; or

(C) Qualifies for Supplemental Security Income (SSI) as determined by the Social Security Administration.

(b) An initial adoption assistance agreement was entered into on behalf of a child who is age 16 or 17, and upon reaching the age of 18, he or she is:

(A) Completing secondary school (or equivalent);  
(B) Enrolled in post-secondary or vocational school;  
(C) Participating in a program or activity that promotes or removes barriers to employment;

(D) Employed for at least 80 hours a month; or  
(E) Determined incapable of any of the above due to a documented medical condition, physical disability, or mental disability.

(2) In order for the extension of adoption assistance as described in subsection (1)(a) of this rule to continue on behalf of a young adult, the adoptive family must submit to the Department, upon request and before the child's 18th birthday, documentation from the agency making the determination described in paragraphs (1)(a)(A) through (C) of this rule.

(3) If an individual does not meet the requirements under subsection (1)(a) of this rule or the adoptive family does not submit the documentation before the individual's 18th birthday as required in section (2) of this rule, the Department may not approve an extension of an adoption assistance agreement.

(4) An extension of adoption assistance approved pursuant to subsection (1)(a) of this rule will continue until the young adult turns 21 years old.

(5) In order for the extension of adoption assistance as described in subsection (1)(b) of this rule to continue on behalf of a young adult, the adoptive family must submit to the Department, upon request:

(a) Proof that the young adult continues to be enrolled in a secondary, post-secondary, vocational school, or a program or activity that promotes or removes barriers to employment;

(b) Proof that the young adult is employed for at least 80 hours a month; or

(c) Verification from a medical or mental health professional that the young adult is incapable of attending school or obtaining employment due to a medical condition.

(6) The Department will review the young adult's eligibility for continued adoption assistance when an extension of adoption assistance has been granted under subsection (1)(b) of this rule:

(a) At least annually; or  
(b) When information is received that indicates the young adult may no longer be eligible for adoption assistance or may be eligible for adoption assistance in a different amount.

(7) The adoptive family must notify the Department, orally or in writing, of any changes in circumstances that may make the young adult:

(a) Ineligible for adoption assistance; or  
(b) Eligible for adoption assistance in a different amount.

Stat. Auth.: ORS 418.005 & 418.340  
Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 25-2011(Temp), f. 9-30-11, & cert. ef. 10-1-11 thru 12-27-11; CWP 35-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-130-0070

### Negotiation and Determination of the Monthly Adoption Assistance Payment

(1) When adoption assistance is not provided, a pre-adoptive family or adoptive family may enter into an adoption assistance agreement only.

(2) The monthly adoption assistance payment may not exceed the total of:

(a) The adoption assistance base rate; and  
(b) When applicable, the level of care payment determined by the CANS screening conducted under OAR 413-020-0230.

(3) The monthly adoption assistance base rate:

(a) Is determined through discussion and negotiation between the Department and the pre-adoptive family or adoptive family.

(b) May not exceed the current foster care base rate payment the child or young adult would be eligible to receive in foster care under OAR 413-090-0010(1)(b).

(c) Is negotiated between the pre-adoptive family or adoptive family and the Department, taking into consideration relevant factors which include, but are not limited to:

(A) The ordinary and special needs of the child or young adult;  
(B) The services and goods required to meet the needs of the child or young adult;

(C) The cost of the services and goods required to meet the needs of the child or young adult;

(D) The circumstances of the pre-adoptive family or adoptive family and their ability to provide the required services and goods for the child or young adult; and

(E) The resources available to the pre-adoptive family or adoptive family such as medical coverage, private health insurance, public education, other income sources and community resources.

(4) When, during negotiation of the adoption assistance base rate, the Adoption Assistance and Guardianship Assistance Coordinator and the pre-adoptive family or adoptive family are unable to reach agreement, the Adoption Assistance and Guardianship Assistance Coordinator or the family may request a review by the Adoption Assistance Review Committee. When a review is requested:

(a) An Adoption Assistance and Guardianship Assistance Coordinator must:

(A) Prepare documentation for the scheduled Adoption Assistance Review Committee;

(B) Notify the pre-adoptive family or adoptive family and the assigned caseworkers of the date of the committee; and

(C) Attend and participate in the Adoption Assistance Review Committee.

(b) The pre-adoptive family or adoptive family may provide written documentation to the Adoption Assistance and Guardianship Assistance Coordinator for the review and consideration by the Adoption Assistance Review Committee.

(c) The caseworker for the pre-adoptive family or adoptive family and the caseworker for the child or young adult may participate in an Adoption Assistance Review Committee meeting and may present information and respond to questions. The caseworkers may not participate in the deliberations of the Adoption Assistance Review Committee.

(d) The Adoption Assistance Review Committee members must:

(A) Consider written documentation provided by the pre-adoptive family or adoptive family, the caseworker for the pre-adoptive family or adoptive family, the caseworker for the child or young adult, and the Adoption Assistance and Guardianship Assistance Coordinator.

(B) Review materials submitted to the Adoption Assistance Review Committee, deliberate, and make a recommendation regarding the adoption assistance base rate.

(e) At the conclusion of the Adoption Assistance Review Committee, the Adoption Assistance and Guardianship Assistance Coordinator must:

(A) Document the recommendation of the Adoption Assistance Review Committee; and

(B) Submit the recommendation to the Assistant Adoption Program Manager or designee within one business day of the Adoption Assistance Review Committee meeting.

(f) The Assistant Adoption Program Manager or designee must:

(A) Attend the Adoption Assistance Review Committee and may ask clarifying questions, but does not participate in the deliberation or recommendation of the Adoption Assistance Review Committee; and

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(B) Make a decision and provide written notification of the decision regarding the adoption assistance base rate to the Adoption Assistance and Guardianship Assistance Coordinator within one business day of the Adoption Assistance Review Committee meeting.

(g) The Adoption Assistance and Guardianship Assistance Coordinator must notify the pre-adoptive family or adoptive family of the Assistant Adoption Program Manager or designee's decision, including a written notice, within ten business days of the decision.

(5) A pre-adoptive family or adoptive family unsatisfied with the adoption assistance base rate decision of the Assistant Adoption Program Manager or designee under paragraph (4)(f)(B) of this rule may submit a written request for a review of the decision by the Adoption Program Manager or designee within 14 days of the date of the written notice in subsection (4)(g) of this rule.

(6) The Adoption Program Manager or designee must complete each of the following actions.

(a) Review and consider:

(A) The materials submitted to the Adoption Assistance Review Committee;

(B) The recommendation of the committee;

(C) The decision made by the Assistant Adoption Program Manager or designee following the committee recommendation; and

(D) The information presented by the pre-adoptive family or adoptive family in the request submitted under section (5) of this rule.

(b) Make a decision within 60 days of the date of the request for review.

(c) Provide written notification to the pre-adoptive family or adoptive family and the Adoption Assistance and Guardianship Assistance Coordinator within ten business days of the decision in subsection (b) of this section.

(7) The monthly level of care payment:

(a) Is determined based on the results of a CANS screening conducted under OAR 413-020-0230;

(b) May not exceed the amount of the level of care payment set forth in OAR 413-090-0010(2)(g); and

(c) Is included in the adoption assistance payment when the child or young adult qualifies for a level of care payment and when requested by the pre-adoptive family or adoptive family.

(8) When a pre-adoptive family or adoptive family is unsatisfied with the final adoption assistance offer from the Department, consisting of the adoption assistance base rate and, when applicable, a level of care payment, the pre-adoptive family or adoptive family has the right to a contested case hearing under Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535.

(9) An initial adoption assistance payment begins on a date determined by the Department when all of the following criteria are met:

(a) The child is legally free for adoption;

(b) Unless the child is in the custody of a pre-adoptive family eligible to apply for adoption assistance under OAR 413-130-0040(5) or the Department has approved an adoptive family to apply for adoption assistance under OAR 413-130-0130 -- the Department, participating tribe, or licensed adoption agency has approved the pre-adoptive family as the adoptive placement; and

(c) An adoption assistance agreement has been signed by the pre-adoptive family or adoptive family and by the Department representative.

(10) An adoption assistance payment is issued at the end of each month of eligibility.

(11) An adoption assistance payment made to a pre-adoptive family or an adoptive family by the Department is inalienable by any assignment or transfer and exempt from garnishment, levy, or execution under the laws of this state.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSC 8-1999, f. & cert. ef. 5-17-99; SOSC 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 23-2008, f. & cert. ef. 10-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 25-2011(Temp), f. 9-30-11, & cert. ef. 10-1-11 thru 12-27-11; CWP 35-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-130-0075

### Renegotiation of an Adoption Assistance Payment

(1) The Department, pre-adoptive family, or adoptive family may request renegotiation of an adoption assistance agreement. When the pre-adoptive family or adoptive family has previously signed an adoption assistance agreement only and requests adoption assistance at a later date, it is considered a renegotiation.

(2) A request for renegotiation of the adoption assistance agreement made by a pre-adoptive family or adoptive family must:

(a) Be in writing in a format provided by the Department to the pre-adoptive family or adoptive family;

(b) Document changes in the circumstances of the pre-adoptive family or adoptive family, when applicable;

(c) Document the needs of the child or young adult;

(d) Provide information about the financial expenses of the pre-adoptive family or adoptive family in meeting the needs of the child or young adult; and

(e) Provide additional documentation of the child's or young adult's current behaviors when the child or young adult meets the eligibility requirements for consideration of a level of care payment under OAR 413-020-0230 and the pre-adoptive family or adoptive family is requesting a level of care payment.

(3) Renegotiation of the adoption assistance base rate will be conducted using the negotiation process described in OAR 413-130-0070(2)-(8).

(4) A new adoption assistance agreement must be signed by all parties each time the adoption assistance payment changes as a result of renegotiation.

(5) The Department may authorize a renegotiated adoption assistance payment increase or decrease for the period commencing the first day of the month in which the Department receives the documentation required to complete the requested renegotiation, or another date agreed upon by the pre-adoptive family or adoptive family and the Department.

(6) The Department may approve up to twelve months of retroactive payments unless a contested case hearing was requested and a subsequent decision necessitates a payment of more than twelve months. The decision includes any decision by the Department, including:

(a) A final order;

(b) A stipulated final order;

(c) A settlement agreement; or

(d) Any other agreement resulting in withdrawal of the contested case. Stat. Auth.: ORS 418.005, 418.340

Stats Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSC 8-1999, f. & cert. ef. 5-17-99; SOSC 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 25-2011(Temp), f. 9-30-11, & cert. ef. 10-1-11 thru 12-27-11; CWP 35-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-130-0077

### Eligibility for Nonrecurring Expenses

(1) Except as provided in section (2) of this rule, a pre-adoptive family is eligible for reimbursement of nonrecurring expenses through Title IV-E funding on behalf of a child determined to have special needs under OAR 413-130-0020 when the child is in the custody of:

(a) The Department, a participating tribe, a licensed adoption agency; or

(b) An Oregon family following a relinquishment of parental rights by the legal parent directly to the Oregon family.

(2) For applications received on or after October 1, 2010, reimbursement for nonrecurring expenses is prohibited on behalf of an applicable child who:

(a) Is not a citizen or resident of the United States; and

(b) Was either adopted outside the United States or was brought to the United States for the purpose of being adopted.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSC 8-1999, f. & cert. ef. 5-17-99; SOSC 7-2002, f. 3-28-02, cert. ef. 4-1-02; SOSC 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11, Renumbered from 413-130-0030; CWP 25-2011(Temp), f. 9-30-11, & cert. ef. 10-1-11 thru 12-27-11; CWP 35-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-130-0080

### Payment for Nonrecurring Expenses

(1) An agreement, indicating the nature and amount of nonrecurring expenses, must be signed prior to the final judgment of adoption. Payment for nonrecurring expenses is made when the Department receives the final judgment of adoption.

(2) The Department will reimburse an adoptive family up to \$1,500 for each eligible child for approved nonrecurring expenses, including but not limited to:

(a) The cost of a home study;

(b) Court costs;

(c) Legal fees, as authorized by the Department;

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(d) Physical and psychological examinations required for the adoption; and

(e) Travel to visit with the adoptive child prior to the placement.

(3) The Department will consider requests for nonrecurring expenses that:

(a) Are submitted with written documentation to the Adoption Assistance and Guardianship Assistance Unit;

(b) Are not in violation of state or federal law; and

(c) Do not duplicate expenses covered by:

(A) The Interstate Compact for Placement of Children;

(B) A Department contract with a licensed adoption agency; or

(C) Another resource available to the adoptive family.

(4) When a pre-adoptive family indicates that they will be using a qualified vendor attorney, the Adoption Assistance and Guardianship Assistance Unit must send the pre-adoptive family a list of qualified vendor attorneys.

(5) The pre-adoptive family may select and contact an attorney from the list of qualified vendor attorneys, in which case the pre-adoptive family must:

(a) Sign the legal fees agreement; and

(b) Send the legal fees agreement to the attorney, who will sign it and return it to the Department for payment after the judgment of adoption is received.

(6) The pre-adoptive family may privately retain an attorney, in which case:

(a) The adoptive family is responsible for paying the attorney; and

(b) The Department will reimburse the adoptive family reasonable charges equal to the amount allowed for a qualified vendor attorney unless the Adoption Assistance and Guardianship Assistance Coordinator has determined that a higher amount may be considered due to extraordinary circumstances.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 23-2005(Temp), f. 12-30-05, cert. ef. 1-1-06; CWP 16-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 25-2011(Temp), f. 9-30-11, & cert. ef. 10-1-11 thru 12-27-11; CWP 35-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-130-0090

### Special Payments

(1) A request for a special payment:

(a) May be made after finalization of the adoption by an adoptive family who has an existing adoption assistance agreement with the Department; and

(b) Must include documentation from the adoptive family when requested by the Department.

(2) The Department may authorize a special payment for a limited duration, on a case-by-case basis, subject to the availability of resources.

(3) An approved special payment may only be issued to the adoptive family.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 25-2011(Temp), f. 9-30-11, & cert. ef. 10-1-11 thru 12-27-11; CWP 35-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-130-0100

### Medical Assistance

(1) A child or young adult who is the subject of an adoption assistance agreement funded by Title IV-E funds is categorically eligible for medical assistance through Title XIX and eligible for social services through Title XX.

(2) A child or young adult who is the subject of an adoption assistance agreement funded with state general funds is eligible for medical assistance under Child Welfare Policy I-E.6.2, "Title XIX and General Assistance Medical Eligibility", OAR 413-100-0400 to 413-100-0610 when:

(a) The child or young adult resides in Oregon; or

(b) The child or young adult resides outside of Oregon but in the United States or a territory or possession thereof and is not able to obtain medical assistance in his or her place of residence.

(3) When the adoptive child or young adult resides outside of Oregon, the Department provides the necessary documentation to the state of residence of the child or young adult through the Interstate Compact on

Adoption and Medical Assistance (ICAMA) to assist the pre-adoptive family or adoptive family in obtaining medical assistance for the child or young adult.

(4) Medical assistance is not provided for a child or young adult who resides outside of the United States, a territory or possession thereof.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 25-2011(Temp), f. 9-30-11, & cert. ef. 10-1-11 thru 12-27-11; CWP 35-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-130-0110

### Administration of Approved Adoption Assistance

(1) Except as provided in OAR 431-130-0130, in order for the Department to provide adoption assistance on behalf of an eligible child:

(a) An adoption assistance agreement must be signed by each individual who is a party to the agreement and a Department representative; and

(b) The adoption assistance agreement must be in effect before the judgment of adoption.

(2) An adoption assistance agreement must include each of the following:

(a) A statement indicating that an adoption assistance agreement remains in effect regardless of the state or residency of the pre-adoptive family or the adoptive family and the child.

(b) An effective date which:

(A) Must be after the completion of a signed adoption assistance application; and

(B) Except as provided in OAR 413-120-0130, must be before the date of the judgment of adoption.

(c) Information identifying the eligibility of the child or young adult to receive medical assistance and specifying the eligibility of the child or young adult for Title XIX and XX.

(d) Information that ORS 192.520 allows the Oregon Health Plan (OHP) and OHP managed care plans to exchange the following protected health information without authorization from the pre-adoptive family or adoptive family for the purpose of treatment activities related to behavioral or physical health of the child or young adult when the child or young adult is the recipient of OHP services:

(A) The name and Medicaid recipient number for the child or young adult;

(B) The hospital or medical provider for the child or young adult;

(C) The hospital or medical provider's Medicaid number;

(D) Each diagnosis for the child or young adult;

(E) Each treatment activity's date of service;

(F) Each treatment activity's procedure or revenue code;

(G) The quantity of units or services provided; and

(H) Information about medication prescription and monitoring.

(e) Specification of the amount and nature of all adoption assistance to be provided.

(f) A statement informing the pre-adoptive family or adoptive family of the right to a contested case hearing under Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535.

(3) The Department remains financially responsible for providing the services specified in the adoption assistance agreement if the needed service is not available in the new state or service area of residence, except as described in OAR 413-130-0100(4).

(4) The foster care base rate payment, level of care payment, any level of personal care payment, and medical coverage end when adoption assistance begins. Medical assistance, as determined by the child's eligibility, may continue when requested by the pre-adoptive family or adoptive family.

(5) The Department may require documentation from the pre-adoptive family or adoptive family verifying that the child:

(a) Is enrolled in an elementary or secondary school as determined by the law of the state of residence;

(b) Is home schooled in accordance with the law of the state of residence;

(c) Is enrolled in an independent study program in accordance with the law of the state of residence;

(d) Has completed secondary school; or

(e) Is incapable of attending school due to a documented medical condition, mental disability, or physical disability.

(6) A pre-adoptive family or adoptive family must immediately inform the Adoption Assistance and Guardianship Assistance Unit of a

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change in circumstances that may make them ineligible for adoption assistance or eligible for an adoption assistance payment in a different amount.

(7) An individual who is a party to an adoption assistance agreement may request a change of payee due to a divorce, legal separation, or other judicially recognized modification of custody.

(a) The requesting individual must provide the Department with the current address and telephone number of the current payee.

(b) The Department must notify the current payee that there has been a request to change the payee within 30 days of receipt of a request for a change of payee.

(c) Unless the current payee submits a challenge to the request to change payee within 30 days of the date the Department sends the notice in subsection (b) of this section, the request to change payee will be approved.

(d) If the change of payee is challenged, the Department requires legal documentation describing physical custody of the child to make a change in payee.

(e) The new payee must be one of the parties to the adoption assistance agreement.

(8) Overpayment.

(a) If the Department issues an adoption assistance payment on behalf of a child or young adult after the date the adoption assistance agreement automatically expires, the Department may seek reimbursement of the overpayment and the pre-adoptive family or the adoptive family must repay the Department.

(b) If the pre-adoptive family or adoptive family fails to comply with any provisions of the adoption assistance agreement, including failing to notify the Department of any of the events or circumstances described in section (6) of this rule, the Department may collect any adoption assistance payment or medical assistance which the Department would not have provided had the pre-adoptive family or adoptive family complied with the provisions of the adoption assistance agreement.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 11-1999(Temp), f. & cert. ef. 6-3-99 thru 11-30-99; SOSCF 22-1999, f. & cert. ef. 11-24-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 25-2011(Temp), f. 9-30-11, & cert. ef. 10-1-11 thru 12-27-11; CWP 35-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-130-0125

### Adjustments of Adoption Assistance

(1) The Department may request updated information from the pre-adoptive family or the adoptive family when the Department becomes aware of a change in circumstances that may make the pre-adoptive family or the adoptive family ineligible for adoption assistance or eligible for adoption assistance in a different amount.

(2) When the adoptive family divorces, legally separates, or is party to a judicially recognized modification of custody, the Department may request updated information, including financial information, to reflect the change in family circumstances.

(3) When there is an across-the-board reduction or increase in the base rate payment or level of care payment that the child or young adult would be eligible to receive if the child or young adult were in foster care, the Department may, after a case-by-case review and without concurrence of the adoptive family, adjust the adoption assistance payment to an amount that does not exceed the new foster care payment the child or young adult would receive if currently in foster care, as follows:

(a) In the case of a reduction, only those payments that exceed the amount the child or young adult would be eligible for if currently in foster care would be reduced, and the reduction would only be to the amount that the child or young adult would be eligible to receive if currently in foster care.

(b) In the case of an increase, the Department, considering the needs of the child or young adult and the circumstances of the adoptive family, may increase the adoption assistance payment to an amount that does not exceed the new foster care payment the child or young adult would receive if currently in foster care.

(4) If, upon an adjustment under section (3) of this rule, the Department intends to adjust an adoption assistance payment without the concurrence of the adoptive family, the Department will provide the adoptive family and the child or young adult with written notice as described in Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535.

(5) The Department, with the concurrence of the pre-adoptive family or adoptive family, may adjust or suspend the adoption assistance payment

to reflect a change in the pre-adoptive family or adoptive family's circumstances or expenses on behalf of the child or young adult.

(6) The Department will terminate the adoption assistance agreement upon ten days written notice to the pre-adoptive family or adoptive family when it becomes known to the Department that the pre-adoptive family or adoptive family is no longer providing any support to the child or young adult or is no longer legally responsible for the support of the child or young adult, including under the following circumstances:

(a) When the parental rights of the adoptive family have been terminated or relinquished.

(b) When the child becomes an emancipated minor.

(c) When the child or young adult:

(A) Marries.

(B) Enlists in the military.

(C) Dies.

(d) When the young adult no longer meets the eligibility requirements in OAR 413-130-0055.

(7) The adoption assistance agreement automatically expires when the child reaches the age of 18 or, when an extension has been granted under OAR 413-130-0055, no later than when the young adult reaches the age of 21 as documented in the adoption assistance agreement.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: CWP 16-2003, f. 1-21-03, cert. ef. 2-1-03; CWP 38-2003(Temp), f. & cert. ef. 11-19-03 thru 5-17-04; CWP 4-2004, f. & cert. ef. 4-1-04; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 25-2011(Temp), f. 9-30-11, & cert. ef. 10-1-11 thru 12-27-11; CWP 35-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-130-0130

### Post Judgment of Adoption Applications for Adoption Assistance

(1) An adoptive family asking to apply for adoption assistance after the judgment of adoption must submit a written request to the Adoption Assistance and Guardianship Assistance Unit, 500 Summer Street NE, E-71, Salem, Oregon 97301, based on one or more of the following extenuating circumstances:

(a) Relevant facts regarding the child, the biological family, or background of the child were known, but not shared with the adoptive family prior to legal finalization of the adoption;

(b) Adoption assistance was denied based on an assessment of the financial need of the adoptive family;

(c) The Department determined the child was ineligible for adoption assistance, but information becomes known which indicates a review of the determination is appropriate; or

(d) The Department failed to advise the adoptive family of a special needs child of the availability of adoption assistance.

(2) Upon receipt of the written request, the Department must determine, within 30 days, whether the child meets Title IV E eligibility requirements.

(3) The Department or adoptive family may seek historic information regarding the child to determine eligibility for adoption assistance through a:

(a) Request to the adoption registry as provided by ORS 109.425 through 109.507; or

(b) Court order to review the sealed adoption file.

(4) When a child is Title IV-E eligible, a decision is made through a contested case hearing on whether the adoptive family may apply for adoption assistance after the judgment of adoption based on the extenuating circumstances in section (1) of this rule:

(a) The Adoption Assistance and Guardianship Assistance Coordinator must write a summary of the situation and submit a hearing referral and supporting documentation to the Office of Administrative Hearings within 45 days of receipt of the request in section (1) of this rule.

(b) An adoptive family has the burden of proof to show that extenuating circumstances exist. The Department may provide corroborating facts to both the adoptive family and the administrative law judge.

(c) The contested case hearing is conducted under Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535.

(5) When a child does not meet Title IV E eligibility requirements, the Adoption Program Manager determines if extenuating circumstances under section (1) of this rule exist that justify accepting an adoption assistance application from the adoptive family.

(a) The Adoption Assistance and Guardianship Assistance Coordinator must prepare information for review by the Adoption Program Manager including information submitted by both the adoptive family and Department records.

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(b) A written finding will be sent to the adoptive family within 60 days of the receipt of the request for review.

(c) When the Adoption Program Manager finds that extenuating circumstances do not exist, the adoptive family may request a contested case hearing under Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535.

(A) The administrative law judge in the contested case hearing reviews whether the adoptive family may submit an application for adoption assistance.

(B) The approval of the adoption assistance application is a separate determination made by the Department.

(6) When the decision, through a contested case hearing or Adoption Program Manager review, is that the adoptive family is eligible to apply for adoption assistance on behalf of the child, an adoption assistance application may be signed, effective the date of the written request described in section (1) of this rule. The process for application in OAR 413-130-0050 and negotiation in OAR 413-130-0070 apply.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 25-2011(Temp), f. 9-30-11, & cert. ef. 10-1-11 thru 12-27-11; CWP 35-2011, f. 12-27-11, cert. ef. 12-28-11

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 36-2011

**Filed with Sec. of State:** 12-27-2011

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**Rules Amended:** 413-200-0270, 413-200-0272, 413-200-0274, 413-200-0276, 413-200-0278, 413-200-0281, 413-200-0283, 413-200-0285, 413-200-0287, 413-200-0289, 413-200-0292, 413-200-0294, 413-200-0296

**Subject:** These rules (OAR 413-200-0270 through 413-200-0296) about Department responsibilities for certification and supervision of foster parents, relative caregivers, and adoptive applicants are being amended to promote child safety, clarify the Department's responsibilities, clarify when declaration of citizenship status is required, prohibit electronic monitoring devices as a mechanism to manage behavior, and update the rules to match current practices.

OAR 413-200-0270 about the purpose of the Department's rules concerning Department responsibilities for certification and supervision of foster parents, relative caregivers, and adoptive applicants is being amended to clarify the purpose of the rules, making the distinction between a certified family and an adoptive applicant.

OAR 413-200-0272 about the definitions of key terms used in these rules is being amended to add current and remove and revise outdated definitions of certain terms used throughout these rules.

OAR 413-200-0274 about the responsibilities for certification of foster parents and relative caregivers and assessment of an adoptive applicant is being amended to clarify the processes which must be completed during the assessment and certification of a foster parent or relative caregiver, and the assessment of an adoptive applicant.

OAR 413-200-0276 about determining the maximum number of children placed in the home is being amended to clarify how the Department determines the maximum number for which the home is certified.

OAR 413-200-0278 about the Department responsibilities for issuing a certificate of approval is being amended to state the responsibilities of the supervisor for both expedited and two-year certificates of approval.

OAR 413-200-0281 is being amended to clarify requirements regarding respite providers and babysitters and to state when criminal history checks will be conducted on respite providers.

OAR 413-200-0283 is being amended to state the timeframes for home visits during the period of an expedited certificate of approval.

OAR 413-200-0285 is being amended to clarify when a Placement Support Plan is required.

OAR 413-200-0287 is being amended to state the responsibilities for recertification of a home and to describe circumstances when a two year certificate of approval will not expire.

OAR 413-200-0289 is being amended to state when a child-specific certificate of approval will terminate.

OAR 413-200-0292 is being amended to state circumstances when individualized training plans may be approved in connection with the recertification of a previously certified home.

OAR 413-200-0294 is being amended to clarify certifier responsibilities for inactive referral status.

OAR 413-200-0296 is being amended to state circumstances when a certificate of approval must be revoked and circumstances when, despite an expiration date, a certificate of approval will not expire.

In addition, the above rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.  
**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-200-0270

### Purpose

(1) The purpose of these rules (OAR 413-200-0270 to 413-200-0296) is to describe the activities of the Department related to:

(a) The certification of a relative caregiver or foster parent, and the assessment of a potential adoptive resource;

(b) Monitoring a certified family's compliance with the Certification Standards; and

(c) Recertification of a certified family.

(2) Regardless of the nature of the relationship between a family and a child or young adult, a family must be assessed and certified prior to placement of the child or young adult in the home.

(3) In these rules, unless otherwise indicated, a child or young adult refers to a child or young adult in the care or custody of the Department.

(4) OAR 413-200-0276, 413-200-0278, 413-200-0281, 413-200-0283, 413-200-0285, 413-200-0287, 413-200-0289, 413-200-0292, 413-200-0294, and 413-200-0296 do not apply to a potential adoptive resource.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: SOSCF 17-1999, f. & cert. ef. 8-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 18-2007, f. & cert. ef. 11-1-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 2-2009, f. & cert. ef. 2-2-09; CWP 36-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0272

### Definitions

The following definitions apply to OAR 413-200-0270 to 413-200-0296:

(1) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request, or if a review was requested, the selection has been sustained by that review and the review is complete.

(2) "Applicant" means an individual or individuals who apply:

(a) To become or remain a certified family;

(b) For approval as a potential adoptive resource.

(3) "Certificate of Approval" means a document that the Department issues to approve the operation of a certified relative caregiver home or foster home.

(4) "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.

(5) "Certifier" means a Child Welfare employee who:

(a) Conducts assessments of applicants interested in providing relative or foster care to a child or young adult in the care or custody of the Department or conducts assessments of a potential adoptive resource;

(b) Determines whether or not to recommend approval of the operation of a relative caregiver or foster home or approval of a potential adoptive resource; and

(c) Monitors the compliance of a caregiver or foster care home with Child Welfare certification rules.

(6) "Child" means a person under 18 years of age.

(7) "Child-Specific Certificate of Approval" means a document authorizing an individual or individuals to operate a home to provide care for a specific child or young adult in the care or custody of the Department.

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(8) "Co-habiting" means the act of two adults, unmarried to each other, living together in an intimate relationship as if married.

(9) "Criminal records check" means the process for obtaining and reviewing an individual's criminal offender information and may include a fingerprint-based criminal offender records check of national crime information databases.

(10) "Denial" means the refusal of the Department to issue an initial or renew a Certificate of Approval to operate a relative caregiver home or foster home to provide care for a child or young adult in the care or custody of the Department.

(11) "Department" means the Department of Human Services, Child Welfare.

(12) "Foster parent" means an individual who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(13) "Home study" means a document containing an analysis of the ability of the applicant to provide safe and appropriate care of a child or young adult.

(14) "Inactive Referral Status" means a period of time, not to exceed 12 months, during which neither the Department nor any other agency will place an additional child or young adult with a certified family.

(15) "Member of the household" means any adult or child living in the home, including any caregiving employee or volunteer who may reside in the home.

(16) "Placement support plan" means a documented set of actions or resources that is developed to assist a relative caregiver or foster parent to maintain conditions that provide safety and well-being for a child or young adult in the home.

(17) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(18) "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.

(19) "Revocation" means an administrative act by the Department that rescinds an existing Certificate of Approval.

(20) "Young adult" means an individual aged 18 through 20 years.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: SOSCF 17-1999, f. & cert. ef. 8-12-99; Renumbered from 413-200-0280, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 11-2007(Temp), f. & cert. ef. 6-1-07 thru 11-27-07; Suspended by CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 24-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 2-2009, f. & cert. ef. 2-2-09; CWP 36-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0274

### Responsibilities for Assessment and Certification

(1) Sections (2) to (5) of this rule cover Department responsibilities for an expedited process for certification of an applicant for a Child-Specific Certificate of Approval. Sections (6) and (7) cover Department responsibilities for certification of all other applicants and assessment of a potential adoptive resource.

(2) To complete the expedited process for assessment of an applicant for a Child-Specific Certificate of Approval, the certifier must:

(a) Review the completed application.

(b) Have face-to-face contact with the applicant and each member of the household. If a member of the household is unavailable when conducting face-to-face contact for a Child-Specific Certificate of Approval, the certifier must:

(A) Obtain the approval of the supervisor to delay face-to-face contact with that member of the household; and

(B) Determine a date and time for the face-to-face contact within one week of the date the member of the household becomes available.

(c) Explain the certification process.

(d) Discuss with the applicant the role and responsibilities of the Department.

(e) Assess the applicant's motivation for and interest in caring for the child or young adult.

(f) Complete a home visit.

(A) Observe and assess the safety of the physical environment;

(B) Walk through every room in the home and each surrounding building; and

(C) Complete a Safety Assessment of the home.

(g) Gather and analyze information, through interview and observation, as it relates to each applicant's personal qualifications and assess the

conditions that appear to exist in the home that affect safety, health, and well-being for a child or young adult.

(h) Assure completion of a criminal records check through LEDS, which includes information compiled and maintained by OSP Bureau of Criminal Identification on each adult member of the household and initiate a criminal records check, including information compiled and maintained by OSP Bureau of Criminal Identification and a fingerprint-based criminal offender records check of national crime information as outlined in Child Welfare Policy I-G.1.4, "Criminal History", OAR 413-120-0400 to 413-120-0470.

(A) Assess the fitness of the applicant or member of the household pursuant to OAR 413-120-0450 and 413-120-0455; and

(B) If appropriate, request an exception pursuant to OAR 413-120-0450(7) to complete certification of the applicant despite the criminal offender history of an applicant or member of the household.

(i) At the Department's discretion and when there is reason to believe a child, not in the care or custody of the Department and living in the home, may pose a risk to a child or young adult placed in the home, initiate a fingerprint-based criminal offender records check of national crime information databases as outlined in Child Welfare Policy I-G.1.4, "Criminal History", OAR 413-120-0400 to 413-120-0470.

(j) Assure initiation of child abuse history background checks for each adult member of the household.

(A) A child abuse history background check must be completed in the state of Oregon and requested from any other state where the individual has resided in the last five years;

(B) Assess any safety concerns regarding the applicant or member of the household raised by information learned from the child abuse history background check; and

(C) When appropriate, obtain approval from the District Manager or designee on a form approved by the Department to continue certification when a member of the household has been identified as the perpetrator or possible perpetrator of abuse or neglect in a Child Protective Services Assessment Founded Disposition, Unable to Determine Disposition, or a similar disposition from another state.

(k) Within 24 hours, gather information from at least two personal references for the applicant.

(l) Assure the applicant possesses a valid driver license and auto insurance if the applicant will transport a child or young adult in the care or custody of the Department.

(m) Determine, with input from the applicant, the gender, ages, and maximum number of children and young adults who may be placed in the home by the Department.

(n) When appropriate, obtain approval from the Child Welfare program manager or designee on a form approved by the Department when:

(A) The applicant or a member of the household is an in-home day care provider or foster care provider licensed by another program, unless placement is authorized under an agreement;

(B) The applicant or a member of the household is an adult foster care or in-home adult day care provider; or

(C) An applicant applying to become a relative caregiver is 18, 19, or 20 years of age.

(o) When appropriate, obtain approval from the Child Welfare program manager or designee on a form approved by the Department, when the applicant is assessed as a Child-Specific Certificate of Approval through an office other than the office in the county in which the applicant resides.

(p) When appropriate, obtain the approval of the Child Welfare program manager when the number of children or young adults placed in the home will exceed the maximum number of children or young adults as described in OAR 413-200-0276.

(q) After completing the activities in subsections (2)(a) to (p) of this rule, the Department may issue a Child-Specific Certificate of Approval for up to 180 days.

(3) As soon as possible and no later than the 180-day period beginning the date the Child-Specific Certificate of Approval is issued, the certifier must complete all of the following actions:

(a) Gather information from at least two additional references. No more than two of the four required references may be provided by the applicant's relatives.

(b) Contact the caseworker of the child or young adult placed in the home regarding the adjustment of the child or young adult in placement and the certified family's ability to meet the needs of the child or young adult.

(c) Conduct a home visit at least every 90 days, and when necessary, additional home visits.



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(d) Gather personal, family social history information sufficient to assess the conditions that appear to exist in the home that affect safety, health, and well-being of a child or young adult through a series of questionnaires and interviews completed by applicants, members of the household, and others.

(e) Assure completion of the fingerprint based criminal records check as described in Child Welfare Policy I-G.1.4, "Criminal History", OAR 413-120-0400 to 413-120-0470.

(f) Assure completion of the child abuse history background checks for each adult member of the household as required in paragraph (2)(j)(A) of this rule and request a child abuse history background check for each adult member of the household who has lived in another country in the five years preceding the applicant's dated application for a Certificate of Approval from the Department.

(g) Verify that the certified family --

(A) Has completed Orientation within 30 days after the expedited Child-Specific Certificate of Approval was issued; and

(B) Has a plan --

(i) To complete Foundations training before or within 12 months after the date on which the Certificate of Approval was issued; or

(ii) Has a written, individualized training plan, approved by a supervisor, specific to meeting the needs of the child or young adult placed with a certified family holding a child-specific certificate. The individualized training plan must:

(I) Include training on mental and emotional problems that occur in child victims of abuse and neglect, including sexual abuse and rape of a child; and

(II) Be developed within 90 days after a Child-Specific Certificate of Approval has been issued by the Department.

(h) Discuss and develop a training plan for each certified adult in the family.

(i) Document the assessment of the certified family's ability to provide safety, health, and well-being for the child or young adult in a home study on a form approved by the Department.

(4) After completing the activities in section (3) of this rule, the Department may approve the certified family for the two-year certification period and issue a Child-Specific Certificate of Approval. The effective date of an approval issued under this section will be the day on which the activities in section (3) of this rule were completed. The expiration date of an approval issued under this section will be two years from the effective date on the first expedited Child-Specific Certificate of Approval.

(5) When the activities described in subsections (3)(a) to (3)(i) of this rule have not been completed within 180 days:

(a) The District Manager or designee may extend the Child-Specific Certificate of Approval for no longer than 30 days; or

(b) The Foster Care Program Manager or designee may extend the Child-Specific Certificate of Approval for over 30 days if an activity has not been completed due to circumstances beyond the control of the Department.

(6) To complete the assessment for the certification of all other applicants other than those being assessed for an expedited Child-Specific Certificate of Approval, the certifier must:

(a) Review the completed application.

(b) Have face-to-face contact with the applicant and each member of the household.

(c) Explain the process for certification of a relative caregiver or foster parent and approval of a potential adoptive resource.

(d) Discuss with the applicant the role and responsibilities of the Department.

(e) Assess the applicant's motivation for and interest in caring for a child or young adult.

(f) Complete a minimum of two home visits.

(A) Observe and assess the safety of the physical environment;

(B) Walk through every room in the home and each surrounding building; and

(C) Complete a Safety Assessment of the home.

(g) Gather social history information through a series of questionnaires approved by the Department, interviews, and observations in which the Department staff gathers personal information about the applicant and the household. Analyze information as it relates to each applicant's personal qualifications and assess the conditions that appear to exist in the home that affect safety, health, and well-being for a child or young adult.

(h) Assure completion of a criminal records check including information compiled and maintained by the OSP Bureau of Criminal Identification and a fingerprint-based criminal records check of national crime informa-

tion databases on each adult member of the household and, at the Department's discretion, on any child under 18, as outlined in Child Welfare Policy I-G.1.4, "Criminal History", OAR 413-120-0400 to 413-120-0470.

(A) Assess the fitness of the applicant or member of the household pursuant to OAR 413-120-0450 and 413-120-0455; and

(B) If appropriate, request an exception pursuant to OAR 413-120-0450(7) to complete certification of the applicant despite the criminal offender history of an applicant or member of the household.

(i) At the Department's discretion and when there is reason to believe a child, not in the care or custody of the Department and living in the home, may pose a risk to a child or young adult placed in the home, initiate a fingerprint-based criminal offender records check of national crime information databases as outlined in Child Welfare Policy I-G.1.4, "Criminal History", OAR 413-120-0400 to 413-120-0470.

(j) Assure completion of child abuse history background checks for each adult member of the household.

(A) If the applicant or an adult member of the household has lived outside the state of Oregon and within the United States in the previous five years, obtain a child abuse history background check from each state where the individual resided in the five years preceding the applicant's dated application for a Certificate of Approval from the Department;

(B) If the applicant or an adult member of the household has lived outside of the United States in the previous five years, a child abuse history background check must be requested from each country where the individual lived within the five years preceding the applicant's dated application for a Certificate of Approval from the Department;

(C) Assess any safety concerns regarding the applicant or member of the household raised by information learned from the child abuse history background check; and

(D) When appropriate, obtain approval from the District Manager or designee on a form approved by the Department to continue certification when a member of the household has been identified as the perpetrator or possible perpetrator of abuse or neglect in a Child Protective Services Assessment Founded Disposition, Unable to Determine Disposition, or a similar disposition from another state.

(k) Gather information from at least four personal references for the applicant, no more than two of which may be provided by the applicant's relatives.

(l) Obtain authorization from the applicant prior to contacting any individual in completing a thorough background check, other than the applicant's adult children and references provided by the applicant.

(m) Assure the applicant possesses a valid driver license and auto insurance if the applicant will transport a child or young adult.

(n) Determine, with input from the applicant, the gender, ages, and maximum number of children and young adults who may be placed in the home by the Department.

(o) When appropriate, obtain approval from the Child Welfare program manager or designee on a form approved by the Department under the following circumstances:

(A) The applicant or a member of the household is an in-home day care provider or foster care provider licensed by another child-caring agency, unless placement is authorized under an Interagency Agreement;

(B) The applicant or a member of the household is an adult foster care or in-home adult day care provider; or

(C) An applicant applying to become a relative caregiver is 18, 19, or 20 years of age.

(p) When appropriate, obtain approval from the Child Welfare program manager or designee on a form approved by the Department when the applicant applies for a Certificate of Approval through an office other than the office in the county in which the family resides.

(q) When appropriate, obtain the approval of the Child Welfare program manager when the number of children or young adults placed in the home will exceed the maximum number of children or young adults as described in OAR 413-200-0276.

(r) Verify that the applicant has completed Orientation and Foundations training before or within 12 months after the date on which the Certificate of Approval was issued, or has written documentation of completion of equivalent training content from another licensed child-caring agency within two years of an applicant's dated application for a Certificate of Approval from the Department.

(s) Discuss and develop a training plan with each applicant.

(t) Document the assessment of the applicant's ability to provide safety, health, and well-being for the child or young adult in a home study on a form approved by the Department.

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(7) After completing the activities in section (6) of this rule, the Department may:

- (a) Issue a Certificate of Approval for a two-year period for individuals applying to become a certified family; or
- (b) Send written notice of the status of the application for a potential adoptive resource pursuant to OAR 413-120-0240.

Stat. Auth.: ORS 409.050, 418.005, 418.640  
Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645  
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 24-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 2-2009, f. & cert. ef. 2-2-09; CWP 36-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0276

### Responsibility to Determine the Maximum Number of Children or Young Adults in a Certified Family Home

(1) Unless special circumstances exist, a supervisor may not issue a Certificate of Approval that, when the home is fully occupied, exceeds the following maximum number of children or young adults living in the home:

- (a) A total of four children or young adults to one certified adult living in the home;
- (b) A total of seven children or young adults to two certified adults living in the home; or
- (c) A total of two children under the age of three.

(2) When making the determination of the maximum number of children or young adults in the home as described in section (1) of this rule, the supervisor includes all children and young adults residing in the home, not only the children or young adults in the care or custody of the Department.

(3) The Child Welfare program manager may approve placing additional children or young adults in the home in special circumstances.

(a) Special circumstances include, but are not limited to:

(A) Placing siblings together; or

(B) Placing a special needs child or young adult with a family that has demonstrated extraordinary ability in meeting the safety, health, and well-being needs of a child or young adult.

(b) In these special circumstances, the certifier must assess:

(A) The skills, abilities, willingness, and training of the certified family related to the quantity of services that are required for each child or young adult;

(B) The skills, abilities, safety, health, and well-being needs of each child or young adult;

(C) The amount of Departmental supervision the certified family requires and the certified family's network of support to the child or young adult related to the needs of the child or young adult;

(D) The maximum safe physical capacity of the home, including sleeping arrangements; and

(E) The plan for each individual to escape from the home in case of fire or other emergency.

(4) The certifier must document the assessment described in subsection (3)(b) of this rule on a form approved by the Department and obtain Child Welfare program manager approval prior to permitting the home to exceed the maximum number of children or young adults specified in section (1) of this rule.

(5) When a Child Welfare program manager approves placing additional children or young adults in a certified home, the certifier must:

(a) Visit the home every 90 days;

(b) Assess during each visit the certified family's compliance with certification standards; and

(c) Document the certified family's compliance with certification standards after each visit.

Stat. Auth.: ORS 409.050, 418.005, 418.640  
Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645  
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 2-2009, f. & cert. ef. 2-2-09; CWP 36-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0278

### Responsibilities for Issuing a Certificate of Approval

(1) The Department must complete the assessment activities described in OAR 413-200-0274, and issue a Certificate of Approval or provide notice of intent to deny a Certificate of Approval within 180 days of receipt of an application to become a foster parent or relative caregiver, unless the application is withdrawn or the assessment period is extended by the District Manager or designee.

(2) The supervisor must --

(a) Review all assessment activities;

(b) Ensure all safety components of the certification standards are met; and

(c) Ensure any required exception or approval as provided in these rules (OAR 413-200-0270 to 413-200-0296) has been obtained prior to the Department issuing a Certificate of Approval.

(3) A supervisor may approve and the Department may issue the following Certificates of Approval:

(a) An expedited Child-Specific Certificate of Approval for up to 180 days when all activities required in OAR 413-200-0274(2) have been completed;

(b) A two-year Child-Specific Certificate of Approval to provide relative caregiver or foster care after all activities required in OAR 413-200-0274(3) have been completed.

(c) A Certificate of Approval for two years when all the activities required in OAR 413-200-0274(6) have been completed.

(4) A Certificate of Approval must include the following information:

(a) The name of each primary adult, including married couples, individuals in a domestic partnership (as defined in ORS 106.310), and cohabitating individuals, approved as the certified family;

(b) The address to which the certificate applies;

(c) The age range (birth to 20) and gender of the children or young adults for whom the certified family is approved to provide care;

(d) The maximum number of children or young adults who can be placed in the home;

(e) The provider number that the Department has given the home;

(f) The effective and expiration dates of the certificate; and

(g) The signature of the Child Welfare program manager or designee.

(5) The Department may at its discretion modify the Certificate of Approval to increase or decrease the maximum number of children or young adults, the age range, or the gender of the children or young adults for whom the family is certified within the limits prescribed in OAR 413-200-0276.

Stat. Auth.: ORS 409.050, 418.005, 418.640  
Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645  
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 24-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 2-2009, f. & cert. ef. 2-2-09; CWP 36-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0281

### Respite Care Providers and Babysitters

(1) The certifier must undertake all of the following activities when applicable:

(a) Discuss with the certified family the plan for providing care to a child or young adult, when the certified family will be unavailable to provide care.

(b) Assure completion of criminal records check through LEDS which includes information compiled and maintained by OSP Bureau of Criminal Identification as outlined in Child Welfare Policy I-G.1.4, "Criminal History", OAR 413-120-0460 on any individual the certified family has identified to as a prospective respite care provider.

(c) Assure completion of a fingerprint-based criminal offender records check of national crime information databases whenever:

(A) The criminal records check conducted under subsection (b) of this section indicates the prospective respite care provider has a criminal history; or

(B) The prospective respite care provider has lived in Oregon less than five years.

(d) Conduct child abuse history background checks on any individual the certified family has identified as a prospective respite care provider.

(e) Analyze information gathered under subsections (a) and (b) of this section prior to determining the individual is safe and appropriate to provide respite care and approving the individual to provide respite care.

(f) Document the analysis under subsection (e) of this section in the certification record.

(g) Notify the certified family of the approval for the individual identified to provide respite care within one business day of the approval.

(h) Verify that any certified family identified to provide respite care for another certified family has a current Certificate of Approval.

(i) When the analysis under subsection (e) of this section results in a determination that the individual is either not a safe or appropriate individual to provide respite care, notify the certified family that the individual is not authorized to provide respite care within one business day of the decision.

(2) The Department has the discretion to request a criminal records check of a babysitter.

(3) When a certified family notifies the Department of their intent to provide respite care for another child or young adult, the certifier must approve the request prior to the certified family providing respite care.

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Stat. Auth.: ORS 409.050, 418.005, 418.640  
Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645  
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 24-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 2-2009, f. & cert. ef. 2-2-09; CWP 36-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0283

### Responsibilities to Monitor Certification Compliance

(1) A certifier must conduct the following home visits:  
(a) A minimum of one home visit every 90 days during the period an expedited Child-Specific Certificate of Approval is effective;  
(b) A minimum of one home visit to any certified family every 180 days; and  
(c) A minimum of one home visit every 90 days when a certified family has been approved to exceed the maximum number of children or young adults as prescribed in OAR 413-200-0276(1), as long as the approval is applicable.

(2) To monitor a certified family's compliance with Child Welfare Policy II B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Approval of Potential Adoptive Resources", OAR 413-200-0301 to 413-200-0396, a certifier must complete the following activities when applicable:

(a) Assess the certified family's ability to maintain conditions in the home that provide safety, health, and well-being for the children and young adults whenever it becomes known that the certified family wishes to become an in-home child care, an adult foster care, or in-home adult day care provider, and, when appropriate, obtain approval from the Child Welfare program manager or designee on a form approved by the Department.

(b) Obtain approval from the Child Welfare program manager or designee on a form approved by the Department prior to placement of the child or young adult whenever it becomes known that another agency wishes to place a child or young adult in a certified home.

(c) Assure completion of a criminal records check and child abuse history background checks whenever it becomes known that another adult is living in the household or the certified family identifies another respite care provider.

(d) Seek input from the caseworkers of each child and young adult placed or living in the home during the past 180 days and assess the conditions that appear to exist in the home that affect safety, health, and well-being for the child or young adult;

(e) Assess the information that the certifier learns from the home visit, the certified family, members of the household, and caseworkers to determine whether conditions appear to exist in the home that affect safety, health, and well-being for the child or young adult placed in the home by the Department;

(f) Review and assess the conditions that appear to exist in the home that affect safety and well-being for the child or young adult when any special circumstances described in OAR 413-200-0276(3)(a) exist; and

(g) Document the contacts with the certified family and the assessment information obtained under this rule in the certification record.

Stat. Auth.: ORS 409.050, 418.005, 418.640  
Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645  
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 24-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 2-2009, f. & cert. ef. 2-2-09; CWP 36-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0285

### Responsibilities When Developing a Placement Support Plan

(1) When a certifier determines that a certified family needs additional support to maintain conditions that provide safety, health, and well-being in the home, the certifier must develop a placement support plan. A placement support plan is appropriate when one or both of the following circumstances apply:

(a) The certified family needs additional training or instruction to improve the care giving practices to meet the needs of the children or young adults placed in the certified family's home.

(b) The certified family is not in compliance with one or more of the Department's certification standards, and the non-compliance does not result in a safety threat to a child.

(2) When a placement support plan is appropriate to support a certified family, the certifier must gather information regarding current circumstances from:

(a) The certified family;  
(b) The children or young adults placed in the certified family's home, when appropriate;

(c) The caseworkers of the children or young adults currently placed in the home; and

(d) Other collateral contacts that may have information regarding the characteristics of the care provided in the certified family's home.

(3) The certifier must schedule a meeting with the certified family to discuss the current circumstances that require a placement support plan and the appropriate supports and services to assist the certified family.

(4) The certifier must prepare a written placement support plan that specifies:

(a) The actions or services in which the certified family will participate;

(b) The actions or services the Department will provide to support the certified family in maintaining conditions that provide safety, health, and well-being for the children or young adults placed in the home by the Department;

(c) Agreement that the certified family is willing and able to participate in the actions or services;

(d) Agreement to review the placement support plan on a specified date, which is within at least 90 days; and

(e) The anticipated end date of the placement support plan.

(5) A supervisor must approve the placement support plan.

(6) When the placement support plan has been approved, the certifier must:

(a) Provide a copy to the certified family;

(b) File a copy in the certification file;

(c) Document the placement support plan in the Department information system; and

(d) Provide written notification to the caseworkers of each child or young adult placed in the home of the placement support plan.

(7) The certifier must contact the certified family prior to the anticipated end date of the placement support plan to assure that all activities and services have been completed, or the certified family can meet the needs of the children or young adults placed in the home by the Department and is in compliance with Department certification standards.

(8) The certifier must document the end of a placement support plan in the certification file, in provider case notes, and notify the caseworkers of each child or young adult placed in the certified family's home.

Stat. Auth.: ORS 409.050, 418.005, 418.640  
Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645  
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 36-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0287

### Responsibilities Regarding Two-Year Renewal of the Certificate of Approval

(1) A certified family must be assessed every two years. The Department must complete the assessment and provide written notice of the decision to renew a certificate approval or intent to deny the renewal of the certified family's Certificate of Approval. To renew a Certificate of Approval, the certifier must complete all of the following:

(a) Conduct a minimum of one home visit, have face-to-face contact with each member of the household, and complete the questionnaires and interviews necessary to complete a home study update.

(b) Review the completed Certified Family Certificate Renewal or Change of Status Application.

(c) Confirm completion of required hours of training, and develop a training plan for the new certification period.

(d) Contact the caseworkers who have had children or young adults placed with the certified family during the past 180 days.

(e) Assure completion of criminal records checks on each adult member of the household; and, at the Department's discretion, any child, when there is reason to believe the child may pose a risk to children placed in the home, as described in Child Welfare Policy I G.1.4, "Criminal History", OAR 413-120-0400 to 413-120-0470. A fingerprint-based criminal offender records check of national crime information databases is not required for an application for renewal of a Certificate of Approval, unless an applicant or member of the household has lived outside of Oregon for more than 60 consecutive days within the two-year certification period or has been arrested or convicted during the two-year certification period.

(A) Assess any safety concerns regarding the fitness of the applicant or member of the household pursuant to OAR 413-120-0450 and 413-120-0455; and

(B) If appropriate, request an exception pursuant to OAR 413-120-0450(7) to complete certification of the applicant despite the new criminal offender history of an applicant or member of the household.

(f) Assure completion of child abuse history background checks for each adult member of the household.

(A) When the applicant or an adult member of the household has lived outside the state of Oregon in the previous five years, and an out-of-state

# ADMINISTRATIVE RULES

child abuse history background check has not been completed, a child abuse history background check must be requested from each state or country where the individual resided in the five years preceding the applicant's dated application for renewal of a Certificate of Approval from the Department.

(B) Assess any safety concerns regarding the applicant or adult member of the applicant's household raised by information learned from the child abuse history background check.

(C) When appropriate, obtain approval from the District Manager or designee, on a form approved by the Department, to proceed with an application when a member of the household has been identified as the perpetrator or possible perpetrator of abuse or neglect in a Child Protective Services Assessment Founded Disposition, Unable to Determine Disposition, or a similar disposition from another state.

(g) Review and assess whether conditions appear to exist in the home that jeopardize the safety, health, or well-being of the child or young adult.

(h) Review and analyze the certified family's skills and abilities in maintaining conditions in the home that provide safety, health, and well-being for the child or young adult, maintaining relationships with the community and the Department, and supporting the case plan of the child or young adult.

(i) Update the home study on a form approved by the Department, including results of the assessment activities completed in subsections (a) to (h) of this section, and submit to the supervisor for approval.

(2) The supervisor reviews the updated home study and may approve or deny the home study. If the supervisor approves the home study, the Department will issue a new two-year Certificate of Approval. If the supervisor does not approve the home study, the Department will proceed as outlined in OAR 413-200-0296.

(3) Pursuant to ORS 183.430, if the certified family has submitted a timely Renewal Application and the Department does not complete the activities in sections (1) and (2) of this rule before the stated expiration date on the certified family's Certificate of Approval, the certified family's Certificate of Approval may not be deemed to expire until the Department has issued a new Certificate of Approval or there is a final order denying renewal.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 24-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 2-2009, f. & cert. ef. 2-2-09; CWP 36-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0289

### Responsibilities Regarding Voluntary Termination of an Application or an Existing Certificate of Approval

(1) When an applicant requests to withdraw his or her application for a Certificate of Approval, the certifier must document his or her communication regarding the applicant's request.

(2) When a certified family requests that the Department terminate the Certificate of Approval or does not wish to renew a Certificate of Approval, the certifier must document his or her communication regarding the certified family's request.

(3) The Department terminates a Child-Specific Certificate of Approval within 10 business days of the departure of the child or young adult, unless at least one of the following subsections applies:

(a) The child-specific certified family submits a written request to continue their Certificate of Approval as a foster parent under section (4) of this rule within 10 business days of the departure of the child or young adult from the home;

(b) The Department has determined the child or young adult is removed because the certified family cannot meet the safety, health, and well-being needs of the child or young adult and has violated one or more rules under Child Welfare Policy II B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Approval of Potential Adoptive Resources", OAR 413-200-0301 to 413-200-0396; or

(c) OAR 413-200-0395(6) applies.

(4) When the Department has determined that subsection (3)(b) of this rule applies, the Department will notify the certified family of the decision and issue a notice of intent to revoke the Certificate of Approval pursuant to OAR 413-200-0395(2).

(5) When a child-specific certified family requests to become certified as a foster parent, the certifier must:

(a) Provide the family with a "Certified Family Certificate Renewal or Change of Status Application"; and

(b) Assess the family's ability to meet the safety, health, and well-being needs of a non-related child or young adult placed in the home pursuant to the requirements of OAR 413-200-0274.

(6) After the certifier has completed the assessment pursuant to subsection (5)(b) of this rule, a supervisor will approve the assessment and send a Certificate of Approval to the family, or send a notice of intent to deny the application, unless the family has withdrawn their request pursuant to OAR 413-200-0296.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 36-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0292

### Responsibilities Regarding Recertification of a Previously Certified Home

(1) When a certified family has been closed less than six months, the previous Certificate of Approval would not have expired during the months the home was closed (if the Certificate of Approval was not revoked), the certified family continues to live in the same residence, and the certified family requests that the Department reopen the Certificate of Approval, the certifier must undertake the following actions:

(a) Provide the family with a Certified Family Certificate Renewal or Change of Status Application.

(b) Assure completion of criminal records checks on each adult member of the household; and, at the Department's discretion, when there is reason to believe a child, not in the care or custody of the Department and living in the home, may pose a risk to a child or young adult placed in the home, initiate a fingerprint-based criminal offender records check of national crime information databases as described in Child Welfare Policy I G.1.4, "Criminal History", OAR 413-120-0400 to 413-120-0470. A fingerprint-based criminal offender records check of national crime information databases is required when an applicant or member of the household has lived outside of Oregon for more than 60 consecutive days or has been arrested or convicted during the two-year certification period.

(A) Assess any safety concerns regarding the fitness of the applicant, child, or member of the household pursuant to OAR 413-120-0450 and 413-120-0455; and

(B) If appropriate, request an exception pursuant to per OAR 413-120-0450(7) to complete recertification of the previously certified family despite the new criminal offender information history of an applicant, child, or member of the household.

(c) Assure completion of child abuse history background checks for each adult member of the household.

(A) When the applicant or an adult member of the household has lived outside the state of Oregon, a child abuse history background check must be requested from each state or country where the individual resided.

(B) Assess any safety concerns regarding the applicant or adult member of the applicant's household raised by information learned from the child abuse history background check.

(C) When appropriate, obtain approval from the District Manager or designee, on a form approved by the Department, to proceed with an application when a member of the household has been identified as the perpetrator or possible perpetrator of abuse or neglect in a Child Protective Services Assessment Founded Disposition, Unable to Determine Disposition, or a similar disposition from another state.

(d) Conduct a home visit to identify and assess any changes in the environment or family:

(A) Observe and assess the safety of the physical environment;

(B) Walk through every room in the home and each surrounding building; and

(C) Complete a Safety Assessment of the home.

(e) Document in the certification file the circumstances under which the Department reopened the Certificate of Approval.

(2) When a certified family has been closed for six months or more or the previous Certificate of Approval would have expired during the months the home was closed, and the previously certified family contacts the Department to become certified again, the certifier must:

(a) Provide to the certified family for completion the necessary documents for an initial application for a Certificate of Approval to provide care;

(b) Complete the assessment process as described in OAR 413-200-0274;

(c) Update the family's home study and document any changes in the family's circumstances since the most recent closure of the Certificate of Approval; and

(d) Submit the updated home study to the supervisor for approval.

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(3) The supervisor reviews the updated home study and may approve or deny the updated home study. If the supervisor approves the updated home study, the Department will issue a new two-year Certificate of Approval. If the supervisor does not approve the home study, the Department will proceed as outlined in OAR 413-200-0296.

(4) A family previously certified by the Department must complete Foundations training if the family has not been certified within the last two years unless the supervisor either:

(a) Approves an individualized training plan for a certified family who has been issued a Child-Specific Certificate of Approval; or

(b) Waives the training requirement based on the family's documented knowledge and skills in caring for a child or young adult placed in the home by the Department.

(5) When the certified family moves to another residence in the State of Oregon, the Department terminates the Certificate of Approval automatically. The Department may issue a new Certificate of Approval for the new residence after the activities described in this section have been completed. Within 10 business days, the certifier must complete the following actions:

(a) Provide the certified family a Certified Family Certificate Renewal or Change of Status Application.

(b) Review the completed Certified Family Certificate Renewal or Change of Status Application.

(c) Conduct a home visit.

(A) Observe and assess the safety of the physical environment;

(B) Walk through every room in the home and each surrounding building; and

(C) Complete a Safety Assessment of the home.

(d) Document in the certification file the circumstances of the family's relocation.

(6) When a certified family has been initially certified by the local Child Welfare office in the county in which the family resides and the family moves to another county, all of the following actions are required:

(a) The issuing Child Welfare office's certification supervisor must notify the certification supervisor in a Child Welfare office in the county to which the certified family is moving;

(b) The certification file and ongoing Department responsibilities are transferred to a Child Welfare office in the county to which the certified family is moving, unless the Child Welfare program manager or designee in the county to which the certified family is moving has approved that Department certification responsibilities remain in the Child Welfare office in the county from which the certified family is moving.

(c) Complete the actions described in section (5) of this rule.

(7) When a certified family wishes to move outside the State of Oregon with a child or young adult, refer to Child Welfare Policy I-B.3.4.2, "Interstate Compact on the Placement of Children", OAR 413-040-0200 to 413-040-0330.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 24-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 2-2009, f. & cert. ef. 2-2-09; CWP 36-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0294

### Responsibilities Regarding Inactive Referral Status

(1) The certified family or the Department may initiate an Inactive Referral Status. When a certified family is on Inactive Referral Status, no additional child or young adult may be placed in the home.

(2) A certified family may ask the Department to place their home on Inactive Referral Status for any reason for up to 12 months. The Inactive Referral Status begins immediately upon the request of the family.

(3) When either a certified family or the Department indicate an Inactive Referral Status, the certifier must immediately notify Department staff responsible for placement that the certified family is unavailable for placement of a child or young adult.

(4) Within 30 days of a certified family requesting Inactive Referral Status, the certifier must send a letter to the certified family that documents the inactive status, the reasons for the status, and the requested length of the Inactive Referral Status.

(5) The Department may place a certified family on Inactive Referral Status for one or more of the following reasons:

(a) The special needs of a child or young adult, who is currently in the home, require so much of the certified family's care and attention that no agency should place an additional child or young adult in the home.

(b) The family or members of the household are experiencing significant family or life stress.

(c) The certified family does not currently meet one or more of the certification standards.

(6) The Department must place a certified family on Inactive Referral Status when the Department is assessing an allegation of child abuse or neglect in the home.

(7) Within 14 days of the Department's initiating Inactive Referral Status, the certifier must send a letter to the certified family that documents the beginning date of Inactive Referral Status, the reason for the Inactive Referral Status, and any specific certification standards that have been violated, if any.

(a) The certifier and the certified family may collaborate to develop a placement support plan to address the concerns precipitating the Inactive Referral Status; and

(b) The certification supervisor reviews and approves the placement support plan.

(8) The Department may revoke a Certificate of Approval if a certified family is unable to remedy a violation of a certification rule within the time frame of the Inactive Referral Status.

(9) When the certified family initiates Inactive Referral Status, the inactive status ends at the request of the certified family.

(10) When the Department initiates Inactive Referral Status, the Department determines, within the time frame of the Inactive Referral Status, when the conditions that warranted the Inactive Referral Status have been resolved.

(11) When the Inactive Referral Status ends, the certifier must:

(a) Document removal of the Inactive Referral Status in the certification file;

(b) Send written notification to the family within 30 days; and

(c) Notify Department staff responsible for placement that the certified family is available for placement of a child or young adult.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 36-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0296

### Responsibilities Regarding Denial or Revocation of a Certificate of Approval

(1) The Department may deny an application for a Certificate of Approval or revoke a Certificate of Approval when the applicant or certified family does not meet one or more of the certification rules in Child Welfare Policy II-B.1, "Standards for Certification of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources", OAR 413-200-0301 to 413-200-0396.

(2) The Department must provide the applicant a written notice of the intent to deny a Certificate of Approval, which must state the reason or reasons for the denial and comply with OAR 413-010-0510.

(3) The Department must revoke a Certificate of Approval when, at the conclusion of a CPS assessment, the Department determines there is a safety threat in the certified family's home, unless the certified family voluntarily requests that the Department terminate the Certificate of Approval and provides written documentation of the request to terminate the Certificate of Approval.

(4) The Department may deny an application or revoke a Certificate of Approval if the Department discovers an applicant or certified family has falsified information (by act of commission or omission) before or after the Certificate of Approval has been issued or if a certified family fails to provide information or inform the Department of any disqualifying condition that arises after the Certificate of Approval has been issued.

(5) The Department must provide an applicant or certified family a written notice of intent to deny or revoke a Certificate of Approval, which must state the reason or reasons for the revocation and comply with OAR 413-010-0510.

(6) When the Department has issued a notice to revoke a Certificate of Approval before the stated expiration date on the Certificate of Approval, the Certificate of Approval will not be deemed to expire until there is a final order on the notice to revoke the Certificate of Approval.

(7) The Department must remove from the home all the children and young adults in the care or custody of the Department upon making the decision to revoke the certified family's Certificate of Approval.

(8) When the Department has revoked a family's Certificate of Approval or denied an application for a Certificate of Approval, the Department may require a waiting period of up to five years from the date of revocation of the family's Certificate of Approval before the Department accepts a new application from the family.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

# ADMINISTRATIVE RULES

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 2-2009, f. & cert. ef. 2-2-09; CWP 36-2011, f. 12-27-11, cert. ef. 12-28-11

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 37-2011

**Filed with Sec. of State:** 12-27-2011

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**Rules Amended:** 413-200-0301, 413-200-0305, 413-200-0306, 413-200-0308, 413-200-0314, 413-200-0335, 413-200-0348, 413-200-0352, 413-200-0354, 413-200-0358, 413-200-0362, 413-200-0371, 413-200-0377, 413-200-0379, 413-200-0383, 413-200-0386, 413-200-0388, 413-200-0390, 413-200-0393, 413-200-0394, 413-200-0395, 413-200-0396

**Subject:** These rules (OAR 413-200-0301 through 413-200-0396) about certification standards for foster parents, relative caregivers, and potential adoptive resources are being amended to promote child safety, clarify the certification standards, clarify when a declaration of citizenship status is required, prohibit electronic monitoring devices as a mechanism to manage behavior, and update the rules to match current practices.

OAR 413-200-0301 about the purpose of the Department's rules regarding the certification standards is being amended to clarify the purpose of the rules.

OAR 413-020-0306 about the definitions of key terms used in these rules is being amended to add current and remove and revise outdated definitions of certain terms used throughout these rules.

OAR 413-200-0308 about the personal qualifications of applicants and certified families is being amended to add current personal qualifications and clarify when declaration of citizenship status is required.

OAR 413-200-0314 is being amended to restate the process to apply to become a certified family or an approved adoptive applicant.

OAR 413-200-0335 about the certification standards regarding the home environment is being reorganized and amended to clarify when carbon-monoxide detectors are required.

OAR 413-200-0348 about the number of children and young adults in the home is being amended to clarify maximum numbers of children in the home.

OAR 413-200-0352 is being amended to restate that a certified family must work cooperatively with the Department regarding specific care requirements for a child or young adult.

OAR 413-200-0354 is being amended to restate the requirements that a certified family has regarding monitoring the ongoing progress of a child's education.

OAR 413-200-0358 about certification standards regarding a child's discipline is being amended to clarify differences between discipline and punishment. It is also being amended to state when specific training is required if physical restraint is used.

OAR 413-200-0362 about a child's physical and mental health care is being amended to clarify the certified family's responsibilities in ensuring appropriate physical and mental health care and documentation requirements.

OAR 413-200-0371 is being amended to clarify the type of criminal history background check required for a respite care provider.

OAR 413-200-0379 about required training is being amended to state when individualized training plans can be approved by the Department.

OAR 413-200-0383 about notifications is being amended to clarify when the Department must be notified of changes in the home, surrounding property or type of care which the certified family wishes to provide.

OAR 413-200-0388 is being amended to clarify the purpose of the assessment of the certified home during a home visit.

OAR 413-200-0390 about maintaining a certificate of approval is being amended to state circumstances when a certificate will not expire.

OAR 413-200-0393 about inactive referral status is being amended to correct the title of a related set of administrative rules.

OAR 413-200-0394 is being amended to clarify circumstances when a certificate of approval is terminated and when a certificate of approval does not expire.

OAR 413-200-0395 is being amended to clarify the circumstances when a certificate will not expire during a revocation process.

OAR 413-200-0396 is being amended to update the rule and make it consistent with other rules about the contested case process.

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

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-200-0301

### Purpose of Certification Standards

(1) The purpose of these rules (OAR 413-200-0301 to 413-200-0396) is to describe the criteria for approval as:

- (a) A certified family; or
- (b) A potential adoptive resource.

(2) These rules apply to any individual who:

(a) Has applied to become a certified family or potential adoptive resource;

(b) Is currently a certified family; or

(c) Has applied to have the Certificate of Approval renewed.

(3) In these rules, unless otherwise indicated, a child or young adult refers to a child or young adult in the care or custody of the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0305

### Authorization

(1) Title IV-E, section 471 (a)(10) of the Social Security Act, requires the State of Oregon to establish a state authority responsible for establishing and maintaining standards for foster family homes and child care institutions.

(2) ORS 418.005 to 418.648 give the Department the authority and responsibility to approve homes for children and young adults in the care or custody of the Department. ORS 418.005 to 418.648 further authorize the Department to develop rules to approve these homes.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0306

### Definitions

The following definitions apply to these rules (OAR 413-200-0301 to 413-200-0396):

(1) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request, or if a review was requested, the selection has been sustained by that review and the review is complete.

(2) "Applicant" means an individual or individuals who apply:

(a) To become or remain a certified family; or

(b) For approval as a potential adoptive resource.

(3) "Babysitting" means the provision of temporary, occasional care for a child or young adult that is:

(a) Ten consecutive hours or less; and

(b) Not overnight care.

(4) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on the needs and strengths of a child or young adult used for one or more of the following purposes:

(a) Identifying case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family;

(b) Determining the level of care payment while in substitute care with a certified family; and

(c) Determining the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(5) "Carbon monoxide alarm" means a device that:

(a) Detects carbon monoxide; and

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(b) Produces a distinctive audible alert when carbon monoxide is detected.

(6) "Certificate of Approval" means a document that the Department issues to approve the operation of a certified relative caregiver home or foster home.

(7) "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.

(8) "Certifier" means a Child Welfare employee who:

(a) Conducts assessments of applicants interested in providing relative or foster care to a child or young adult in the care or custody of the Department or assessments of a potential adoptive resource;

(b) Determines whether or not to recommend approval of the operation of a relative caregiver or foster home or approval of a potential adoptive resource; and

(c) Monitors the compliance of a relative caregiver or foster care home with Child Welfare certification rules.

(9) "Child" means an individual under 18 years of age.

(10) "Child-Specific Certificate of Approval" means a document authorizing an individual or individuals to operate a home to provide care for a specific child or young adult in the care or custody of the Department.

(11) "Co-habiting" means the act of two adults, unmarried to each other, living together in an intimate relationship as if married.

(12) "Criminal records check" means the process for obtaining and reviewing an individual's criminal offender information and may include a fingerprint-based criminal offender records check of national crime information databases.

(13) "Denial" means the refusal of the Department to issue or renew a Certificate of Approval to operate a relative caregiver home or foster home to provide care for a child or young adult in the care or custody of the Department.

(14) "Department" means the Department of Human Services, Child Welfare.

(15) "Discipline" means a training process a certified family uses to help a child or young adult develop the self control and self direction necessary to assume responsibilities, make daily living decisions, and learn to conform to accepted levels of social behavior.

(16) "Electronic monitoring" means the use of video monitoring or listening devices to monitor or record the behavior of a child or young adult. "Electronic monitoring" does not include:

(a) Door monitors;

(b) Window alarms;

(c) Motion detectors;

(d) Audio or video baby monitors used for a child five years and under; or

(e) Monitors approved by a medical provider for medical purposes.

(17) "Enhanced supervision" means the additional support, direction, observation, and guidance needed to promote and ensure the safety and well-being of a child or young adult when the child or young adult qualifies for a level of care payment.

(18) "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.

(19) "Inactive Referral Status" means a period of time, not to exceed 12 months, during which neither the Department nor any other agency will place an additional child or young adult with a certified family.

(20) "Level of care payment" means the payment provided to an approved or certified family, a guardian, a pre-adoptive family, or an adoptive family based on the need for enhanced supervision of the child or young adult as determined by applying the CANS algorithm to the results of the CANS screening.

(21) "Member of the household" means any adult or child living in the home, including any caregiving employees and volunteers who may reside in the home.

(22) "Personal care services plan" means a written plan to provide personal care services for the child or young adult documenting:

(a) The determination that the individual is a qualified provider;

(b) The frequency or intensity of each personal care service to be provided; and

(c) The date personal care services begin.

(23) "Physical restraint" means the act of restricting the voluntary movement of a child or young adult as an emergency measure in order to manage and protect the child, young adult, or others from injury when no alternate actions are sufficient to manage the behavior of the child or young

adult. "Physical restraint" does not include temporarily holding a child or young adult to assist him or her or assure his or her safety, such as preventing a child from running onto a busy street.

(24) "Psychotropic medication" means medication, the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including but not limited to antipsychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated intended effect when prescribed because it may have many different effects.

(25) "Punishment" means the intentional infliction of emotional or physical pain or suffering.

(26) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(27) "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 the child or young adult in the home of the respite provider or certified family. "Respite care" must be less than 14 consecutive days.

(28) "Revocation" means an administrative act by the Department that rescinds an existing Certificate of Approval.

(29) "Surrogate" means an individual who has been appointed to safeguard a child's rights in the special education decision-making process. The individual may be appointed pursuant to applicable Department of Education administrative rules and statutes or by the juvenile court.

(30) "Young adult" means an individual aged 18 through 20 years.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 6-1-07 thru 11-27-07; Suspended by CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 25-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0308

### Personal Qualifications of Applicants and Certified Families

(1) An applicant has the burden of proving that he or she possesses the required qualifications to be approved as a certified family or as a potential adoptive resource.

(2) To provide care for a child or young adult, an applicant must be at least 21 years of age unless:

(a) Otherwise specified in Child Welfare Policy I-E.2.1, "Placement of Indian Children", OAR 413-070-0100 to 413-070-0260; or

(b) A Child Welfare program manager or designee has approved an applicant between the ages of 18 through 20 years to become a relative caregiver.

(3) An applicant must, as determined by the Department pursuant to OAR 413-200-0274:

(A) Possess the ability to exercise sound judgment and demonstrate responsible, stable, emotionally mature behavior;

(B) Possess the ability to manage the applicant's home and personal life;

(C) Maintain conditions in the home that provide safety, health, and well-being for the child or young adult;

(D) Have supportive relationships with adults and children living in the household and with others in the community;

(E) Have a lifestyle and personal habits free of criminal activity, and abuse or misuse of alcohol or drugs;

(F) Have adequate financial resources to support the household independent of the monthly family foster care payments;

(G) Be willing to participate in the home study process that includes a comprehensive inquiry into the applicant's personal and family history and family dynamics;

(H) Have the physical and mental capacity to care for a child or young adult. Upon request, an applicant must provide copies of medical reports from a health care professional, or may be required to complete an expert evaluation and authorize the Department to obtain a report from the evaluator; and

(i) Ensure that all adult members of the household:

(A) Possess the ability to exercise sound judgment and demonstrate responsible, stable, emotionally mature behavior, within the individual's developmental and cognitive abilities;

(B) Do not pose a risk to the safety, health, and well-being needs of a child or young adult;

(C) Have a lifestyle and personal habits free of criminal activity, and abuse or misuse of alcohol or drugs; and

(D) Cooperate with the Department's assessment of the household.

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(4) To maintain a Certificate of Approval, in addition to continuing to meet the personal qualifications in sections (1) to (3) of this rule, a certified family must:

(a) Learn and apply effective childrearing and behavior intervention practices focused on helping a child or young adult grow, develop, and build positive personal relationships and self-esteem;

(b) Incorporate into the family's care-giving practices positive non-punitive discipline and ways of helping a child or young adult build positive personal relationships, self-control, and self-esteem;

(c) Ensure the child or young adult is taught age appropriate health and hygiene practices and is given the opportunity to practice good hygiene;

(d) Respect and support the Department's efforts to develop and maintain the relationships of the child or young adult with the birth family, their relatives, and any other significant individual in the life of the child or young adult;

(e) Respect the spiritual beliefs, lifestyles, sexual orientation, gender identity, disabilities, national origin, and cultural identities of each child or young adult, and provide opportunities to enhance the positive self-concept and understanding of the heritage of the child or young adult;

(f) Work in partnership with the Department to identify the strengths and meet the needs of each child or young adult;

(g) Follow through and comply with prescribed services, activities, supervision plans, personal care services plans, visitation plans, transition plans, and restrictions for each child or young adult placed in the certified home, as applicable to that child or young adult; and

(h) Use reasonable efforts to prevent anyone from influencing the child or young adult regarding allegations in a judicial or administrative proceeding in which the family or legal guardian of the child or young adult, the child or young adult, or another individual may be involved.

(5) Except when a certified family applies for recertification, an applicant must be:

(a) A citizen of the United States, either through birth or naturalization;

(b) Able to verify immigration status; or

(c) A relative of the child for whom the applicant is applying for a Certificate of Approval as a relative caregiver or approval as a potential adoptive resource.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0314

### Initial Application Process

(1) To become a certified family or potential adoptive resource, the applicant must comply with all of the following requirements:

(a) Complete a Department application.

(b) Provide the names and contact information of at least four references, two of whom may be relatives of the applicant, who can attest to the applicant's character and ability to provide safe and protective care for a child or young adult.

(c) Provide names and contact information of at least two individuals with whom the certified family is likely to remain in contact if displaced due to a natural disaster.

(d) Complete all required paperwork requested by the Department in a timely manner and no later than 90 days after the initial request.

(e) Allow Department staff to conduct an in home safety assessment of conditions that appear to exist in the home that affect health, safety, and well-being for the child or young adult by providing access to each room in the primary residence of the applicant and each surrounding building on the property of the applicant unless the building or residence is a self-contained, separate entry residence rented to or owned by another individual.

(f) Allow Department staff to have face-to-face contact with all members of the applicant's household.

(g) Provide social and family history information to the Department.

(h) Provide information about any current or previous licenses, certifications, or applications for relative care, foster care, day care, adoption, or any other types of services for vulnerable individuals including adult care giving. Information must include the organization's name and any denials, suspensions, revocations, or terminations.

(i) Sign a Department Authorization for Use and Disclosure of Information as requested to allow the Department to complete a thorough background check of the applicant.

(j) Allow the Department, at its discretion, to gather information regarding the criminal offender information records of any child, not in the

care or custody of the Department, who lives in the household if there is reason to believe that child may pose a risk to children placed in the home.

(2) Both individuals are required to apply when the two individuals are lawfully married, have a domestic partnership (as defined in ORS 106.310), or are co-habiting, unless:

(a) One individual is in the military and stationed out of the state; or

(b) For other unique circumstances in which one individual will not be responsible for any household management or the care of a child or young adult placed in the home, an exception is approved by the Child Welfare program manager.

(3) The applicant and each adult member of the applicant's household must have face-to-face contact with a Department certifier and must provide:

(a) Information regarding criminal involvement, including arrests and convictions regarding any member of the household;

(b) Consent to a criminal records check, including information compiled and maintained by OSP Bureau of Criminal Identification and a fingerprint-based criminal records check of national crime information databases as outlined in Child Welfare Policy, I-G.1.4, "Criminal History", OAR 413-120-0460;

(c) Information regarding any previous allegations of child abuse and neglect; and

(d) Consent to a child abuse and neglect background check.

(4) Withdrawal of Application. An applicant may voluntarily withdraw the application. The applicant must provide the voluntary withdrawal notice:

(a) On a form provided by the Department;

(b) In a written format of his or her choice; or

(c) Verbally to a certifier, adoption worker, or the supervisor of the certifier or adoption worker.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; Renumbered from 413-200-0381, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 25-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0335

### Standards Regarding the Home Environment

The applicant or certified family must ensure the home and surrounding environment comply with all of the following requirements:

(1) General Conditions.

(a) The home must be the primary residence and the residence where the child or young adult will reside.

(b) The home must have adequate space for each member of the household, including space for safe and appropriate sleeping arrangements.

(A) Department staff must consider the age, gender, special needs, behavior, and history of abuse or neglect of the child or young adult in determining appropriate sleeping arrangements.

(B) An unrelated child or young adult in the care or custody of the Department may not share a bed.

(c) The home may not use electronic monitoring.

(d) The applicant or certified family must have access to a working telephone to make and receive phone calls.

(e) The applicant or certified family must consider the age, special needs, and capabilities of the child or young adult, and have necessary safeguards and assurances that:

(A) Swimming pools, hot tubs, wading pools, ponds, and other water hazards are inaccessible to a child or young adult unless responsibly supervised, and safeguards comply with state and local ordinances;

(B) Outdoor tools and equipment, machinery, chemicals, flammables, and combustibles are stored in a safe manner;

(C) Animals are properly cared for and kept in compliance with local ordinances; and

(D) The access of a child or young adult to potentially dangerous animals is restricted.

(f) The certified family must consider the age, special needs, and capabilities of the child or young adult when determining if an animal is a safe and appropriate pet.

(g) The certified family must receive authorization from the caseworker of the child or young adult or the caseworker's supervisor prior to the beginning of hunting or target practice by the child or young adult.

(h) Hunting and sporting equipment, such as knives, spears, arrows, hunting sling shots, bows, and martial art weapons must be stored in a safe and secure manner inaccessible to a child or young adult.

(2) Sanitation and Health.



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(a) The home must have the necessary equipment for the safe preparation, storage, serving, and clean-up of food.

(b) The home must have a safe, properly maintained, and operational heating system. Space heaters must be plugged directly into a wall outlet and must be equipped with tip-over protection.

(c) The home and furnishings must be clean and in good repair, and the grounds must be maintained.

(d) There must be no accumulation of garbage or debris.

(e) The home must have safe and adequate drinking water, and an adequate source of safe water to be used for personal hygiene.

(f) There must be provision for the safe storage of all medications in the household, and locked storage for psychotropic medications for any member of the household.

(g) There must be easily accessible first aid supplies, and a reasonable understanding of how to use such supplies.

(h) Smoking limitations:

(A) A child or young adult may not be exposed to any type of second-hand smoke in the family's home or vehicle; and

(B) A member of the household may not provide any form of tobacco products to a child or young adult.

(3) Fire and Carbon Monoxide Safety.

(a) The home must have all of the following:

(A) One working smoke alarm in each bedroom where a child or young adult sleeps within 24 hours of the time the applicant is certified or approved.

(B) One working carbon monoxide alarm within 15 feet of each bedroom where a child or young adult sleeps and one on each floor within 24 hours of the time the applicant is certified or approved.

(C) At least one operable fire extinguisher rated 2-A:10-B-C or higher within 24 hours of the time the applicant is certified or approved.

(D) One means of emergency exit and one means of rescue from the home.

(E) An adequate safeguard around operating fireplaces, wood stoves, or other heating systems which may cause burns to a child or young adult developmentally unable to reasonably follow safety rules regarding such devices.

(F) Operable, quick-release mechanisms on barred windows. No bedroom occupied by a child or young adult unable to use the quick-release mechanism may have a barred window.

(G) A written, comprehensive home evacuation plan, shared with each child or young adult at the time of placement, and practiced at least every six months. The written, comprehensive home evacuation plan must include a provision for the safe exit of a child or young adult who is not capable of understanding or participating in the evacuation plan.

(H) Doors that lock on the inside operable from the outside of the room, and doors that lock on the outside operable from the inside of the room.

(b) Each bedroom used by a child or young adult must have:

(A) One unrestricted exit;

(B) At least one secondary means of exit or rescue;

(C) Alarms required under paragraph (a)(A) of this section; and

(D) Unrestricted, direct access at all times to hallways, corridors, living rooms, or other such common areas.

(4) Travel and Transportation Safety.

(a) An applicant or certified family must have available, and be willing to use, a safe and reliable method of transportation.

(b) Any member of the household transporting a child or young adult must provide proof of a valid driver license and current insurance, as required by law, on any family-owned motorized vehicle by which a child or young adult might be transported, when a family has applied for certification and at each re-certification.

(c) The applicant or certified family must assure that, as required by current state law:

(A) Only a licensed and insured driver transports a child or young adult in motorized vehicles; and

(B) A child or young adult uses a seat belt or age and size appropriate safety seat when transported in motorized vehicles.

(d) Written authorization from the Department must be received prior to transporting a child or young adult out of the State of Oregon or outside the United States.

(e) A certified family must provide the Department a minimum of 30 days notice seeking approval for international travel prior to any international travel with a child or young adult. In an emergency, the certified family must request approval from the Department as soon as the need for international travel becomes known.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 11-2007(Temp), f. & cert. ef. 6-1-07 thru 11-27-07; Suspended by CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0348

### Requirements Regarding the Number of Children and Young Adults in the Home

(1) Except as provided in section (3) of this rule, a certified family may not exceed the following maximum number of children and young adults in the home:

(a) A total of:

(A) Four children or young adults when one certified adult lives in the home; or

(B) Seven children or young adults when two certified adults live in the home.

(b) Two children under the age of three.

(2) The limits in section (1) of this rule include all children or young adults residing in the home, not only children or young adults in the care or custody of the Department.

(3) Under special circumstances, a Child Welfare program manager may approve placement of a child or young adult in a certified family that exceeds the maximum number of children and young adults in section (1) of this rule.

(4) A certified family may not accept a child or young adult for placement from another agency without prior approval of the Child Welfare program manager or designee.

(5) A certified family may not provide formal or informal adult foster care or child day care without prior approval of the Child Welfare program manager or designee.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0352

### Requirements for the Care of Children and Young Adults

A certified family must comply with all of the following requirements:

(1) Work cooperatively with the Department, the child or young adult, and his or her family to support the case plan and meet the needs of the child or young adult including but not limited to:

(a) Health, dental, and mental health care;

(b) Recreational, social, intellectual, and emotional development;

(c) Continued contact or connection with family members, siblings, and relatives; and

(d) Adequate and appropriate clothing.

(2) Include the child or young adult as part of the certified family household.

(3) Assure that when a child or young adult leaves the certified family, the belongings of the child or young adult, both those brought with him or her and those obtained while living in the home, remain with the child or young adult.

(4) Not subject any child to abuse, as described in ORS 419B.005.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; Renumbered from 413-200-0375, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0354

### Requirements Regarding the Education of a Child or Young Adult

(1) The certified family must comply with all of the following requirements:

(a) Enroll the child or young adult in his or her school or educational placement, after the school or educational placement has been determined by the Department.

(b) Support the child or young adult in his or her school or educational placement, and respond to inquiries from the school or educational placement.

(c) Assure the child or young adult regularly attends the school or educational placement, and monitor the educational progress of the child or young adult, including keeping records of:

(A) The report cards of the child or young adult;

(B) Any reports received from the teacher, school, or educational placement;

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(C) Any evaluations received as a result of educational testing or assessment;

(D) Disciplinary reports regarding the child or young adult; and

(E) Ongoing progress toward graduation of a child or young adult no later than age 19.

(d) Monitor educational successes, learning style, and potential learning difficulties of the child or young adult.

(e) Work with the caseworker of the child or young adult when referring the child or young adult for assessment of a possible disability.

(f) Notify the caseworker of the child or young adult of the certified family's interest in or intent to be appointed as the educational surrogate (see OAR 413-100-0506) parent of the child or young adult.

(g) Work with the Department to regularly share information regarding the educational progress of the child or young adult.

(2) The certified family may be appointed to safeguard a child's rights in the special education decision-making process. This appointment may occur pursuant to Division 581-015 of Oregon Department of Education administrative rules, or by the juvenile court under ORS 419B.220.

(3) The certified family may provide consent for a child or young adult placed in the home to participate in routine school-related activities, such as school enrollment, field trips within the state of Oregon, routine social events, sporting events, and cultural events.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0358

### Requirements Regarding the Discipline of a Child or Young Adult

(1) The certified family must demonstrate a willingness to understand the meaning of the behaviors of the child or young adult, and have the ability to develop and use appropriate discipline strategies to address challenging behaviors.

(2) When disciplining a child or young adult, the certified family may not do any of the following:

(a) Use or threaten physical force.

(b) Use threats or intimidation.

(c) Withhold food or other items essential to the protection, safety, or well-being of a child or young adult.

(d) Discipline all children or young adults in the household for the misbehavior of one child or young adult.

(e) Use any form of punishment which includes but is not limited to:

(A) The deliberate infliction of physical force causing pain.

(B) Verbal abuse including derogatory remarks about the child or young adult, the family characteristics, physical traits, culture, ethnicity, language, sexual orientation, or traditions of the child or young adult.

(C) Denying a child or young adult visits, telephone, or other types of contact with an individual authorized in a visit and contact plan.

(D) Assigning extremely strenuous exercise or work.

(E) Use of or threatened use of restraining devices.

(F) Imposing a sanction, penalty, consequence, or reprimand for bed-wetting or during toilet training.

(G) Directing or permitting a child or young adult to punish another child or young adult.

(H) Threat of removal from the certified family home.

(I) Forcing or requiring a child or young adult to shower or bathe as a sanction, penalty, consequence, or reprimand.

(J) Extreme isolation as a means of punishment that restricts the ability of a child or young adult to talk with or associate with others.

(K) Locking a child or young adult in a room or outside of the home.

(3) The certified family may use a time-out only for the purpose of giving the child or young adult a short break to allow the child or young adult to calm himself or herself and regain control, and not as a punishment. The certified family must take into consideration the age and developmental level of the child or young adult in determining the length of a time-out.

(4) Pursuant to Child Welfare Policy I-B.1.6, "Enhanced Supervision", OAR 413-020-0200 to 413-020-0255, only an adult in a certified family or Department staff, who has been trained to use a physical restraint, may do so, unless a child, young adult, or others are at imminent risk of harm. Physical restraint may only be used if good judgment indicates that a physical restraint may safely be implemented. Any time a physical restraint is used, the certified family must follow the reporting requirements in OAR 413-020-0240.

(5) The certified family must notify and request assistance of the Department when the challenging behavior of a child or young adult may

be beyond the ability of the certified family to discipline in a positive manner.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01, Renumbered from 413-200-0347, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0362

### Requirements Regarding the Medical, Dental, and Mental Health Care of a Child or Young Adult

(1) In addressing the health care for a child or young adult, the certified family must:

(a) Work collaboratively with the Department in managing the health care needs of a child or young adult, which may include involving a parent of the child or young adult in medical, dental, and mental health appointments;

(b) Regularly exchange medical, dental, and mental health information of the child or young adult with the Department;

(c) Work collaboratively with providers in managing the medical, dental, and mental health needs of a child or young adult; and

(d) Maintain documentation of each child or young adult, including:

(A) Medical, dental, and mental health appointments;

(B) Medical, dental, and mental health information;

(C) Medical, dental, and mental health appointment follow-up reports; and

(D) Immunization records.

(2) A certified family must comply with the Department's direction on obtaining medical, dental, and mental health care for a child or young adult.

(3) A certified family may consent to routine examinations and laboratory tests.

(4) A certified family must allow vaccination and immunization of a child or young adult in accordance with the Department's case plan.

(5) Except as provided in section (6) of this rule, the certified family must contact the caseworker of a child or young adult to obtain appropriate prior consent from the Department before a child or young adult receives any medical care or undergoes a procedure, other than routine medical care.

(6) In an emergency, a certified family must notify the Department as soon as possible when emergency care is needed.

(7) Medication management requirements.

(a) The certified family must comply with all of the following requirements:

(A) Administer prescription medications to a child or young adult only in accordance with the written prescription or authorization.

(B) Record the dosage, date, and time that each medication is administered to a child or young adult on a form approved by the Department. If medication is given in a location other than the certified home, such as at school or in daycare, the medication log of the institution or program must be attached to the Department form. The medication form, with any attachments, must be submitted monthly to the caseworker of the child or young adult.

(C) Take the medication log to each medical appointment and share with the medical provider.

(D) Inform the caseworker of the child or young adult or the supervisor of the caseworker within one business day when a child or young adult is prescribed a psychotropic medication or the dosage of any existing prescription for psychotropic medication is changed.

(E) Begin administration of any psychotropic medication only after consent has been obtained from the Department pursuant to Child Welfare Policy I-E.3.3.1, "Psychotropic Medication Management", OAR 413-070-0400 to 413-070-0490.

(F) Maintain the documentation received from the caseworker when a child is prescribed a psychotropic medication or when the dosage of any existing prescription for a psychotropic medication is changed.

(b) Except as provided in subsection (c) of this section, the certified family must store all medications in such a way that the medications are inaccessible to a child or young adult and must store all psychotropic medications in locked storage.

(c) When a child or young adult is learning to manage his or her own medications, the certified family, the child or young adult, and the caseworker may develop an individualized, written plan for the child or young adult to access the medication. The child or young adult may not have access to medication that is not his or her own. The plan must state how the medication will be inaccessible to other children or young adults in the home. The certified family, the child or young adult, and the caseworker keep a copy of the plan.

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(8) The certified family must comply with the personal care services plan for any child or young adult placed in the certified family's home and eligible for personal care services pursuant to Child Welfare Policy I-E.5.1.2, "Personal Care Services", OAR 413-090-0100 to 413-090-0210.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; Renumbered from 413-200-0346, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0371

### Responsibilities and Notification Requirements for Selection and Use of Respite Care Providers and Babysitters

(1) Respite Providers.

(a) The certified family is responsible for identifying a safe and responsible respite care provider for a child or young adult placed in the certified family's home and must take into consideration:

(A) The age, special needs, attachment, and individual behaviors of each child or young adult; and

(B) The length of time that the child or young adult will be with the respite care provider.

(b) Responsibilities when identifying a respite care provider. The certified family must:

(A) Select a respite care provider who:

(i) Is at least 18 years of age;

(ii) Is capable of assuming child care and supervision responsibilities, including meeting the safety, health, and well-being needs of each child or young adult in the certified family's care;

(iii) Complies with OAR 413-200-0358; and

(iv) Is present with the children or young adults for whom they are providing respite care at all times.

(B) Provide to the certifier the name, address, and telephone number of the prospective respite care provider and receive Department approval under OAR 413-200-0281 prior to using the respite care provider.

(2) Babysitters.

(a) The certified family must use a responsible person 14 years of age or older for babysitting, and must:

(A) Assure the babysitter is capable of assuming child care responsibilities required to meet the needs of each child or young adult, and will be present with the child or young adult for whom the babysitter is providing care at all times, and

(B) Have no reason to suspect that the babysitter --

(i) Has any criminal history or child abuse or neglect history; or

(ii) Poses any risk to the child or young adult for whom the babysitter will provide care.

(b) The certified family may not use a babysitter for overnight care.

(c) Unless requested by the Department, the certified family does not need to provide identifying information to the Department to complete a criminal records check for a babysitter.

(3) General Provisions for Respite Care and Babysitting.

(a) The certified family must have an available method through which the certified family may be contacted in an emergency at any time the child or young adult is cared for by another individual.

(b) A certified family may use a licensed, registered, or approved childcare center or day care provider for a child or young adult, and must notify the Department in advance of using the childcare center or day care provider.

(c) Family and childhood activities.

(A) The certified family may give consent for a child or young adult in the Department's care or custody to participate in ordinary childhood activities, such as parties and sleepovers with friends, and organized activities provided by schools, religious or civic organizations, scouts, or similar groups.

(B) The certified family must verify that the event is safe, adequately supervised, and appropriate for the child or young adult based upon his or her needs.

(C) When the certified family has any questions regarding the child or young adult participating in an activity, the certified family must consult with the caseworker of the child or young adult.

(d) The certified family must notify the caseworker of the child or young adult and obtain the approval of the caseworker or caseworker's supervisor prior to the child or young adult being absent from the certified family for more than 24 hours.

(e) The certified family must obtain approval from the certifier or the certifier's supervisor when the certified family plans to provide respite care for another certified family causing the number of children or young adults

in the home to exceed the maximum number of children or young adults on the certified family's Certificate of Approval.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; SOSCF 15-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 29-2003, f. 7-31-03 cert. ef. 8-1-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 25-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0377

### Confidentiality

(1) The certified family must exercise good judgment in sharing personal information about the child or young adult and the family of the child or young adult. The certified family must store documents regarding the child or young adult and family of the child or young adult in a way that protects the privacy of the child or young adult and the family of the child or young adult.

(2) The certified family may not disclose confidential information regarding a child or young adult or the family of a child or young adult, except when necessary to promote or to protect the health and welfare of the child, young adult, or the community.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0379

### Education and Training for Applicants and Certified Families

(1) An applicant must participate in the Department's orientation prior to receiving a Certificate of Approval, or within 30 days after the placement of a child or young adult in a home that has been issued a Child-Specific Certificate of Approval.

(2) Except as provided in sections (3) or (4) of this rule, each applicant and certified family must complete Foundations training before or within 12 months after the date on which the Certificate of Approval was issued, or have written documentation of completion of equivalent training content from another licensed child-caring agency within two years of an applicant's dated application for a Certificate of Approval from the Department.

(3) A certified family is exempt from section (2) of this rule if a written, individualized training plan, specific to the needs of the children or young adults placed with a certified family holding a Child-Specific Certificate of Approval, has been approved by a supervisor and developed within 90 days after a Child-Specific Certificate of Approval has been issued by the Department.

(4) An applicant is exempt from section (2) of this rule if the applicant is applying to become a potential adoptive resource and has approval under OAR 413-120-0246.

(5) Foundations training is required if an applicant previously certified by the Department has not been certified within the preceding two years unless:

(a) Alternative training has been approved under sections (3) or (4) of this rule; or

(b) The supervisor waives the training requirement based on the applicant's documented knowledge and skills in caring for a child or young adult placed in the home by the Department.

(6) The certified family and the certifier must develop a training plan for each individual certified in the family to complete at least 30 hours of training during each two-year certification period, unless a written individualized training plan is developed for a certified family with a Child-Specific Certificate of Approval. The written individualized training plan:

(a) Must be designed to strengthen the certified family's ability to meet the safety, health, and well-being needs of the children or young adults placed in the certified family's home;

(b) May be less than the required 30 hours required during a certification period; and

(c) Must be approved by a certification supervisor.

(7) Each applicant and certified family with limited English proficiency or a hearing or visual impairment, and unable to meet the training requirements outlined in sections (1) to (6) of this rule may be provided an individualized training plan prepared by the certifier and approved by the certification supervisor.

(8) The Department may require a certified family to obtain more than the 30 hours of training for a two-year certification period depending on the needs of the children or young adults placed in the home or the knowledge, skills, and abilities of the certified family.

Stat. Auth.: ORS 409.050, 418.005, 418.640

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Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645  
Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; Renumbered from 413-200-0349, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0383

### Other Required Notifications

A certified family must notify the certifier or certifier's supervisor of all of the following:

- (1) Any individual joining or leaving the household.
- (2) Any prospective respite care provider.
- (3) Any anticipated change in address.
- (4) Any physical or structural change in the home or surrounding property on which they live.
- (5) Any arrest or court conviction for any member of the household.

This notification must occur within one business day.

(6) Any known allegation of child abuse or neglect perpetrated by any member of the household, or an individual who regularly visits the home. Such notification must occur on the day that the certified family learns of the allegation.

(7) The suspension of a driver license of any adult on the Certificate of Approval or any member of the household.

(8) Any change in the physical health, mental health, or medication of a member of the household that reasonably could affect the ability of the member or the family to meet the needs of safety, health, and well-being of a child or young adult.

(9) Any time any member of the household applies to become an in-home child care provider, an adult foster care, or in-home adult day care provider.

(10) Any time another agency wishes to place a child or young adult in the certified home.

(11) Any time the certified family agrees to provide respite care for another certified family.

(12) Any other circumstance that reasonably could affect the safety, health, or well-being of a child or young adult in the certified family's home.

Stat. Auth.: ORS 409.050, 418.005, 418.640  
Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645  
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 25-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0386

### Requirements Regarding Mandatory Reporting

Any member of the household and any certified family's employee, independent contractor, or volunteer who works in the certified family's home, must report the pertinent information to the Department upon reasonable cause to believe that any child with whom the individual comes in contact has suffered abuse or neglect or that any adult with whom the individual comes in contact has abused or neglected a child.

Stat. Auth.: ORS 409.050, 418.005, 418.640  
Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645  
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0388

### Requirements Regarding Visits in the Certified Family's Home

For purposes of assessing the conditions in the home that affect safety, health, and well-being for the child or young adult, a certified family must:

(1) Allow on-going in-home visits, both scheduled and unscheduled, by Department staff; and

(2) Allow Department staff unsupervised contact with a child or young adult.

Stat. Auth.: ORS 409.050, 418.005, 418.640  
Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645  
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0390

### Requirements Regarding Maintaining the Certificate of Approval

(1) The Department may conduct an expedited certification and may issue a Child-Specific Certificate of Approval for no more than 180 days when assessment activities described in Child Welfare Policy II-B.1.1, "Responsibilities for Certification and Supervision of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources", OAR 413-200-0274(2)(a) to (p) have been completed.

(2) The Department may issue a full certification and Certificate of Approval for up to two years when all assessment activities in OAR 413-200-0274(6) have been completed.

(3) To remain certified, the certified family must submit a completed Application for Renewal or Change of Status, and the Department will assess the certified family every two years.

(4) When the certified family has submitted a timely application for re-certification, the current Certificate of Approval will not expire, despite any expiration date, until the Department has issued a new Certificate of Approval or there is a final order of denial.

Stat. Auth.: ORS 409.050, 418.005, 418.640  
Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645  
Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0393

### Requirements Regarding Inactive Referral Status

(1) A certified family may request that the Department place the home on Inactive Referral Status for any reason for up to 12 months. The inactive referral status begins immediately and while it is in effect:

(a) The Department will place no additional child or young adult in the home; and

(b) The certified family may not accept placement of any child or young adult from another agency.

(2) Inactive Referral Status, when requested by the certified family, ends:

(a) At the request of the certified family; or

(b) When the certificate expires; and

(A) The family has not timely applied for renewal of the certificate; or

(B) The Department has not renewed the certificate.

(3) The Department may initiate a certified family's Inactive Referral Status under the conditions described in Child Welfare Policy II-B.1.1, "Responsibilities for Certification and Supervision of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources", OAR 413-200-0294(5) or (6). When the Department initiates Inactive Referral Status, the Department must:

(a) Provide written notification to the certified family of the Inactive Referral Status within 14 business days; and

(b) Provide written notification to the certified family when Inactive Referral Status ends.

Stat. Auth.: ORS 409.050, 418.005, 418.640  
Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645  
Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0394

### Requirements Regarding Termination of a Certificate of Approval

(1) A certified family may voluntarily request that the Department terminate the Certificate of Approval and close the home. The certified family must give the Department ten-days notice before the Certificate of Approval is terminated. The Department must remove any child or young adult in the care or custody of the Department from the home before closing the home.

(2) When a child or young adult leaves a home that has a Child-Specific Certificate of Approval, the Department terminates the Child-Specific Certificate of Approval within 10 business days of the departure of the child or young adult, unless at least one of the following subsections applies:

(a) The child-specific certified family submits a written request to continue their Certificate of Approval as a foster parent under OAR 413-200-0289(4) within 10 business days of the departure of the child or young adult from the home.

(b) The Department has determined the child or young adult is removed because the certified family cannot meet the safety, health, and well-being needs of the child or young adult and has violated one or more rules under Child Welfare Policy II B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Approval of Potential Adoptive Resources", OAR 413-200-0301 to 413-200-0396.

(c) OAR 413-200-0395(6) applies.

(3) When the Department has determined that subsection (2)(b) of this rule applies, the Department will notify the certified family of the decision and issue a notice of intent to revoke the Certificate of Approval pursuant to OAR 413-200-0395(2).

(4) When a certified family moves to a different residence, the Department terminates the Certificate of Approval and closes the home.

# ADMINISTRATIVE RULES

The Department may issue a new Certificate of Approval when the activities described in OAR 413-200-0292(5) have been completed.

Stat. Auth.: ORS 409.050, 418.005, 418.640  
Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645  
Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0395

### Requirements Regarding Denial and Revocation of a Certificate of Approval

(1) The Department may deny an application for a Certificate of Approval if an applicant fails to provide requested information within 90 days of a written request from the Department.

(2) The Department may deny an application or revoke a Certificate of Approval when:

(a) The applicant or certified family does not meet one or more of these rules (OAR 413-200-0301 to 413-200-0396);

(b) The Department discovers an applicant or a certified family has falsified information (by act of commission or omission) before or after the Certificate of Approval has been issued; or

(c) An applicant or certified family fails to provide information to or inform the Department of any disqualifying condition that arises before or after the Certificate of Approval has been issued.

(3) The Department must provide an applicant to become or remain a certified family a written notice of revocation or denial, which must comply with OAR 413-010-0510 and must state the reason or reasons for the revocation or the denial.

(4) Unless the certified family requests that the Department terminate the Certificate of Approval under OAR 413-200-0394(1), the Department must revoke a Certificate of Approval when a certified family violates one or more of these rules (OAR 413-200-0301 to 413-200-0396) and, at the conclusion of a Child Protective Services assessment, the Department determines that there is a safety threat in the certified family's home.

(5) Upon deciding to revoke a certified family's Certificate of Approval, the Department must remove from the home any child or young adult in the Department's care or custody.

(6) When the Department has issued a notice to revoke a Certificate of Approval, the certificate will not expire despite any expiration date on the Certificate of Approval, until there is a final order to revoke the Certificate of Approval.

(7) When the Department revokes a Certificate of Approval or denies an application to become a certified family, the Department has the discretion to require up to a five-year waiting period before the individual or individuals can reapply to become a relative caregiver or foster parent.

Stat. Auth.: ORS 409.050, 418.005, 418.640  
Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645  
Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

## 413-200-0396

### Requirements Regarding Contested Case Hearings

(1) Except as provided in section (4) of this rule, an applicant to become a certified family may request a contested case hearing to contest the Department's decision to deny a Certificate of Approval.

(2) A certified family may request a contested case hearing to contest the Department's decision to revoke the Certificate of Approval.

(3) A certified family or an applicant to become a certified family requests a contested case hearing, as provided in ORS Chapter 183, by providing a Child Welfare program manager a written request for a hearing within 30 days of the date that the Department mailed the notice of denial or revocation.

(4) ORS Chapter 183 does not provide a contested case process for an adoptive applicant who is denied approval as a potential adoptive resource.

(5) If the Department does not receive a request for a contested case hearing within 30 days of the date that the Department mailed the notice of denial or revocation, the certified family or applicant to become a certified family has waived the right to a hearing, except as provided in OAR 413-010-0505.

(6) Department actions when a contested case hearing is timely requested but such request is subsequently withdrawn are outlined in OAR 413-010-0530(1).

(7) OAR 413-010-0505 describes the requirements to a request for a contested case hearing due to the denial or revocation of a Certificate of Approval.

Stat. Auth.: ORS 409.050, 418.005, 418.640  
Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645  
Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11

**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 38-2011

**Filed with Sec. of State:** 12-27-2011

**Certified to be Effective:** 1-3-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 413-200-0404, 413-200-0409, 413-200-0414, 413-200-0419, 413-200-0424

**Rules Repealed:** 413-200-0404(T), 413-200-0409(T), 413-200-0414(T), 413-200-0419(T), 413-200-0424(T)

**Subject:** OAR 413-200-0404, 413-200-0409, 413-200-0414, 413-200-0419, and 413-200-0424 about Department responsibilities during screening and assessment of a child abuse or neglect report involving the home of a Department-certified foster parent or relative caregiver are being amended to make permanent changes adopted by temporary rule on September 1, 2011 that reflect current Department practice under a new database system and a redesigned structure in which the written assessment is located and assigned to a family and a child. These amendments also extend the use of consistent definitions and terminology, and remove references to positions no longer in the Department.

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

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-200-0404

### Purpose

(1) The purpose of these rules (OAR 413-200-0404 to 413-200-0424) is to describe Department responsibilities during the screening and assessment of a report of child abuse or neglect involving the home of a Department certified foster parent or relative caregiver. A report involves the home of a Department-certified foster parent or relative caregiver if the report alleges that someone in the home abused or neglected any child.

(2) When a report is received involving the home of a Department-certified foster parent or relative caregiver, these rules, Child Welfare Policies I-AB.1 to I-AB.7, "Child Protective Services" (OAR 413-015-0100 to 413-015-1230), 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), II-B.1.1, "Responsibilities for Certification and Supervision of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources" (OAR 413-200-0270 to 413-200-0296), and I-B.1, "Monitoring Child Safety" (OAR 413-080-0040 to 413-080-0067) apply.

Stat. Auth.: ORS 409.050 & 418.005  
Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.015 & 419B.020  
Hist.: CWP 33-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 15-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 17-2011(Temp), f. & cert. ef. 9-1-11 thru 2-28-12; CWP 38-2011, f. 12-27-11, cert. ef. 1-3-12

## 413-200-0409

### Definitions

The following definitions apply to OAR 413-200-0404 to 413-200-0424:

(1) "Certification supervisor" means an employee of the Department, designated as a supervisor, supervising staff responsible for certification, training, and monitoring homes certified by the Department.

(2) "Certified family" means an individual or individuals who hold a Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(3) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing relative or foster care to a child or young adult in the care or custody of the Department or an adoptive applicant, determines whether or not to recommend approval of the operation of a relative care or foster home or an adoptive applicant, and monitors the compliance of a relative care or foster care home with Child Welfare certification rules.

(4) "Child" means a person under 18 years of age.

(5) "Child protective services assessment (CPS assessment)" means activities and interventions that identify and analyze safety threats, determine if there is reasonable cause to believe child abuse or neglect occurred, and assure child safety through protective actions or ongoing safety planning.

# ADMINISTRATIVE RULES

(6) "Child protective services supervisor (CPS supervisor)" means an employee of Child Welfare trained in child protective services and designated as a supervisor.

(7) "Child protective services worker (CPS worker)" means an employee of Child Welfare who has completed the mandatory Department training for child protective service workers.

(8) "Consulting foster parent or relative caregiver" means an individual who maintains or has held a Certificate of Approval to operate a foster or relative caregiver home, received Department approved training on the role of a consulting foster parent or relative caregiver, and agrees to serve in this role.

(9) "Department" means the Department of Human Services, Child Welfare.

(10) "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.

(11) "Inactive referral status" means a period of time, not to exceed 12 months, during which neither the Department nor any other agency will place an additional child or young adult with a certified family. The certified family or the Department may initiate the inactive referral status.

(12) "Initial contact" means the first face-to-face contact between a CPS worker and a family. The initial contact includes face-to-face contact with the alleged child victim, his or her siblings, parent or caregiver, and other children and adults living in the home; accessing the home environment; identifying safety threats; and determining if a protective action is needed.

(13) "Referral" means a report that has been assigned for the purpose of CPS assessment.

(14) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(15) "Report" means an allegation of child abuse or neglect provided to Child Welfare that the screener evaluates to determine if it constitutes a report of child abuse or neglect as defined in ORS 419B.005.

(16) "Screener" means a Child Welfare employee with training required to provide screening services.

(17) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.015 & 419B.020

Hist.: CWP 33-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 15-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 17-2011(Temp), f. & cert. ef. 9-1-11 thru 2-28-12; CWP 38-2011, f. 12-27-11, cert. ef. 1-3-12

## 413-200-0414

### Department Actions During Screening

(1) Screener Actions.

(a) When a screener receives information involving the home of a certified family, the screener must:

(A) Refer to and follow Child Welfare Policy I-AB.2, "Screening", OAR 413-015-0200 to 413-015-0225 to gather and share information;

(B) Consult with the CPS supervisor before determining the Department's response;

(C) Notify the assigned caseworker of each child or young adult placed in the home, each assigned caseworker's supervisor, the assigned certifier, and the certifier's supervisor of all information received; and

(D) If the information is closed at screening as described in Child Welfare Policy I-AB.2, "Screening", OAR 413-015-0210(4):

(i) Document the information in provider case notes in the Department's information system; and

(ii) Notify the individuals listed in paragraph (C) of this subsection that the information was closed at screening.

(b) When a screener receives information alleging abuse or neglect of a young adult living in the home of a certified family, the screener must provide the information to the young adult's caseworker; and

(A) Provide the information to the Department's Seniors and People with Disabilities Division when the young adult is an individual with a diagnosed disability; or

(B) Provide the information to law enforcement.

(2) Certifier Actions. When the assigned certifier is notified by a screener that information involving the home of a certified family was closed at screening, the certifier must examine the information received and follow Child Welfare Policy II-B.1.1., "Responsibilities for Certification and Supervision of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources" (OAR 413-200-0270 to 413-200-0296).

(3) Assigned Caseworker Actions.

(a) When a report of information alleging abuse or neglect of a young adult has been shared with Seniors and People with Disabilities Division

because the young adult is an individual with a diagnosed disability, the young adult's caseworker must coordinate the Department's response with the Seniors and People with Disabilities Division.

(b) When a report of information alleging abuse or neglect of a young adult has been shared with law enforcement, the young adult's caseworker must coordinate the Department's response with law enforcement.

(c) When a report is received alleging that a child or young adult in substitute care in the home of a certified family may have been subjected to abuse or neglect, and the screener determines that the report constitutes a report of child abuse or neglect as defined in ORS 419B.005, within three business days of the Department's receipt of the report, the caseworker of the child or young adult in substitute care who is the alleged victim must notify the following individuals that a report was received:

(A) The attorney for the child or young adult;

(B) The court appointed special advocate (CASA) for the child or young adult;

(C) The parents of the child or young adult;

(D) Any attorney representing the parents of the child or young adult; and

(E) If the disclosure is authorized by ORS 419B.035, others who are involved in the case plan as necessary.

(d) The notification of the parents of the child or young adult and any attorney representing the parents of the child or young adult in paragraphs (3)(c)(C) and (D) of this rule is not required if the notification may interfere with an investigation or assessment or jeopardize the safety of the child or young adult. The CPS supervisor, or the supervisor of a caseworker of the child or young adult may authorize an exception to the requirement to provide notification based on documentation that supports this conclusion.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.015 & 419B.020

Hist.: CWP 33-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 15-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 17-2011(Temp), f. & cert. ef. 9-1-11 thru 2-28-12; CWP 38-2011, f. 12-27-11, cert. ef. 1-3-12

## 413-200-0419

### Department Actions During the CPS Assessment

(1) CPS Worker and CPS Supervisor Actions.

(a) If the report involving the home of a certified family is referred for a CPS assessment, the assigned CPS worker must convene a staffing before making initial contact unless the timing of the staffing will compromise child safety. The purpose of the staffing is:

(A) To determine and coordinate the response to the referral;

(B) To notify the certifier assigned to the home, the caseworkers assigned to each child or young adult placed in the home, and their respective supervisors of the referral; and

(C) To share information known by the Department regarding the children or young adults placed in the home and the certified family.

(b) The CPS worker must ensure that the following people are invited to the staffing:

(A) The assigned certifier or the certification supervisor; and

(B) The assigned caseworker of each child or young adult in the home or each caseworker's supervisor.

(c) The CPS supervisor or his or her designee must:

(A) Ensure that the staffing discussed in subsection (a) of this section occurs prior to the initial contact unless the timing of the staffing will compromise child safety;

(B) Determine whether the Child Welfare Program Manager, CPS Consultant, and Foster Care Coordinator should be invited to the staffing; and

(C) If the staffing does not occur prior to the initial contact, ensure the staffing occurs the next business day and that all persons identified in subsection (b) of this section share information known by the Department regarding children or young adults placed in the home, the certified family, and any other individuals living in the home.

(d) The CPS worker must complete the following activities during the CPS assessment:

(A) At initial contact, in addition to the requirements in Child Welfare Policy I-AB.4, "CPS Assessment", OAR 413-015-0400 to 413-015-0485, provide the certified family with the appropriate "What you need to know about a Child Protective Service Assessment" pamphlet;

(B) Consult with a CPS supervisor before making the decision to remove any child or young adult from the home;

(C) Provide on-going information to the assigned certifier and to the caseworkers of each child or young adult placed in the home on the status of the CPS assessment; and

(D) Complete the CPS assessment.

# ADMINISTRATIVE RULES

(2) Certifier and Certification Supervisor Actions. When the assigned certifier is notified that information received by a screener involving the home of a certified family is referred for a CPS assessment--

(a) Within one business day after the CPS worker has made initial contact, the certifier must contact and notify the certified family and provide them with the following information:

(A) The certifier is available to answer questions related to certification but will not discuss the specifics of the CPS assessment;

(B) The certified family is immediately placed on inactive referral status pending the completion of the CPS assessment;

(C) The certified family has the option of having a consulting foster parent or relative caregiver available for support during the assessment; and

(D) The names of foster parents and relative caregivers who have agreed to serve as a consulting foster parent or relative caregiver.

(b) Within one business day, the certifier must document the initiation of a CPS assessment and the placement of the certified family on inactive referral status in provider case notes in the Department's information system.

(c) Within one business day, the certifier must notify Department staff responsible for placement that the certified family's home is on inactive referral status.

(d) Within 14 days of the notification required in paragraph (2)(a)(B) of this rule, the Department must provide written notification to the certified family that the home has been placed on inactive referral status and place a copy of the written notification in the certification file.

(e) The certifier must provide ongoing information regarding the certified family and any individuals living in the home to the assigned CPS worker and the caseworkers of each child or young adult placed in the home.

(f) The certification supervisor must ensure that the actions required in subsections (a) through (e) of this section are completed if the certifier is unavailable.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.015 & 419B.020

Hist.: CWP 33-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 15-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 17-2011(Temp), f. & cert. ef. 9-1-11 thru 2-28-12; CWP 38-2011, f. 12-27-11, cert. ef. 1-3-12

## 413-200-0424

### Department Actions at the Conclusion of the CPS Assessment

(1) CPS Worker and Supervisor Actions.

(a) In addition to the actions required in Child Welfare Policy I-AB.4, "CPS Assessment", OAR 413-015-0400 to 413-015-0485, the CPS worker must convene a staffing within five business days of the completion of the CPS assessment to --

(A) Share information acquired during the CPS assessment, and the results of the CPS assessment;

(B) Discuss and determine whether any additional actions described in Child Welfare Policy I-AB.4, "CPS Assessment", OAR 413-015-0400 to 413-015-0485 are appropriate;

(C) Determine who needs to be notified of the disposition of the CPS assessment and determine which staff will be responsible for providing notification;

(D) Discuss certification actions that have been taken and whether any additional actions described in Child Welfare Policy II-B.1.1, "Responsibilities for Certification and Supervision of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources", OAR 413-200-0270 to 413-200-0296 are appropriate.

(b) The CPS worker must ensure that the following staff members are invited to the staffing:

(A) The CPS supervisor;

(B) The assigned certifier or the certification supervisor; and

(C) The caseworkers assigned to each child or young adult placed in the home of the certified family or their respective supervisors.

(c) The CPS supervisor or his or her designee must:

(A) Ensure that the staffing, discussed in subsection (a) of this section occurs;

(B) Determine whether the Child Welfare Program Manager, CPS Consultant, and Foster Care Coordinator should be invited to the staffing; and

(C) Approve notification of the following individuals of the disposition of the CPS assessment:

(i) The attorney for the child;

(ii) The court appointed special advocate (CASA) for the child;

(iii) The parents of the child;

(iv) Any attorney representing the parents of the child; and

(v) If the disclosure is authorized by ORS 419B.035, others who are involved in the case plan as necessary.

(D) The supervisor may authorize an exception to the notification of the parents of the child and any attorney representing the parents of the child required in paragraph (C) of this subsection if the notification may interfere with an investigation or assessment or jeopardize the safety of the child.

(d) At the conclusion of any CPS assessment, regardless of the disposition, the CPS supervisor must immediately notify the assigned caseworkers, the certifier, the CPS Consultant, and the Foster Care Coordinator that the CPS assessment has been completed and approved.

(2) Assigned Caseworker Actions.

(a) Within ten business days of the Department determining the disposition of a CPS assessment involving the alleged abuse of a child placed in the home of a certified family, the caseworker for the child must notify the individuals identified in paragraph (1)(c)(C) of this rule of the disposition unless an exception, described in paragraph (1)(c)(D) of this rule, is authorized by the CPS supervisor or his or her designee.

(b) Within ten business days of the conclusion of a law enforcement determination involving the alleged abuse of a young adult placed in the home of a certified family, the caseworker for the young adult must notify the individuals identified in paragraph (1)(c)(C) of this rule of the disposition, unless notification may interfere with an investigation or assessment or jeopardize the young adult's safety as authorized by the caseworker's supervisor.

(3) Certifier and Certification Supervisor Actions.

(a) At the conclusion of the CPS assessment, during or within five business days of the meeting required in subsection (1)(a) of this rule, the certifier and certification supervisor must:

(A) Staff the case and review all the information in the CPS assessment;

(B) Determine whether the information indicates certification actions described in Child Welfare Policy II-B.1.1, "Responsibilities for Certification and Supervision of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources", OAR 413-200-0270 to 413-200-0296 should be taken; and

(C) Assure documentation of the results of the staffing in provider case notes in the Department's information system.

(b) After completing the staffing required in subsection (1)(a) of this rule, if the Department determines --

(A) That the Certificate of Approval for the certified family should be revoked, the assigned certifier must initiate revocation of the Certificate of Approval as described in Child Welfare Policy II-B.1.1, "Responsibilities for Certification and Supervision of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources", OAR 413-200-0296.

(B) That inactive referral status should continue because one or more of the conditions in Child Welfare Policy II-B.1.1, "Responsibilities for Certification and Supervision of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources", OAR 413-200-0294 are present, the assigned certifier must summarize the outcome of the assessment and the reasons for continuing inactive referral status in a letter delivered to the certified family within 10 days of the completed CPS assessment. The certifier must retain a copy of the letter in the certification file.

(C) That the certificate will not be revoked after a founded or unable to determine disposition, the assigned certifier must:

(i) Submit written documentation supporting the continued certification of the certified family to the District Manager or Child Welfare Program Manager for approval;

(ii) Upon receiving approval for continued certification from the District Manager or Child Welfare Program Manager, remove the certified family from inactive referral status;

(iii) Within ten business days of receiving approval from the District Manager or Child Welfare Program Manager, send written notification to the certified family that the home is no longer on inactive referral status and retain a copy of the written notification in the certification file; and

(iv) Notify Department staff responsible for placement that the certified family is no longer on inactive referral status.

(4) The CPS worker or supervisor, and the certifier or supervisor must meet with the certified family within ten business days of the completion of the CPS assessment to explain the disposition and any certification actions that will be taken unless the certified family declines the opportunity for a meeting.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.015 & 419B.020

Hist.: CWP 33-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 15-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 17-2008(Temp), f. & cert. ef. 7-17-08 thru 1-13-09; CWP 26-

# ADMINISTRATIVE RULES

2008, f. & cert. ef. 10-1-08; CWP 17-2011(Temp), f. & cert. ef. 9-1-11 thru 2-28-12; CWP 38-2011, f. 12-27-11, cert. ef. 1-3-12

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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.

**Adm. Order No.:** SSP 32-2011

**Filed with Sec. of State:** 12-27-2011

**Certified to be Effective:** 12-27-11

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 461-180-0130

**Subject:** OAR 461-180-0130 about the restoration of benefits is being amended to make permanent a temporary rule change adopted October 1, 2011 so that the effective date for restoring benefits that have been suspended refers to the policy in OAR 461-135-0950(8) which sets effective dates for restoring medical benefits of inmates who have had medical benefits suspended. This rule is also being amended to make permanent a temporary rule change adopted June 29, 2011 to align the time period for clients in the TANF program to be eligible for restoration of administrative error underpayments with the time period for the SNAP program and with other public assistance programs covered by the rule. This amendment shortens the time period for the TANF program.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-180-0130

### Effective Dates; Restored Benefits

(1) The effective date for restoring benefits that were underpaid (including erroneous collections of overpayments) or denied or closed in error is set as follows:

(a) Except as provided in subsection (b) of this section, in all programs except the SNAP program, for underpayments resulting from administrative error, the effective date is the date the error was made.

(b) In all programs, benefits can be restored only for the preceding 12 months.

(c) In all programs except the SNAP program, for underpayments resulting from client error, the effective date is the earliest of the following:

(A) The month the benefit group (see OAR 461-110-0750) notifies the branch office (see OAR 461-001-0000) of the possible loss.

(B) The month the branch office discovers the loss.

(C) The date a hearing is requested.

(2) In the SNAP program, for underpayments resulting from administrative error, benefits are restored for not more than twelve months prior to whichever of the following occurs first:

(a) The date the benefit group notifies the branch office of the possible loss.

(b) The date the branch office discovers the loss.

(c) The date a hearing is requested.

(3) In the SNAP program, benefits are not restored for underpayments resulting from client error.

(4) The effective date for restoring benefits that have been suspended is:

(a) For individuals whose medical assistance is suspended because they are incarcerated with an anticipated stay of a year or less, see OAR 461-135-0950(8).

(b) When subsection (a) of this section does not apply:

(A) The first of the month after the suspension, if suspension was for only one month; or

(B) The date the benefit group again becomes eligible, if benefits have been suspended for more than 30 days. The Department treats the month in which benefits are restored as an initial month (see OAR 461-001-0000).

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 414.231  
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.439, 411.816, 412.014, 412.049, 414.231

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2011(Temp), f. & cert. ef. 6-29-11 thru 12-26-11; SSP 28-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-26-11; SSP 32-2011, f. & cert. ef. 12-27-11; SSP 33-2011(Temp), f. & cert. ef. 12-27-11

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

**Adm. Order No.:** SSP 33-2011(Temp)

**Filed with Sec. of State:** 12-27-2011

**Certified to be Effective:** 12-27-11 thru 6-24-12

**Notice Publication Date:**

**Rules Amended:** 461-180-0130

**Subject:** OAR 461-180-0130 is being amended to limit the restoration of benefits period for the Job Participation Incentive (JPI) program to four months. This policy has been in this rule since October 1, 2011 but that temporary rule change is being refiled due to the intervening adoption of other permanent changes to this rule.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-180-0130

### Effective Dates; Restored Benefits

(1) The effective date for restoring benefits that were underpaid (including erroneous collections of overpayments) or denied or closed in error is set as follows:

(a) Except as provided in subsection (b) of this section, in all programs except the SNAP program, for underpayments resulting from administrative error, the effective date is the date the error was made.

(b) In all programs except the JPI program, benefits may be restored only for the preceding 12 months.

(c) In the JPI program, benefits may be restored only for the preceding four months.

(d) In all programs except the SNAP program, for underpayments resulting from client error, the effective date is the earliest of the following:

(A) The month the benefit group (see OAR 461-110-0750) notifies the branch office (see OAR 461-001-0000) of the possible loss.

(B) The month the branch office discovers the loss.

(C) The date a hearing is requested.

(2) In the SNAP program, for underpayments resulting from administrative error, benefits are restored for not more than twelve months prior to whichever of the following occurs first:

(a) The date the benefit group notifies the branch office of the possible loss.

(b) The date the branch office discovers the loss.

(c) The date a hearing is requested.

(3) In the SNAP program, benefits are not restored for underpayments resulting from client error.

(4) The effective date for restoring benefits that have been suspended is:

(a) For individuals whose medical assistance is suspended because they are incarcerated with an anticipated stay of a year or less, see OAR 461-135-0950(8).

(b) When subsection (a) of this section does not apply:

(A) The first of the month after the suspension, if suspension was for only one month; or

(B) The date the benefit group again becomes eligible, if benefits have been suspended for more than 30 days. The Department treats the month in which benefits are restored as an initial month (see OAR 461-001-0000).

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 414.231  
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.439, 411.816, 412.014, 412.049, 414.231

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2011(Temp), f. & cert. ef. 6-29-11 thru 12-26-11; SSP 28-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-26-11; SSP 32-2011, f. & cert. ef. 12-27-11; SSP 33-2011(Temp), f. & cert. ef. 12-27-11 thru 6-24-12

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

**Adm. Order No.:** SSP 34-2011

**Filed with Sec. of State:** 12-27-2011

**Certified to be Effective:** 12-29-11

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 461-001-0025, 461-130-0327, 461-135-0475

**Subject:** OAR 461-001-0025 about the definitions of terms, components, and activities in the Job Opportunity and Basic Skills (JOBS), Post-Temporary Assistance for Needy Families (Post-TANF), Pre-Temporary Assistance for Needy Families (Pre-TANF), and Temporary Assistance for Needy Families (TANF) programs is



## ADMINISTRATIVE RULES

being amended in response to recent legislation (House Bill 2049 (2011)) to add and revise the definitions of certain terms used throughout the chapter 461 administrative rules.

OAR 461-130-0327 about what the Department considers to be good cause for non-participation in a Department employment program is being amended to include good cause for non-participation if there are no appropriate activities available or support services to support an activity. This rule is also being amended to make permanent changes made by temporary rule on July 1, 2011.

OAR 461-135-0475 about the specific requirements for the Pre-TANF program is being amended to implement HB 2049 (2011) and address budget constraints that reduce TANF program service levels. These amendments set out the requirements for employability screenings and participating in an overview of the JOBS program. This rule is also being amended to set out the reductions to basic living expenses payments for shelter, utility and household supplies in the Pre-TANF program. This rule is also being amended to change the basic living expenses payment from 200 percent of the TANF payment standard for the benefit group to 100 percent of the payment standard. This rule is also being amended to clarify the availability of support services payments for Pre-TANF clients. This rule is also being amended to make permanent changes to this rule made by temporary rule on July 1 and October 1, 2011.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

### 461-001-0025

#### Definitions of Terms, Components, and Activities; JOBS, Pre-TANF, Post-TANF, TANF

In the JOBS, Pre-TANF, Post-TANF, and TANF programs, the following definitions apply to rules in Chapter 461 unless the context indicates otherwise.

(1) Activity: An action or set of actions to be taken by the client, as specified in the case plan. An activity is intended to reduce barriers and:

- (a) Increase the likelihood of self sufficiency, employment, job retention, wage enhancement, and financial independence; or
- (b) Promote family stability (see OAR 461-001-0000).

(2) Adult Basic Education (ABE): An activity in the basic education component that involves remedial education coursework intended to ensure functional literacy.

(3) Assessment: An activity of the program entry component that involves gathering information to identify the strengths, interests, family circumstances, status in the JOBS program, and vocational aptitudes and preferences of the client and to mutually determine an employment goal, the level of participation of the client in the JOBS program, and which support services are needed. This activity includes providing screenings and evaluations (if appropriate) to determine the level of participation, accommodation, and modification for the client in the JOBS program. The screenings include but are not limited to physical and mental health needs, substance abuse, domestic violence, and learning needs.

(4) Barrier: A personal condition or circumstance that reduces the likelihood the client will become employed or the client's ability to participate in an activity listed in the case plan.

(5) Basic education: A component of non-core activities intended to ensure functional literacy for all JOBS clients. Basic education activities are high school attendance, English as a second language (ESL) instruction, job skills training, adult basic education (ABE) instruction, and services that result in obtaining a general equivalency diploma (GED). The component is discussed in OAR 461-190-0171 and 461-190-0181.

(6) Case plan (formerly also known as an employment development plan (EDP), a personal plan, or personal development plan): A written outline, developed in partnership by the client and case manager, with input from partners as appropriate, listing activities and goals for the client. The case plan also identifies the support service payments, accommodations, and modifications to help the client complete the plan. The DHS 1543 — Domestic Violence Assistance Agreement — is the case plan for clients with safety concerns about domestic violence.

(7) Community Service Program: An activity in the unpaid employment component in which the client works without pay at a job site to enhance the likelihood the client will become employed and perform work for the direct benefit of the community. This activity is available through nonprofit organizations or public agencies.

(8) Component: A set of one or more activities of the JOBS program. Components of the JOBS program are paid unsubsidized employment, paid

subsidized employment, unpaid employment, vocational training, job search and readiness, and basic education activities.

(9) Core activities: Federally-defined countable work activities that include: paid unsubsidized employment; paid subsidized employment; work experience; on-the-job training; job search and readiness; community service programs; vocational training; and providing child care assistance to a community service program participant.

(10) Degree Completion Initiative (DCI): An activity in which a limited number of TANF recipients may participate for up to 12 months to complete an educational degree at a two- or four-year educational institution.

(11) Drug and alcohol services: An activity in the job search and readiness component that provides substance abuse screenings and evaluations, outpatient or resident treatment, and support groups such as AA or NA.

(12) Employer contact: A client communication with an employer or employer's representative through a visit, phone call, or mail to request consideration for employment.

(13) English as a second language (ESL): An activity in the basic education component. ESL classes are designed to give clients with limited English proficiency better working skills in the language.

(14) Fair Labor Standards Act (FLSA): Applies to subject employers with clients working in the unpaid employment component. FLSA requires that clients engaged in unpaid employment, in effect, cannot "work off" their SNAP and TANF benefits at an hourly rate less than the state minimum wage.

(15) Federally required participation rates: The participation rates required by section 407 of the Social Security Act (42 USC 607).

(16) High School or GED Completion Attendance: An activity in the basic education component that involves attendance at a secondary school or in a course of study that leads to the completion of the GED.

(17) Job search: An activity in the job search and readiness component that focuses on clients looking for and obtaining employment. It is designed to improve skills in locating and competing for employment in the local labor market and may include writing resumes, receiving instruction in interviewing skills, and participating in group and individual job search. There are two categories of job search: initial job search and regular job search. Initial job search may occur during the Pre-TANF program. Regular job search begins not later than the day after the Department finds the client eligible for TANF benefits.

(18) Job search and readiness: A component designed to prepare clients to compete in the local labor market. Job search, life skills, drug and alcohol services, mental health services, and rehabilitation activities are the activities of the job search and readiness component.

(19) Job skills training: An activity in the basic education component designed to provide classroom training in vocational and technical skills or equivalent knowledge and abilities in a specific job area.

(20) JOBS Plus program (JOBS Plus): An activity in the paid subsidized employment component that provides TANF clients with on the job training and pays their benefits as wages (see the rules at OAR 461-190-0401 to 461-190-0426).

(21) Life skills: An activity of the job search and readiness component. The activity develops employment-preparation skills and skills and attitudes that are commonly found in the workplace.

(22) Mental health services: An activity in the job search and readiness component that provides mental health screenings and assessments, counseling, medication management, and support groups.

(23) Microenterprise: An activity in the paid unsubsidized employment component in which the client is self-employed in a sole proprietorship, partnership, or family business that has fewer than five employees and has capital needs no greater than \$35,000.

(24) Non-core activities: Federally-defined countable work activities that include: job skills training directly related to employment; education directly related to employment; and satisfactory school attendance at a secondary level or leading to a GED.

(25) On-the-job training (OJT): An activity in the paid subsidized employment component in which a client works for an employer for a contracted period. The employer trains the client and is reimbursed by the Department, usually at 50 percent of the wages of the participant, for those training costs.

(26) Paid subsidized employment: A component in which clients are employed in a subsidized public or private sector job. JOBS Plus, work supplementation, and on-the-job training are the activities in the paid subsidized employment component.

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(27) Paid unsubsidized employment: A component in which clients are employed full- or part-time in an unsubsidized job and receiving TANF benefits. Unsubsidized employment is a job that is not subsidized by TANF or any other public program. The UN work program and microenterprise are the activities in the paid unsubsidized employment component.

(28) Parents as Scholars (PAS): A JOBS program component that assists TANF parents who are or will be undergraduates to begin or continue their education at a two- or four-year educational institution (see OAR 461-190-0199).

(29) Program entry: An activity that includes all the activities that prepare a client to actively participate in the JOBS program. Program entry activities include assessment and writing the initial case plan.

(30) Progress (good or satisfactory): For federal reporting purposes, a client participating in an education or training activity makes good progress or satisfactory progress by receiving a passing grade or progressing toward completion of high school or GED completion at no less than the normal rate of a half-time student.

(31) Providing child care services to a Community Service Program participant: An activity in the unpaid employment component.

(32) Rehabilitation activities: An activity in the job search and readiness component that provides medical or therapeutic screenings, assessments, and treatment. This activity also includes medical management and support groups.

(33) Self Initiated Training (SI): A JOBS program component that allows a participant to continue an ongoing two-year or four-year degree program or Vocational Training education opportunities for up to 12 months. Each SI participant is limited to 12 months of participation, and a participant must meet the requirements of one of the following subsections:

(a) Be a client on the PAS wait list as of June 30, 2011 who has contacted his or her case manager on or before July 15, 2011; or

(b) Be a client who is transitioned from Vocational Training to SI by his or her local DHS office.

(34) Sheltered or supported work: An activity in the unpaid employment component that gives clients intensive staff support, skill training, intervention and counseling that will enable them to function independently at work.

(35) Stabilization, intervention, and other activities: A group of activities that are non-countable for federal participation purposes. These activities include child health and development, crisis intervention, domestic violence services, family stability activities (see OAR 461-001-0000), medical services, retention services, services to child welfare families, social security application, and stabilized living services.

(36) Support services: Services that case-managed clients need to participate successfully in activities outlined in their case plan, seek and maintain employment, or remove barriers.

(37) Teen parent: A parent (see OAR 461-001-0000) under 20 years of age who has not completed a high school diploma or GED.

(38) Transition services: Services included in a client's case plan when the client becomes employed or becomes ineligible for cash benefits because of an increase in income or resources.

(39) Unpaid employment: A component in which a client is placed in an unpaid job to develop good work habits, training and knowledge to obtain employment. Employment may be in the private or public sector or through a work simulation program. Work experience, Community Service Program, providing child care services to a Community Service Program participant, and sheltered or supported work are the activities of the unpaid employment component.

(40) UN work program: An activity in the paid unsubsidized employment component in which TANF clients work in unsubsidized employment and may also participate in another JOBS work site training activity.

(41) Vocational Training: An activity and component of the JOBS program that provides JOBS participants with access to specific vocational training that will lead to a career with an appropriate wage level and opportunity for employment.

(42) Work experience: An activity in the unpaid employment component in which the client works without pay at a job site to develop good work habits and basic vocational skills that enhance the likelihood the client will become employed. Work experience is available through private for-profit businesses, nonprofit organizations, or public agencies.

(43) Work supplementation: An activity in the unpaid employment component. Up to six months of work-site training provided by an employer. The component and activity are both called work supplementation. In work supplementation, the Department subsidizes the wages of the participant by providing up to \$200 per month to the employer.

Stat. Auth.: ORS 411.060, 412.006, 412.009, 412.049

Stats. Implemented: ORS 411.060, 412.001, 412.006, 412.009, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 10-1991, f. & cert. ef. 4-19-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; Renumbered from 461-190-0110, SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 34-2011, f. 12-27-11, cert. ef. 12-29-11

## 461-130-0327

### Good Cause; Employment Programs

In a Department employment program administered under these rules (OAR 461-130-0305 to 461-130-0335):

(1) The Department does not require a client to provide verification of good cause if providing the verification would expose the client to increased risk of domestic violence (see OAR 461-001-0000).

(2) If in making a determination under this rule a client's physical or mental impairment is in question, the Department may require the client to provide documentation from a qualified and appropriate medical professional.

(3) A client is excused for good cause from a failure to comply with a requirement of an employment program, including an activity in a case plan (both terms defined in OAR 461-001-0025) in the following circumstances:

(a) Participation in a required activity in a case plan would have an adverse effect on or risk to the client's physical or mental health or would expose the client to increased risk of domestic violence (see OAR 461-001-0000).

(b) Except in the SNAP program, participation is likely to cause undue hardship for the dependent child (see OAR 461-001-0000) or the client.

(c) Appropriate child care, or day care for an individual in the household who has a disability (see OAR 461-001-0000 and 461-001-0015 as applicable) that substantially reduces or eliminates the individual's ability to care for himself or herself, cannot be obtained. "Appropriate child care" means that:

(A) Both the provider and the place where care is provided meet health, safety, and provider requirements as required in OAR 461-165-0180;

(B) The care accommodates the parent's work schedule; and

(C) The care meets the specific needs of the dependent child, such as age and special-needs requirements.

(d) The work attachment position or employment offered is vacant due to a strike, lockout, or other labor dispute.

(e) The work attachment position or employment requires the client to join a union, and the client has religious objections to unions.

(f) The client belongs to a union and the employment violates the conditions of the client's membership in the union.

(g) The wage for the client's current or potential job is:

(A) Less than applicable minimum wage; or

(B) If minimum wage laws do not apply, the wage (rate for piece work) is less than that normally paid for similar work.

(h) The client's prospective employer engages in employment practices that are illegally discriminatory on the basis of age, sex, race, religious or political belief, marital status, disability, sexual orientation, or ethnic origin.

(i) The client's participation in a required activity in a case plan would prevent or interfere with the client's participation in an activity of the Grande Ronde Tribe's NEW program.

(j) The client's failure to participate is due to a circumstance beyond his or her reasonable control.

(k) When the failure to comply is caused by an aspect of the client's disability, including the Department's failure to provide a reasonable accommodation.

(l) The client quits a job to accept another job with a monthly income at least equal to the monthly income of the first job.

(m) The Department determines there are no appropriate activities or necessary support services (see OAR 461-001-0025) to support an activity (see OAR 461-001-0025) in order for the client to participate.

(4) In the SNAP program, a client is excused from not accepting employment or for leaving a job under the following circumstances:

(a) The hours or nature of the job interferes with the client's religious observances, convictions, or beliefs.

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(b) The client accepts employment or enrolls at least half-time in any recognized school, training program, or institution of higher education that requires the client to quit a job.

(c) A client accepts employment or enrolls in school in another county, requiring the benefit group to move and the client to quit a job.

(d) A client less than 60 years of age resigns, and the employer recognizes the resignation as retirement.

(e) The client leaves a job to follow a type of employment that moves from one area to another, such as migrant labor or construction.

(f) The client accepts a job that, for reasons beyond the control of the client, does not materialize or results in fewer work hours or a lower wage than the client's previous job.

(g) Work demands or conditions, such as not being paid for work or not being paid on schedule, make employment unreasonable.

(h) The wage for the client's current or potential job is less than applicable minimum wage or, if minimum wage laws do not apply, the wage (rate for piece work) is less than that normally paid for similar work.

(i) The work schedule for the job in question does not conform to hours customary to the occupation or the hours worked each week are more than those customary to the occupation.

(j) The client is not obligated to accept a job during the first 30 days of registration for employment if the job is not in the client's field of experience.

(k) The client has no means of transportation and would have to walk an unreasonable distance to meet the participation requirement. An "unreasonable distance" is a distance that requires a commute of more than two hours each day. The client must make a good-faith effort to secure the needed transportation.

(l) Lack of adequate child care for a child who is six years of age or older and less than 12 years of age.

Stat. Auth.: ORS 411.060, 411.816, 412.006, 412.009, 412.049  
Stats. Implemented: ORS 411.060, 411.117, 411.816, 412.006, 412.009, 412.049  
Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 34-2011, f. 12-27-11, cert. ef. 12-29-11

## 461-135-0475

### Specific Requirements; Pre-TANF Program

(1) This rule explains specific requirements for the Pre-TANF program. The eligibility criteria of the Pre-TANF program are the same as the TANF program. It is not the intent of the Pre-TANF program to delay the start of TANF program benefits. The purposes of the Pre-TANF program are:

- (a) To help individuals find employment or other alternatives;
- (b) To assess the employment potential of individuals;
- (c) To help individuals determine the service level needed to enhance their employability and their likelihood of becoming self sufficient;
- (d) To determine if a needy caretaker relative (see OAR 461-001-0000) has or may have a barrier to employment or to family stability.

(e) To develop an individualized case plan (see OAR 461-001-0025), when appropriate, that establishes goals and identifies suitable activities (see OAR 461-001-0025) that promote family stability and financial independence.

(f) To provide basic living expenses, as described in section (5) of this rule, immediately to families in need.

(2) Applicants for the TANF program whose unverified application indicates the client meets the TANF eligibility requirements participate in the Pre-TANF program. Their applications for the TANF program are also considered applications for the Pre-TANF program. The Pre-TANF program is open for not longer than 45 days following the date of request (see OAR 461-115-0030).

(3) Individuals in the Pre-TANF program are subject to the requirements of the JOBS program, described in divisions 130 and 190 of this chapter of rules, and they are subject to the requirements of OAR 461-135-0085 pertaining to substance abuse and mental health.

(4) During the Pre-TANF program, each caretaker relative in the need group (see OAR 461-110-0630) must complete an employability screening (see OAR 461-135-0485). At least one caretaker relative in the need group must participate in an overview of the JOBS program (see OAR 461-135-0485). If the employability screening indicates there is or may be a barrier, the individual must be offered additional screenings, at no cost to the individual, by a person with relevant expertise or specialized training. When appropriate, per OAR 461-190-0211, the individual and the Department

prepare a case plan that lists the activities of the client and support services payments if available.

(5) The Department may provide the client with basic living expenses necessary to stabilize the household so the client can accomplish the activities in the case plan. Basic living expenses covered by this section are limited to the current need of the client for personal incidentals that the client cannot meet with other, immediately available resources. Payments under this section are limited to 100 percent of the payment standard for the benefit group (see OAR 461-155-0030(2)(b)). Payment for "past expenses" is made only when the need of the client cannot be adequately met by a less expensive alternative.

(6) During the Pre-TANF program, an individual may receive support services payments listed in the case plan pursuant to OAR 461-190-0211.

(7) The Pre-TANF program is closed, at any point during the 45 days following the date of request (see OAR 461-115-0030) for TANF program benefits, in any of the following circumstances:

(a) The client is unlikely to become employed due to the employability of the client, the circumstances affecting the family, or other causes.

(b) The client fails without good cause (see OAR 461-130-0327) to comply with a requirement of an employment program or the case plan.

(c) In any circumstance that would make a client ineligible for TANF.

(d) Upon starting a JOBS Plus assignment.

(e) Upon employment and enrollment in the Post-TANF program.

(8) If Pre-TANF benefits are closed pursuant to subsection (7)(a) or (b) of this rule, TANF benefits may be opened if all TANF eligibility requirements are met.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.049  
Stats. Implemented: ORS 409.010, 411.060, 411.070, 412.006, 412.049, 412.064, 2011 Oregon Laws 604  
Hist.: AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 16-2009(Temp), f. & cert. ef. 7-1-09 thru 9-28-09; Administrative correction 10-22-09; SSP 20-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 27-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-28-11; SSP 34-2011, f. 12-27-11, cert. ef. 12-29-11

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

**Adm. Order No.:** SSP 35-2011

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**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 461-115-0016, 461-135-0485

**Rules Amended:** 461-115-0030, 461-115-0050, 461-115-0230, 461-115-0690, 461-130-0330, 461-130-0335, 461-135-0089, 461-135-0780, 461-135-0832, 461-135-0845, 461-135-0950, 461-135-0990, 461-135-1195, 461-145-0130, 461-145-0220, 461-145-0410, 461-155-0150, 461-155-0250, 461-155-0270, 461-155-0300, 461-155-0320, 461-155-0360, 461-160-0015, 461-160-0580, 461-160-0620, 461-175-0290, 461-180-0050, 461-180-0070, 461-180-0085

**Rules Repealed:** 461-115-0016(T), 461-115-0030(T), 461-115-0050(T), 461-115-0230(T), 461-115-0690(T), 461-130-0330(T), 461-130-0335(T), 461-135-0089(T), 461-135-0485(T), 461-135-0950(T), 461-135-0960, 461-135-1195(T), 461-145-0410(T), 461-155-0320(T), 461-155-0528, 461-155-0693, 461-160-0015(T), 461-180-0050(T), 461-180-0070(T)

**Subject:** OAR 461-115-0016 is being adopted to establish policies for a reservation list in the Employment Related Day Care program. This rule can be implemented as budget needs arise to keep caseload within budget levels and caps in accordance with legislative funding. This rule indicates which clients remain eligible once the reservation list is in place, which clients are placed on the reservation list, and how clients move from the reservation list into the program. This rule is also being adopted to make permanent the temporary rule adopted on August 1, 2011.

OAR 461-115-0030 is being amended to align how the Department determines the date of request for purposes of eligibility for current recipients of benefits in the Continuous Eligibility for OHP-CHP Pregnant Women (CEC), Continuous Eligibility for Medicaid (CEM), Extended Medical Assistance (EXT), Healthy KidsConnect (HKC), Medical Assistance Assumed (MAA), Medical Assistance to

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Families (MAF), Oregon Health Plan (OHP), Oregon Supplemental Income Program Medical (OSIPM), Refugee Assistance Medical (REFM), and Medical Coverage for Children in Substitute or Adoptive Care (SAC) programs. This amendment aligns the processes for recipients of these programs who are sent an auto-pend (DHS Form 945) with those who are sent a DHS 6623 at medical redetermination. When either form is sent, the Department or the Oregon Health Authority has established a date of request on behalf of the recipient. This rule is also being amended to make permanent changes made by temporary rule on August 1, 2011.

OAR 461-115-0050 is being amended as part of the implementation of HB 3536 (2011) to indicate when clients who have had their medical case suspended as a result of incarceration with an anticipated stay of one year or less do not need a new application to resume medical benefits.

OAR 461-115-0230 about interviews of clients is being amended to make permanent temporary changes that were made on July 22, 2011 changing the interview policies in the Supplemental Nutrition Assistance Program (SNAP). The statement about face-to-face SNAP interviews occurring is removed, and interviews for expedited SNAP may no longer be postponed. This rule is also being amended to clarify when hardship criteria must be met for waiving a face to face interview. Currently, this rule indicates that all programs except BCCM, HKC, MAA, MAF, OHP and SAC must meet the hardship criteria to waive the face-to-face interview; it is being amended to reflect that only the TANF program requires the hardship criteria to be met.

OAR 461-115-0690 about verification is being amended to reflect that interviews cannot be postponed for expedited SNAP households. Interviews must be conducted prior to an eligibility determination being made. This amendment makes a temporary rule change from July 22, 2011 permanent.

OAR 461-130-0330 about the disqualification penalty in the Department's Temporary Assistance for Needy Families program is being amended to change the levels of disqualifications and the penalty in the final month in the Job Opportunity and Basic Skills (JOBS) program. The amendment also adds a two month ineligibility period if a client does not begin cooperation in the final month of disqualification. As a result of legislative changes during the 2011 legislative session, the levels and penalty for non-cooperation in the JOBS program are being changed. The amendment changes the levels of disqualification from four to two. There are three months in the first level and one month in the second level. The amendment also stipulates that a client who does not begin cooperation in the second level month will have the TANF grant closed and would not be eligible for TANF program benefits for two-consecutive month. This amendment also makes permanent changes adopted by temporary rule on October 1, 2011.

OAR 461-130-0335 about removing a disqualification penalty and the effects on benefits is being amended to change how a disqualification is ended depending on the level of disqualification in the Temporary Assistance for Needy Families (TANF) program. In the first level of disqualification a disqualified individual must cooperate for two consecutive weeks in all activities of a new or revised case plan. In the second level of disqualification, the disqualified individual must begin the two consecutive weeks of cooperation prior to the end of the month or their TANF grant will be closed for two consecutive months, after which the individual would need to re-apply for TANF program benefits. If the individual begins and cooperates for the two consecutive months, TANF benefits are restored effective the date the two consecutive weeks ended. As a result of legislative changes during the 2011 legislative session, the levels and penalty for non-cooperation in the JOBS program are being changed. This amendment was needed to comply with the legislative changes. This rule is also being amended to clarify the meaning of

the term "household" and to make permanent the changes made by temporary rule on October 1, 2011.

OAR 461-135-0089 about the disqualification penalty for non cooperation with substance abuse and mental health requirements in the Department's Temporary Assistance for Needy Families program is being amended to describe how to end a penalty imposed under OAR 461-135-0085. The amendment specifies what a client must do in order to end a disqualification imposed under OAR 461-135-0085. These changes are a result of legislative changes during the 2011 legislative session, the levels and penalty for non-cooperation in the JOBS program is being changed. This rule is also being amended to make permanent changes adopted by temporary rule on October 1, 2011.

OAR 461-135-0485 is being adopted to implement HB 2049 (2011) by setting out the requirements to complete an employability assessment and orientation for the Job Opportunity and Basic Skills (JOBS) program. These are new requirements for individuals applying for the Temporary Assistance to Needy Families (TANF) program. This rule is also being adopted to make the permanent the temporary rule adopted on October 1, 2011.

OAR 461-135-0780 about eligibility for Pickle Amendment clients in the OSIPM program, 461-145-0220 about treatment of the home, 461-155-0250 about income and payment standard for OSIPM, 461-155-0270 about room and board standards for OSIPM, 461-155-0300 about shelter-in-kind standard for OSIP, OSIPM and QMB, 461-160-0015 about resource limits, 461-160-0580 about excluded resources (community spouse provision) OSIPM program (except OSIP-EPD and OSIPM-EPD), and 461-160-0620 and income deductions and client liability for Long Term Care Services and Waivered Services are being amended to adjust these standard to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living.

OAR 461-135-0832 about definitions for the estate recovery program is being amended to include a definition for a new type of real property deed, created by Oregon Laws 2011, chapter 212, known as a "Transfer on Death Deed."

OAR 461-135-0845 about valuation of life estates, transfer on death deeds, reversionary interest, and property is being amended to clarify that the new "Transfer on Death Deeds" created by Oregon Laws 2011, chapter 212 are subject to estate recovery claims for recoverable public assistance, and to establish how they will be valued for estate recovery purposes.

OAR 461-135-0950 is being amended as part of the implementation of HB 3536 (2011) to state that clients who become incarcerated for less than 12 months may have their medical benefits suspended rather than closed. This legislation was based on a request by local jails that have been experiencing an influx of inmates with high medical needs. These inmates have had their medical benefits terminated upon incarceration, and were not able to get their benefits reinstated upon release without completing a new application and/or submitting a reservation list request for OHP benefits. Reinstating medical benefits without a new application when an individual reports their release timely result in more timely medical benefits. This rule is also being amended to include the age criteria previously in OAR 461-135-0960 for individuals in state psychiatric institutions and training centers for the Oregon Supplemental Income Program Medical (OSIPM) and Medical Coverage for Children in Substitute or Adoptive Care (SAC) programs. The age criteria are being corrected from under the age of 21 to under the age of 22, and the section about a State Training Center is being removed because there are no longer any such training centers in existence. This rule is also being amended to make permanent changes adopted by temporary rule on October 1, 2011.

OAR 461-135-0960 regarding the age criteria for Oregon Supplemental Income Program Medical (OSIPM, assistance to the aged and people with disabilities) and Children in Substitute or Adoptive

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Care (SAC) when the individual is in a State Psychiatric Institution or Training Center is being repealed because this topic is now being covered in OAR 461-135-0950, where the information is being updated and corrected. This repeal will make permanent a temporary rule suspension adopted on October 1, 2011.

OAR 461-135-0990 about reimbursement of cost-effective, private or employer-sponsored health insurance premiums is being amended to align it with the revision of OAR 410-120-1960 by the Oregon Health Authority and revise who may be reimbursed for private or employer-sponsored health insurance premiums.

OAR 461-135-1195 about the specific eligibility requirements for the Department's State Family Pre-SSI/SSDI (SFPSS) program is being amended to expand eligibility to one-adult families with each child in the household are on Social Security Income (SSI). As a result of budget constraints during the 2011 legislative session, the SFPSS grants are being reduced by removing enhanced grants. The grant will equal what the clients would have been receiving in a Temporary Assistance for Needed Families (TANF) grant. Because of this change, families with one adult where their child or all their children in the household are receiving SSI will have an SFPSS grant equal to a TANF grant. Prior to the grant amount changing, these families would have received less on SFPSS than TANF. Therefore they were not allowed to be on SFPSS program. They were provided all other SFPSS services. This rule is also being amended to make permanent temporary rule amendments adopted on October 1, 2011.

OAR 461-145-0130 about how earned income is treated in the eligibility process for several Department programs is being amended to remove an incorrect reference concerning cafeteria benefits plans and SNAP earned income deductions, and to clarify that a reimbursed cafeteria-style benefits cannot be excluded when reimbursed and are counted as earned income.

OAR 461-145-0410 about how benefits from one program are treated in determining eligibility for another program is being amended to remove a reference to a repealed rule affecting the TANF program.

OAR 461-155-0150 about child care eligibility standards, payment rates, and copayments in the ERDC, JOBS, JOBS Plus, and TANF programs is being amended to change the definitions of infants and toddlers for the purpose of setting DHS rates to licensed (registered or certified) child care providers. Licensed providers will receive infant rates up to 18 months instead of up to 12 months.

OAR 461-155-0320 about the payment standard for the Department's State Family Pre-SSI/SSDI (SFPSS) program is being amended to set new and lower payment standards. As a result of budget constraints during the 2011 legislative session, the SFPSS grants are being reduced by removing enhanced grants. The grant will equal what the clients would have been receiving in a Temporary Assistance for Needed Families (TANF) grant. This rule is also being amended to make permanent changes made by temporary rule on August 19, 2011.

OAR 461-155-0360 about requirements for clients to pursue cost-effective employer sponsored health insurance is being amended to align this rule with revision of OAR 410-120-1960 by the Oregon Health Authority. This amendment removes the step by step instructions for field workers on how to determine cost effective employer-sponsored health insurance for the purpose of applying OAR 461-120-0345, and states that the Health Insurance Group determines if employer sponsored health insurance meets the criteria for the purpose of applying OAR 410-120-1960 as well as OAR 461-120-0345 for failure to pursue cost effective employer sponsored insurance.

OAR 461-155-0528 about emergency assistance payments in the Oregon Supplemental Income Program Medical (OSIPM) program is being repealed. This repeal will have the effect of making the temporary changes to this rule on August 1, 2011 permanent.

OAR 461-155-0693 about transportation services payments in the Oregon Supplemental Income Program Medical (OSIPM) program

is being repealed. This repeal will have the effect of making the temporary changes to this rule on July 15, 2011 permanent.

OAR 461-160-0015 is being amended to update the resource limit for SNAP households that include at least one member who is elderly or an individual with a disability. The resource limit for these SNAP households prior to October 1, 2011 is \$3,000. Based on an increase in the Consumer Price Index (CPI) the new resource limit as of October 1, 2011 is \$3,250. There is no change in the resource limit for other SNAP households. This amendment makes permanent the temporary rule change from October 1, 2011

OAR 461-175-0290 about overpayment repayment notices is being amended to clarify when notices are sent to reduce benefits for recovery of an overpayment.

OAR 461-180-0050 about effective date for suspending or closing benefits or Job Opportunity and Basic Skills (JOBS) support services is being amended to fix a conflict between two rules and correct an error applicable to TANF program notices, changing the reference to the notice period from 30 to 45 days. This rule is also being amended as part of the implementation of HB 3536 (2011) to set out the policy on the effective date for suspending benefits for inmates. This rule is also being amended to make permanent changes made by temporary rule on October 1, 2011.

OAR 461-180-0070 about effective dates for initial month of benefits is being amended to clarify the initial date for TANF benefits when a client has received Pre-TANF benefits in the context of other changes to the Pre-TANF program due to state legislation and budget constraints. This rule is also being amended to make permanent changes made by temporary rule on October 1, 2011.

OAR 461-180-0085 about redetermining medical eligibility prior to reducing or ending medical benefits is being amended to change how it specifies who will remain eligible if additional information is needed to make an eligibility decision after the Department initiates a redetermination.

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

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### 461-115-0016

#### Application Process; Reservation List for ERDC

Notwithstanding any other rule in Chapter 461 of the Oregon Administrative Rules, in the ERDC program:

(1) Eligibility is subject to the availability of funds. The Department may implement a Child Care Reservation List whenever the Department determines that sufficient funding is not available to sustain benefits for all of the applicants requesting assistance.

(2) Except as provided in section (3) of this rule, the following applicants are subject to placement on the Child Care Reservation List when the Child Care Reservation List is in effect:

(a) New applicants for ERDC when no member of the ERDC filing group (see OAR 461-110-0350) received a partial or full month of REF, SFPSS, or TANF program cash benefits from the State of Oregon in at least one of the preceding three months; and no member of the ERDC program filing group may be concurrently receiving TANF program benefits except as allowed under OAR 461-165-0030.

(b) Individuals who are reapplying for ERDC after a break in ERDC benefits of two consecutive, calendar months or more.

(3) Except as allowed under OAR 461-165-0030, no member of an ERDC program filing group may be concurrently receiving TANF program benefits. When concurrent benefits are not allowed, the Department sends a decision notice (see OAR 461-001-0000) of ineligibility for the ERDC program and the filing group is not placed on the Child Care Reservation List.

(4) When the Child Care Reservation List is in effect, the Department must place all applicants who are subject to the Child Care Reservation List under section (2) of this rule on the Child Care Reservation List for future selection. The Department sends these applicants a decision notice of ineligibility for the ERDC program.

(5) Each month, on the basis of an estimate of available funds, an appropriate number of individuals from the Child Care Reservation List are randomly selected and invited to apply for ERDC.

(6) After an individual is selected from the Child Care Reservation List, the individual must contact the Department to establish a date of

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request no later than 30 days after the date on the selection letter. The individual may request child care benefits from the Department:

(a) Without completing a new application, when the previous application is within 45 days of its date of request (see OAR 461-115-0030); or

(b) By submitting a new application for child care benefits to the Department.

(7) The processing time frame for the ERDC application is the same as that specified in OAR 461-115-0190, except that:

(a) An individual who requests benefits after the 30 day deadline to apply (see section (6) of this rule) will be returned to the Child Care Reservation List.

(b) If the Department does not receive a request for benefits within the deadline to apply, the individual is dropped from the Child Care Reservation List.

Stat. Auth: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 23-2011(Temp), f. & cert. ef. 8-1-11 thru 1-27-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12

## 461-115-0030

### Date of Request

(1) For all programs covered by Chapter 461 of the Oregon Administrative Rules, the client or someone authorized to act on behalf of the client must contact the Department or use another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. The request starts the application process.

(2) The date of request is one of the following:

(a) In the EA, ERDC, GA, OSIP, REF, and TANF programs and for support service payments in the JOBS program authorized by OAR 461-190-0211, the date of request is the day the request for benefits is received by the Department.

(b) In the SNAP program, this section does not apply. See OAR 461-115-0040.

(c) In the GAM, HKC, MAA, MAF, OHP, OSIPM, REFM, and SAC programs, for a new applicant, the date of request is determined as follows:

(A) The day the request for medical benefits is received by a Department representative, except as described in paragraphs (B) and (C) of this subsection.

(B) If the request for medical benefits is received by a Department representative no later than the next business day after medical services are received, the date of request is the day these medical services were received.

(C) An individual's request to be placed on the OHP Standard Reservation List (see OAR 461-135-1125) does not establish a date of request for medical benefits.

(d) In the CEC, CEM, EXT, HKC, MAA, MAF, OHP, OSIPM, REFM, and SAC programs, for a current recipient, the date of request is one of the following:

(A) The date the client reports a change requiring a redetermination of eligibility.

(B) The date the Department initiates a review, except that the automatic mailing of an application only constitutes a Department-initiated review when a CEC, CEM, EXT, MAA, MAF, OHP-OP6, OHP-OPC, OHP-OPP, or OHP-OPU recipient is mailed the DHS 6623 "Client TANF Packet--PA" redetermination packet.

(C) The date the client establishes a date of request by contacting the Department orally or in writing or by submitting an application.

(e) In the SFPSS program:

(A) Except as provided in paragraph (B) of this subsection, the date of request is the day the client signs the program's Interim Assistance Agreement.

(B) The date of request for support service payments is the day the request for benefits is received by the Department.

Stat. Auth: ORS 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.826, 414.831, 414.839

Stats. Implemented: ORS 409.050, 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 2-1992, f. 1-30-92, cert. ef. 2-1-92; 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 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; 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 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 12-2008(Temp), f. & cert. ef. 4-17-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 22-2009(Temp), f. & cert. ef. 8-28-09 thru 2-21-10; 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 23-2011(Temp), f. & cert. ef. 8-1-11 thru 1-27-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12

## 461-115-0050

### When an Application Must Be Filed

(1) A client must file an application, or may amend a completed application, as a prerequisite to receiving benefits as follows:

(a) A client may apply for the TA-DVS program as provided in OAR 461-135-1220.

(b) In all programs except the TA-DVS program:

(A) Except as provided otherwise in this rule, a client wishing to apply for program benefits must submit a complete application on a form approved by the Department.

(B) An application is complete if all of the following requirements are met:

(i) All information necessary to determine the individual's eligibility and benefit amount is provided on the application for each individual in the filing group.

(ii) The applicant, even if homeless, provides a mailing address.

(iii) The application is signed. An individual required but unable to sign the application may sign with a mark, witnessed by another individual.

(iv) The application is received by the Department, except an electronic application (see OAR 461-001-0000) meets the requirements of this paragraph only when submitted to and received by the Department with an electronic signature.

(2) A new application is not required in the following situations:

(a) In the SNAP program, when a single application can be used both to determine a client is ineligible in the month of application and to determine the client is eligible the next month. This can be done when--

(A) Anticipated changes make the filing group (see OAR 461-110-0370) eligible the second month; or

(B) The filing group provides verification between 30 and 60 days following the filing date (see OAR 461-115-0040), under OAR 461-180-0080.

(b) In all programs except the SNAP program, when a single application can be used both to determine a client is ineligible on the date of request (see OAR 461-115-0030) and to determine the client is eligible when anticipated changes make the filing group eligible within 45 days from the date of request.

(c) When the case is closed and reopened during the same calendar month.

(d) When benefits were suspended for one month because of the level of income, and the case is reopened the month following the month of suspension.

(e) When reinstating medical benefits for a pregnant woman covered by OAR 461-135-0950, notwithstanding subsection (g) of this section.

(f) When the Department determines a child under the age of 19 years with a date of request from July 1, 2009 through December 31, 2009 is not eligible for EXT, MAA, MAF, OHP, OSIPM, QMB, or SAC program benefits for a reason other than failure to complete the application requirements under OAR 461-115-0020, and the Department chooses to redetermine the child's eligibility for EXT, MAA, MAF, OHP, OSIPM, QMB, and SAC program benefits under the administrative rules in effect on October 1, 2009 and January 1, 2010.

(g) In the BCCM, CEC, CEM, EXT, GAM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs, when a client's medical benefits are suspended because the client lives in a public institution (see OAR 461-135-0950), if the inmate is released within 12 months of admission and the inmate provides notification to the Department within 10 days of the release.

(3) When a client establishes a new date of request (see OAR 461-115-0030) prior to the end of the month following the month of case closure, unless the Department determines a new application is required, a new application is not required in the following situations:

(a) In the OSIPM program, when the client's case closed due to failure to make a liability payment required under OAR 461-160-0610.

(b) In the OSIPM-EPD program, when the client's case closed due to failure to make a participant fee payment required under OAR 461-160-0800.

(4) A new application is required to add a newborn child to a benefit group (see OAR 461-110-0750) according to the following requirements:

(a) For the REF and TANF programs:

(A) A new application is not required if the child is listed on the application as "unborn" and there is sufficient information about the child to establish its eligibility.

(B) A new application is required if the child is not included on the application as "unborn."

(b) In the CEC, CEM, EXT, HKC, MAA, MAF, OHP, and REFM programs, no additional application is required to add a newborn to a benefit

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group receiving benefits from one of the listed programs if eligibility can be determined without submission of a new application.

(c) In the CEC, CEM, EXT, GAM, HKC, MAA, MAF, OHP, OSIPM, QMB, REFM, and SAC programs, no additional application is required to add an assumed eligible newborn to a benefit group currently receiving Department medical program benefits.

(d) In the ERDC and SNAP programs, an application is not required to add the child to the benefit group.

(e) In all programs other than CEC, CEM, ERDC, EXT, GAM, HKC, MAA, MAF, OHP, QMB, REF, REFM, SAC, SNAP, and TANF, an application is required.

(5) A new application is required to add an individual, other than a newborn child, to a benefit group according to the following requirements:

(a) In the ERDC and SNAP programs, a new application is not required.

(b) In the EXT, HKC, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs, an individual may be added by amending a current application if the information is sufficient to determine eligibility; otherwise a new application is required.

(c) In all programs other than the ERDC, EXT, HKC, MAA, MAF, OHP, REF, REFM, SAC, SNAP, and TANF programs, a new application is required.

(6) A client whose TANF grant is closing may request ERDC orally or in writing.

(7) Except for an applicant for the SNAP program, a client may change between programs administered by the Department using the current application if the following conditions are met:

(a) The client makes an oral or written request for the change.

(b) The Department has sufficient evidence to determine eligibility and benefit level for the new program without a new application.

(c) The program change can be effected while the client is eligible for the first program.

(8) In the CEC, CEM, EXT, HKC, MAA, MAF, OHP, OSIP, OSIPM, and QMB programs, a new application is not required to redetermine eligibility if the following conditions are met:

(a) The client currently is receiving benefits from one of these programs; and

(b) The Department has sufficient evidence to redetermine eligibility for the same program or determine eligibility for the new program without a new application or by amending the current application.

Stat. Auth: ORS 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.839

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.117, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 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 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 27-1996, f. 6-27-1996, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 21-2001(Temp), f. & cert. ef. 10-1-01 thru 12-31-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 2-2008(Temp), f. & cert. ef. 1-28-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 17-2009(Temp), f. 7-29-09, cert. ef. 8-1-09 thru 1-28-10; SSP 22-2009(Temp), f. & cert. ef. 8-28-09 thru 1-28-10; 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 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

## 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.

(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.

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

## 461-115-0690

### Verification For SNAP Expedited Service; Time Limits

This rule establishes verification requirements for expedited services in the SNAP program.

(1) An applicant meeting the SNAP program expedited services criteria under OAR 461-135-0575 and determined eligible for SNAP benefits must provide verification of his or her identity either through a collateral contact or documentary evidence before benefits may be issued. Benefits may not be delayed solely because other eligibility factors are not verified. The filing group (see OAR 461-110-0370) must provide the postponed verification within the timeframes established in section (3) of this rule.

(2) A filing group that was receiving SNAP benefits in another state during the same month the filing group applies for expedited services in Oregon must verify that the filing group will not use SNAP benefits from both the other state and Oregon in the same month. The filing group may provide the verification by signing a statement attesting to the following:

(a) The filing group did not receive SNAP benefits from the other state for the month in which the filing group is applying for SNAP benefits in Oregon; and

(b) If the filing group receives SNAP benefits from the other state for a month in which the filing group receives SNAP benefits in Oregon, the filing group must comply with the following requirements:

(A) The filing group may not use the other state's SNAP benefits; and

(B) The filing group must report receipt of the other state's SNAP benefits and turn them in to the Department within five days of receipt. Failure to comply with this requirement constitutes an intentional program violation.

(3) A filing group that does not provide all necessary postponed verification becomes ineligible as follows:

(a) A filing group applying on or before the 15th of the month becomes ineligible the last day of the month of application.

(b) A filing group applying after the 15th of the month becomes ineligible the last day of the month following the month of application.

(4) When SNAP benefits under expedited services close or change due to postponed verification, notice is provided in accordance with OAR 461-175-0300.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 5-2010, f. & cert. ef. 4-1-10; 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

## 461-130-0330

### Disqualifications; Post-TANF, 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

# ADMINISTRATIVE RULES

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:

(a) At the first level, the penalty is removal of the disqualified client from the need group (see OAR 461-110-0630) for three months.

(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 OAR 461-001-0025) necessary to support the activity (see OAR 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

## 461-130-0335

### Removing Disqualifications and Effect on Benefits

(1) An applicant who would be subject to an employment program disqualification under OAR 461-130-0330 but withdraws the application before benefits are approved is not subject to disqualification.

(2) In the SNAP and TANF programs, a filing group (see OAR 461-110-0330 and 461-110-0370) is not subject to the impact of a disqualification for a disqualified member who has left the household group (see OAR 461-110-0210). Should the member join another filing group, that group is subject to the member's most recent disqualification.

(3) In the SNAP program, the disqualification ends the first day of the month following the month in which information is provided to the

Department justifying the change in the client's participation classification, even if the date falls within the disqualification period provided in OAR 461-130-0330(4).

(4) In the REF and TANF programs, a client disqualified for failure to meet the requirements of an employment program under division 190 of these rules:

(a) At the first level of disqualification must cooperate for two consecutive weeks with each activity (see OAR 461-001-0025) specified in the client's current or revised case plan (see OAR 461-001-0025) before the Department may remove the disqualification. Cash benefits are restored effective the date the client completes the two consecutive week cooperation period.

(b) When the second level of disqualification ends, TANF program benefits are closed for two consecutive months, unless the client begins two consecutive weeks of cooperation with each activity specified in the client's current or revised case plan before the end of the level two. If the client completes the two consecutive weeks of cooperation, cash benefits are restored effective the date the client completes the two consecutive week cooperation period.

(c) Cash benefits are restored effective the date it is determined, by the Department, there are no appropriate activities or support services (see OAR 461-001-0025) necessary to support the activity available in order for the client to demonstrate participation.

(5) In the REF and TANF programs, a disqualification ends when the Department changes the participation classification of the disqualified individual to exempt (see OAR 461-130-0305) or when the client complies with the requirements of the employment program (see section (4) of this rule).

Stat. Auth.: ORS 411.060, 411.816, 412.009, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.009, 412.049

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; 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

## 461-135-0089

### Demonstrating Compliance with Substance Abuse and Mental Health Requirements; Restoring Cash Benefits

In the Pre-TANF, REF, and TANF programs:

(1) In order to end a penalty imposed under OAR 461-135-0085:

(a) At the first level of disqualification (see OAR 461-130-0330(3)), a client must:

(A) Cooperate for a period of two consecutive weeks with each activity (see OAR 461-001-0025) specified in the client's current or revised case plan (see OAR 461-001-0025); and

(B) Demonstrate a willingness to participate in treatment required under OAR 461-135-0085 if treatment is still required.

(b) When the second level of disqualification (see OAR 461-130-0330(3)) ends, program benefits are closed for two consecutive months, unless the client:

(A) Begins two consecutive weeks of cooperation with each activity specified in the client's case plan before the end of the level two; and

(B) Demonstrates a willingness to participate in treatment required under OAR 461-135-0085 if treatment is still required.

(2) When the Department removes a disqualification due to a client's compliance with the requirements under OAR 461-135-0085, cash benefits are restored effective the date the client completed the two consecutive week cooperation period.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.049, 412.089

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.049, 412.089

Hist.: AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; 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

## 461-135-0485

### Requirement to Complete an Employability Screening and Overview of the Job Opportunity and Basic Skills (JOBS) program; TANF

(1) As used in this rule:

(a) "Employability screening" means the DHS 7823A - Employability Screening Tool.

(b) "Overview of the JOBS program" means a discussion with the caretaker relative (see OAR 461-001-0000) in the need group (see OAR 461-110-0630) about the requirements and services provided under the JOBS program.



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(2) To be eligible for TANF benefits, the following must be completed prior to the end of the application processing time frames in OAR 461-115-0190:

(a) Each caretaker relative in the need group must complete an employability screening (see section (1) of this rule); and

(b) At least one caretaker relative in the need group must participate in an overview of the JOBS program (see section (1) of this rule).

(3) The employability screening and overview of the JOBS program must be offered during the initial eligibility intake for TANF program benefits.

Stat Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.049, 412.124, 2011 Oregon Laws 604  
Stats Implemented: ORS 409.010, 411.060, 411.070, 412.006, 412.049, 412.064, 412.124, 2011 Oregon Laws 604  
Hist.: 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

## 461-135-0780

### Eligibility for Pickle Amendment Clients; OSIPM

(1) An individual is eligible for OSIPM under this rule and the so-called Pickle amendment (Pub. L. No. 94 566, § 503, title V, 90 Stat. 2685 (1976)), if he or she meets all other eligibility requirements, and:

(a) Is receiving Social Security Benefits (SSB);

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the individual was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB benefits.

(2) The SSB amount received by the individual when he or she became ineligible for SSI or OSIP is used as the individual's countable Social Security income, for the purposes of the Pickle Amendment. If the amount cannot be determined, it is calculated in accordance with sections (3) and (4) of this rule.

(3) Determine the month in which the individual was entitled to Social Security and received SSI in the same month. Use the table in section (4) of this rule to find the percentage that applies to that month. Multiply the present amount of the individual's Social Security benefits by the applicable percentage. This amount, rounded down to the next lower whole dollar, is the individual's countable Social Security for purposes of this rule and the Pickle Amendment. Add that figure to any other countable unearned income plus adjusted earned income of the individual, and if the total is less than the full SSI income standard for a single individual plus the \$20 unearned income deduction (OAR 461-160-0550), the individual is eligible for OSIPM for purposes of this rule and the Pickle amendment. For spouses in the same financial group (see OAR 461-110-0530), perform the above calculation for each spouse, combine the results and add the subtotal to all other countable unearned and adjusted earned income. If the total is less than the full SSI standard for a couple plus the \$20 unearned income deduction (OAR 461-160-0550), the couple is eligible for OSIPM for purposes of this rule and the Pickle amendment. All other financial and non-financial eligibility criteria must be met.

(4) The following guide contains the calculations used to determine the SSB for prior years: [Calculations not included. See ED. NOTE.]

[ED. NOTE: Calculations referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.070, 411.404  
Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2003(Temp), f. & cert. ef. 6-18-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12

## 461-135-0832

### Estate Administration; Definitions

Effective July 18, 1995, for purposes of these rules (OAR 461-135-0832 to 461-135-0847) and ORS 93.268, 410.075, 411.694, 411.708, 411.795, 416.310, 416.340, and 416.350 the terms listed below have the meanings ascribed to them herein; provided, however, as used in these rules, any term has the same meaning as when used in a comparable context in the laws of the United States in effect on June 1, 1996, relating to the recovery of medical assistance paid by a state pursuant to 42 USC 1396 et. seq. relating to Grants to States for Medical Assistance Programs, unless a different meaning is clearly required or the term is specifically defined

herein. The Department applies the definitions and procedures set forth in these rules to recoveries and claims made pursuant to ORS 411.708, 411.795, 416.310, 416.340, and 416.350.

(1) "Assets" means all income and resources of an individual, including any income or resources that an individual is entitled to at the time of death, including any income or resources to which the individual is entitled, but does not receive, because of action: by the individual; the individual's spouse; by a person, including a court or administrative body with legal authority to act in place of or on behalf of the individual; or by any person, including any court or administrative body, acting at the direction or upon the request of the individual.

(2) "Assign" means a person who acquires an interest in real or personal property or an asset pursuant to a written or oral assignment of such real or personal property or asset from a person with the legal right to assign it.

(3) "Blind child" means the deceased recipient's natural or adopted son or daughter, of any age, who, within two years after the Department initially asserts its claim, substantiates blindness throughout the time the Department seeks to enforce its claim by presenting evidence of:

(a) Vision of 20/200 or less in the better eye with a corrective lens; or

(b) A limitation in vision field to an angle of 20 degrees or less; or

(c) Meeting any other SSI criteria for blindness.

(4) "Bona fide purchaser for value" means any person who provides consideration, including money or property, to a seller or transferor of real property or personal property equal to the fair market value of the real or personal property sold or transferred.

(5) "Child under age 21" means the deceased recipient's natural or adopted son or daughter who is under 21 years of age throughout the time the Department seeks to enforce its claim.

(6) "Consideration furnished test" means the method by which the ownership of real or personal property is traced to its economic origin. The fractional share of the property considered owned by a co-owner shall be that fractional share to have originally belonged to or to be attributable to the monetary consideration furnished by the co-owner. The fractional share is based on the proportion the original ownership share or monetary consideration bore to the acquisition cost and, if applicable, capital additions for the property. The fractional share is not based on the dollar amount of contribution compared to the current market value of the property. For example, if one co-owner contributed \$2,500 and the other \$7,500 to the purchase price of a \$10,000 property in 1960; in 1995, the property is appraised at \$50,000. The co-owner who contributed \$2,500 is considered to own 25% of the property in 1995.

(7) "Convincing evidence" includes, but is not limited to:

(a) Recorded documents of title.

(b) Unrecorded documents of title executed contemporaneously with the transaction or transfer at issue.

(c) Tax statements or returns.

(d) Records of banking, financial or other similar institutions.

(e) Written receipts, bills of sale or other writings or documents executed contemporaneously with the transaction or transfer at issue.

(f) Such other reliable, probative evidence, including oral, of a similar nature and authenticity that accurately reflects the true facts of the transaction or transfer at issue.

(8) "Date of request" means the date an individual or someone authorized on behalf of the individual contacts the Department or uses another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. It starts the application process.

(9) "Disabled child" means the deceased recipient's natural or adopted son or daughter of any age, who meets SSI disability criteria throughout the time the Department seeks to enforce its claim, and who presents evidence to the Department substantiating the disability within two years after the Department initially asserts its claim.

(10) "Estate" means:

(a) With respect to the collection of payments made for public assistance provided prior to July 18, 1995, or for exclusively state funded public assistance, all real property, personal property, or other assets included within a recipient's estate, or the estate of the recipient's spouse, as such estate is defined by applicable state probate law.

(b) With respect to the collection of payments made for public assistance provided on or after July 18, 1995:

(A) For recipients who die prior to October 1, 2008, all real property, personal property, or other assets, wherever located, in which a recipient had any legal title or ownership or beneficial interest at the time of death, including real property, personal property, or other assets conveyed by the recipient to, subsequently acquired by, or traceable to, a person, including

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the recipient's surviving spouse and any successor-in-interest to the recipient's surviving spouse, through:

- (i) Tenancy by the entirety;
- (ii) Joint tenancy;
- (iii) Tenancy in common;
- (iv) Not as tenants in common, but with the right of survivorship;
- (v) Life estate;
- (vi) Transfer on death deed;
- (vii) Living trust;
- (viii) Annuity purchased on or after April 1, 2001; or
- (ix) Other similar arrangement.

(B) For recipients who die on or after October 1, 2008, all real property, personal property, or other assets, wherever located, in which a recipient had any legal title or ownership or beneficial interest at the time of death of the recipient, including real property, personal property, or other assets conveyed by the recipient to, subsequently acquired by, or traceable to, a person, including the recipient's spouse and any successor-in-interest to the recipient's spouse, through:

- (i) Tenancy by the entirety;
- (ii) Joint tenancy;
- (iii) Tenancy in common;
- (iv) Not as tenants in common, but with the right of survivorship;
- (v) Life estate;
- (vi) Transfer on death deed;
- (vii) Living trust;
- (viii) Annuity purchased on or after April 1, 2001; or
- (ix) Other similar arrangement, such as an interspousal transfer of assets, including one facilitated by a court order, which occurred no earlier than 60 months prior to the first date of request established from the recipient's and the recipient's spouse's applications, or at any time thereafter, whether approved, withdrawn, or denied, for the public assistance programs referenced in OAR 461-135-0835(2).

(11) "Heir" means any individual, including the surviving spouse, who is entitled under intestate succession to the real property, personal property, and assets of a decedent who died wholly or partially intestate.

(12) "Interest" means any form of legal, beneficial, equitable or ownership interest.

(13) "Interspousal transfer" means any transfer, or chain of transfers, that effectively transfers title or control of an asset, or an interest in an asset, from one spouse to another, including: direct transfers between spouses, transfers from one or both spouses to a trust, and transfers from one trust to another trust.

(14) "Intestate" means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all of a decedent's estate.

(15) "Intestate succession" means succession to real property, personal property or assets of a decedent who dies intestate or partially intestate.

(16) "Joint tenancy" means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenants with right of survivorship and tenants by the entirety.

(17) "Legal title" means legal ownership by a person.

(18) "Life estate" means an interest in real or personal property that terminates upon the death of a measuring life.

(19) "Living trust" means a revocable or irrevocable inter vivos trust funded with assets to which the recipient is legally entitled.

(20) "Medical institution" means a facility that provides care and services equivalent to those received in a nursing facility. Medical Institution does not apply to in-home waived services, adult foster home (AFH) care, residential care facility (RCF) services, or assisted living facility (ALF) care.

(21) "Ownership documents" mean any applicable documents, certificates or written evidence of title or ownership such as, but not limited to, recorded deeds, stock certificates, certificates of title, bills of sale or other similar documents evidencing ownership or legal title held by a person.

(22) "Permanently institutionalized" means an individual, regardless of age, who, at the time of his or her death, had resided in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, for 180 days or more.

(23) "Person" means any individual, corporation, association, firm, partnership, trust, estate or other form of entity.

(24) "Personal property" means all tangible and intangible personal property wherever located, including, but not limited to, chattels and movables, boats, vehicles, furniture, personal effects, livestock, tools, farming

implements, cash, currency, negotiable papers, securities, contracts, and contract rights.

(25) "Real property" means all land wherever situated, including improvements and fixtures thereon, and every estate, Interest, and right, whether legal or equitable, therein including, but not limited to, fee simple, terms for years, life estates, leasehold interests, condominiums or time share properties. Real property includes property conveyed by the individual to, subsequently acquired by, or traceable to, a person, including the individual's surviving spouse and any successor-in-interest to the individual's surviving spouse, if the real property may be included in the individual's, or the individual's surviving spouse's, estate, as defined in this rule.

(26) "Recipient of property" means:

(a) Any survivor, heir, assign, devisee under a will, beneficiary of a trust, transferee or other person to whom real property, personal property or other assets pass upon the death of the decedent either by law, intestate succession, contract, will, trust instrument or otherwise; and

(b) Any subsequent transferee of such real property, personal property, or asset, or proceeds from the sale thereof, through any form of conveyance, that is not a bona fide purchaser for value.

(27) "Survivor" means any person who, as a co-tenant, is automatically entitled to an expanded share of real or personal property upon the death of a fellow co-tenant.

(28) "Survivorship" means an interest in real or personal property that expires upon the death of an individual whereby the Interest of the individual's co-owners automatically expands to the same extent without necessity for any act of transfer or distribution.

(29) "Tenancy in common" means ownership of real or personal property by an individual together with one or more other persons which ownership interest shall not pass by survivorship upon the death of the individual.

(30) "Time of death" means the instant of death, the time and date of which shall be established in the place of the decedent's residence; in no case shall time of death be construed to mean a time after which an interest in real or personal property or other assets may:

(a) Pass by survivorship or other operation of law due to the death of the decedent; or

(b) Terminate by reason of the decedent's death.

(31) "Transfer on death deed" has the meaning set out in Oregon Laws 2011, chapter 212, section 2.

(32) "Value" means the fair market value. Fair market value is the price at which real or personal property would change hands between a willing buyer and a willing seller. In the event the real or personal property was not reported to the Department by the deceased Medicaid recipient, the value would be established based on its fair market value at the time of discovery.

Stat. Auth: ORS 410.070, 411.060 & 416.350

Stats. Implemented: ORS 93.268, 410.070, 411.060, 411.694, 411.708, 411.795, 416.310, 416.340 & 416.350

Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 30-2000, f. & cert. ef. 12-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 16-2008, f. 7-1-08, cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12

## 461-135-0845

### Valuation of Life Estate, Reversionary Interest and Property

(1) Effective July 18, 1995, the value of an expressly created life estate or other interest in real or personal property or other asset measured by or valued with respect to a life span, including that of the relevant recipient of public assistance, is established by reference to the life estate valuation tables set forth in this rule and is valued as of the time of death of the recipient of public assistance irrespective of the actual life span of the measuring life. [Table not included. See ED. NOTE.]

(2) For public assistance recovery purposes, the interest of a person in real or personal property or other asset held in joint tenancy with right of survivorship (including transfers with right of survivorship covered by ORS 93.180) or other form of concurrent ownership with one or more other persons with right of survivorship, other than a spouse or a transfer on death deed (see OAR 461-135-0832), is presumed to be the value of the fractional share held by the person. The fractional share of a person is presumed to be the share reflected in the ownership documents. Such presumption may be rebutted under the Consideration Furnished Test or by Convincing Evidence of the actual consideration contributed by another co-owner of the property or asset. In the absence of any stated fractional share on the Ownership Documents, each co-owner is presumed to have an equal fractional share of ownership of the whole, unless rebutted by the

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Consideration Furnished Test or as otherwise established by Convincing Evidence.

(3) With respect to Real or Personal Property or an Asset held jointly by spouses, as Tenants in Common, tenants by the entirety, with right of survivorship or otherwise, such property or asset is conclusively deemed to be owned one-half by each spouse; provided, however, that in the event the Ownership Documents expressly set forth a different fractional share of ownership, and such fractional share is lawful in the appropriate jurisdiction, then the fractional share set forth in such Ownership Documents is presumed to be the fractional share owned by each spouse. Such presumption may be rebutted by Convincing Evidence.

(4) With respect to a transfer on death deed, for public assistance recovery purposes, the transferor is presumed to own the full value of the real property. If there is more than one transferor their respective interests are determined in accordance with sections (2) and (3) of this rule.

(5) The Value of Real Property at, or prior to, the Time of Death is determined by establishing the fair market value of the property to the satisfaction of the Department. The burden of proof for establishing the Real Property's fair market value to the satisfaction of the Department lies with the person or, after the Time of Death of the person, with the person's representative, and may be established by any methodology, including the provision of an appraisal performed by an appraiser certified or licensed in the applicable jurisdiction, that the Department determines most accurately reflects the Value of the Real Property. The Value of liens and other encumbrances against the Real Property that is established by Convincing Evidence, if appropriate, is subtracted from the fair market value of the Real Property in order to derive a net fair market value of the Real Property.

(6) The Value of Personal Property consisting of shares of stock or other securities traded on an exchange is evidenced by the average of the bid and ask prices on the date of the Time of Death, or the next trading day thereafter. If such bid and ask prices are unavailable for certain stocks or securities, the Value may be established by a written estimate from the corporation or other entity issuing such shares or securities of the Value, or if such estimate is unobtainable, an estimate from a broker, trader or other Person with knowledge in the field of the Value. Liens and encumbrances established by Convincing Evidence against shares of stock or other securities is subtracted from the value of such stock or securities established by the foregoing procedure.

(7) The Value of tangible Personal Property, including, but not limited to, livestock, furniture, vehicles and other tangible items may be established—

(a) By a written estimate from a Person knowledgeable in the field of appraising such items of Personal Property; or

(b) From published sources such as catalogs of antiques or collectibles, blue books or other Convincing Evidence that accurately establishes the Value of the property. Liens and encumbrances established by Convincing Evidence against tangible personal property is subtracted from the value of such property established by the foregoing procedure.

(8) The Value of intangible Personal Property not otherwise provided for in this rule, is established by a written estimate from a Person knowledgeable in the field of appraising such items of intangible Personal Property. Liens and encumbrances established by Convincing Evidence against tangible personal property is subtracted from the value of such property established by the foregoing procedure.

(9) Notwithstanding anything to the contrary contained in this rule, in cases where an inventory has been filed with the appropriate court or an estate tax return has been filed with the appropriate governmental authority, the Value of any Real or Personal Property or other Asset is presumptively established by the amounts set forth on such inventory or estate tax return. The presumptive Value established by such inventory or return may be rebutted by Convincing Evidence.

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 410.070, 411.060, 411.070, 416.340, 416.350  
Stats. Implemented: ORS 411.708, 411.795, 416.310, 416.340, 416.350, 2011 OL 212 sec. 13, 2011 OL 720 sec. 224  
Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2004(Temp), f. & cert. ef. 2-5-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12

## 461-135-0950

### Eligibility for Inmates and Residents of State Hospitals

(1) This rule sets out additional restrictions on the eligibility of inmates and residents of state hospitals for programs covered by Chapter 461 of the Oregon Administrative Rules.

(2) Definition of an "inmate".

(a) An inmate is an individual living in a public institution who is:

(A) Confined involuntarily in a local, state or federal prison, jail, detention facility, or other penal facility, including an individual being held involuntarily in a detention center awaiting trial or an individual serving a sentence for a criminal offense;

(B) Residing involuntarily in a facility under a contract between the facility and a public institution where, under the terms of the contract, the facility is a public institution;

(C) Residing involuntarily in a facility that is under governmental control; or

(D) Receiving care as an outpatient while residing involuntarily in a public institution.

(b) An individual is not considered an inmate when:

(A) The individual is released on parole, probation, or post-prison supervision;

(B) The individual is on home- or work-release, unless the individual is required to report to a public institution for an overnight stay;

(C) The individual is staying voluntarily in a detention center, jail, or county penal facility after his or her case has been adjudicated and while other living arrangements are being made for the individual; or

(D) The individual is in a public institution pending other arrangements as defined in 42 CFR 435.1010.

(3) Definition of a "public institution".

(a) A public institution is any of the following:

(A) A state hospital (see ORS 162.135).

(B) A local correctional facility (see ORS 169.005): a jail or prison for the reception and confinement of prisoners that is provided, maintained and operated by a county or city and holds individuals for more than 36 hours.

(C) A Department of Corrections institution (see ORS 421.005): a facility used for the incarceration of individuals sentenced to the custody of the Department of Corrections, including a satellite, camp, or branch of a facility.

(D) A youth correction facility (see ORS 162.135):

(i) A facility used for the confinement of youth offenders and other individuals placed in the legal or physical custody of the youth authority, including a secure regional youth facility, a regional accountability camp, a residential academy and satellite, and camps and branches of those facilities; or

(ii) A facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youth, or youth offenders pursuant to a judicial commitment or order.

(b) As used in this rule, the term public institution does not include:

(A) A medical institution as defined in 42 CFR 435.1010 including the Secure Adolescent Inpatient Program (SAIP) and the Secure Children's Inpatient Program (SCIP);

(B) An intermediate care facility as defined in 42 CFR 440.140 and 440.150;

(C) A publicly operated community residence that serves no more than 16 residents, as defined in 42 CFR 435.1009; or

(D) A child-care institution as defined in 42 CFR 435.1009 with respect to:

(i) Children for whom foster care maintenance payments are made under title IV-E of the Social Security Act; and

(ii) Children receiving TANF-related foster care under title IV-A of the Social Security Act.

(4) Definition of serious mental illness. An individual has a serious mental illness if the individual has been diagnosed by a psychiatrist, a licensed clinical psychologist or a certified non-medical examiner as having dementia, schizophrenia, bipolar disorder, major depression or other affective disorder or psychotic mental disorder other than a substance abuse disorder and other than a disorder that is both--

(a) Caused primarily by substance abuse; and

(b) Likely to no longer meet the applicable diagnosis if the substance abuse discontinues or declines.

(5) An individual who resides in a public institution, meets the definition of a serious mental illness (see section (4) of this rule), and applies for medical assistance between 90 and 120 days prior to the expected date of the person's release from the public institution may be found eligible for medical assistance. If the individual is determined to be eligible, the effective date of the individual's medical assistance is the date the individual is released from the institution.

(6) A client who becomes a resident of a state hospital has medical benefits suspended for up to twelve full calendar months if the client is at least 22 years of age and under 65 years of age. When a client with suspended medical benefits is no longer a resident of the state hospital, med-

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ical benefits are reinstated effective the first day the client is no longer a resident, if the client continues to meet eligibility for the medical program.

(7) An individual residing in a state psychiatric institution may be eligible for OSIPM or SAC benefits if the individual is:

- (a) 65 years of age or older;
- (b) Under 22 years of age; or
- (c) 21 years of age or older, if the basis of need is disability or blindness; eligibility was determined before the individual reached 21 years of age; and the individual entered the state hospital before reaching 21 years of age.

(8) For all programs covered under chapter 461 of the Oregon Administrative Rules:

(a) Except as provided in OAR 461-135-0750, an inmate of a public institution is not eligible for benefits.

(b) If a pregnant woman receiving medical assistance through the BCCM, CEC, CEM, EXT, GAM, MAA, MAF, OHP, OSIPM, or SAC program becomes an inmate of a public institution, her medical benefits are suspended. When the Department is informed the woman is no longer an inmate, her medical benefits are reinstated--effective on the first day she is no longer an inmate--if she is still in her protected period of eligibility under OAR 461-135-0010.

(c) If an individual receiving medical assistance through the BCCM, CEC, CEM, EXT, GAM, MAA, MAF, OHP, OSIPM, QMB, or SAC program becomes an inmate of a correctional facility with an expected stay of no more than 12 months, medical benefits are suspended for up to 12 full calendar months during the incarceration period.

(A) In the BCCM, CEC, CEM, EXT, GAM, MAA, MAF, OHP, or SAC program, when the Department is notified by a client with suspended benefits that the client has been released from incarceration, and the notification takes place within 10 days of the release or there is good cause for the late reporting, medical benefits are reinstated effective the first day the client is no longer an inmate.

(B) In the OSIPM or QMB program, when the Department is notified that an individual with suspended benefits has been released, and the notification takes place within 10 days of the release, medical benefits are reinstated effective the first day the client is no longer an inmate if the client continues to meet eligibility for the medical program.

(9) In the GA and SNAP programs, in addition to the other provisions of this rule, an inmate released from a public institution on home arrest, and required to wear an electronic device to monitor his or her activity, is ineligible for benefits if the correctional agency provides room and board to the individual.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049  
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.439, 411.443, 411.445, 411.816, 412.014, 412.049, 414.426  
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 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 21-2001(Temp), f. & cert. ef. 10-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 17-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06; 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 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; 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

## 461-135-0990

### Specific Requirements; Reimbursement of Cost-Effective, Employer-Sponsored Health Insurance Premiums

(1) Clients or an eligible applicant (see section (2) of this rule) for a client in the CEM, EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP-OPU), OSIPM, and SAC programs may be reimbursed for their share of the premiums for private or employer-sponsored group health insurance if--

(a) The insurance covers a member of the benefit group (see OAR 461-110-0750);

(b) The insurance coverage is a comprehensive major medical plan that includes inpatient and outpatient hospital, physician, lab, x-ray and full prescription coverage; and

(c) The premium is cost-effective (see OAR 461-155-0360 and OAR 410-120-1960).

(2) An "eligible applicant" may be a non-Medicaid individual living in or outside of the household. The Department may pay a portion of or the entire premium if payment of the premium for the non-Medicaid individual is necessary in order to enroll the Department client in the group health plan (see OAR 410-120-1960).

Stat. Auth.: ORS 411.060, 411.070, 414.042  
Stats. Implemented: ORS 411.060, 411.070, 414.042  
Hist.: AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97,

cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; 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 35-2011, f. 12-27-11, cert. ef. 1-1-12

## 461-135-1195

### Specific Requirements; SFPSS Eligibility

In the SFPSS program:

(1) To be eligible, a client must meet the following requirements:

- (a) Be an adult;
- (b) Meet all TANF program eligibility requirements (except as provided otherwise in this rule);
- (c) Be receiving TANF benefits;
- (d) Have an impairment that meets the requirements in OAR 461-125-0260;

(e) File an application for Supplemental Security Income (SSI) disability benefits under the Social Security Act; and

(f) Sign an Interim Assistance Authorization authorizing the Department to recover interim SFPSS program benefits paid to the client (or paid to providers on the client's behalf) from the initial SSI payment or the initial payment after the decision on SSI eligibility. The following provisions are considered part of the Interim Assistance Authorization:

(A) Interim SFPSS program benefits include only those SFPSS program cash benefits paid to the adult, who is applying for SSI, during the period of time that the SSI benefit covers.

(B) For any month in which SSI is prorated, the Department may recover only a prorated amount of the interim SFPSS program cash benefit.

(C) If the Department does not stop delivery of an SFPSS program benefit issued after the SSI payment is made, the SFPSS program payment is included in the interim assistance reimbursement to the Department.

(2) Counting earned and unearned income.

(a) The TANF standards in OAR 461-155-0030 are used to determine eligibility for the SFPSS program.

(b) The SFPSS payment standard (see OAR 461-155-0320) is used to determine the benefit amount for the SFPSS program.

(3) A client whose impairment no longer meets the criteria in OAR 461-125-0260 is ineligible for SFPSS benefits.

(4) An SFPSS client found by the Social Security Administration (SSA) not to meet disability criteria may continue receiving SFPSS benefits until all SSA administrative appeals are exhausted.

(5) Once a client is approved for SFPSS, the client is no longer subject to OAR 461-120-0340. The client remains exempt from OAR 461-120-0340 as long as the client is eligible for and receiving SFPSS.

(6) Each client is required to participate in the appropriate activities the Department determines necessary, including activities that promote family stability (see OAR 461-001-0000). The Department must consider the needs of an individual with a disability (see OAR 461-001-0000), and a client's need for accommodation or modification.

(7) A client must provide the information necessary for the Department to administer the program.

(a) The necessary information includes that needed to determine appropriate activities for the client and to assess whether a client had good cause (see OAR 461-130-0327) for any failure to meet a requirement of the program.

(b) If a medical condition is in question, the Department will assist and may require the client to provide a medical opinion from a qualified and appropriate medical professional.

(8) The Department offers each client the opportunity to participate in any suitable JOBS program activity (see OAR 461-001-0025).

Stat. Auth.: ORS 411.060, 411.070, 412.006, 412.009, 412.014, 412.049  
Stats. Implemented: ORS 411.060, 411.070, 412.006, 412.009, 412.014, 412.049, 412.084  
Hist.: SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; 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 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-14-10; SSP 5-2010, f. & cert. ef. 4-1-10; 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

## 461-145-0130

### Earned Income; Treatment

(1) Earned income (see OAR 461-145-0120) is countable in determining eligibility for programs, subject to sections (2) to (8) of this rule.

(2) JOBS Plus income is earned income and is treated as follows:

(a) In the SNAP program:

(A) JOBS Plus income earned by a TANF-PLS client:

(i) Is counted in determining initial SNAP program eligibility.

(ii) Is excluded in determining ongoing eligibility.

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(B) JOBS Plus wages received after the client's last month of work under a TANF-PLS JOBS Plus agreement are counted.

(b) In the TANF program:

(A) JOBS Plus income earned by an NCP-PLS (see OAR 461-101-0010(20)(c)) client is counted in determining initial TANF eligibility.

(B) When determining the need for a TANF supplement for a TANF-PLS client, the income is treated as follows:

(i) It is excluded in determining the countable income limit and in calculating the benefit equivalency standards.

(ii) It is counted in calculating the wage supplement.

(C) JOBS Plus wages received after the client's last month of work under a JOBS Plus agreement are counted.

(c) In the CAWEM, CEC, CEM, HKC, MAA, MAF, OHP, OSIPM, QMB, REFM, SAC programs:

(A) For JOBS Plus income earned by a TANF-PLS program client who is also in:

(i) The MAA or REFM program, the income is excluded when determining initial and ongoing program eligibility.

(ii) The MAF program, the income is counted when determining initial and ongoing program eligibility.

(B) JOBS Plus wages received after the client's last month of work under a TANF-PLS JOBS Plus agreement are counted.

(d) In all programs not covered under subsections (a) to (c) of this section, TANF-PLS income is counted as earned income.

(e) In all programs other than the TANF program, NCP-PLS income is counted as earned income.

(f) In all programs, client wages received under the Tribal TANF JOBS programs are counted as earned income.

(3) Welfare-to-Work work experience income is treated as follows:

(a) In the EXT, MAA, MAF, REF, REFM, and TANF programs, the income is earned income, and the first \$260 is excluded each month.

(b) In the OHP and SNAP programs, the income is earned income.

(4) In the ERDC and OHP programs, earned income of a child is excluded.

(5) In the EXT, MAA, MAF, REF, REFM, SAC, and TANF programs:

(a) Earned income of the following children is excluded:

(A) Dependent children under the age of 19 years, and minor parents under the age of 18 years, who are full-time students in grade 12 or below (or the equivalent level of vocational training, in GED courses), or in home schooling approved by the local school district.

(B) Dependent children under the age of 18 years who are attending school part-time (as defined by the institution) and are not employed full-time.

(C) Dependent children too young to be in school.

(b) Income remaining after the month of receipt is a resource.

(c) In-kind earned income is excluded (see OAR 461-145-0280 and 461-145-0470).

(6) In the SNAP program:

(a) If a cafeteria plan (see OAR 461-001-0000) benefit that the employee cannot elect to receive as a cash payment is designated and used to pay for child care, medical care, or health insurance, the benefit is excluded unless it is reimbursed by the Department. If reimbursed, the Department counts it as earned income.

(b) The following types of income are excluded:

(A) The earned income of an individual under the age of 18 years who is under the parental control of another member of the household and is:

(i) Attending elementary or high school;

(ii) Attending GED classes recognized by the local school district;

(iii) Completing home-school elementary or high school classes recognized by the local school district; or

(iv) Too young to attend elementary school.

(B) In-kind earned income, except as provided in section (7) of this rule.

(C) Deductions from base pay for future educational costs under Pub. L. No. 99-576, 100 Stat. 3248 (1986), for clients on active military duty.

(D) Income remaining after the month of receipt is a resource.

(7) In the OHP and SNAP programs, earned in-kind income (see OAR 461-145-0280) is excluded unless it is an expenditure by a business entity that benefits a principal (see OAR 461-145-0088).

(8) In all programs except the EXT program, and for an OSIPM client in nonstandard living arrangement (see OAR 461-001-0000), the income of a temporary employee of the U.S. Census Bureau employed to assist in taking the census is excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.400, 411.404, 411.706, 411.816, 411.892, 412.014, 412.049, 414.231, 414.712, 414.826

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.400, 411.404, 411.706, 411.816, 411.892, 412.014, 412.049, 414.231, 414.712, 414.826  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 9-1990, f. & cert. ef. 3-2-90; 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 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; 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 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 9-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 31-2009(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 5-2010, f. & cert. ef. 4-1-10; SSP 14-2010(Temp), f. & cert. ef. 5-19-10 thru 11-15-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12

## 461-145-0220

### Home

(1) Home defined: A home is the place where the filing group lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:

(a) Land on which the home is built and contiguous property.

(A) In all programs except the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs property must meet all the following criteria to be considered contiguous property:

(i) It must not be separated from the land on which the home is built by land owned by people outside the financial group (see OAR 461-110-0530).

(ii) It must not be separated by a public right-of-way, such as a road.

(iii) It must be property that cannot be sold separately from the home.

(B) In the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, contiguous property is property not separated from the land on which the home is built by land owned by people outside the financial group.

(b) Other dwellings on the land surrounding the home that cannot be sold separately from the home.

(2) Exclusion of home and other property:

(a) For a client who has an initial month (see OAR 461-001-0000) of long-term care on or after January 1, 2006:

(A) For purposes of this subsection:

(i) The definition of "child" in OAR 461-001-0000 does not apply.

(ii) "Child" means a biological or adoptive child who is:

(I) Under age 21; or

(II) Any age and meets the Social Security Administration criteria for blindness or disability.

(B) The equity value of a home is excluded if the requirements of at least one of the following subparagraphs are met:

(i) The child of the client occupies the home.

(ii) The spouse of the client occupies the home.

(iii) The equity in the home is \$525,000 or less, and the requirements of at least one of the following sub-subparagraphs are met:

(I) The client occupies the home.

(II) The home equity is excluded under OAR 461-145-0250.

(III) The home is listed for sale per OAR 461-145-0420.

(iv) Notwithstanding OAR 461-120-0330, the equity in the home is more than \$525,000 and the client is unable legally to convert the equity value in the home to cash.

(b) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.

(c) In the SNAP program, the value of land is excluded while the group is building or planning to build their home on it, except that if the group owns (or is buying) the home they live in and has separate land they intend to build on, only the home in which they live is excluded, and the land they intend to build on is treated as real property in accordance with OAR 461 145 0420.

(3) Exclusion during temporary absence: If the value of a home is excluded under section (2) of this rule, the value of this home remains excluded in each of the following situations:

(a) In all programs except the GA, GAM, OSIP, OSIPM, and QMB programs, during the temporary absence of all members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.

(b) In the SNAP program, when the financial group is absent because of employment or training for future employment.

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(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, when the client is absent to receive care in a medical institution, if one of the following is true:

(A) The absent client has provided evidence that he or she will return to the home. The evidence must reflect the subjective intent of the client, regardless of the client's medical condition. A written statement from a competent client is sufficient to prove the intent.

(B) The home remains occupied by the client's spouse, child, or a relative dependent on the client for support. The child must be less than 21 years of age or, if over the age of 21, blind or an individual with a disability as defined by SSA criteria.

(d) In the MAA, MAF, REF, REFM, SAC, and TANF programs, when all members of the filing group are absent because:

(A) The members are employed in seasonal employment and intend to return to the home when the employment ends; or

(B) The members are searching for employment, and the search requires the members to relocate away from their home. If all members of the filing group are absent for this reason, the home may be excluded for up to six months from the date the last member of the filing group leaves the home to search for employment. After the six months, if a member of the filing group does not return, the home is no longer excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.049  
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.049  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12

## 461-145-0410

### Program Benefits

(1) EA and TA-DVS payments are treated as follows:

(a) In the ERDC and SNAP programs, a payment made directly to the client is counted as unearned income. Dual payee and provider-direct payments are excluded.

(b) In all programs except the ERDC and SNAP programs, these payments are excluded.

(2) Payments from ERDC and TANF child care are excluded unless the client is the provider.

(3) Payments from the EXT, GAM, MAA, MAF, OHP, OSIPM, QMB, REFM, and SAC programs are excluded.

(4) SNAP payments are treated as follows:

(a) The value of an SNAP benefit is excluded in all programs except the EA program. In the EA program, the value is counted as a resource when determining the emergency food needs of the filing group (see OAR 461-110-0310).

(b) OFSET service payments are excluded.

(5) Benefits from the GA, OSIP (except OSIP-IC), Post-TANF, REF, SFPSS, TANF, and tribal-TANF programs are treated as follows:

(a) In the EA program, these payments are counted as unearned income, except that these payments are excluded for a benefit group (see OAR 461-110-0750) whose emergent need is the result of domestic violence (see OAR 461-001-0000).

(b) In the ERDC program:

(A) Post-TANF payments are excluded.

(B) All other payments are counted as unearned income.

(c) In the SNAP program:

(A) These payments are treated as unearned income.

(B) An amount received as a late processing payment is treated as lump-sum income.

(C) Payments made to correct an underpayment are treated as lump-sum income.

(D) Ongoing special needs payments for laundry allowances, special diet or meal allowance, restaurant meals, accommodation allowances, and telephone allowances are treated as unearned income. All other special needs payments are excluded as reimbursements.

(d) In the OHP program:

(A) GA payments are excluded from income for purposes of determining OHP eligibility.

(B) Benefits from the Post-TANF program are excluded.

(C) Benefits from the OSIP (except OSIP-IC), REF, SFPSS, and TANF programs are treated as follows:

(i) The payments are counted as unearned income if all the individuals included in the benefit group for the cash payment are also in the OHP financial group (see OAR 461-110-0530).

(ii) A prorated share is counted as unearned income if any of the individuals in the cash payment are not included in the OHP financial group. A prorated share is determined by dividing the total payment by the number of individuals in the TANF benefit group.

(iii) A payment made to correct an underpayment caused by the Department is excluded if the underpayment occurred prior to the budget period.

(e) In all programs except the EA, ERDC, OHP, and SNAP programs:

(A) These payments are excluded in the month received, and any portion remaining following the month of receipt is counted as a resource.

(B) Payments made to correct an underpayment are excluded.

(f) In all programs:

(A) JOBS, REF, and TANF JOBS Plus support service payments are excluded.

(B) For the treatment of JOBS Plus income, see OAR 461-145-0130.

(C) REF and TANF client incentive payments are treated as follows:

(i) Except in the TANF program, the cooperation incentive payment (see OAR 461-135-0310) is counted as unearned income.

(ii) Progress and outcome incentive payments other than in-kind payments are counted as lump-sum income (see OAR 461-140-0120). All other incentives are excluded.

(6) Payments from OSIP-IC are treated as follows:

(a) In the SNAP program, these payments are counted as unearned income and assets held in a contingency fund (see OAR 411-030-0020) are counted as a resource.

(b) In all other programs, these payments and funds held in a contingency fund are excluded.

(7) Pre-TANF program payments are treated as follows:

(a) In the SNAP program, a payment for basic living expenses, made directly to the client, is counted as unearned income. All other payments are excluded.

(b) In all programs except the SNAP program, these payments are excluded.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.404, 411.700, 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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 5-1991, f. & cert. ef. 2-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 21-1992(Temp), f. 7-31-92, cert. ef. 8-1-92; AFS 32-1992, f. 10-30-92, cert. ef. 11-1-92; 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 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 18-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; 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

## 461-155-0150

### Child Care Eligibility Standard, Payment Rates, and Copayments

The following provisions apply to child care in the ERDC, JOBS, JOBS Plus, and TANF programs:

(1) The following definitions apply to the rules governing child care rates:

(a) Infant: For all providers other than licensed (registered or certified) care, a child aged newborn to 1 year. For licensed care, an infant is a child aged newborn to 18 months.

(b) Toddler: For all providers other than licensed (registered or certified) care, a child aged 1 year to 3 years. For licensed care, a toddler is a child aged 18 months to 3 years.

(c) Preschool: A child aged 3 years to 6 years.

(d) School: A child aged 6 years or older.

(e) Special Needs: A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her age due to a physical, behavioral or mental disability. The need for a higher level of care must be determined by the provider and the disability must be verified by one of the following:

(A) A physician, nurse practitioner, licensed or certified psychologist or clinical social worker.

(B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.

(C) Eligibility for SSI.

(2) The following definitions apply to the types of care specified in the child care rate charts in subsections (4)(a) through (4)(c) of this rule:

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(a) The Standard Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.

(b) The Enhanced Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider meets the training requirements of the Oregon Registry, established by the Oregon Center for Career Development in Childhood Care and Education.

(c) The Registered Family Rate applies to child care provided in the provider's own home when the provider meets criteria established by the Child Care Division.

(d) The Certified Family Rate applies to child care provided in a residential dwelling that is certified by the Child Care Division as a Certified Family Home. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.

(e) The Standard Center Rate applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Child Care Division Certification rules (see OAR 414-300-0000).

(f) The Enhanced Center Rate applies to child care provided in an exempt center whose staff meet the training requirements of the Oregon Registry established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:

(A) A minimum of one staff member for every 20 children in care must meet the Oregon Registry training requirements noted in paragraph (2)(b) of this rule.

(B) New staff must meet the Oregon Registry training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (A) of this subsection.

(C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.

(g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of subsection (2)(b), (f), or (g) of this rule.

(h) The Certified Center Rate applies to child care provided in a center that is certified by the Child Care Division.

(3) The following provisions apply to child care payments:

(a) Providers not eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.

(b) Providers eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 136 hours a month, unless the provider customarily bills all families at a part-time monthly rate (subject to the maximum full-time monthly rate) and is designated as the primary provider for the case.

(c) At their request, providers eligible for the enhanced or licensed rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month, customarily bill all families at a part-time monthly rate, and are designated as the primary provider for the case.

(d) Unless required by the circumstances of the client or child, the Department will not pay for care at a part-time monthly or a monthly rate to more than one provider for the same child for the same month.

(e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.

(f) The Department will pay for up to five days each month the child is absent if:

(A) The child was scheduled to be in care and the provider bills for the amount of time the child was scheduled to be in care;

(B) The absent child's place is not filled by another child; and

(C) It is the provider's policy to bill all families for absent days.

(g) The Department will not pay for more than five consecutive days of scheduled care for which the child is absent.

(4) The following are the child care rates, the rates are based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (hourly or monthly): [Table not included. See ED. NOTE.]

(5) This section establishes the ERDC eligibility standard and the client's copayment (copay).

(a) The ERDC eligibility standard is met for need groups (see OAR 461-110-0630) of eight or less if monthly countable income (see OAR 461-001-0000) for the need group is less than 185 percent of the federal poverty level (FPL), as described in OAR 461-155-0180(6). The eligibility stan-

dard for a need group size of eight applies to any need group larger than eight.

(b) The minimum monthly ERDC copay is \$25.

(c) For filing groups (see OAR 461-110-0310) whose countable income is at or below 50 percent of the 2007 FPL, the copay is \$25 or 1.5 percent of the filing group's monthly countable income, whichever is greater.

(d) For filing groups whose countable income is over 50 percent of the 2007 FPL, the copay amount is determined with the following percentage of monthly income:

(A) Determine filing group's countable income as a percent of FPL (rounding to the nearest whole number percentage), subtract 50, and multiply this difference by 0.12.

(B) Add 1.5 to the amount in paragraph (A) of this subsection. This sum is the percentage of monthly income to determine the copay amount.

(e) The 2007 federal poverty level used to determine copay amounts under subsections (c) and (d) of this section is set at the following amounts [Table not included. See ED. NOTE.]

(6) Subject to the provisions in section (9) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:

(a) The monthly rate provided in section (4) of this rule.

(b) The product of the hours of care, limited by section (8) of this rule, multiplied by the hourly rate provided in section (4) of this rule.

(7) The limit in any month for child care payments on behalf of a child whose caretaker is away from the child's home for more than 30 days because the caretaker is a member of a reserve or National Guard unit that is called up for active duty is the lesser of the following:

(a) The amount billed by the provider or providers.

(b) The monthly rate established in this rule for 215 hours of care.

(8) The number of payable billed hours of care for a child is limited as follows:

(a) In the ERDC and TANF programs, the total payable hours of care in a month may not exceed:

(A) 125 percent of the number of hours necessary for the client to perform the duties of his or her job, or to participate in activities included in a case plan (see OAR 461-001-0025) including, for clients in the JOBS Plus program, the time the client searches for unsubsidized employment and for which the employer pays the client; or

(B) The monthly rate established in section (4) of this rule multiplied by a factor of not more than 1.5, determined by dividing the number of hours billed by 215, when the client meets the criteria for extra hours under section (10) of this rule.

(b) In the ERDC program, for a client who earns less than the Oregon minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time). The limitation of this subsection is waived for the first three months of the client's employment.

(c) In the TANF program, for a client who earns less than the Oregon minimum wage or is self-employed, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time). The limitation of this subsection is waived for the first three months of the client's employment.

(9) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (10) of this rule, is the lesser of one of the following:

(a) The amount billed by the provider or providers; or

(b) The monthly rate established in section (4) of this rule multiplied by a factor, of not more than 1.5, determined by dividing the number of hours billed by 215.

(10) The limit allowed by section (9) of this rule is authorized once the Department has determined the client has special circumstances. For the purposes of this section, a client has special circumstances when it is necessary for the client to obtain child care in excess of 215 hours in a month to perform the requirements of his or her employment or training. This is limited to the following situations:

(a) The commute time to and from work exceeds two hours per day.

(b) The caretaker works an overnight shift and care is necessary for both work hours and sleep hours.

(c) The caretaker works a split shift and it is not feasible to care for the child between shifts.

(d) The caretaker consistently works more than 40 hours per week.

(e) Weekend work or other nonstandard work hours require care by more than one provider, and the total allowable hours billed by both providers exceeds the maximum limit.

# ADMINISTRATIVE RULES

(f) The caretaker needs child care for both full-time work and participation in Department assigned activities.

(11) The payment available for care of a child who meets the special needs criteria described in subsection (1)(e) of this rule is increased in accordance with OAR 461-155-0151 if the requirements of both of the following subsections are met:

(a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age; and

(b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.070 & 412.049

Stats. Implemented: ORS 411.060, 411.070 & 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 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 14-1992, f. & cert. ef. 6-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1994, f. 4-29-94, cert. ef. 5-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 4-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 4-2000(Temp), f. 2-29-00, cert. ef. 3-1-00 thru 8-25-00; 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 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; 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 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12

## 461-155-0250

### Income and Payment Standard; OSIPM

(1) A client who is assumed eligible per OAR 461-135-0010(7) is presumed to meet the income limits for the OSIPM program.

(2) A client in a *nonstandard living arrangement* (see OAR 461-001-0000) 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).

(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, 411.706, 2009 OL Ch. 849

Stats. Implemented: ORS 411.060, 411.070, 411.704, 411.706, 2009 OL Ch. 849

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 11-1999(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; Suspend 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; Suspend 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

## 461-155-0270

### Room and Board Standard; OSIPM

For an OSIPM program client in a waived community based care (see OAR 461-001-0000) facility, the room and board standard is \$542.70. A client residing in a community based care facility must pay room and board.

Stat. Auth.: ORS 411.060, 411.070, 411.704, 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.704, 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; 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 35-2011, f. 12-27-11, cert. ef. 1-1-12

## 461-155-0300

### Shelter-in-Kind Standard

In the OSIP, OSIPM, and QMB programs, the Shelter-in-Kind Standard is:

(1) For a single person:

(a) Living alone, \$429 for total shelter or \$257 for housing costs only.

(b) Living with others, \$199 for total shelter or \$119 for housing costs only.

(2) For a couple:

(a) Living alone, \$531 for total shelter or \$319 for housing costs only.

(b) Living with others, \$197 for total shelter or \$118 for housing costs only.

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 25-1991, f. & cert. ef. 1-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 17-1993(Temp), f. & cert. ef. 9-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12

## 461-155-0320

### Payment Standard; SFPSS

In the SFPSS program the following payment standards apply:

(1) When one adult in the filing group (see OAR 461-110-0330) is applying for SSI: [Table not included. See ED. NOTE.]

(2) When two adults in the filing group are applying for SSI: [Table not included. See ED. NOTE.]

(3) The standard for eleven individuals or more in the need group (see OAR 461-110-0530) is the sum of the Adults Amount for ten individuals in the need group, plus the Family Payment for ten individuals in the need group, plus \$110 for each additional individual in the need group.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.014, 412.049

Stats. Implemented: ORS 409.050, 411.060, 411.070, 412.006, 412.014, 412.049

Hist.: SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 26-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 24-2011(Temp), f. & cert. ef. 8-19-11 thru 2-15-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12

## 461-155-0360

### Pursuit of Cost-Effective Employer Sponsored Health Insurance

(1) This rule applies to the following medical assistance programs: CEM, EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP-OPU), OSIPM, and SAC and is for the purpose of applying OAR 461-120-0345.

(2) The Health Insurance Group (HIG) determines if employer sponsored health insurance meets the criteria as cost effective for the purpose of OAR 410-120-1960.

(3) If the insurance is determined to be cost effective and the client or eligible applicant pursues the insurance, HIG will authorize reimbursement



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of the client or eligible applicant's portion of the premium per OAR 410-120-1960.

(4) If the insurance is determined to be cost effective and the client or eligible applicant fails to pursue cost effective employer sponsored insurance, the Department will apply a penalty per OAR 461-120-0345.

Stat. Auth.: ORS 411.060, 414.042

Stats. Implemented: ORS 411.060, 414.042

Hist.: AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 23-2008, f. & cert. ef. 10-1-08; 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 35-2011, f. 12-27-11, cert. ef. 1-1-12

## 461-160-0015

### Resource Limits

(1) In the EA program, all countable (see OAR 461-001-0000) resources must be used to meet the emergent need.

(2) In the ERDC, EXT, HKC, and REFM programs, and for an individual whose eligibility is determined under the OHP-CHP, OHP-OPC, OHP-OPP, or OHP-OP6 programs, there is no resource limit.

(3) In the GA, GAM, OSIP, and OSIPM programs, the resource limit is as follows:

(a) \$2,000 for a one-person need group (see OAR 461-110-0630) and \$3,000 for a two-person need group.

(b) \$1,000 for an OSIP need group eligible under OAR 461 135 0771. The total cash resources may not exceed \$500 for a one-person need group or \$1,000 for a two-person need group.

(c) \$5,000 is the limit for the OSIP-EPD and OSIPM-EPD programs (see OAR 461-001-0035 and 461-145-0025 for funds that may be excluded as approved accounts).

(4) In the MAA, MAF, REF, SAC, and TANF programs, the resource limit is:

(a) \$10,000 for a need group with at least one JOBS participant who is progressing in a case plan.

(b) \$10,000 for a need group with at least one member who is working under a JOBS Plus agreement.

(c) \$2,500 for all other need groups, including all TANF applicants.

(5) In the OHP program, the resource limit for an individual whose eligibility is determined under the OHP-OPU program is \$2,000.

(6) In the QMB program, the resource limit is amended in January of each year based on the low income subsidy for Medicare Part D as published by the Health Resources and Services Administration of the U.S. Department of Health and Human Services. Effective January 1, 2012 the resource limit is \$6,940 for a one-person need group and \$10,410 for a need group containing two or more individuals.

(7) In the SNAP program, the resource limit is:

(a) \$3,250 for a financial group (see OAR 461-110-0530) with at least one member who is elderly (see OAR 461-001-0015) or an individual with a disability (see OAR 461-001-0015).

(b) \$2,000 for all other financial groups.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 414.231

Stats. Implemented: ORS 409.050, 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 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 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 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; 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 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; 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

## 461-160-0580

### Excluded Resource; Community Spouse Provision (OSIPM except OSIPM-EPD)

In the OSIPM (except OSIPM-EPD) program:

(1) This rule applies to an institutionalized spouse (see OAR 461-001-0030) who has applied for benefits because he or she is in or will be in a continuous period of care (see OAR 461-001-0030).

(2) Whether a legally married (see OAR 461-001-0000) couple lives together or not, the determination of whether the value of the couple's

resources exceeds the eligibility limit for the institutionalized spouse for OSIPM program is made as follows:

(a) The first step is the determination of what the couple's combined countable resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)

(A) Division 461-140 and 461-145 rules applicable to OSIPM describe which of the couple's resources are countable resources, and are applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIPM clients.

(B) The countable resources of both spouses are combined.

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.

(b) The second step is the calculation of one half of what the couple's combined countable resources were at the beginning of the continuous period of care. The community spouse's half of the couple's combined resources is treated as a constant amount when determining eligibility.

(c) The third step is the determination of the community spouse's resource allowance. The community spouse's resource allowance is the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than \$113,640.

(B) \$22,728 (the state community-spouse resource allowance).

(C) A court-ordered community spouse resource allowance. In this paragraph and paragraph (2)(f)(C) of this rule, the term court-ordered community spouse resource allowance means a court-ordered community spouse resource allowance that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance. In cases where the client became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the client's available income and the community spouse's income to meet the community spouse's monthly maintenance needs allowance before any resources are used to generate interest income to meet the allowance.

(D) After considering the income of the community spouse and the income available from the institutionalized spouse, an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. The amount described in this paragraph is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(3)(c).

(d) The fourth step is the determination of what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.

(e) The fifth step is the subtraction of the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.

(f) The sixth step is a comparison of the value of the remaining resources to the OSIPM resource standard for one person (under OAR 461-160-0015(4)(a)). If the value of the remaining resources is at or below the standard, the institutionalized spouse meets this eligibility requirement. If the value of the remaining resources is above the standard, the institutionalized spouse cannot be eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than \$113,640) plus the OSIPM resource standard for one person.

(B) \$22,728 (the state community-spouse resource allowance), plus the OSIPM resource standard for one person.

(C) A court-ordered community spouse resource allowance plus the OSIPM resource standard for one person. (See paragraph (2)(c)(C) of this rule for a description of the court-ordered community spouse resource allowance.)

(D) The OSIPM resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income

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of the community spouse and the income available from the institutionalized spouse, add an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. Add this amount only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(3)(c).

(3) Once eligibility has been established, resources equal to the community spouse's resource allowance (under subsection (2)(c) of this rule) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.

(4) The provisions of paragraph (2)(c)(C) of this rule requiring income to be considered first may be waived if the Department determines that the resulting community resource allowance would create an undue hardship on the spouse of the client.

Stat. Auth.: ORS 411.060, 411.070, 411.700, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.700, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 5-2006(Temp), f. & cert. ef. 3-6-06 thru 8-31-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12

## 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. \$1,839 is added to the amount over \$552 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 \$1,839. To determine the income allowance of each eligible dependent:

(i) The monthly income of the eligible dependent is deducted from \$1,839.

(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, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.706, 411.816, 412.049

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

## 461-175-0290

### Notice Situation; Overpayment Repayment

When benefits are reduced for recovery of an overpayment (see OAR 461-195-0551) a timely continuing benefit decision notice (see OAR 461-001-0000) is sent for the first month of the reduction.

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.014, 412.049  
Stats. Implemented: ORS 411.060, 411.070, 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 28-1992, f. & cert. ef. 10-1-92; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12

## 461-180-0050

### Effective Dates; Suspending or Closing Benefits and JOBS Support Service Payments

(1) This rule explains the effective date for closing or suspending benefits for the entire benefit group (see OAR 461-110-0750) and the effective date for ending JOBS support service payments.

(2) In all programs except the ERDC program, when the only individual in a benefit group dies, the effective date of the closure is:

(a) In the REF, SNAP, and TANF programs, the last day of the month in which the death occurred.

(b) In all other programs, the date of the death.

(3) For all closures and suspensions not covered by section (2) of this rule, the effective date is determined as follows:

(a) When prospective eligibility is used, the effective date for closing or suspending benefits is the last day of the month in which the notice period ends.

(b) When retrospective eligibility or budgeting is used, the effective date for closing or suspending benefits is the last day of the budget month.

(c) When an absent parent enters an ongoing TANF program household, or another change occurs that ends eligibility based on the incapacity or unemployment of a parent, the effective date for closing benefits is the last day of the month in which the 45-day period described in OAR 461-125-0255 ends.

(d) For a pregnant female receiving benefits of the EXT, MAA, MAF, OSIPM, or SAC program, the effective date for closing benefits is no earlier than the last day of the calendar month in which the 60th day after the last day of pregnancy falls, except at the client's request.

(e) Notwithstanding subsection (f) of this section, for a client who is receiving medical assistance and becomes incarcerated with an expected stay of a year or less, the effective date for suspending medical benefits is the effective date on the decision notice (see OAR 461-001-0000).

(f) In the OHP program, the effective date for closing benefits is:

(A) The last day of the month in which the benefit group becomes ineligible;

(B) The date the program ends; or

(C) For cases not covered by paragraph (A) or (B) of this subsection, the last day of the certification period (see OAR 461-001-0000).

(g) The effective date for ending support service payments authorized under OAR 461-190-0211 is the earlier of the following:

(A) The date the related JOBS activity is scheduled to end.

(B) The date the client no longer meets the requirements of OAR 461-190-0211.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826  
Stats. Implemented: ORS 409.050, 411.060, 411.070, 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 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 18-2004, f. & cert. ef. 7-12-04; 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 5-2010, f. & cert. ef. 4-1-10; SSP 18-2010, f. & cert. ef. 7-1-10; 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

## 461-180-0070

### Effective Dates; Initial Month Benefits

(1) In the EA program, the effective date for opening the case is the day benefits are issued to the benefit group (see OAR 461-110-0750). For a benefit group whose only eligible child is an unborn, the effective date cannot be earlier than the first day of the calendar month preceding the month in which the due date falls.

(2) In the ERDC program, the effective date for starting benefits is one of the following:

(a) The first day of the month in which the request for benefits is made, as long as:

(A) All eligibility requirements are met in that month; and

(B) Verification is provided within the application processing timeframes.

(b) If all eligibility requirements are not met in the month of request, the effective date is the first day of the month in which they are met, if verification is provided within the application processing timeframes.

(c) For a benefit group that received TANF program benefits within the 30 days before applying for ERDC program benefits, the effective date is the first of the month following closure of their TANF program benefits.

(3) In the GA program, the effective date for the initial month (see OAR 461-001-0000) of benefits is whichever of the following occurs first:

(a) The day all eligibility requirements are met and verified.

(b) The 45th day from the date the client requests benefits, if all eligibility requirements were met, but the Department did not receive documentation until after the 45th day.

(4) In the OSIP program, the effective date for the initial month of benefits is whichever of the following occurs first:

(a) The date the client requests benefits, if he or she was eligible as of that date.

(b) The date all eligibility requirements are met.

(5) In the REF and TANF programs, the effective date for the initial month of benefits is as follows:

(a) For a client in the Pre-TANF program, it is the later of the following:

(A) The day the Pre-TANF program ends in accordance with OAR 461-135-0475.

(B) The 30th day following the date the client requests benefits, if the Department does not receive required verification until after the 30th day.

(b) For a client not in the Pre-TANF program (see OAR 461 135 0475), it is the day the client meets and verifies all eligibility requirements.

(c) In the TANF program, if the only eligible child is an unborn, it may not be earlier than the first day of the calendar month preceding the month in which the due date falls.

(d) For a provider-direct child care payment (see OAR 461 165 0190), it is the first of the month in which TANF program benefits begin.

(e) For a JOBS support service payment, it is the date the client meets all eligibility requirements in OAR 461-190-0211.

(6) For TANF program recipients moving to the SFPSS program, the effective date for the initial month of SFPSS program benefits is:

(a) Except as provided in subsection (b) of this section, the first of the month following the day all eligibility requirements are met and verified.

(b) If the day all eligibility requirements are met and verified falls after the compute deadline, the initial month of SFPSS program benefits will be the first of the month following the month after compute deadline. For purposes of this rule, the "compute deadline" means the Department computer system monthly deadline after which changes will not take effect until the month following the first of the next month.

Stat. Auth.: ORS 411.060, 411.070, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 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 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, 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 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 5-2009, f. & cert. ef. 4-1-09; 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

## 461-180-0085

### Effective Dates; Redeterminations of CEC, CEM, EXT, MAA, MAF, OHP, OSIPM, QMB, SAC

In the CEC, CEM, EXT, MAA, MAF, OHP, OSIPM, QMB, and SAC programs, when the Department initiates a redetermination of eligibility, the Department must review each individual in the filing group for eligibility for the other medical programs listed in this rule prior to reducing or ending medical benefits. If additional information is needed to redetermine eligibility, members of the benefit group (see OAR 461-110-0750) who may be eligible for the other programs listed in this rule remain eligible from the date the review is initiated until the Department determines their eligibility in accordance with the application processing time frames in OAR 461-115-0190.

Stat. Auth.: ORS 409.050, 411.060, 414.042

Stats. Implemented: ORS 409.010, 411.060, 414.042

Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 9-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; 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 35-2011, f. 12-27-11, cert. ef. 1-1-12

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

**Adm. Order No.:** SSP 36-2011(Temp)

**Filed with Sec. of State:** 12-27-2011

# ADMINISTRATIVE RULES

**Certified to be Effective:** 1-1-12 thru 6-29-12

**Notice Publication Date:**

**Rules Amended:** 461-115-0705, 461-135-1100, 461-145-0410

**Rules Suspended:** 461-135-1110

**Subject:** OAR 461-115-0705 is being amended to reflect the elimination of OHP-OPU Student Status eligibility criteria. The rule as amended no longer refers to the higher education student requirements provided in OAR 461-135-1110, which is being suspended.

OAR 461-135-1100 is being amended to reflect the elimination of OHP-OPU Student Status eligibility criteria and no longer refer to the higher education student requirements that were in OAR 461-135-1110, which is being suspended. OAR 461-135-1100 is also being amended to align it with the January 1, 2012 revisions of OAR 410-120-1960, 461-135-0990 and 461-155-0360 that centralize the Health Insurance Premium Payment (HIPP) program. This amendment clarifies what constitutes major medical insurance by eliminating the \$10,000 coverage minimum and stating what types of benefits an insurance policy must have to be considered major medical.

OAR 461-135-1110 about eligible and ineligible students in the Oregon Health Plan OPU program (coverage for adults who qualify under an income standard based on 100 percent of the federal poverty level) is being suspended as applicants and recipients will no longer be required to meet the income requirements for a Pell grant (having an estimated family contribution of \$0), or be a student in a program serving displaced workers under section 236 of the Trade Act of 1974 (19 USC 2296).

OAR 461-145-0410 about how program benefits are treated in the eligibility process is being amended to provide specifics regarding description of the Job Participation Incentive (JPI) program benefits and how those benefits will be treated when determining eligibility for other programs. This policy has been in this rule since October 1, 2011 but that temporary rule change is being refiled due to the intervening adoption of other permanent changes to this rule.

**Rules Coordinator:** Annette Tesch — (503) 945-6067

## 461-115-0705

### **Required Verification; BCCM, HKC, MAA, MAF, OHP, SAC**

(1) This rule establishes verification requirements for the BCCM, EXT, HKC, MAA, MAF, OHP, and SAC programs in addition to the requirements of OAR 461-115-0610.

(2) Except as provided in section (3) of this rule, each client declaring U.S. citizenship must provide acceptable documentation of citizenship and identity. For purposes of this rule, acceptable documentation consists of any of the documents permitted under section 1903(x) of the Social Security Act (42 U.S.C. 1396b).

(a) A new applicant must provide acceptable documentation as a condition of eligibility (see OAR 461-001-0000). Except for an applicant whose medical benefits previously were closed after March 31, 2009 for not providing acceptable documentation, an applicant's medical assistance may not be delayed for citizenship documentation while the eligibility decision is pending if all other medical assistance eligibility requirements have been met.

(b) A current recipient who has not already provided acceptable documentation must provide acceptable documentation as a condition of eligibility when requested by the Department.

(c) A client who already has provided acceptable documentation is not required to provide additional evidence during a subsequent application for benefits or redetermination of eligibility.

(3) Each of the following clients is exempt from the requirements of section (2) of this rule, a client who is:

- (a) Assumed eligible under OAR 461-135-0010(5);
- (b) Eligible for or receiving Medicare;
- (c) Presumptively eligible for the BCCM program;
- (d) Receiving Social Security Disability Income (SSDI); or
- (e) Receiving Title IV-E benefits.

(4) At initial application and at any other time it affects the client, the following must be verified:

(a) The requirement in OAR 461-120-0210 to have or apply for a social security number.

(b) Alien status for an applicant who indicates he or she is not a U.S. citizen, and for a client who meets the alien status requirement under OAR

461-120-0125(4)(b) the client's alien status must be verified at each certification.

(5) When the pregnancy of a client is first reported, it must be verified by a medical practitioner, health department, clinic, or crisis pregnancy center or similar facility.

(6) In the HKC, MAA, MAF, OHP, and SAC programs, at initial application, recertification, and at any other time it affects the client, the Department must verify the client's statement of income. If no verification is available, the Department accepts the client's statement.

(7) In the OHP-OPU program, to allow a premium exemption, the Department must verify that a client is --

- (a) A member of a federally recognized Indian tribe, band, or group;
- (b) An Eskimo, Aleut, or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act; or
- (c) An individual eligible for benefits through an Indian Health Program.

(8) In the EXT, MAA, MAF, OHP-OPC, and OHP-OP6 programs, the amount of the premium for cost-effective employer-sponsored health insurance must be verified.

(9) A client must provide verification for any eligibility requirement in sections (4) to (8) of this rule questioned by the Department.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 414.231  
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.400, 411.404, 414.025, 414.231, 414.428, 414.826, 414.831, 414.839  
Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; 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 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; Suspended by SSP 13-2006(Temp), f. & cert. ef. 9-25-06 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 8-2008, f. & cert. ef. 4-1-08; SSP 10-2009(Temp), f. & cert. ef. 5-6-09 thru 9-28-09; 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 17-2010(Temp), f. & cert. ef. 5-28-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 19-2010(Temp), f. & cert. ef. 7-1-10 thru 11-24-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 37-2010(Temp), f. & cert. ef. 11-1-10 thru 4-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 36-2011(Temp), f. 12-27-11, cert. ef. 1-1-12 thru 6-29-12

## 461-135-1100

### **Specific Requirements; OHP**

In addition to eligibility requirements applicable to the OHP program in other rules in chapter 461 of the Oregon Administrative Rules, this rule sets out specific eligibility requirements for the OHP program.

(1) For purposes of this rule, OAR 461-135-1101, and 461-135-1149, the term private major medical health insurance refers to a comprehensive major medical insurance plan that at a minimum provides physician services; hospitalization (inpatient and outpatient); outpatient lab, x-ray, immunizations; and prescription drug coverage. This term does not include coverage under the Kaiser Child Health Program or Kaiser Transition Program but does include policies that are purchased privately or are employer-sponsored.

(2) To be eligible for the OHP program, an individual cannot:

- (a) Be receiving, or deemed to be receiving, SSI benefits;
- (b) Be eligible for Medicare, except that this requirement does not apply to the OHP OPP program;
- (c) Be receiving Medicaid through another program; or
- (d) Be enrolled in a health insurance plan subsidized by the Family Health Insurance Assistance program (FHIAP, see ORS 735.720 to 735.740).

(3) To be eligible for the OHP-OPU program, an individual must be 19 years of age or older and may not be pregnant. An individual eligible for the OHP-OPU program is referred to as a health plan new/noncategorical (HPN) client. In addition to all other OHP program eligibility requirements, an HPN client:

(a) May not be covered by private major medical health insurance and may not have been covered by private major medical health insurance during the six months preceding the effective date for starting medical benefits. The six-month waiting period is waived if:

- (A) The individual has a condition that, without treatment, would be life-threatening or would cause permanent loss of function or disability;
- (B) The individual's private health insurance premium was reimbursed under the provisions of OAR 461-135-0990;
- (C) The individual's private health insurance was subsidized through FHIAP or the Office of Private Health Partnerships (OPHP) in accordance with ORS 414.231, 414.826, 414.831, and 414.839; or
- (D) A member of the individual's filing group was a victim of domestic violence.

(b) Must meet the following eligibility requirements:

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(A) The resource limit provided in OAR 461-160-0015;  
(B) Payment of premiums determined in accordance with OAR 461-155-0235 and paid in accordance with OAR 461-135-1120; and

(C) The requirements in OAR 461-120-0345 related to obtaining medical coverage for members of the benefit group through the Family Health Insurance Assistance Program (FHIAP), if applicable.

(4) To be eligible for the OHP-OPC program, an individual must be less than 19 years of age.

(5) To be eligible for the OHP-OP6 program, a child must be less than six years of age and not eligible for OHP-OPC.

(6) To be eligible for the OHP-OPP program, an individual must be pregnant or must be a newborn assumed eligible under OAR 461-135-0010(4).

(7) To be eligible for the OHP-CHP program, an individual must be under 19 years of age and must:

(a) Not be eligible for the OHP-OPC, OHP-OPP, or OHP-OP6 programs;

(b) Meet budgeting requirements of OAR 461-160-0700;

(c) For eligibility decisions prior to August 16, 2010, select a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the client is exempted by OAR 410-141-0060; and

(d) Not be covered by private major medical health insurance or by any private major medical health insurance during the preceding two months. The two-month waiting period is waived if:

(A) The individual has a condition that, without treatment, would be life threatening or cause permanent loss of function or disability;

(B) The loss of health insurance was due to the loss of or a change in employment;

(C) The individual's private health insurance premium was reimbursed under OAR 461 135 0990;

(D) The individual's private health insurance was subsidized through FHIAP or the Office of Private Health Partnerships (OPHP) in accordance with ORS 414.231, 414.826, 414.831, and 414.839; or

(E) A member of the individual's filing group was a victim of domestic violence.

(8) A child who becomes ineligible for the OHP program because of age while receiving in patient medical services remains eligible until the end of the month in which he or she no longer receives those services if he or she is receiving in patient medical services on the last day of the month in which the age requirement is no longer met.

(9) In the HKC, OHP-CHP, and OHP-OPC programs, for the Department to enroll a child in the program based on a determination made by an ELA, the child's parent or guardian must give consent in writing, by telephone, orally, or through electronic signature for the child to be enrolled in the program.

(10) The Department only may use ELE for a child in a filing group in which no member is already receiving benefits through the CEC, CEM, EXT, HKC, MAA, MAF, OHP-CHP, OHP-OPP, OHP-OP6, OSIPM, or SAC program.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 414.231  
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.704, 411.706, 414.025, 414.231, 414.826, 414.831, 414.839

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 13-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 36-2009(Temp), f. & cert. ef. 12-1-09 thru 12-31-09; 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 9-2010(Temp), f. & cert. ef. 4-21-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 21-2010(Temp), f. & cert. ef. 7-1-10 thru 10-18-10; SSP 24-2010(Temp), f. & cert. ef. 7-15-10 thru 10-18-10; SSP 27-2010(Temp), f. & cert. ef. 8-16-10 thru 10-18-10; SSP 30-2010(Temp), f. & cert. ef. 8-25-10 thru 10-18-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 35-2010(Temp), f. & cert. ef. 10-1-10 thru 3-30-11; SSP 41-2010, f. & cert. ef. 12-30-10, cert. ef. 1-1-11; SSP 36-2011(Temp), f. 12-27-11, cert. ef. 1-1-12 thru 6-29-12

## 461-135-1110

### Eligible and Ineligible Students; OHP-OPU

(1) In the OHP-OPU program, an individual enrolled full time in higher education is ineligible to receive benefits, unless the requirements of one of the following subsections are met:

(a) The student:

(A) Meets the income requirements for a Pell grant;

(B) Is not currently covered by private major medical health insurance (see OAR 461-135-1100) or an HMO; and

(C) Has not been covered by private major medical health insurance or by an HMO for the six months immediately preceding the date of application.

(b) The student is in a program serving displaced workers under Section 236 of the Trade Act of 1974 (19 USC 2296).

(2) For the purposes of this rule:

(a) Higher education includes the following:

(A) Any public or private university, college or community college.

(B) Any post-secondary vocational or technical school that is eligible to accept Pell grants.

(b) Full time is defined by the school.

(c) Meets the income requirements for a Pell grant means:

(A) The student's Student Aid Report shows an "expected family contribution" less than \$5,274 for the 2010-2011 or 2011-2012 school year; or

(B) The student is eligible for a Pell grant and provides documentation of eligibility from the school's financial aid office.

(3) A student's enrollment status continues during school vacation and breaks. A student's higher education status ends when the student graduates, drops out (as verified by their disenrolling), reduces the student's credit or attendance hours below full-time status, is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

Stat. Auth.: ORS 411.060, 411.070, 411.402, 411.404, 414.025  
Stats. Implemented: ORS 411.060, 411.070, 411.081, 411.083, 411.085, 411.087, 411.402, 411.404, 414.025  
Hist.: AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 14-2002(Temp), f. & cert. ef. 10-30-02 thru 4-28-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 20-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; SSP 32-2010, f. & cert. ef. 10-1-10; 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; Suspended by SSP 36-2011(Temp), f. 12-27-11, cert. ef. 1-1-12 thru 6-29-12

## 461-145-0410

### Program Benefits

(1) EA and TA-DVS payments are treated as follows:

(a) In the ERDC and SNAP programs, a payment made directly to the client is counted as unearned income. Dual payee and provider-direct payments are excluded.

(b) In all programs except the ERDC and SNAP programs, these payments are excluded.

(2) Payments from ERDC and TANF child care are excluded unless the client is the provider.

(3) Payments from the EXT, GAM, MAA, MAF, OHP, OSIPM, QMB, REFM, and SAC programs are excluded.

(4) Payments from the JPI (see OAR 461-135-1260) are issued as a food benefit and are excluded.

(5) SNAP payments are treated as follows:

(a) The value of an SNAP benefit is excluded in all programs except the EA program. In the EA program, the value is counted as a resource when determining the emergency food needs of the filing group (see OAR 461-110-0310).

(b) OFSET service payments are excluded.

(6) Benefits from the GA, OSIP (except OSIP-IC), Post-TANF, REF, SFPSS, TANF, and tribal-TANF programs are treated as follows:

(a) In the EA program, these payments are counted as unearned income, except that these payments are excluded for a benefit group (see OAR 461-110-0750) whose emergent need is the result of domestic violence (see OAR 461-001-0000).

(b) In the ERDC program:

(A) Post-TANF payments are excluded.

(B) All other payments are counted as unearned income.

(c) In the SNAP program:

(A) These payments are treated as unearned income.

(B) An amount received as a late processing payment is treated as lump-sum income.

(C) Payments made to correct an underpayment are treated as lump-sum income.

(D) Ongoing special needs payments for laundry allowances, special diet or meal allowance, restaurant meals, accommodation allowances, and telephone allowances are treated as unearned income. All other special needs payments are excluded as reimbursements.

(d) In the OHP program:

(A) GA payments are excluded from income for purposes of determining OHP eligibility.

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(B) Benefits from the Post-TANF program are excluded.

(C) Benefits from the OSIP (except OSIP-IC), REF, SFPSS, and TANF programs are treated as follows:

(i) The payments are counted as unearned income if all the individuals included in the benefit group for the cash payment are also in the OHP financial group (see OAR 461-110-0530).

(ii) A prorated share is counted as unearned income if any of the individuals in the cash payment are not included in the OHP financial group. A prorated share is determined by dividing the total payment by the number of individuals in the TANF benefit group.

(iii) A payment made to correct an underpayment caused by the Department is excluded if the underpayment occurred prior to the budget period.

(e) In all programs except the EA, ERDC, OHP, and SNAP programs:

(A) These payments are excluded in the month received, and any portion remaining following the month of receipt is counted as a resource.

(B) Payments made to correct an underpayment are excluded.

(f) In all programs:

(A) JOBS, REF, and TANF JOBS Plus support service payments are excluded.

(B) For the treatment of JOBS Plus income, see OAR 461-145-0130.

(C) REF and TANF client incentive payments are treated as follows:

(i) Except in the TANF program, the cooperation incentive payment (see OAR 461-135-0310) is counted as unearned income.

(ii) Progress and outcome incentive payments other than in-kind payments are counted as lump-sum income (see OAR 461-140-0120). All other incentives are excluded.

(7) Payments from OSIP-IC are treated as follows:

(a) In the SNAP program, these payments are counted as unearned income and assets held in a contingency fund (see OAR 411-030-0020) are counted as a resource.

(b) In all other programs, these payments and funds held in a contingency fund are excluded.

(8) Pre-TANF program payments are treated as follows:

(a) In the SNAP program, a payment for basic living expenses, made directly to the client, is counted as unearned income. All other payments are excluded.

(b) In all programs except the SNAP program, these payments are excluded.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.404, 411.700, 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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 5-1991, f. & cert. ef. 2-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 21-1992(Temp), f. 7-31-92, cert. ef. 8-1-92; AFS 32-1992, f. 10-30-92, cert. ef. 11-1-92; 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 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 18-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; 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 36-2011(Temp), f. 12-27-11, cert. ef. 1-1-12 thru 6-29-12

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

**Adm. Order No.:** SSP 37-2011(Temp)

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12 thru 6-29-12

**Notice Publication Date:**

**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.

**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.

(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

Stats. Implemented: ORS 411.060, 411.095, 411.404 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 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

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

**Adm. Order No.:** SSP 1-2012(Temp)

**Filed with Sec. of State:** 1-13-2012

**Certified to be Effective:** 1-13-12 thru 7-11-12

**Notice Publication Date:**

**Rules Amended:** 461-135-0010

**Subject:** 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.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 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.

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(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 & 414.025

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

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

**Rule Caption:** Home Delivered Meals.

**Adm. Order No.:** SPD 26-2011(Temp)

**Filed with Sec. of State:** 12-20-2011

**Certified to be Effective:** 12-20-11 thru 6-13-12

**Notice Publication Date:**

**Rules Amended:** 411-040-0000

**Subject:** The Department of Human Services (Department) is temporarily amending OAR 411-040-0000 to clarify the eligibility standards for home delivered meals and to clearly define the standards for all Medicaid paid providers of home delivered meals.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

### 411-040-0000

#### Home Delivered Meals

(1) Medicaid paid home delivered meals, exclusive of those funded through the Older Americans Act or Oregon Project Independence, constitute a service that may be provided as part of a waived services care plan to assist an individual to remain in the individual's own home.

(2) To be eligible for Medicaid paid home delivered meals, an individual must comply with the Department's October 2008 Nutrition Program Standards for Medicaid Paid Home Delivered Meal Programs.

(3) Applicants determined ineligible to receive Medicaid paid home delivered meals but who need food assistance shall be directed to the nearest AAA or appropriate food assistance programs.

(4) All Medicaid paid providers of home delivered meals must:

(a) Meet the basic, administrative, and program requirements as described in the Department's October 2008 Nutrition Program Standards for Medicaid Paid Home Delivered Meal Programs;

(b) Follow the food service sanitation and safety requirements for Medicaid paid home delivered meals as directed in the Department's October 2008 Nutrition Program Standards for Medicaid Paid Home Delivered Meal Programs;

(c) Provide nutrition education as described in the Department's October 2008 Nutrition Program Standards for Medicaid Paid Home Delivered Meal Programs;

(d) Plan menus that meet the requirements as described in the Department's October 2008 Nutrition Program Standards for Medicaid Paid Home Delivered Meal Programs; and

(e) Establish a means of soliciting participant input as described in the Department's October 2008 Nutrition Program Standards for Medicaid Paid Home Delivered Meal Programs.

(5) The Department's October 2008 Nutrition Program Standards for Medicaid Paid Home Delivered Meal Programs may be found anytime at: <http://www.dhs.state.or.us/spd/tools/cm/hdm/standards.pdf> or is available from the Department upon request

(6) Payment for meals delivered to an individual at the individual's home may be provided when other plans do not appear feasible and home delivered meals are determined by the Department or AAA to be more appropriate for the client's needs than nursing facility care. The cost for these meals shall be calculated into the service plan in conjunction with in-home services provided by a client-employed provider or a home care agency.

(7) All requests for home delivered meals shall be referred to the Department or AAA.

(8) The Department shall establish, authorize, purchase, and monitor the standards for Medicaid paid home delivered meals.

(9) Individuals required to make a monthly payment under OAR 461-185-0050 in order to remain eligible for Medicaid waiver services must have their home-delivered meal costs calculated in conjunction with their in-home service provider costs.

(a) To remain eligible for waiver services, pay-in clients are responsible for payment of authorized home-delivered meals received up to their specified monthly pay-in amount. Payments due for meal services shall be included as part of the monthly sum and the individual must send the payment to the Department's pay-in unit rather than making any direct payments to the Medicaid paid home delivered meal provider.

(b) The Department shall direct payments made to Medicaid paid home delivered meal providers for all authorized home-delivered meals to waiver service eligible clients. Direct payment from the Department shall include the meals paid through the individual's monthly pay-in and for meals that exceed the individual's total monthly liability.

(10) For individuals whose meals are delivered through an Older Americans Act (OAA) meal service program that also contracts as a Medicaid paid home delivered meals provider:

(a) Individuals receiving home-delivered meals authorized and paid for by the Department shall be officially informed by the Department or AAA that there is no obligation to make any voluntary or suggested donation for this service. However, if the individual chooses to make a voluntary donation, there is no restriction from doing so.

(b) The criteria in section (9) of this rule and subsection (a) of this section applies to individuals that must submit a monthly payment to the Department under OAR 461-185-0050 in order to remain eligible for services.

(c) An individual who meets the criteria in sections (6) or (9) of this rule and is age 65 or older, may choose to receive meals through the OAA meal service program and may make voluntary donations. For individuals required to make a monthly payment under OAR 461-185-0050, these donations are not credited toward the pay-in liability. In turn, OAA meal programs are not mandated to provide home-delivered meals to Medicaid waiver service clients, age 65 and older, unless the agency is a Medicaid-contracted meal provider and the meals are authorized and paid for by the Department.

Stat. Auth.: ORS 410.070, 411.060 & 411.070

Stats. Implemented: ORS 410.070

Hist.: SSD 11-1982, f. & ef. 10-1-82; SPD 12-2004, f. & cert. ef. 6-1-04; SPD 26-2011(Temp), f. & cert. ef. 12-20-11 thru 6-13-12

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**Rule Caption:** Support Services for Adults with Developmental Disabilities.

**Adm. Order No.:** SPD 27-2011

**Filed with Sec. of State:** 12-28-2011

**Certified to be Effective:** 12-28-11

**Notice Publication Date:** 12-1-2011

# ADMINISTRATIVE RULES

**Rules Adopted:** 411-340-0125

**Rules Amended:** 411-320-0090, 411-320-0110, 411-340-0020, 411-340-0100, 411-340-0110, 411-340-0120, 411-340-0130, 411-340-0140, 411-340-0150

**Rules Repealed:** 411-320-0090(T), 411-320-0110(T), 411-340-0100(T), 411-340-0110(T)

**Subject:** The Department of Human Services (Department) is updating the support services rules in OAR chapter 411, division 340 and the Community Developmental Disability Program (CDDP) rules in OAR chapter 411, division 320 to:

- Permanently make the receipt of support services contingent on eligibility for the federally approved Support Services Waiver in most cases and require that all individuals not eligible for the Support Services Waiver exit brokerage services. Prior to this, eligibility for the Support Services Waiver was not a requirement for support services;

- Further define eligibility criteria for supplemental funds relating to needs associated with activities of daily living;

- Emphasize that support funds are not meant to supplement existing and naturally occurring supports;

- Address the role of brokerages in handling an individual in crisis;

- As a result of adding the role of case manager to the personal agent, include timelines for informing individuals of the personal agent, establish expectations around providing protective services, and outline specific requirements around progress noting; and

- Specifically identify rate range and expenditure guidelines.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-320-0090

### Developmental Disabilities Case Management Program Responsibilities

(1) **AVAILABILITY.** As required by these rules, the CDDP must assure the availability of a services coordinator to meet the service needs of an individual and any emergencies or crisis. The assignment of the services coordinator must be appropriately documented in individual service records and the CDDP must accurately report enrollment in the Department's payment and reporting systems.

(2) **POLICIES AND PROCEDURES.** The CDDP must adopt written procedures to assure that the delivery of services meet the standards in OAR 411-320-0090(4) of this rule.

(a) The CDDP must have procedures for ongoing involvement of individuals and family members in the planning and review of consumer satisfaction with the delivery of case management or direct services provided by the CDDP.

(b) Copies of the procedures for planning and review of case management services, consumer satisfaction, and complaints must be maintained on file at the CDDP offices. The procedures must be available to:

(A) CDDP employees who work with individuals;

(B) Individuals who are receiving services from the CDDP and the individuals' families;

(C) Individuals' legal representatives, advocates, and service providers; and

(D) The Department.

(3) **NOTICE OF SERVICES.** The CDDP must inform the individuals, family members, legal representatives, and advocates of the minimum case management services that are set out in OAR 411-320-0090(4) of this rule.

(4) **MINIMUM STANDARDS FOR CASE MANAGEMENT SERVICES.**

(a) The CDDP must ensure that eligibility for services is determined by a trained eligibility specialist in accordance with OAR 411-320-0030.

(b) An Annual Plan for an individual must be developed and reviewed in accordance with OAR 411-320-0120(1).

(A) The services coordinator must assure that there is an Annual Plan. The services coordinator must attend the annual plan meeting and participate in the development of the plan for individuals enrolled in comprehensive services. The services coordinator is responsible for the development of the Annual Plan, on the form provided by the Department, for children receiving family support services in coordination with the child and the family.

(B) An Annual Plan must be completed for each individual that is not enrolled in any Department-funded service other than case management.

(c) Program services must be authorized in accordance with OAR 411-320-0120(3).

(d) Services coordinators must monitor services and supports for all individuals enrolled in case management in accordance with the standards described in OAR 411-320-0130.

(e) Entry, exit, and transfers from comprehensive program services must be in accordance with OAR 411-320-0110.

(f) Crisis diversion services must be assessed, identified, planned, monitored, and evaluated by the services coordinator in accordance with OAR 411-320-0160.

(g) Abuse investigations and provision of protective services for adults must be provided as described in OAR 407-045-0250 to 407-045-0360 and include investigating complaints of abuse, writing investigation reports, and monitoring for implementation of report recommendations.

(h) Civil commitment services must be provided in accordance with ORS 427.215 to 427.306.

(i) The services coordinator must provide information and timely referral about how to access services to individuals and their families regarding developmental disability services available within the county and services available from other agencies or organizations within the county.

(A) For individuals 18 years and older, information and referral must specifically include information necessary to inform the individual of the comprehensive services wait list and support services. When more than one support services brokerage is available within the CDDP's geographic service area, the CDDP must also provide impartial information about the brokerages available to the individual.

(B) For individuals 18 years and older, information and referral must be provided initially and at minimum annually thereafter if the individual declines the comprehensive services wait list or support services. Annual information and referral must include informing the individual of the individual's right to, at any time, request access to the comprehensive services wait list or support services. Documentation of the initial referral and subsequent annual discussion must be documented in the individual's CDDP file.

(C) For individuals enrolled in the support services brokerage but not enrolled in the comprehensive services wait list, the CDDP must coordinate with the support services brokerage to ensure that wait list information is provided annually.

(j) The services coordinator must enroll individuals in the comprehensive services wait list who meet the following criteria:

(A) The individual is age 18 or older;

(B) The individual is enrolled in case management services or a support services brokerage;

(C) The individual has requested to be enrolled in the comprehensive services wait list; and

(D) The individual is not enrolled in comprehensive services as an adult.

(k) An individual who moves between CDDP's and whose case management or support services do not lapse for more than a period of 12 months shall retain the wait list enrollment date assigned or continued by the CDDP in which case management services were previously received. If an individual did not receive case management services in any county in Oregon for a period exceeding 12 calendar months, a new wait list enrollment date shall be assigned. The new wait list enrollment date must be the date the individual first meets all the criteria described in OAR 411-320-0090(4)(j) of this section.

(l) When funding and resources are available, the CDDP must facilitate selection of individuals from the comprehensive services wait list using the date of enrollment on the comprehensive services wait list. An individual in crisis according to OAR 411-320-0160(2) and in need of service must be given first consideration for comprehensive services regardless of the date of enrollment on the comprehensive services wait list.

(m) The services coordinator may remove an individual from the comprehensive services wait list for the following reasons:

(A) The individual requests to be removed;

(B) The individual is placed in comprehensive services; or

(C) The individual has exited or been terminated from case management services or a support services brokerage.

(n) The CDDP must inform the individual of the CDDP's intent to remove the individual from the comprehensive services wait list.

(o) Services coordinators must coordinate services with the child welfare (CW) caseworker assigned to a child to ensure the provision of required supports from the Department, CDDP, and CW.



## ADMINISTRATIVE RULES

(p) Services coordinators may attend IEP planning meetings or other transition planning meetings for children when the services coordinator is invited by the family or guardian to participate.

(A) The services coordinator may, to the extent resources are available, assist the family in accessing those critical non-educational services that the child or family may need.

(B) Upon request and to the extent possible, the services coordinator may act as a proponent for the child or family at IEP meetings.

(C) The services coordinator must participate in transition planning by attending IEP meetings or other transition planning meetings of students 16 years of age or older, or until the student is enrolled in the support services brokerage, to discuss the individual's transition to adult living and work situations unless such attendance is refused by the child's parent or legal guardian, or the individual if the individual is 18 years or older.

(q) The CDDP must ensure that individuals eligible for and receiving developmental disability services are enrolled in Department payment and reporting systems. The county of origin must enroll the individual into the Department payment and reporting systems for all developmental disability service providers except in the following circumstances:

(A) The Department shall complete the enrollment or termination form for children entering or leaving a licensed 24-hour residential program that is directly contracted with the Department.

(B) The Department shall complete the Department payment and reporting systems enrollment, termination, and billing forms for children entering or leaving the children's intensive in-home services (CIIS) program.

(C) The Department shall complete the enrollment, termination, and billing forms as part of an interagency agreement for purposes of billing for crisis diversion services by a region.

(r) Services coordinators must facilitate referrals to nursing homes when appropriate as determined by OAR 411-070-0043.

(s) The services coordinator must coordinate and monitor the specialized services provided to an eligible individual living in a nursing home in accordance with OAR 411-320-0150.

(t) The services coordinator must ensure that all serious events related to an individual are reported to the Department using the SERT system. The CDDP must ensure that there is monitoring and follow-up on both individual events and system trends.

(u) When the services coordinator completes the Title XIX waiver form, the services coordinator must ensure that Medicaid eligible individuals are offered the choice of home and community-based waiver services, provided a notice of hearing rights, and have a completed Title XIX waiver form that is reviewed annually or at anytime there is a significant change. For individuals who are expected to enter support services, the services coordinator must complete the initial Title XIX waiver form after the individual's 18th birth date and no more than 30 days prior to entry into the support services brokerage. The support services brokerage staff must assess the individual's level of care annually thereafter for continued Title XIX waiver eligibility or at anytime there are significant changes.

(v) The services coordinator must participate in the appointment of a health care representative per OAR chapter 411, division 365.

(w) The services coordinator must coordinate with other state, public, and private agencies regarding services to individuals.

(x) The CDDP must ensure that a services coordinator is available to provide or arrange for comprehensive in-home supports for adults, long term supports for children, or family supports, as required, to meet the support needs of eligible individuals. This includes:

(A) Providing assistance in determining needs and planning supports;

(B) Providing assistance in finding and arranging resources and supports;

(C) Providing education and technical assistance to make informed decisions about support need and direct support service providers;

(D) Arranging fiscal intermediary services;

(E) Arranging employer-related supports; and

(F) Providing assistance with monitoring and improving the quality of supports.

(5) SERVICE PRIORITIES. If it becomes necessary for the CDDP to prioritize the availability of case management services, the CDDP must request and have approval of a variance prior to implementation of any alternative plan. If the reason for the need for the variance could not have been reasonably anticipated by the CDDP, the CDDP has 15 working days to submit the variance request to the Department. The variance request must:

(a) Document the reason the service prioritization is necessary (including any alternatives considered);

(b) Detail the specific service priorities being proposed; and

(c) Provide assurances that the basic health and safety of individuals shall continue to be addressed and monitored.

(6) FAMILY RECONNECTION. The CDDP and the services coordinator must provide assistance to the Department when a family member is attempting to reconnect with an individual who was previously discharged from Fairview Training Center or Eastern Oregon Training Center or the individual is currently receiving developmental disability services.

(a) If a family member contacts a CDDP for assistance in locating a family member they shall be referred to the Department. A family member may contact the Department directly.

(b) The Department shall send the family member a Department form requesting further information to be used in providing notification to the individual. The form shall include the following information:

(A) Name of requestor;

(B) Address of requestor and other contact information;

(C) Relationship to individual;

(D) Reason for wanting to reconnect; and

(E) Last time the family had contact.

(c) The Department shall determine if the individual was previously a resident of Fairview Training Center or Eastern Oregon Training Center and also determine:

(A) If the individual is deceased or living;

(B) Whether the individual is currently or previously enrolled in Department services; and

(C) The county in which services are being provided, if applicable.

(d) Within 10 working days of receipt of the request, the Department shall notify the family member if the individual is enrolled or no longer enrolled in Department services.

(e) If the individual is enrolled in Department services, the Department shall send the completed family information form to the individual or the individual's guardian and the individual's services coordinator.

(f) If the individual is deceased, the Department shall follow the process for identifying the personal representative of the deceased as provided for in ORS 192.526.

(A) If the personal representative and the requesting family member are the same, the family member shall be informed that the person is deceased.

(B) If the personal representative is different from the requesting family member, the personal representative shall be contacted for permission to share the information to the requesting family member. In the event of this situation, the Department must make a good faith effort at finding the personal representative and obtaining a decision concerning the sharing of information as soon as practicable.

(g) When an individual is located, the services coordinator when the individual is enrolled in case management, or the CDDP in conjunction with the support services brokerage when the individual is enrolled in a support services brokerage, must facilitate a meeting with the individual or the individual's guardian to discuss and determine if the individual wishes to have contact with the family member.

(A) The services coordinator when the individual is enrolled in case management, or the CDDP in conjunction with the support services brokerage when the individual is enrolled in a support services brokerage, must assist the individual or the individual's guardian in evaluating the information to make a decision regarding initiating contact including providing the information from the form and any relevant history with the family member that might support contact or present a risk to the individual.

(B) If the individual does not have a guardian or is unable to express his or her wishes, the ISP team must be convened to review factors and choose the best response for the individual after evaluating the situation.

(h) If the individual or the individual's guardian wishes to have contact, the individual or ISP team designee may directly contact the family member to make arrangements for the contact.

(i) If the individual or the individual's guardian does not wish to have contact, the services coordinator must notify the Department with the information and the Department shall inform the family member in writing that no contact is requested.

(j) The notification to the family member regarding the decision of the individual or the individual's guardian must be within 60 business days of the receipt of the information form from the family member.

(k) The decision by the individual or the individual's guardian is not appealable.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 - 430.695

# ADMINISTRATIVE RULES

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 27-2011, f. & cert. ef. 12-28-11

## 411-320-0110

### Entry and Exit Requirements

#### (1) ADMISSION TO A DEPARTMENT-FUNDED DEVELOPMENTAL DISABILITY PROGRAM.

(a) Department staff must authorize entry into children's residential services, children's proctor care, children's intensive in-home supports, state operated community programs, and state training centers. The services coordinator must make referrals for admission and participate in all entry meetings for these programs.

(b) Admissions to all other Department-funded programs for individuals must be coordinated and authorized by the services coordinator in accordance with these rules.

(2) WRITTEN INFORMATION REQUIRED. The services coordinator, or the services coordinator's designee, must provide available and sufficient written information to service providers including information that is current and necessary to meet the individual's support needs in comprehensive services prior to admission.

(a) This written information must be provided in a timely manner and include:

(A) A copy of the individual's eligibility determination decision;

(B) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device, and the ability to adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges including supervision and support needs;

(D) A medical history and information on health care supports that includes, where available:

(i) The results of a physical exam (if any) made within 90 days prior to the entry;

(ii) Results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning;

(F) If applicable, copies of protocols, the risk tracking record, and any support documentation;

(G) Copies of documents relating to guardianship, conservatorship, health care representative, power of attorney, court orders, probation and parole information, or any other legal restrictions on the rights of the individual, when applicable;

(H) Written documentation why preferences or choices of the individual cannot be honored at that time;

(I) Written documentation that the individual is participating in out-of-residence activities including school enrollment for individuals under the age of 21; and

(J) A copy of the most recent functional assessment, Behavior Support Plan, ISP, and IEP, if applicable.

(b) If the individual is being admitted from the individual's family home and entry information is not available due to a crisis, the services coordinator must ensure that the service provider assesses the individual upon entry for issues of immediate health or safety and the services coordinator must document a plan to secure the information listed in OAR 411-320-0110(2)(a) of this section no later than 30 days after admission. The documentation must include a written description as to why the information is not available. A copy of the information and plan must be given to the service provider at the time of entry.

(c) If the individual is being admitted from comprehensive service, the information must be made available prior to the admission.

(3) ENTRY MEETING. Prior to an individual's date of entry into a Department-funded comprehensive service, the ISP team must meet to review referral material in order to determine appropriateness of placement. The ISP team participants shall be determined according to OAR 411-320-0120. The findings of the entry meeting must be recorded in the individual's file and distributed to the ISP team members. The documentation of the entry meeting must include at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the entry meeting and the date determined to be the date of entry;

(c) The names and role of the participants at the entry meeting;

(d) Documentation of the pre-entry information required by OAR 411-320-0110(2)(a) of this rule;

(e) Documentation of the decision to serve or not serve the individual requesting service, with reasons;

(f) If the decision was made to enter the individual, a written transition plan to include all medical, behavior, and safety supports needed by the individual, to be provided to the individual for no longer than 60 days after admission; and

(g) Documentation of the participants included in the entry meeting.

(4) CRISIS DIVERSION SERVICES. For a period not to exceed 30 days, OAR 411-320-0110(3)(d) of this rule does not apply if an individual is temporarily admitted to a program for crisis diversion services.

(5) EXIT FROM DEPARTMENT-FUNDED PROGRAMS. All exits from Department-funded developmental disability services must be authorized by the CDDP. All exits from Department direct-contracted service for children's 24-hour residential and from state-operated community programs, must be authorized by Department staff. Prior to an individual's exit date, the ISP team must meet to review the appropriateness of the move and to coordinate any services necessary during or following the transition. The ISP team participants must be determined according to OAR 411-320-0120(1)(b).

(6) EXIT STAFFING. The exit plan must be distributed to all ISP team members. The exit plan must include:

(a) The name of the individual considered for exit;

(b) The date of the exit meeting;

(c) Documentation of the participants included in the exit meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of the strategies to prevent an exit from service, unless the individual, the individual's legal guardian or, for a child, the child's parent or guardian, is requesting the exit;

(f) Documentation of the decision regarding exit including verification of majority agreement of the exit meeting participants regarding the decision; and

(g) The written plan for services for the individual after exit.

(7) TRANSFER MEETING. All transfers within a county between service sites by a comprehensive service provider agency must be authorized by the CDDP, except for transfers between Department direct contracted services for children in 24-hour residential programs and in state operated community programs. Transfers between Department direct contracted services for children in 24-hour residential programs and state operated community programs must be coordinated by Department staff. A transfer meeting of the ISP team must precede any decision to transfer an individual. Findings of such a transfer meeting must be recorded in the individual's file and include, at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the transfer meeting;

(c) Documentation of the participants included in the transfer meeting;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, the individual's legal representative, or family members may not be honored;

(g) Documentation of the decision regarding transfer including verification of majority agreement of the transfer meeting participants regarding the decision; and

(h) The written plan for services for the individual after transfer.

#### (8) ENTRY TO SUPPORT SERVICES.

(a) Referrals of eligible individuals to a support services brokerage must be made in accordance with OAR 411-340-0110. Referrals must be made using the Department mandated application and referral form in accordance with Department guidelines.

(b) The CDDP of an individual's county of origin may find the individual eligible for services from a support services brokerage when:

(A) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP; AND

(B) The individual is an adult living in the individual's own home or family home and not receiving other Department-paid in-home or community living support other than state Medicaid plan services; AND

(C) The individual is not enrolled in comprehensive services; AND

(D) At the time of initial entry to the support services brokerage, the individual is not receiving crisis diversion services from the Department because the individual does not meet one or more of the crisis risk factors listed in OAR 411-320-0160; AND

# ADMINISTRATIVE RULES

(E) The individual, or the individual's legal representative, has chosen to use a support service brokerage for assistance with design and management of personal supports; AND

(F) The individual is eligible for entry to the Support Services Waiver according to OAR 461-135-0750; OR

(G) The individual turns 18 years old and meets the level of care that qualifies the individual for entry to the Support Services Waiver and the individual was enrolled in the CIIS Program up to the individual's 18th birthday.

(c) The individual must be referred within 90 days of:

(A) Being determined eligible for developmental disability services;

(B) Being determined eligible for entry to the Support Services

Waiver;

(C) The individual's 18th birth date;

(D) Requesting support services; and

(E) Selecting an available support services brokerage within the CDDP's geographic service area.

(d) The individual must complete entry within 90 days of referral to the support services brokerage.

(e) The services coordinator must communicate with the support services brokerage staff and provide all relevant information upon request and as needed to assist support services brokerage staff in developing an ISP that best meets the individual's support needs including:

(A) A current application or referral on the Department mandated application or referral form;

(B) A completed Title XIX waiver form;

(C) A copy of the eligibility statement for developmental disability services;

(D) Copies of financial eligibility information;

(E) Copies of any legal documents such as guardianship papers, conservatorship, civil commitment status, probation and parole, etc.;

(F) Copies of relevant progress notes; and

(G) A copy of any current plans.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 27-2011, f. & cert. ef. 12-28-11

## 411-340-0020

### Definitions

As used in OAR chapter 411, division 340:

(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) "Activities of Daily Living (ADL)" mean the self-care activities accomplished by an individual for continued well-being.

(4) "Adaptive Behavior" means the degree to which an individual meets the standards of personal independence and social responsibility expected for age and culture group.

(5) "Administration of Medication" means the act of placing a medication in, or on, an individual's body by a person responsible for the individual's care and employed by or under contract to the individual, the individual's legal representative, or a provider organization.

(6) "Administrative Review" means the formal process that is used when the individual or the individual's legal representative is not satisfied with the decision made by the brokerage about a complaint involving the provision of services or a provider.

(7) "Administrator" means the Administrator of the Department, or that person's designee. The term "Administrator" is synonymous with "Assistant Director".

(8) "Adult" means an individual 18 years or older with developmental disabilities.

(9) "Alternative Resources" mean possible resources, not including support services, for the provision of supports to meet an individual's needs. Alternative resources includes but is not limited to private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.

(10) "Basic Benefit" means the type and amount of support services available to each eligible individual, specifically:

(a) Access to the brokerage services listed in OAR 411-340-0120(1); and if required

(b) Access to an amount of support services funds used to assist with the purchase of supports listed in OAR 411-340-0130(6).

(11) "Basic Supplement" means an amount of support services funds in excess of the basic benefit to which an individual may have access in order to purchase necessary supports based on demonstration of extraordinary long-term need on the Basic Supplement Criteria Inventory, Form DHS 0203.

(12) "Basic Supplement Criteria Inventory (Form DHS 0203)" means the written inventory of an individual's circumstances that is completed and scored by the brokerage to determine whether the individual is eligible for a basic supplement.

(13) "Benefit Level" means the total annual amount of support services funds for which an individual is eligible. The benefit level includes the basic benefit and any exceptions to the basic benefit financial limits.

(14) "Certificate" means a document issued by the Department to a brokerage, or to a provider organization requiring certification under OAR 411-340-0170(2), that certifies the brokerage or provider organization is eligible to receive state funds for support services.

(15) "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.

(16) "Chore Services" mean services needed to maintain a clean, sanitary, and safe environment in an individual's home. Chore services include heavy household chores such as washing floors, windows, and walls, tacking down loose rugs and tiles, and moving heavy items of furniture for safe access and egress.

(17) "Client Process Monitoring System (CPMS)" means the Department's computerized system for enrolling and terminating services for individuals with developmental disabilities.

(18) "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.

(19) "Community Living and Inclusion Supports" mean services that facilitate independence and promote community integration by supporting the individual to gain or maintain skills to live as independently as possible in the type of home the individual chooses. Community living and inclusion supports provide support for the individual to participate in activities in integrated settings that promote community inclusion and contribution.

(a) Community living and inclusion supports include supports designed to develop or maintain skills for self-care, ability to direct supports, care of the immediate environment, and may include instruction in skills an individual wishes to acquire, retain, or improve that enhance independence, productivity, integration, or maintain the individual's physical and mental skills. Community living and inclusion supports include supports in the following areas:

(A) Personal skills, which includes eating, bathing, dressing, personal hygiene, and mobility;

(B) Socialization, which includes development or maintenance of self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(C) Community participation, recreation, or leisure, which includes the development or maintenance of skills to use available community services, facilities, or businesses;

(D) Communication, which includes development or maintenance of expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills; and

(E) Personal environmental skills, which includes development or maintenance of skills such as planning and preparing meals, budgeting, laundry, and housecleaning.

(b) Community living and inclusion supports may or may not be work related.

(20) "Complaint" means a verbal or written expression of dissatisfaction with services or providers.

(21) "Comprehensive Services" mean a package of developmental disability services and supports that include 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:

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(a) Twenty-four hour residential services including but not limited to services provided in a group home, foster home, or through a supported living program; or

(b) In-home supports provided to an individual in the individual or family home costing more than the individual cost limit.

(c) Comprehensive services do not include support services for adults enrolled in brokerages or for children enrolled in long-term supports or children's intensive in-home services.

(22) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet an individual's support needs. Less costly alternatives include other programs available from the Department, the utilization of assistive devices, natural supports, architectural modifications, and alternative resources. Less costly alternatives may include resources not paid for by the Department.

(23) "Crisis" means:

(a) A situation that may result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160 are present for which no appropriate alternative resources are available.

(24) "Crisis Diversion Services" mean the services authorized and provided according to OAR 411-320-0160 that are intended to maintain an individual at home or in the family home while an individual is in emergent status. Crisis diversion services may include short-term residential placement services indicated on an individual's Support Services Brokerage Plan of Care Crisis Addendum, as well as additional support as described in an Individual Support Plan.

(25) "Department" means the Department of Human Services (DHS). The term "Department" is synonymous with "Division (SPD)".

(26) "Developmental Disability" 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.

(27) "Emergent Status" means an individual has been determined to be eligible for crisis diversion services according to OAR 411-320-0160..

(28) "Employer-Related Supports" mean activities that assist individuals and, when applicable, their family members with fulfilling roles and obligations as employers as described in the Individual Support Plan. Supports to the employer include but are not limited to:

- (a) Education about employer responsibilities;
- (b) Orientation to basic wage and hour issues;
- (c) Use of common employer-related tools such as job descriptions;

and

(d) Fiscal intermediary services.

(29) "Entry" means admission to a Department-funded developmental disability service provider.

(30) "Environmental Accessibility Adaptations" mean physical adaptations that are necessary to ensure the health, welfare, and safety of the individual in the home, or that enable the individual to function with greater independence in the home.

(a) Environmental accessibility adaptations include but are not limited to:

(A) Environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke detectors, light fixtures, and appliances;

(G) Sound and visual monitoring systems;

(H) Fencing;

(I) Installation of ramps, grab-bars, and electric door openers;

(J) Adaptation of kitchen cabinets and sinks;

(K) Widening of doorways;

(L) Handrails;

(M) Modification of bathroom facilities;

(N) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk;

(O) Installation of non-skid surfaces;

(P) Overhead track systems to assist with lifting or transferring;

(Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; or

(R) Modifications to a vehicle to meet the unique needs of the individual (lift, interior alterations such as seats, head and leg rests and belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle).

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, and central air conditioning; and

(B) Adaptations that add to the total square footage of the home.

(31) "Environmental Modification Consultant" means either an independent provider, provider organization, or general business paid with support services funds, to provide advice to an individual, the individual's legal representative, or the individual's personal agent about the environmental accessibility adaptation required to meet the individual's needs.

(32) "Exit" means either termination from a Department-funded developmental disability service provider or transfer from one Department-funded service provider to another.

(33) "Family" for determining individual eligibility for brokerage services as a resident in the family home and for determining who may receive family training, means a unit of two or more persons that include at least one individual with developmental disabilities where the primary caregiver is:

(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.

(34) "Family Training" means training and counseling services for the family of an individual that increase the family's capacity to care for, support, and maintain the individual in the home. Family training includes:

(a) Instruction about treatment regimens and use of equipment specified in the Individual Support Plan;

(b) Information, education, and training about the individual's developmental disability, medical, and behavioral conditions; and

(c) Counseling for the family to relieve the stress associated with caring for an individual with developmental disabilities.

(35) "Fiscal Intermediary" means a person or entity that receives and distributes support services funds on behalf of an individual who employs persons to provide services, supervision, or training in the home or community according to the Individual Support Plan.

(36) "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.

(37) "General Business Provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with support services funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public;

(b) Provides services for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(38) "Habilitation Services" mean services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. Habilitation services include supported employment and community living and inclusion supports.

(39) "Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a service. This is a formal process required by federal law (42 CFR 431.200-250). A hearing is also known as a Medicaid Fair Hearing and contested case hearing.

(40) "Home" means an individual's primary residence that is not under contract with the Department to provide services to an individual as a licensed or certified foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

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(41) “Homemaker Services” mean the general household activities such as meal preparation and routine household services required to maintain a clean, sanitary, and safe environment in an individual’s home.

(42) “Incident Report” means a written report of any unusual incident involving an individual.

(43) “Independence” means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(44) “Independent Provider” means a person selected by an individual or the individual’s legal representative and paid with support services funds that personally provide services to the individual.

(45) “Individual” means an adult with developmental disabilities for whom services are planned and provided.

(46) “Individual Cost Limit” means the maximum annual benefit level available under the Support Services Waiver.

(47) “Individual Support Plan (ISP)” means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The type of service supports needed, how supports are delivered, and the frequency of provided supports are included in the ISP. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual’s plan of care for Medicaid purposes.

(48) “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.

(49) “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.

(50) “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.

(51) “Medication” means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(52) “Natural Supports” or “Natural Support System” means the resources available to an individual from their relatives, friends, significant others, neighbors, roommates, and the community. Services provided by natural supports are resources that are not paid for by the Department.

(53) “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.

(54) “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.

(55) “Occupational Therapy” means the services provided by a professional licensed under ORS 675.240 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(56) “OSIP-M” means Oregon Supplemental Income Program Medical.

(57) “Personal Agent” means a person who works directly with individuals and families to provide or arrange for support services as described in the Support Services Waiver and these rules, is a case manager for the provision of targeted case management services, meets the qualifications set forth in OAR 411-340-0150(5), and is:

(a) A trained employee of a brokerage; or

(b) A person who has been engaged under contract to the brokerage to allow the brokerage to meet responsibilities in geographic areas where personal agent resources are severely limited.

(58) “Personal Emergency Response Systems” mean electronic devices required by certain individuals to secure help in an emergency for safety in the community.

(59) “Person-Centered Planning” means:

(a) A process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about personal goals, activities, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(60) “Physical Therapy” means the services provided by a professional licensed under ORS 688.020 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(61) “Plan Year” means 12 consecutive months used to calculate an individual’s annual benefit level. Unless otherwise set according to the conditions of OAR 411-340-0120, the initial plan year begins on the start date specified on the individual’s first authorized Individual Support Plan (ISP) after entry to a brokerage. Subsequent plan years begin on the anniversary of the start date of the initial ISP.

(62) “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.

(63) “Prescription Medication” means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(64) “Primary Caregiver” means the person identified in an Individual Support Plan as providing the majority of service and support for an individual in the individual’s home.

(65) “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.

(66) “Protection” and “Protective Services” mean necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, and to safeguard an individual’s person, property, and funds.

(67) “Provider Organization” means an entity selected by an individual or the individual’s legal representative, and paid with support services funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(68) “Provider Organization Director” means the employee of a provider organization, or the employee’s designee, responsible for administration and provision of services according to these rules.

(69) “Psychotropic Medication” means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including but not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(70) “Quality Assurance” means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(71) “Regional Crisis Diversion Program” means the regional coordination of the management of crisis diversion services for a group of designated counties that is responsible for the management of the following developmental disability services:

(a) Crisis intervention services;

(b) Evaluation of requests for new or enhanced services for certain groups of individuals eligible for developmental disability services; and

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(c) Other developmental disability services that the counties comprising the region agree are more effectively or automatically delivered on a regional basis.

(72) "Respite" means intermittent services provided on a periodic basis for the relief of, or due to the temporary absence of, persons normally providing the supports to individuals unable to care for themselves.

(73) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(74) "Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon written order of a physician, and safely maintains the medication without supervision.

(75) "Self-Determination" means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom. The ability for an individual with a developmental disability, together with freely-chosen family and friends, to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority. The ability for an individual with a developmental disability, with the help of a social support network if needed, to control a certain sum of resources in order to purchase support services;

(c) Autonomy. The arranging of resources and personnel, both formal and informal, that shall assist an individual with a developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility. The acceptance of a valued role in an individual's community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for individuals with developmental disabilities.

(76) "Social Benefit" means a service or financial assistance solely intended to assist an individual with a developmental disability to function in society on a level comparable to that of a person who does not have such a developmental disability.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to persons regardless of developmental disability;

(B) Provide financial assistance with food, clothing, shelter, and laundry needs common to persons with or without developmental disabilities; or

(C) Replace other governmental or community services available to an individual.

(b) Financial assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported in the individual's home and must be either:

(A) Reimbursement for an expense previously authorized in an Individual Support Plan (ISP); or

(B) An advance payment in anticipation of an expense authorized in a previously authorized ISP.

(77) "Special Diet" means specially prepared food or particular types of food, ordered by a physician and periodically monitored by a dietician, specific to an individual's medical condition or diagnosis that are needed to sustain an individual in the individual's home. Special diets are supplements and are not intended to meet an individual's complete daily nutritional requirements. Special diets may include:

(a) High caloric supplements;

(b) Gluten-free supplements; and

(c) Diabetic, ketogenic, or other metabolic supplements.

(78) "Specialized Medical Equipment and Supplies" mean devices, aids, controls, supplies, or appliances that enable individuals to increase their abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which they live. Specialized medical equipment and supplies include items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the State Medicaid Plan. Specialized medical equipment and supplies may not include items not of direct medical or remedial benefit to the individual. Specialized medical equipment and supplies must meet applicable standards of manufacture, design, and installation.

(79) "Specialized Supports" mean treatment, training, consultation, or other unique services necessary to achieve outcomes in the Individual Support Plan that are not available through State Medicaid Plan services or

other support services listed in OAR 411-340-0130(6). Typical supports include the services of a behavior consultant, a licensed nurse, or a social or sexual consultant to:

(a) Assess the needs of the individual and family, including environmental factors;

(b) Develop a plan of support;

(c) Train caregivers to implement the plan of support;

(d) Monitor implementation of the plan of support; and

(e) Revise the plan of support as needed.

(80) "Speech and Language Therapy" means the services provided by a professional licensed under ORS 681.250 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(81) "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.

(82) "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.

(83) "Supported Employment Services" means provision of job training and supervision available to assist an individual who needs intensive ongoing support to choose, get, and keep a job in a community business setting. Supported employment is a service planned in partnership with public vocational assistance agencies and school districts and through Social Security Work Incentives when available.

(84) "Support Services" mean the services of a brokerage listed in OAR 411-340-0120(1) as well as the uniquely determined activities and purchases arranged through the brokerage support services that:

(a) Complement the existing formal and informal supports that exist for an individual living in the individual's own home or family home;

(b) Are designed, selected, and managed by the individual or the individual's legal representative;

(c) Are provided in accordance with an Individual Support Plan; and

(d) May include purchase of supports as a social benefit required for an individual to live in the individual's home or the family home.

(85) "Support Services Brokerage" or "Brokerage" means an entity, or distinct operating unit within an existing entity, that uses the principles of self-determination to perform the functions listed in OAR 411-340-0120(1) associated with planning and implementation of support services for individuals with developmental disabilities.

(86) "Support Services Brokerage Director" or "Brokerage Director" means the employee of a publicly or privately-operated brokerage, or that person's designee, who is responsible for administration and provision of services according to these rules.

(87) "Support Services Brokerage Plan of Care Crisis Addendum" means the short-term plan that is required by the Department to be added to an Individual Support Plan to describe crisis diversion services an individual is to receive while the individual is in emergent status in a short-term residential placement.

(88) "Support Services Brokerage Policy Oversight Group" or "Policy Oversight Group" means the group that meets the requirements of OAR 411-340-0150(1) that is formed to provide consumer-based leadership and advice to each brokerage regarding issues such as development of policy, evaluation of services, and use of resources.

(89) "Support Services Expenditure Guideline" means a publication of the Department that describes allowable uses for support services funds.

(90) "Support Services Funds" mean public funds designated by the brokerage for assistance with the purchase of supports according to each Individual Support Plan.

(91) "Support Services Rate Ranges" means a publication of the Department that defines policy regarding the use of support services funds and limits to the rates paid for some support services.

(92) "These Rules" mean the rules in OAR chapter 411, division 340.

(93) "Transportation" means services that allow individuals to gain access to community services, activities, and resources that are not medical in nature.

(94) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(95) "Volunteer" means any person assisting a service provider without pay to support the services provided to an individual.

Stat. Auth.: ORS 409.050 & 410.070

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 430.695  
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1760, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; 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 27-2011, f. & cert. ef. 12-28-11

## 411-340-0100

### Eligibility for Support Service Brokerage Services

(1) NON-DISCRIMINATION. Individuals determined eligible according to OAR 411-340-0100(2) of this rule may not be denied brokerage services or otherwise discriminated against on the basis of age, diagnostic or disability category, race, color, creed, national origin, citizenship, income, or duration of Oregon residence.

(2) ELIGIBILITY. The CDDP of an individual's county of residence may find the individual eligible for a brokerage when:

(a) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP; AND

(b) The individual is an adult living in the individual's own home or family home and not receiving other Department-paid in-home or community living support other than State Medicaid Plan services; AND

(c) The individual is not enrolled in comprehensive services; AND

(d) At the time of initial entry to the brokerage, the individual is not receiving short-term services from the Department because the individual is eligible for, and at imminent risk of, civil commitment under ORS chapter 427.215 through 427.306; AND

(e) The individual or the individual's legal representative has chosen to use a brokerage for assistance with design and management of personal supports; AND

(f) The individual is an adult eligible for enrollment in the Support Services Waiver according to OAR 461-135-0750; OR

(g) The individual turns 18 years old and meets the level of care that qualifies the individual for enrollment to the Support Services Waiver and the individual was enrolled in the Children's Intensive In-home Services (CIIS) Program up to the individual's 18th birthday.

(3) CONCURRENT SERVICES. Individuals are not eligible for service by more than one brokerage unless the concurrent service:

(a) Is necessary to affect transition from one brokerage to another;

(b) Is part of a collaborative plan between the affected brokerages; and

(c) Does not duplicate services and expenditures.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007, 430.610–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1840, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 21-2011(Temp), f. & cert. ef. 8-31-11 thru 12-28-11; SPD 27-2011, f. & cert. ef. 12-28-11

## 411-340-0110

### Standards for Support Service Brokerage Entry and Exit

(1) The brokerage must make accurate, up-to-date information about the brokerage available to individuals referred for services. This information must include:

(a) A declaration of brokerage philosophy;

(b) A brief description of the services provided by the brokerage, including typical timelines for activities;

(c) A description of processes involved in using the services, including application and referral, assessment, planning, and evaluation;

(d) A declaration of brokerage employee responsibilities as mandatory abuse reporters;

(e) A brief description of individual responsibilities for use of public funds;

(f) An explanation of individual rights, including an individual's right to:

(A) Choose a brokerage from among Department contracted brokerages in an individual's county of residence that is serving less than the total number of individuals specified in the brokerage's current contract with the Department;

(B) Choose a personal agent among those available in the selected brokerage;

(C) Select providers among those willing, available, and qualified according to OAR 411-340-0160, OAR 411-340-0170, and OAR 411-340-0180 to provide supports authorized through the ISP;

(D) Direct the services of providers; and

(E) Raise and resolve concerns about brokerage services, including specific rights to notification and hearing for Medicaid recipients according to OAR 411-340-0060(3) when services covered under Medicaid are denied, terminated, suspended, or reduced.

(g) Indication that additional information about the brokerage is available on request. The additional information must include but not be limited to:

(A) A description of the brokerage's organizational structure;

(B) A description of any contractual relationships the brokerage has in place or may establish to accomplish the brokerage functions required by rule; and

(C) A description of the relationship between the brokerage and the brokerage's Policy Oversight Group.

(2) The brokerage must make information required in OAR 411-340-0110(1) of this rule available using language, format, and presentation methods appropriate for effective communication according to individuals' needs and abilities.

(3) ENTRY INTO BROKERAGE SERVICES.

(a) To enter brokerage services:

(A) An individual must be determined by the CDDP to be eligible for brokerage services according to OAR 411-340-0100(2);

(B) The individual or the individual's legal representative must choose to receive services from a selected brokerage; and

(C) The individual must be enrolled in the Support Services Waiver unless eligibility for support services is based upon OAR 411-340-0100(2)(g).

(b) The Department may implement guidelines that govern entries when the Department has determined that such guidelines are prudent and necessary for the continued development and implementation of support services.

(c) The brokerage may not accept individuals for entry beyond the total number of individuals specified in the brokerage's current contract with the Department.

(4) EXIT FROM A BROKERAGE.

(a) An individual must exit a brokerage:

(A) At the written request of the individual or the individual's legal representative to end the service relationship;

(B) No less than 30 days after the brokerage has served written notice of intent to terminate services, when the individual either cannot be located or has not responded to repeated attempts by brokerage staff to complete ISP development and monitoring activities, and does not respond to the notice of intent to terminate;

(C) Whenever the individual's emergent status exceeds 270 consecutive days;

(D) Upon entry into a comprehensive service;

(E) When the individual is incarcerated or in a medical hospital, psychiatric hospital, or convalescent center and it is determined that the individual will not return home, or will not return home after 90 consecutive days;

(F) After no more than 90 consecutive days from the date the individual becomes ineligible for the Support Services Waiver under OAR 461-135-0750, or no more than 30 days from the date the brokerage learns of the individual's loss of eligibility, whichever is later, except as stated in OAR 411-340-0110(4)(a)(A-G) of this section; or

(G) After 10 days when an individual is eligible for support services based on OAR 411-340-0100(2)(g) and:

(i) The individual does not apply for a disability determination and OSIP-M within 10 business days of the individual's 18th birthday; OR

(ii) The Social Security Administration or the Department's Presumptive Medicaid Disability Determination Team finds that an individual does not have a qualifying disability; OR

(iii) The individual is determined by the State of Oregon to be ineligible for OSIP-M.

(b) Any individual being exited from a brokerage shall be given written notice of the intent to terminate service at least 10 days prior to the termination.

(c) An individual who exits support services as a result of the application of OAR 411-340-0110(4)(a)(F) or (G) of this section may not receive continuation of benefits pending a contested case hearing if a hearing is requested to contest the decision to exit from support services.

(d) Each brokerage must have policies and procedures for notifying the CDDP of an individual's county of residence when that individual plans to exit, or exits, brokerage services. Notification method, timelines, and content must be based on agreements between the brokerage and CDDP's of each county in which the brokerage provides services.

Stat. Auth.: ORS 409.050 & 410.070

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 427.005, 427.007, 430.610–430.695  
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1850, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 21-2011(Temp), f. & cert. ef. 8-31-11 thru 12-28-11; SPD 27-2011, f. & cert. ef. 12-28-11

## 411-340-0120

### Support Service Brokerage Services

(1) Each brokerage must provide or arrange for the following services as required to meet individual support needs:

(a) Assistance for individuals to determine needs, plan supports in response to needs, and develop individualized budgets based on available resources;

(b) Assistance for individuals to find and arrange the resources to provide planned supports;

(c) Assistance with development and expansion of community resources required to meet the support needs of individuals served by the brokerage;

(d) Information, education, and technical assistance for individuals to use to make informed decisions about support needs and to direct providers;

(e) Fiscal intermediary services in the receipt and accounting of support services funds on behalf of an individual in addition to making payment to providers with the authorization of the individual;

(f) Employer-related supports; and

(g) Assistance for individuals to effectively put plans into practice, including help to monitor and improve the quality of supports as well as assess and revise plan goals.

(2) SELF-DETERMINATION. Brokerages must apply the principles of self-determination to provision of services required in OAR 411-340-0120(1) of this rule.

(3) PERSON-CENTERED PLANNING. A brokerage must use a person-centered planning approach to assist individuals to establish outcomes, determine needs, plan for supports, and review and redesign support strategies.

(4) HEALTH AND SAFETY ISSUES. The planning process must address basic health and safety needs and supports including but not limited to:

(a) Identification of risks, including risk of serious neglect, intimidation, and exploitation;

(b) Informed decisions by the individual or the individual's legal representative regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(c) Education and support to recognize and report abuse.

### (5) PERSONAL AGENT SERVICES.

#### (a) INITIAL DESIGNATION OF PERSONAL AGENT.

(A) The brokerage must designate a personal agent for individuals newly entered in support services within 10 working days from the date entry becomes known to the brokerage.

(B) In the instance of an individual transferring into a brokerage from another brokerage, the brokerage must designate a personal agent within 10 days of entry to the new brokerage.

(C) The brokerage must send a written notice that includes the name, telephone number, and location of the personal agent or brokerage to the individual and the individual's legal representative within 10 working days from the date entry becomes known to the brokerage.

(D) Prior to implementation of the initial ISP, the brokerage shall ask the individual or the individual's legal representative to identify any family and other advocates to whom the brokerage shall provide the name, telephone number, and location of the personal agent.

(b) CHANGE OF PERSONAL AGENT. Changes of personal agents initiated by the brokerage must be kept to a minimum. If the brokerage must change personal agent assignments, the brokerage must notify the individual, the individual's legal representative, and all current service providers within 10 working days of the change. The notification must be in writing and include the name, telephone number, and address of the new personal agent, if known, or of a contact person at the brokerage.

(6) PARTICIPATION IN PROTECTIVE SERVICES. The brokerage and personal agent must participate in the delivery of protective services, in cooperation with the CDDP, through the completion of activities necessary to address immediate health and safety concerns.

(7) MEDICAID WAIVERS. The brokerage must assure that individuals who become eligible for Medicaid after entry into the brokerage are offered the choice of home and community-based waiver services, provided a notice of fair hearing rights, and have a completed Support Services

Waiver form that is reviewed annually or at any time there is a significant change.

### (8) WRITTEN PLAN REQUIRED.

(a) Unless circumstances allow exception under OAR 411-340-0120(8)(b) of this section, the personal agent must write an ISP dated within 90 days of an individual's entry into brokerage services and at least annually thereafter. The brokerage must provide a written copy of the most current ISP to the individual and the individual's legal representative. The ISP or attached documents must include:

(A) The individual's name;

(B) A description of the supports required, including the reason the support is necessary;

(C) Projected dates of when specific supports are to begin and end;

(D) Projected costs, with sufficient detail to support estimates;

(E) A list of personal, community, and public resources that are available to the individual and how they shall be applied to provide the required supports;

(F) The providers, or when the provider is unknown or is likely to change frequently, the type of provider (i.e. independent provider, provider organization, or general business provider), of supports to be purchased with support services funds;

(G) Schedule of ISP reviews; and

(H) Any revisions to OAR 411-340-0120(8)(a)(A) to (G) of this section that may alter:

(i) The amount of support services funds required;

(ii) The amount of support services required;

(iii) Types of support purchased with support services funds; and

(iv) The type of support provider.

(b) The schedule of the support services ISP, developed in compliance with OAR 411-340-0120(3) of this rule after an individual enters a brokerage, may be adjusted one time for any individual entering a brokerage in certain circumstances. Such an adjustment shall interrupt any plan year in progress and establish a new plan year for the individual beginning on the date the first new ISP is authorized. Circumstances where this adjustment is permitted include:

(A) Brokerages, with the consent of the individual, may designate a new ISP start date.

(i) This adjustment may only occur one time per individual upon ISP renewal.

(ii) The individual's benefit level must be pro-rated based on the shortened plan year in order to not exceed the annual benefit level for which the individual is eligible.

(iii) ISP date adjustments must be clearly documented on the ISP.

(B) Transition of individuals receiving family support services for children with developmental disabilities regulated by OAR chapter 411, division 305, children's intensive in-home services (CIIS) regulated by OAR chapter 411, division 300, or medically fragile children (MFC) services regulated by OAR chapter 411, division 350, when those individuals are 18 years of age. The date of the individual's first new support services ISP after entry to the brokerage may be adjusted to correspond to the expiration date of the individual's Annual Plan of Care in place at the time the individual turns 18 years of age when the Annual Plan of Care, developed while the individual is still receiving family support, CIIS, or MFC services, has been authorized for implementation prior to or upon the individual's entry to the brokerage.

(C) Transition of individuals receiving other Department-paid services who are required by the Department to transition to support services. The date of the individual's first support services ISP may be adjusted to correspond to the expiration date of the individual's plan for services when the plan for services:

(i) Has been developed according to regulations governing Department-paid services the individual receives prior to transition;

(ii) Is current at the time designated by the Department for transition to support services; and

(iii) Is authorized for implementation prior to or upon the individual's entry to the brokerage.

### (9) PROFESSIONAL OR OTHER SERVICE PLANS.

(a) A Nursing Care Plan must be attached to the ISP when support services funds are used to purchase services requiring the education and training of a licensed professional nurse.

(b) A Support Services Brokerage Plan of Care Crisis Addendum, or other document prescribed by the Department for use in these circumstances, must be attached to the ISP when an individual enrolled in a brokerage is in emergent status in a short-term, out-of-home, residential placement as part of the individual's crisis diversion services.



# ADMINISTRATIVE RULES

## (10) ISP AUTHORIZATION.

(a) An initial and annual ISP must be authorized prior to implementation.

(b) A revision to the annual or initial ISP that involves the types of support purchased with support services funds must be authorized prior to implementation.

(c) A revision to the annual or initial ISP that does not involve the types of support purchased with support services funds does not require authorization. Documented verbal agreement to the revision by the individual or the individual's legal representative is required prior to implementation of the revision.

(d) An ISP is authorized when:

(A) The signature of the individual or the individual's legal representative is present on the ISP or documentation is present explaining the reason an individual who does not have a legal representative may be unable to sign the ISP.

(i) Acceptable reasons for an individual without a legal representative not to sign the ISP include physical or behavioral inability to sign the ISP.

(ii) Unavailability of the individual is not an acceptable reason for the individual or the individual's legal representative not to sign the ISP.

(iii) In the case of a revision to the initial or annual ISP that is in response to immediate, unexpected change in circumstance, and is necessary to prevent injury or harm to the individual, documented verbal agreement may substitute for a signature for no more than 10 working days.

(B) The signature of the personal agent involved in the development of, or revision to, the ISP is present on the ISP; and

(C) A designated brokerage representative has reviewed the ISP for compliance with Department rules and policy.

## (11) PERIODIC REVIEW OF PLAN AND RESOURCES.

(a) The personal agent must conduct and document reviews of plans and resources with the individual and the individual's legal representative.

(b) At least annually as part of preparation for a new ISP, the personal agent must:

(A) Evaluate progress toward achieving the purposes of the ISP, assessing and revising goals as needed;

(B) Note effectiveness of the use of support services funds based on personal agent observation as well as individual satisfaction;

(C) Determine whether changing needs or availability of other resources has altered the need for continued use of support services funds to purchase supports; and

(D) Record final support services fund costs.

(12) TRANSITION TO ANOTHER BROKERAGE. At the request of an individual enrolled in brokerage services who has selected another brokerage, the brokerage must collaborate with the receiving brokerage and the CDDP of the individual's county of residence to transition support services.

(a) If the Department has designated and contracted funds solely for the support of the transitioning individual, the brokerage must notify the Department to consider transfer of the funds for the individual to the receiving brokerage.

(b) The ISP in place at the time of request for transfer may remain in effect 90 days after entry to the new brokerage while a new ISP is negotiated and authorized.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1860, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2010(Temp), f. & cert. ef. 11-17-10 thru 5-16-11; SPD 10-2011, f. & cert. ef. 5-5-11; SPD 27-2011, f. & cert. ef. 12-28-11

## 411-340-0125

### Crisis Supports in Support Services

(1) The brokerage must, in conjunction with its Regional Crisis Diversion Program, attempt to provide supports that mediate a crisis risk factor for adults who are:

(a) Entered in support services; and

(b) Determined to be in crisis as described in OAR 411-340-0125(2) of this rule.

(2) CRISIS DETERMINATION. An individual enrolled in support services is eligible for crisis diversion services when:

(a) A brokerage has referred an individual to the Regional Crisis Diversion Program because the brokerage has determined that one or more of the following crisis risk factors, not primarily related to a significant mental or emotional disorder or substance abuse, are present and for which no appropriate alternative resources are available:

(A) An individual is not receiving necessary supports to address life-threatening safety skill deficits;

(B) An individual is not receiving necessary supports to address life-threatening issues resulting from behavioral or medical conditions;

(C) An individual currently engages in self-injurious behavior serious enough to cause injury that requires professional medical attention;

(D) An individual undergoes, or is at imminent risk of undergoing, loss of caregiver due to caregiver inability to provide supports;

(E) An individual experiences a loss of home due to a protective service action; or

(F) An individual is not receiving the necessary supports to address significant safety risks to others, including but not limited to:

(i) A pattern of physical aggression serious enough to cause injury;

(ii) Fire-setting behaviors; or

(iii) Sexually aggressive behaviors or a pattern of sexually inappropriate behaviors.

(b) The Regional Crisis Diversion Program has determined crisis eligibility according to OAR 411-320-0160.

(c) The individual's ISP has been revised to address the identified crisis risk factors and the revisions:

(A) May resolve the crisis; and

(B) May not contribute to new or additional crisis risk factors.

## (3) CRISIS SUPPORTS.

(a) An ISP for an individual in emergent status may authorize short-term, out-of-home, residential placement. Residential placement does not exit an individual from support services.

(b) The individual's personal agent must:

(A) Participate with the Regional Crisis Diversion Program staff in efforts to stabilize supports and return costs to the individual's benefit level;

(B) Assist with the identification of qualified providers who may be paid in whole or in part using crisis diversion funding except in the case of short-term, out-of-home, residential placements with a licensed or certified provider;

(C) Complete and coordinate the Support Services Brokerage Plan of Care Crisis Addendum when an individual in emergent status requires a short-term, out-of-home, residential placement; and

(D) Monitor the delivery of supports provided, including those provided through crisis funding.

(i) Monitoring is done through contact with the individual, any service providers, and the individual's family.

(ii) Monitoring is done to collect information regarding supports provided and progress toward outcomes that are identified as necessary to resolve the crisis.

(iii) The personal agent must document the information described in OAR 411-340-0125(3)(b)(D)(ii) of this section in the individual's case file and report to the Regional Crisis Diversion Program or CDDP as required.

(c) Support services provided during emergent status are subject to all requirements of this rule.

(d) All supports authorized in an ISP continue during the crisis unless prohibited by other rule, policy, or the supports contribute to new or additional crisis risk factors.

(4) TRANSITION TO COMPREHENSIVE SERVICES. When an individual eligible for crisis supports may have long-term support needs that may not be met through support services:

(a) The brokerage must immediately notify the CDDP of the individual's county of residence;

(b) The brokerage must coordinate with the CDDP and the Regional Crisis Diversion Program to facilitate a timely exit from support services and entry into appropriate, alternative services; and

(c) The brokerage must assure that information required for a potential provider of comprehensive services is available as needed for a referral to be made.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

Hist.: SPD 27-2011, f. & cert. ef. 12-28-11

## 411-340-0130

### Using Support Services Funds to Purchase Supports

(1) A brokerage may use support services funds to assist individuals to purchase supports in accordance with an ISP when:

(a) Supports are necessary for an individual to live in the individual's own home or in the family home;

(b) Cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual are specified in the ISP;

## ADMINISTRATIVE RULES

(A) Support services funds are not intended to replace the resources available to an individual from their natural support system. Support services funds may be authorized only when the natural support system is unavailable, insufficient, or inadequate to meet the needs of the individual.

(B) Support services funds are not available when an individual's support needs may be met by alternative resources. Support services funds may be authorized only when alternative resources are unavailable, insufficient, or inadequate to meet the needs of the individual.

(c) An individual is receiving crisis diversion services according to OAR 411-320-0160 and:

(A) Crisis diversion services allowed by OAR 411-320-0160 do not provide the necessary support;

(B) The support was identified as necessary prior to the onset of the crisis;

(C) Support services funds are not expended to such an extent that the support services funds that may be required to purchase the remainder of necessary supports following the termination of crisis diversion services shall be unavailable; and

(D) Support services funds are used for no more than 90 days following the determination that the individual shall enter a comprehensive service.

(d) The ISP projects the amount of support services funds, if any, that may be required to purchase the remainder of necessary supports that are within the benefit level; and

(e) The ISP has been authorized for implementation.

(2) Goods and services purchased with support services funds on behalf of individuals are provided only as social benefits.

(3) **LIMITS OF FINANCIAL ASSISTANCE.** The use of support services funds to purchase individual supports in any plan year is limited to the individual's annual benefit level.

(a) Individuals must have access throughout the plan year to the total annual amount of support services funds for which they are eligible that are determined to be necessary to implement an authorized ISP, even if there is a delay in implementation of the ISP, unless otherwise agreed to in writing by the individual or the individual's legal representative.

(b) The Department may require that annual benefit level amounts be calculated and applied on a monthly basis when an individual's eligibility for Medicaid changes during a plan year, an individual's benefit level changes, or when an individual's ISP is developed and written to be in effect for less than 12 months.

(A) Except in the case of an individual whose benefit level changes as the result of a change in eligibility for the Support Services Waiver, when an individual's benefit level changes, the monthly benefit level shall be 1/12 of the annual benefit level for which the individual would be eligible should the change in benefit level remain in effect for 12 calendar months. The monthly benefit level shall be applied each month for the remainder of the plan year in which the individual's change in benefit level occurred, from the date the change occurred.

(B) In the case of an individual with an ISP developed for a partial plan year, the monthly benefit level shall be 1/12 of the annual benefit level for which the individual would be eligible should the individual's ISP be in effect for 12 calendar months. The monthly benefit level shall be applied each month during which the ISP of less than 12 months' duration is in effect.

(c) Estimates of the cost for each unique support service purchased with support services funds must be based on the Department's Support Services Rate Ranges for costs of frequently used services.

(A) Notwithstanding the Department's Support Services Rate Ranges, final costs for any support service purchased with support services funds may not exceed local usual and customary charges for these services as evidenced by the brokerage's own documentation.

(B) The brokerage must establish a process for review and approval of all cost estimates exceeding the Department's Support Services Rate Ranges and must monitor the authorized ISP involved for continued cost effectiveness.

(4) **EXCEPTIONS TO BASIC BENEFIT FINANCIAL LIMITS.** Exceptions to the basic benefit annual support services fund limit may be only as follows.

(a) Individuals with extraordinary long-term need as demonstrated by a score of 60 or greater on the Basic Supplement Criteria Inventory (Form DHS 0203) may have access to a basic supplement in order to purchase necessary supports.

(A) For Medicaid recipients choosing services under the Support Services Waiver, the basic supplement must result in a plan year cost that is not greater than the individual cost limit.

(B) The brokerage director, or a designee from brokerage management and administration, must administer the Basic Supplement Criteria Inventory only after receiving Department-approved training. The brokerage director or designee must score basic supplement criteria according to written and verbal instruction received from the Department.

(C) The trained brokerage director or a designee from a brokerage's management or administration must administer the Basic Supplement Criteria Inventory within 30 calendar days of the documented request of the individual or the individual's legal representative.

(D) The brokerage director or designee must send written notice of findings regarding eligibility for a basic supplement to the individual and the individual's legal representative within 45 calendar days of the documented request for a basic supplement. This written notice must include:

(i) An offer for the individual and the individual's legal representative to discuss the findings in person with the director and with the individual's personal agent in attendance if desired;

(ii) A notice of the complaint process under OAR 411-340-0060; and  
(iii) A notice of planned action.

(E) Annual ISP reviews for recipients of the basic supplement must include a review of circumstances and resources to confirm continued need according to the instructions included with the Basic Supplement Criteria Inventory.

(F) The basic supplement must be used to address the conditions and caregiver circumstances identified in the Basic Supplement Criteria Inventory as contributing to the extraordinary long-term need.

(b) An individual in emergent status may receive crisis diversion services that may cause an individual's benefit level to be exceeded.

(A) Use of crisis diversion services and length of emergent status may be authorized only by the CDDP of the individual's county of residence, or the Regional Crisis Diversion Program responsible for the individual's county of residence, depending on the source of the funds for crisis diversion services.

(B) Funds associated with crisis diversion services may be used to pay the difference in cost between the authorized ISP and the supports authorized by either the CDDP of the individual's county of residence or the Regional Crisis Diversion Program responsible for crisis diversion services in the individual's county of residence, depending on the source of crisis diversion services funds required to meet the short-term need.

(C) Although costs for crisis diversion services may bring the individual's total plan year cost temporarily above the individual cost limit, the individual's costs may not exceed the cost of the state's current ICF/MR daily cost per individual nor shall plan year expenses at or above the individual cost limit make the individual eligible for comprehensive services.

(D) Individuals placed in emergent status due to receiving crisis diversion services authorized and provided according to OAR 411-320-0160 may remain enrolled in, and receive support services from, the brokerage while both crisis diversion services and support services are required to stabilize and maintain the individual at home or in the family home..

(c) Individuals whose source of support funds are, in whole or in part, an individual-specific redirection of funds through a Department contract from a Department-regulated residential, work, or day habilitation service to support services funds, or to comprehensive in-home support funds regulated by OAR chapter 411, division 330 prior to entry to a brokerage, may have access to the amount specified in the Department contract as available for the individual's use. This provision is only applicable when each transition is separate and specific to the individual and the services being converted are not subject to statewide service transitions.

(A) Individual plan year costs must always be less than the individual cost limit; and

(B) The brokerage must review the need for supports and their cost-effectiveness with the individual and the individual's legal representative at least annually and must make budget reductions when allowed by the ISP.

(d) Individuals whose support funds were specifically assigned through a Department contract to self-directed support services prior to the date designated by the Department for transfer of the individual from self-directed support services to a brokerage may have access to the amount specified in the Department contract as available for the individual's use.

(A) Individual plan year costs must always be less than the individual cost limit; and

(B) The brokerage must review the need for supports and their cost-effectiveness with the individual and the individual's legal representative at least annually and must make budget reductions when allowed by the ISP.

(e) Individuals transferring from the Department's Home and Community-Based Waiver Services for the Aged and Adults with Physical Disabilities who have been determined ineligible for those waiver service

## ADMINISTRATIVE RULES

funds in accordance with OAR 411-015-0015(4)(c), shall have limited access to support services funds as described in these rules. The amount of support services funds available shall be equal to the Department's previous service costs for the individual for no more than 365 calendar days. The 365 calendar days begins the date the individual starts receiving support services exclusively through a brokerage.

(f) For Medicaid recipients eligible for and choosing services under the Support Services Waiver, individuals may have access to a basic supplement for ADLs to purchase needed support services under the following conditions:

(A) The individual must have additional assistance needs with ADLs after development of their ISP within the basic benefit, extraordinary long-term need fund limit, or other exceptions provided in this rule. ADLs include:

(i) Basic personal hygiene -- providing or assisting an individual with such needs as bathing (tub, bed bath, shower), washing hair, grooming, shaving, nail care, foot care, dressing, skin care, mouth care, and oral hygiene;

(ii) Toileting, bowel, and bladder care -- assisting to and from bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, cleansing the individual or adjusting clothing related to toileting, emptying catheter drainage bag or assistive device, ostomy care, or bowel care;

(iii) Mobility, transfers, and repositioning -- assisting the individual with ambulation or transfers with or without assistive devices, turning the individual or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

(iv) Nutrition -- preparing meals and special diets, assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with special utensils, cutting food, and placing food, dishes, and utensils within reach for eating;

(v) Medication and oxygen management -- assisting with ordering, organizing, and administering oxygen or prescribed medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring for choking while taking medications, assisting with the administration of oxygen, maintaining clean oxygen equipment, and monitoring for adequate oxygen supply; and

(vi) Delegated nursing tasks.

(B) Assistance means the individual requires help from another person with ADLs. Assistance may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may also require verbal reminding to complete one of the tasks described in OAR 411-340-0130(4)(f)(A) of this section.

(i) "Cueing" means giving verbal or visual clues during the activity to help the individual complete activities without hands-on assistance.

(ii) "Hands-on" means a provider physically performs all or parts of an activity because the individual is unable to do so.

(iii) "Monitoring" means a provider observes the individual to determine if intervention is needed.

(iv) "Reassurance" means to offer encouragement and support.

(v) "Redirection" means to divert the individual to another more appropriate activity.

(vi) "Set-up" means getting personal effects, supplies, or equipment ready so that an individual may perform an activity.

(vii) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task should the individual be unable to complete the task independently.

(C) The supplement for ADLs must be used to meet identified support needs related to ADLs. The supplement for ADLs may also be used for the following services if they are incidental to the provision of ADLs, essential for the health and welfare of the individual, and provided solely for the individual receiving support services:

(i) Housekeeping tasks necessary to maintain the eligible individual in a healthy and safe environment, including cleaning surfaces and floors, making the individual's bed, cleaning dishes, taking out the garbage, dusting, and gathering and washing soiled clothing and linens. Only the housekeeping activities related to the eligible individual's needs may be considered in housekeeping;

(ii) Arranging for necessary medical appointments including help scheduling appointments and arranging medical transportation services, assistance with mobility, and transfers or cognition in getting to and from appointments;

(iii) Observation of an individual's status and reporting of significant changes to physicians, health care professionals, or other appropriate persons;

(iv) First aid and handling emergencies, including responding to medical incidents related to conditions such as seizures, spasms, or uncontrollable movements where assistance is needed by another person, or responding to an individual's call for help during an emergent situation or for unscheduled needs requiring immediate response; and

(v) Cognitive assistance or emotional support provided to an individual by another person due to developmental disability. This support includes helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive symptoms.

(D) The supplement for ADL support may not be used for any of the following services:

(i) Shopping;

(ii) Transportation;

(iii) Money management;

(iv) Mileage reimbursement;

(v) Social companionship; or

(vi) Respite

(E) Activities and goals related to the provision of ADL services must be sufficiently documented in the individual's ISP.

(F) Planned expenses must be based upon the least costly means of providing adequate services and must only be to the extent necessary to meet the documented ADL needs.

(G) The supplement for ADLs may not cause the cost per any plan year to exceed the individual cost limit. There is an exception for individuals receiving both support services under these rules who had a benefit level at the individual cost limit and state plan personal care services under OAR chapter 411, division 034, as of June 30, 2005. These individuals may continue to access the basic supplement and the supplement for ADLs until the individual terminates their receipt of support services or becomes ineligible for one of the supplements. The combined basic benefit, the basic supplement, and supplement for ADLs must remain above the individual cost limit to remain eligible for this exception.

(H) For Medicaid recipients receiving state plan personal care services under OAR chapter 411, division 034 entering support services after June 30, 2005, the Medicaid Personal Care Assessment (Form SDS 0531A) shall serve as the individual's authorized ISP for a period not to exceed 90 days.

(I) The supplemental ADL services are not intended to replace the resources available to an individual receiving support services under these rules from their natural support system of relatives, friends, neighbors, or other available sources of support.

(5) AMOUNT, METHOD, AND SCHEDULE OF PAYMENT.

(a) The brokerage must disburse, or arrange for disbursement of, support services funds to qualified providers on behalf of individuals up to the amount agreed upon in an authorized ISP. The brokerage is specifically prohibited from reimbursement of individuals or individuals' families for expenses related to services and from advancing funds to individuals or individuals' families to obtain services.

(b) The method and schedule of payment must be specified in written agreements between the brokerage and the individual or the individual's legal representative.

(6) TYPES OF SUPPORTS PURCHASED. Supports eligible for purchase with support services funds are:

(a) Chore services. Chore services may be provided only in situations where no one else in the household is capable of either performing or paying for the services and no other relative, caregiver, landlord, community, volunteer agency, or third-party payer is capable of or responsible for providing these services;

(b) Community living and inclusion supports;

(c) Environmental accessibility adaptation;

(d) Family training;

(A) Family training must be provided:

(i) By licensed psychologists, medical professionals, clinical social workers, or counselors as described in OAR 411-340-0160(9); or

(ii) In organized conferences and workshops that are limited to topics related to the individual's developmental disability, identified support needs, or specialized medical or rehabilitative support needs.

(B) Family training may not be provided to paid caregivers.

(e) Homemaker services. Homemaker services may be provided only when the person regularly responsible for general housekeeping activities as well as caring for an individual in the home is temporarily absent, tem-

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porarily unable to manage the home as well as care for self or the individual in the home, or needs to devote additional time to caring for the individual;

- (f) Occupational therapy services;
- (g) Personal emergency response systems;
- (h) Physical therapy services;
- (i) Respite;

(A) Respite may be provided in the individual's or respite provider's home, a foster home, a group home, a licensed day care center, or a community care facility that is not a private residence.

(B) Respite includes two types of care, neither of which may be characterized as eight-hours-a-day, five-days-a-week services or provided to allow caregivers to attend school or work.

(i) Temporary respite must be provided on less than a 24-hour basis.

(ii) Twenty-four hour overnight care must be provided in segments of 24-hour units that may be sequential but may not exceed 14 consecutive days without permission from the Department.

(j) Special diets. Special diets may not provide or replace the nutritional equivalent of meals and snacks normally required regardless of developmental disability.

(k) Specialized medical equipment and supplies as well as the following provisions:

(A) When specialized medical equipment and supplies are primarily and customarily used to serve a medical purpose, the purchase, rental, or repair of specialized medical equipment and supplies with support services funds must be limited to the types of equipment and supplies permitted under the State Medicaid Plan and specifically those that are not excluded under OAR 410-122-0080.

(B) Support services funds may be used to purchase more of an item than the number allowed under the State Medicaid Plan after the limits specified in the State Medicaid Plan have been reached, requests for purchases have been denied by the State Medicaid Plan or private insurance, and the denial has been upheld in an applicable hearing or private insurance benefit appeals process.

(C) Devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the individual's abilities to perform ADLs or to perceive, control, or communicate with the environment in which the individual lives, may be purchased with support services funds when the individual's developmental disability otherwise prevents or limits the individual's independence in these areas. Equipment and supplies that may be purchased for this purpose must be of direct benefit to the individual and include:

(i) Adaptive equipment for eating, (i.e., utensils, trays, cups, bowls that are specially designed to assist an individual to feed him or herself);

(ii) Positioning devices;

(iii) Specially designed clothes to meet the unique needs of the individual, (e.g., clothes designed to prevent access by the individual to the stoma, etc.);

(iv) Assistive technology items;

(v) Computer software used by the individual to express needs, control supports, plan, and budget supports;

(vi) Augmentative communication devices;

(vii) Environmental adaptations to control lights, heat, stove, etc.; or

(viii) Sensory stimulation equipment and supplies that help an individual calm, provide appropriate activity, or safely channel an obsession (e.g., vestibular swing, weighted blanket, tactile supplies like creams and lotions);

(l) Specialized supports;

(m) Speech and language therapy services;

(n) Supported employment; and

(o) Transportation.

(7) **CONDITIONS OF PURCHASE.** The brokerage must arrange for supports purchased with support services funds to be provided:

(a) In settings and under contractual conditions that allow the individual to freely redirect support services funds to purchase supports and services from another qualified provider;

(A) Individuals who choose to combine support services funds to purchase group services must receive written instruction from the brokerage about the limits and conditions of such arrangements;

(B) Combined support services funds cannot be used to purchase existing, or create new, comprehensive services;

(C) Individual support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements, and timekeeping for staff working with more than one individual;

(D) A provider organization resulting from the combined arrangements for community living and inclusion supports or supported employment services must be certified according to these rules; and

(E) Combined arrangements for residential supports must include a plan for maintaining an individual at home after the loss of roommates.

(b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the individual or others;

(B) Is likely to continue and become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal services, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental accessibility adaptations to the home;

(e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks;

(f) In accordance with OAR 411-340-0160 through 411-340-0180 governing provider qualifications and responsibilities; and

(g) In accordance with the Department's Support Services Expenditure Guidelines.

(8) **INDEPENDENT PROVIDER, PROVIDER ORGANIZATION, AND GENERAL BUSINESS PROVIDER AGREEMENTS AND RESPONSIBILITIES.** When support services funds are used to purchase services, training, supervision, or other personal assistance for individuals, the brokerage must require and document that providers are informed of:

(a) Mandatory reporter responsibility to report suspected abuse;

(b) Responsibility to immediately notify the person or persons, if any, specified by the individual or the individual's legal representative of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(c) Limits of payment:

(A) Support services fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the individual's family, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program; and

(B) The provider must bill all third party resources before using support services funds unless another arrangement is agreed upon by the brokerage and described in the ISP.

(d) The provisions of OAR 411-340-0130(9) of this rule regarding sanctions that may be imposed on providers; and

(e) The requirement to maintain a drug-free workplace.

(9) **SANCTIONS FOR INDEPENDENT PROVIDERS, PROVIDER ORGANIZATIONS, AND GENERAL BUSINESS PROVIDERS.**

(a) A sanction may be imposed on a provider when the brokerage determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with support services funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Surrendered his or her professional license or had his or her professional license suspended, revoked, or otherwise limited;

(D) Failed to safely and adequately provide the authorized services;

(E) Had a founded report of child abuse or substantiated abuse;

(F) Failed to cooperate with any Department or brokerage investigation or grant access to or furnish, as requested, records or documentation;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Failed to comply with the provisions of OAR 411-340-0130(8) of this rule or OAR 411-340-0140; or

(K) Been suspended or terminated as a provider by another division within the Department or Oregon Health Authority.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with support services funds;

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(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the brokerage or the Department, as applicable; or

(C) The brokerage may withhold payments to the provider.

(c) If the brokerage makes a decision to sanction a provider, the brokerage must notify the provider by mail of the intent to sanction.

(d) The provider may appeal a sanction within 30 days of the date the sanction notice was mailed to the provider. The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(A) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Department's Administrator.

(B) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 days of the date the sanction notice was mailed to the provider.

(e) At the discretion of the Department, providers who have previously been terminated or suspended by any Department division or by the Oregon Health Authority may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1870, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 10-2004(Temp), f. & cert. ef. 4-30-04 thru 10-25-04; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; 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 27-2011, f. & cert. ef. 12-28-11

## 411-340-0140

### Using Support Services Funds for Certain Purchases Is Prohibited

(1) Effective July 28, 2009, support services funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(2) OAR 411-340-0140(1) of this rule does not apply to employees of individuals, individual's legal representatives, employees of general business providers, or employees of provider organizations who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(3) Support services funds may not be used to pay for:

(a) Services, materials, or activities that are illegal;

(b) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 407-045-0260;

(c) Materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies;

(d) Individual or family vehicles;

(e) Health and medical costs that the general public normally must pay including:

(A) Medications;

(B) Health insurance co-payments;

(C) Dental treatments and appliances;

(D) Medical treatments;

(E) Dietary supplements including but not limited to vitamins and experimental herbal and dietary treatments; or

(F) Treatment supplies not related to nutrition, incontinence, or infection control.

(f) Ambulance services;

(g) Legal fees;

(h) Vacation costs for transportation, food, shelter, and entertainment that would normally be incurred by anyone on vacation, regardless of developmental disability, and are not strictly required by the individual's need for personal assistance in all home and community settings;

(i) Individual services, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(j) Services, activities, materials, or equipment that are not necessary, cost-effective, or do not meet the definition of support or social benefits as defined in OAR 411-340-0020;

(k) Educational services for school-age individuals over the age 18, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills, and post-secondary educational services such as those provided through two- or four-year colleges for individuals of all ages;

(l) Services provided in a nursing facility, correctional institution, or hospital;

(m) Services, activities, materials, or equipment that may be obtained by the individual or family through alternative resources or natural supports;

(n) Unless under certain conditions and limits specified in Department guidelines, employee wages or contractor charges for time or services when the individual is not present or available to receive services including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(o) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds; or

(p) Notwithstanding abuse as defined in OAR 407-045-0260, services when there is sufficient evidence to believe that the individual or the individual's legal representative has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to accept or delegate record keeping required to use brokerage resources, or otherwise knowingly misused public funds associated with brokerage services.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1880, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 27-2011, f. & cert. ef. 12-28-11

## 411-340-0150

### Standards for Support Services Brokerage Administration and Operations

(1) POLICY OVERSIGHT GROUP. The brokerage must develop and implement procedures for incorporating the direction, guidance, and advice of individuals and family members of individuals in the administration of the organization.

(a) The brokerage must establish and utilize a Policy Oversight Group, of which the membership majority must be individuals with developmental disabilities and family members of individuals with developmental disabilities.

(b) Brokerage procedures must be developed and implemented to assure the Policy Oversight Group has the maximum authority that may be legally assigned or delegated over important program operational decisions, including such areas as program policy development, program planning and goal setting, budgeting and resource allocation, selection of key personnel, program evaluation and quality assurance, and complaint resolution.

(c) If the Policy Oversight Group is not also the governing body of the brokerage, then the brokerage must develop and implement a written procedure that describes specific steps of appeal or remediation to resolve conflicts between the Policy Oversight Group and the governing body of the brokerage.

(d) A Policy Oversight Group must develop and implement operating policies and procedures.

(2) FULL-TIME BROKERAGE DIRECTOR REQUIRED. The brokerage must employ a full-time director who is responsible for daily brokerage operations in compliance with these rules and has authority to make budget, staffing, policy, and procedural decisions for the brokerage.

(3) DIRECTOR QUALIFICATIONS. In addition to the general staff qualifications of OAR 411-340-0070(1) through (2), the brokerage director must have:

(a) A minimum of a bachelor's degree and two years experience, including supervision, in developmental disabilities, social services, mental health, or a related field; or

(b) Six years of experience, including supervision, in the field of developmental disabilities, social services, or mental health.

(4) FISCAL INTERMEDIARY REQUIREMENTS.

(a) A fiscal intermediary must:

(A) Demonstrate a practical understanding of laws, rules, and conditions that accompany the use of public resources;

(B) Develop and implement accounting systems that operate effectively on a large scale as well as track individual budgets;

(C) Establish and meet the time lines for payments that meet individuals' needs;

(D) Develop and implement an effective payroll system, including meeting payroll-related tax obligations;

(E) Generate service, management, and statistical information and reports required by the brokerage director and Policy Oversight Group to effectively manage the brokerage and by individuals to effectively manage supports;

(F) Maintain flexibility to adapt to changing circumstances of individuals; and

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(G) Provide training and technical assistance to individuals as required and specified in ISPs.

(b) A fiscal intermediary may not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline those employed to provide services described in an authorized ISP.

(c) Fiscal intermediary qualifications.

(A) A fiscal intermediary may not:

(i) Be a provider of support services paid using support funds; or

(ii) Be a family member or other representative of an individual for whom they provide fiscal intermediary services.

(B) The brokerage must obtain and maintain written evidence that:

(i) Contractors providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities; and

(ii) Employees providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities prior to hire or that the brokerage has provided requisite education, training, and experience.

(5) PERSONAL AGENT QUALIFICATIONS.

(a) Each personal agent must have:

(A) An undergraduate degree in a human services field and at least one year experience in the area of developmental disabilities; or

(B) Five years of equivalent training and work experience related to developmental disabilities; and

(C) Knowledge of the public service system for developmental disability services in Oregon.

(b) A brokerage must submit a written variance request to the Department prior to employment of a person not meeting the minimum qualifications for a personal agent set forth in OAR 411-340-0150(5)(a) of this section. The variance request must include:

(A) An acceptable rationale for the need to employ a person who does not meet the qualifications; and

(B) A proposed alternative plan for education and training to correct the deficiencies. The proposal must specify activities, timelines, and responsibility for costs incurred in completing the plan. A person who fails to complete a plan for education and training to correct deficiencies may not fulfill the requirements for the qualifications.

(6) PERSONAL AGENT TRAINING. The brokerage must provide or arrange for personal agents to receive training needed to provide or arrange for brokerage services, including but not limited to:

(a) Principles of self-determination;

(b) Person-centered planning processes;

(c) Identification and use of alternative support resources;

(d) Fiscal intermediary services;

(e) Basic employer and employee roles and responsibilities;

(f) Developing new resources;

(g) Major public health and welfare benefits;

(h) Constructing and adjusting individualized support budgets; and

(i) Assisting individuals to judge and improve quality of personal supports.

(7) INDIVIDUAL RECORD REQUIREMENTS. The brokerage must maintain current, up-to-date records for each individual served and must make these records available to the Department upon request. Individual records must include at minimum:

(a) Application and eligibility information received from the referring CDDP.

(b) An easily-accessed summary of basic information, including the individual's name, family name (if applicable), individual's legal representative (if applicable), address, telephone number, date of entry into the program, date of birth, sex, marital status, individual financial resource information, and plan year anniversary date.

(c) Documents related to determining eligibility for brokerage services and the amount of support services funds available to the individual, including basic supplement criteria if applicable.

(d) Records related to receipt and disbursement of funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, and verification that providers meet the requirements of OAR 411-340-0160 through 411-340-0180.

(e) Documentation, signed by the individual or the individual's legal representative, that the individual or the individual's legal representative has been informed of responsibilities associated with the use of support services funds.

(f) Incident reports.

(g) Assessments used to determine supports required, preferences, and resources.

(h) ISP and reviews. If the individual is unable to sign the ISP, the individual record must document that the individual was informed of the contents of the ISP and that the individual's agreement to the ISP was obtained to the extent possible.

(i) Names of those who participated in the development of the ISP. If the individual was not able to participate in the development of the ISP, the individual record must document the reason.

(j) Written service agreements. A written service agreement must be consistent with the individual's ISP and must describe at minimum:

(A) Type of service to be provided;

(B) Hours, rates, location of services, and expected outcomes of services; and

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for the individual's own safety and is missing while in the community under the service of the contractor or provider organization.

(k) A written job description for all services to be delivered by an employee of the individual or the individual's legal representative. The written job description must be consistent with the individual's ISP and must describe at minimum:

(A) Type of service to be provided;

(B) Hours, rates, location, duration of services, and expected outcomes of services; and

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for the individual's own safety and is missing while in the community under the service of the employee of the individual.

(l) Personal agent correspondence and notes related to resource development and plan outcomes.

(m) Progress notes. Progress notes must include documentation of the delivery of service by a personal agent to support each case service provided. Progress notes must be recorded chronologically and documented consistent with brokerage policies and procedures. All late entries must be appropriately documented. Progress notes must at a minimum include:

(A) The month, day, and year the services were rendered and the month, day, and year the entry was made if different from the date service was rendered;

(B) The name of the person receiving service;

(C) The name of the brokerage, the person providing the service (i.e., the personal agent's signature and title), and the date the entry was recorded and signed;

(D) The specific services provided and actions taken or planned, if any;

(E) Place of service. Place of service means the name of the brokerage and where the brokerage is located, including the address. The place of service may be a standard heading on each page of the progress notes; and

(F) The names of other participants (including titles and agency representation, if any) in notes pertaining to meetings with or discussions about the individual.

(n) Information about individual satisfaction with personal supports and the brokerage services.

(8) SPECIAL RECORD REQUIREMENTS FOR SUPPORT SERVICES FUND EXPENDITURES.

(a) The brokerage must develop and implement written policies and procedures concerning use of support services funds. These policies and procedures must include but may not be limited to:

(A) Minimum acceptable records of expenditures:

(i) Itemized invoices and receipts to record purchase of any single item;

(ii) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

(iii) Itemized invoices for any services purchased from independent contractors, provider organizations, and professionals. Itemized invoices must include:

(I) The name of the individual to whom services were provided;

(II) The date of the services; and

(III) A description of the services.

(iv) Pay records, including timesheets signed by both employee and employer, to record employee services; and

(v) Documentation that services provided were consistent with the authorized ISP.

(B) Procedures for confirming the receipt, and securing the use of, specialized medical equipment and environmental accessibility adaptations.

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(i) When equipment is obtained for the exclusive use of an individual, the brokerage must record the purpose, final cost, and date of receipt.

(ii) The brokerage must secure use of equipment or furnishings costing more than \$500 through a written agreement between the brokerage and the individual or the individual's legal representative that specifies the time period the item is to be available to the individual and the responsibilities of all parties should the item be lost, damaged, or sold within that time period.

(iii) The brokerage must ensure that projects for environmental accessibility adaptations involving renovation or new construction in an individual's home costing \$5,000 or more per single instance or cumulatively over several modifications:

(I) Are approved by the Department before work begins and before final payment is made;

(II) Are completed or supervised by a contractor licensed and bonded in Oregon; and

(III) That steps are taken as prescribed by the Department for protection of the Department's interest through liens or other legally available means.

(iv) The brokerage must obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to that structure.

(b) Any goods purchased with support services funds that are not used according to an ISP or according to an agreement securing the state's use may be immediately recovered. Failure to furnish written documentation upon written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit, Centers for Medicare and Medicaid Services, or their authorized representatives immediately or within timeframes specified in the written request may be deemed reason to recover payments or deny further assistance.

## (9) QUALITY ASSURANCE.

(a) The Policy Oversight Group must develop a Quality Assurance Plan and review this plan at least twice a year. The Quality Assurance Plan must include a written statement of values, organizational outcomes, activities, and measures of progress that:

(A) Uses information from a broad range of consumer, advocate, professional, and other sources to determine community support needs and preferences;

(B) Involves individuals in ongoing evaluation of the quality of their personal supports; and

### (C) Monitors:

(i) Customer satisfaction with the services of the brokerage and with individual plans in areas such as individual access to supports, sustaining important personal relationships, flexible and unique support strategies, individual choice and control over supports, responsiveness of the brokerage to changing needs, and preferences of individuals; and

(ii) Service outcomes in areas such as achievement of personal goals and effective use of resources.

(b) The brokerage must participate in statewide evaluation, quality assurance, and regulation activities as directed by the Department.

## (10) BROKERAGE REFERRAL TO AFFILIATED ENTITIES.

(a) When a brokerage is part of, or otherwise directly affiliated with, an entity that also provides services which an individual may purchase using private or support services funds, brokerage staff may not refer, recommend, or otherwise encourage the individual to utilize this entity to provide services unless:

(A) The brokerage conducts a review of provider options that demonstrates that the entity's services shall be cost-effective and best-suited to provide those services determined by the individual to be the most effective and desirable for meeting needs and circumstances represented in the ISP; and

(B) The entity is freely selected by the individual and is the clear choice by the individual among all available alternatives.

(b) The brokerage must develop and implement a policy that addresses individual selection of an entity of which the brokerage is a part or otherwise directly affiliated to provide services purchased with private or support services funds. This policy must address, at minimum:

(A) Disclosure of the relationship between the brokerage and the potential provider;

(B) Provision of information about all other potential providers to the individual without bias;

(C) A process for arriving at the option for selecting the provider;

(D) Verification of the fact that the providers were freely chosen among all alternatives;

(E) Collection and review of data on services, purchased by an individual enrolled in the brokerage, by an entity of which the brokerage is a part or otherwise directly affiliated; and

(F) Training of personal agents and individuals in issues related to selection of providers.

(11) GENERAL OPERATING POLICIES AND PRACTICES. The brokerage must develop and implement such written statements of policy and procedure in addition to those specifically required by this rule as are necessary and useful to enable the brokerage to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007, 430.610–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1890, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 27-2011, f. & cert. ef. 12-28-11

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**Rule Caption:** Community Developmental Disability Program Review.

**Adm. Order No.:** SPD 28-2011

**Filed with Sec. of State:** 12-28-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 411-320-0190

**Subject:** The Department of Human Services (Department) is amending OAR 411-320-0190 to clarify existing practice by removing the language relating to the Department's issuance of a certificate of compliance to Community Developmental Disability Programs (CDDPs). The Department has never issued certificates of compliance to CDDPs. The Department does issue a report to the CDDP that identifies areas of compliance and areas in need of improvement but the report is not considered a certificate.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-320-0190

### Program Review and Certification

(1) The Department may review the CDDP implementation of these rules as provided in OAR 411-320-0180 at least every five years or more frequently as needed to ensure compliance.

(2) Following a Department review, the Department shall issue a report to the CDDP identifying areas of compliance and areas in need of improvement.

(3) If, following a review, the CDDP or case management provider is not in substantial compliance with these rules, the Department may offer technical assistance or request a plan of improvement. The CDDP must perform the necessary improvement measures required by and in the time specified by the Department. The Department may conduct additional reviews as necessary to ensure improvement measures have been achieved.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610–430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 28-2011, f. 12-28-11, cert. ef. 1-1-12

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**Rule Caption:** AFH-DD: Notice of Exit or Transfer.

**Adm. Order No.:** SPD 29-2011(Temp)

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 12-30-11 thru 5-29-12

**Notice Publication Date:**

**Rules Amended:** 411-360-0170, 411-360-0190

**Rules Suspended:** 411-360-0170(T), 411-360-0190(T)

**Subject:** On December 1, 2011, the Department of Human Services (Department) temporarily amended OAR 411-360-0170 and 411-360-0190 to clarify the transfer and exit standards for adult foster homes for individuals with developmental disabilities (AFH-DD) by removing reference to the transfer standards for nursing facilities. Upon further review, it has been determined that reference to the transfer standards for nursing facilities is appropriate as required by ORS 443.738(1)(c).

Through this amended temporary rule, the Department is reestablishing AFH-DD transfer and exit standards by referencing the transfer standards applicable to nursing facilities. It is the Department's

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intent that this amended temporary rule apply retroactively to December 1, 2011, the effective date of the previous filing for these rules.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

### 411-360-0170

#### Documentation and Record Requirements

(1) **INDIVIDUAL RECORDS.** A record must be developed, kept current, and available on the premises for each individual admitted to the AFH-DD.

(a) The provider must maintain a summary sheet for each individual in the home. The record must include:

(A) The individual's name, current and previous address, date of entry into AFH-DD, date of birth, gender, marital status, religious preference, preferred hospital, Medicaid prime and private insurance number if applicable, and guardianship status; and

(B) The name, address, and telephone number of:

(i) The individual's legal representative, family, advocate, or other significant person;

(ii) The individual's preferred primary health care provider and designated back up health care provider or clinic;

(iii) The individual's preferred dentist;

(iv) The individual's day program or employer; if any;

(v) The individual's services coordinator; and

(vi) Other agency representatives providing services to the individual.

(b) **EMERGENCY INFORMATION.** The AFH-DD provider must maintain emergency information for each individual receiving services in the AFH-DD in addition to an individual summary sheet identified in section (1)(a) of this rule. The emergency information must be kept current and must include:

(A) The individual's name;

(B) The provider's name, address, and telephone number;

(C) The address and telephone number of the AFH-DD where the individual resides if different from that of the licensee;

(D) The individual's physical description, which could include a picture and the date it was taken, and identification of:

(i) The individual's race, gender, height, weight range, hair, and eye color; and

(ii) Any other identifying characteristics that may assist in identifying the individual should the need arise, such as marks or scars, tattoos, or body piercings.

(E) Information on the individual's abilities and characteristics including:

(i) How the individual communicates;

(ii) The language the individual uses and understands;

(iii) The ability of the individual to know how to take care of bodily functions; and

(iv) Any additional information that could assist a person not familiar with the individual to understand what the individual can do for him or herself.

(F) The individual's health support needs including:

(i) Diagnosis;

(ii) Allergies or adverse drug reactions;

(iii) Health issues that a person would need to know when taking care of the individual;

(iv) Special dietary or nutritional needs such as requirements around textures or consistency of foods and fluids;

(v) Food or fluid limitations due to allergies, diagnosis, or medication the individual is taking, that may be an aspiration risk or other risk for the individual;

(vi) Additional special requirements the individual has related to eating or drinking, such as special positional needs or a specific way foods or fluids are given to the individual;

(vii) Physical limitations that may affect the individual's ability to communicate, respond to instructions, or follow directions; and

(viii) Specialized equipment needed for mobility, positioning, or other health related needs.

(G) The individual's emotional and behavioral support needs including:

(i) Mental health or behavioral diagnosis and the behaviors displayed by the individual; and

(ii) Approaches to use when dealing with the individual to minimize emotional and physical outbursts.

(H) Any court ordered or guardian authorized contacts or limitations;

(I) The individual's supervision requirements and why; and

(J) Any additional pertinent information the provider has that may assist in the care and support of the individual should a natural or man-made disaster occur.

(c) Individual records must be available to representatives of the Department, or the Department's designee, conducting inspections or investigations, as well as to individuals to whom the information pertains, their authorized representative, or other legally authorized persons;

(d) **INDIVIDUAL RECORDS.** Individual records must be kept by the provider, for a period of at least three years. When an individual moves or the AFH-DD closes, copies of pertinent information must be transferred to the individual's new place of residence; and

(e) In all other matters pertaining to confidential records and release of information, providers must comply with ORS 179.505.

(2) **INDIVIDUAL ACCOUNT RECORDS.** For those individuals not yet capable of managing their own money, as determined by the ISP Team or guardian, the provider must prepare, maintain, and keep current a separate and accurate written record for each individual of all money received or disbursed on behalf of or by the individual.

(a) The record must include:

(A) The date, amount, and source of income received;

(B) The date, amount, and purpose of funds disbursed; and

(C) Signature of the provider making each entry.

(b) Purchases of \$10.00 or more made on behalf of an individual must be documented by receipts unless an alternate amount is otherwise specified by the ISP team.

(c) Personal Incidental Funds (PIF) for individuals are to be used at the discretion of the individual for such things as clothing, tobacco, and snacks (not part of daily diet) and addressed in the ISP.

(d) Each record must include the disposition of the room and board fee that the individual pays to the provider at the beginning of each month.

(e) **REIMBURSEMENT TO INDIVIDUAL.** The provider must reimburse the individual any funds that are missing due to theft, or mismanagement on the part of the provider, resident manager, or caregiver of the AFH-DD or for any funds within the custody of the provider that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing.

(f) Financial records must be maintained for at least seven years.

(3) **INDIVIDUALS' PERSONAL PROPERTY RECORD.** The provider must prepare and maintain an accurate individual written record of personal property that has significant or monetary value to each individual as determined by a documented ISP team or guardian decision. The record must include:

(a) The description and identifying number, if any;

(b) Date of inclusion in the record;

(c) Date and reason for removal from record;

(d) Signature of provider making each entry; and

(e) A signed and dated annual review of the record for accuracy.

(4) **INDIVIDUAL SUPPORT PLAN.** A health and safety transition plan must be developed at the time of admission for the first 60 days of service. A complete ISP must be developed by the end of 60 days. It must be updated at a minimum annually, and more often when the individual's support needs change.

(a) A completed ISP must be documented on the Department-mandated Foster Care ISP Form that includes the following:

(A) What is most important to the individual and what works and doesn't work;

(B) The individual's support needs (as identified on the Support Needs Assessment Profile (SNAP) (if applicable));

(C) The type and frequency of supports to be provided;

(D) The person responsible for carrying out the supports; and

(E) A copy of the Employment, Alternatives to Employment, or Day Program provider's plan must be integrated or attached to the AFH-DD ISP for persons also served in an employment or other Department-funded day service.

(b) The ISP must include at least six hours of activities each week that are of interest to the individual, not including television or movies made available by the provider. Activities available in the community and made available or offered by the provider or the CDDP may include but are not limited to:

(A) Habilitation services;

(B) Rehabilitation services;

(C) Educational services;

(D) Vocational services;

(E) Recreational and leisure activities; and



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(F) Other services required to meet an individual's needs as defined in the ISP.

(5) HOUSE RULES. The provider must document that a copy of the written house rules has been provided and discussed with the individual annually. House rules must be in compliance with sections (9)(a)–(s) of this rule governing the rights of individuals. House rules established by the provider must:

(a) Include any restrictions the AFH-DD may have on the use of alcohol, tobacco in compliance with Oregon's Smokefree Workplace Law, medical marijuana (if applicable), pets, visiting hours, dietary restrictions, or religious preference.

(b) Include house rules specific to the presence and use of medical marijuana on the AFH-DD premises, if applicable. The home's medical marijuana rules must be reviewed and approved by the Department or the Department's designee.

(c) Not be in conflict with the individual's Bill of Rights, the family atmosphere of the home, or any of these rules.

(d) Include house rules specific to the immediate notification of substantiated abuse as described in OAR 411-360-0210(16)(a)–(d).

(e) Be reviewed and approved by the Department or the Department's designee prior to the issuance of a license and prior to implementing changes.

(f) Be readily available to be seen and read by individuals and visitors.

(6) UNUSUAL INCIDENTS. A written report of all unusual incidents relating to an individual must be sent to the CDDP within five working days of the incident. The report must include how and when the incident occurred, who was involved, what action was taken by the provider or caregiver and the outcome to the individual, and what action is being taken to prevent the reoccurrence of the incident.

(7) GENERAL INFORMATION. The provider must maintain all other information or correspondence pertaining to the individual.

(8) MONTHLY PROGRESS NOTES. The provider must maintain and keep current, at minimum monthly progress notes for each individual residing in the home, regarding the progress of the ISP supports, any medical, behavioral, or safety issues or any other events that are significant to the individual.

(9) INDIVIDUAL'S BILL OF RIGHTS. The provider must abide by the Individual's Bill of Rights and post them in a location that is accessible to individuals and individuals' parents, guardians, or legal representatives. The provider must give a copy of the Individual's Bill of Rights along with a description of how to exercise these rights to each individual and the individual's parent, guardian, or legal representative. The Individual's Bill of Rights must be reviewed annually or as changes occur by the provider with the individual and any parent, guardian, or legal representative. The Individual's Bill of Rights states each individual has the right to:

(a) Be treated as an adult with respect and dignity;

(b) Be encouraged and assisted to exercise constitutional and legal rights as a citizen including the right to vote;

(c) Receive appropriate care and services, prompt health care as needed;

(d) Have adequate personal privacy and privacy to associate and communicate privately with any person of choice, such as family members, friends, advocates, and legal, social service, and medical professionals, send and receive personal mail unopened, and engage in telephone conversations as explained in OAR 411-360-0130(6)(a)–(f);

(e) Have access to and participate in activities of social, religious, and community groups;

(f) Be able to keep and use personal clothing and possessions as space permits;

(g) Be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion;

(h) Manage his or her financial affairs unless determined unable by the ISP team or legally restricted;

(i) Have a safe and secure environment;

(j) Have a written agreement regarding services to be provided;

(k) Voice grievance without fear of retaliation;

(l) Have freedom from training, treatment, chemical or protective physical interventions except as agreed to, in writing, in a individual's ISP;

(m) Be allowed and encouraged to learn new skills, to act on their own behalf to their maximum ability, and to relate to individuals in an age appropriate manner;

(n) Have an opportunity to exercise choices including such areas as food selection, personal spending, friends, personal schedule, leisure activities, and place of residence;

(o) Be free from punishment. Behavior intervention programs must be approved in writing on the individual's ISP;

(p) Be free from abuse and neglect;

(q) Have the opportunity to contribute to the maintenance and normal activities of the household;

(r) Have access and opportunity to interact with persons with or without disabilities; and

(s) Have the right not to be transferred or moved without advance notice as provided in ORS 443.739(18) and OAR 411-088-0070, and the opportunity for a hearing as provided in ORS 443.738(11)(c) and OAR 411-088-0080. The standards imposed by this subsection continue the standards in effect prior to December 1, 2011, and continue those standards, except as amended in this subsection, as of December 1, 2011.

(10) AFH-DD records must be kept current and maintained by the AFH-DD provider and be available for inspection upon request. AFH-DD records must include but not be limited to proof that the provider, resident manager, and any other caregivers have met the minimum qualifications as required by OAR 411-360-0110. The following documentation must be available for review upon request:

(a) Completed employment applications, including the names, addresses, and telephone numbers of all caregivers employed by the provider. All employment applications for persons hired to provide care in an AFH-DD must ask if the applicant has ever been found to have committed abuse.

(b) Proof that the provider has the Department's approval for each subject individual, who is 16 years of age and older, to have contact with adults who are elderly or physically disabled or developmentally disabled as a result of a criminal records check.

(c) Proof of required training according to OAR 411-360-0120. Documentation must include the date of each training, subject matter, name of agency or organization providing the training, and number of training hours.

(d) A certificate to document completion of the Department's Basic Training Course for the provider, resident manager, and all caregivers.

(e) Proof of mandatory abuse report training for all caregivers.

(f) Proof of any additional training required for resident managers and caregivers.

(g) Documentation of caregiver orientation to the AFH-DD, training of emergency procedures, training on individual's ISP's, and training on behavior supports and Nursing Care Plan (if applicable).

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef. 2-1-05; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 25-2011(Temp), f. & cert. ef. 12-1-11 thru 5-29-12; SPD 29-2011(Temp), f. & cert. ef. 12-30-11 thru 5-29-12

## 411-360-0190

### Standards for Admission, Transfers, Respite, Crisis Placements, Exit, and Closures

(1) ADMISSION. All individuals considered for admission into the AFH-DD must:

(a) Not be discriminated against because of race, color, creed, age, disability, gender, sexual orientation, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law; and

(b) Be determined to have a developmental disability by the Department or the Department's designee; and

(c) Be referred by the CDDP or have prior written approval of the CDDP or Department if the individual's services are paid for by the Department; or

(d) Be placed with the agreement of the CDDP if the individual is either private pay or not developmentally disabled.

(2) INFORMATION REQUIRED FOR ADMISSION. At the time of the referral, the provider must be given:

(a) A copy of the individual's eligibility determination document;

(b) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device, and adjusting water temperature for bathing and washing;

(c) A brief written history of any behavioral challenges including supervision and support needs;

(d) A medical history and information on health care supports that includes where available:

(A) The results of a physical exam made within 90 days prior to entry;

(B) The results of any dental evaluation;

(C) A record of immunizations;

(D) A record of known communicable diseases and allergies; and

(E) A record of major illnesses and hospitalizations.

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(e) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning;

(f) Copies of documents relating to guardianship or conservatorship or any other legal restrictions on the rights of the individual, if applicable; and

(g) A copy of the most recent Functional Behavioral Assessment, Behavior Support Plan, ISP, and Individual Education Plan if applicable.

(3) **ADMISSION MEETING.** An ISP team meeting must be conducted prior to the onset of services to the individual. The findings of the meeting must be recorded in the individual's file and include at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the meeting and the date determined to be the date of entry;

(c) The names and role of the participants at the meeting;

(d) Documentation of the pre-admission information required by section (2)(a)-(g) of this rule;

(e) Documentation of the decision to serve or not serve the individual requesting service, with reasons; and

(f) A written Transition Plan to include all medical, behavior, and safety supports needed by the individual, to be provided to the individual for no longer than 60 days, if the decision was made to serve.

(4) The provider must retain the right to deny admission of any individual if they feel the individual's support needs may not be met by the AFH-DD provider, or for any other reason specifically prohibited by these rules.

(5) AFH-DD homes may not be used as a site for foster care for children, adults from other agencies, or any other type of shelter or day care without the written approval of the CDDP or the Department.

(6) **TRANSFERS.**

(a) An individual may not be transferred by a provider to another AFH-DD or moved out of the AFH-DD without 30 days advance written notice to the individual, the individual's legal representative, guardian, or conservator, and the CDDP stating reasons for the transfer as provided in ORS 443.739(18) and OAR 411-088-0070, and the individual's right to a hearing as provided in ORS 443.738(11)(c) and OAR 411-088-0080, except for a medical emergency, or to protect the welfare of the individual or other individuals. Individuals may only be transferred by a provider for the following reasons:

(A) Behavior that poses a significant danger to the individual or others;

(B) Failure to make payment for care;

(C) The AFH-DD has had its license suspended, revoked, not renewed, or the provider voluntarily surrendered their license;

(D) The individual's care needs exceed the ability of the provider; or

(E) There is a mutual decision made by the individual and the ISP team that a transfer is in the individual's best interest and all team members agree.

(b) Individuals who object to the transfer by the AFH-DD provider must be given the opportunity for hearing as provided in ORS 443.738(11)(c) and OAR 411-088-0080. Participants may include the individual, and at the individual's request, the provider, a family member, and the CDDP. If a hearing is requested to appeal a transfer, the individual must continue to receive the same services until the appeal is resolved.

(c) The standards imposed by this section continue the standards in effect prior to December 1, 2011, and continue those standards, except as amended in subsections (b) and (c) above, as of December 1, 2011.

(7) **RESPIRE.** Providers may not exceed the licensed capacity of their AFH-DD. However, respite care of no longer than 14 days duration may be provided to one or more individuals if the addition of the respite individual does not cause the total number of individuals to exceed five. Thus, a provider may exceed the licensed number of individuals by one or more respite individuals, for 14 days or less, if approved by the CDDP or the Department, and:

(a) If the total number of individuals does not exceed five;

(b) There is adequate bedroom and living space available in the AFH-DD; and

(c) The provider has information sufficient to provide for the health and safety of individuals receiving respite.

(8) **CRISIS SERVICES.** All individuals considered for crisis services received in an AFH-DD must:

(a) Be referred by the CDDP or Department;

(b) Be determined to have a developmental disability by the Department or the Department's designee;

(c) Be determined to be eligible for developmental disability services as defined in OAR 411-360-0020 or any subsequent revision thereof;

(d) Not be discriminated against because of race, color, creed, age, disability, gender, sexual orientation, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law; and

(e) Have a written Crisis Plan developed by the CDDP or Regional Crisis Diversion Program that serves as the justification for, and the authorization of, supports and expenditures pertaining to an individual receiving crisis services provided under this rule.

(9) **SUPPORT SERVICES PLAN OF CARE AND CRISIS ADDENDUM REQUIRED.** Individuals receiving support services under OAR chapter 411, division 340, and receiving crisis services in an AFH-DD must have a Support Services Plan of Care and a Crisis Addendum upon admission to the AFH-DD.

(10) **PLAN OF CARE.** Individuals, not enrolled in support services, receiving crisis services for less than 90 consecutive days must have a Transition Plan on admission that addresses any critical information relevant to the individual's health and safety including current physicians' orders.

(11) **ADMISSION MEETING REQUIRED.** Admission meetings are required for individuals receiving crisis services.

(12) **EXIT MEETING REQUIRED.** Exit meetings are required for individuals receiving crisis services.

(13) **WAIVER OF APPEAL RIGHTS FOR EXIT.** Individuals receiving crisis services do not have appeal rights regarding exit upon completion of the Crisis Plan.

(14) **EXIT.**

(a) A provider may only exit an individual for valid reasons equivalent to those for transfers stated in sections (6)(a)(A-E) of this rule. The provider must give at least 30 days written notice to an individual, the CDDP services coordinator, and the Department or the Department's designee before termination of residency, except where undue delay might jeopardize the health, safety, or well-being of the individual or others. If an individual requests a hearing to appeal the exit from an AFH-DD, the individual must receive the same services until the grievance is resolved.

(b) The provider must promptly notify the CDDP in writing if an individual gives notice or plans to leave the AFH-DD or if an individual abruptly leaves. An individual is not required to give notice to an AFH-DD provider if they choose to exit the AFH-DD.

(15) **EXIT MEETING.** Each individual considered for exit must have a meeting by the ISP team before any decision to exit is made. Findings of such a meeting must be recorded in the individual's file and include at a minimum:

(a) The name of the individual considered for exit;

(b) The date of the meeting;

(c) Documentation of the participants included in the meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of strategies to prevent an exit from the AFH-DD unless the individual, or individual's guardian is requesting exit;

(f) Documentation of the decision regarding exit including verification of a majority agreement of the meeting participants regarding the decision; and

(g) Documentation of the proposed plan for services to the individual after the exit.

(16) **REQUIREMENTS FOR WAIVER OF EXIT MEETING.** Requirements for an exit meeting may be waived if an individual is immediately removed from the AFH-DD under the following conditions:

(a) The individual and the individual's guardian or legal representative request an immediate move from the AFH-DD home; or

(b) The individual is removed by a legal authority acting pursuant to civil or criminal proceedings.

(17) **CLOSING.** Providers must notify the Department in writing prior to a voluntary closure of an AFH-DD, and give individuals, families, and the CDDP, 30 days written notice, except in circumstances where undue delay might jeopardize the health, safety, or well-being of individuals, providers, or caregivers. If a provider has more than one AFH-DD, individuals may not be shifted from one house to another house without the same period of notice unless prior approval is given and agreement obtained from individuals, family members, and the CDDP. A provider must return the AFH-DD license to the Department if the home closes prior to the expiration of the license.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef. 2-1-05; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 25-2011(Temp), f. & cert. ef. 12-1-11 thru 5-29-12; SPD 29-2011(Temp), f. & cert. ef. 12-30-11 thru 5-29-12

# ADMINISTRATIVE RULES

**Rule Caption:** Hearings for Developmental Disability Services Eligibility Determination.

**Adm. Order No.:** SPD 30-2011(Temp)

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12 thru 6-29-12

**Notice Publication Date:**

**Rules Amended:** 411-320-0175

**Subject:** The Department of Human Services (Department) is temporarily amending OAR 411-320-0175 to reflect recent policy and practice changes by the Department regarding when the Department shall delegate final order authority to the Office of Administrative Hearings (OAH).

Currently, final order authority is always delegated to OAH and the Department is required to revoke this delegation each time the Department desires to request a proposed order or proposed and final order.

This temporary rulemaking allows the Department to identify the type of order the Department desires when making a referral to OAH. This permits the Department to request a proposed order or proposed and final order without having to revoke delegation of final order authority.

The temporary rulemaking also allows the Department to properly inform and explain the process for filing exceptions, describe timelines, and describe 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.

(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 has the right to a hearing, as provided in ORS chapter 183, if the claimant disagrees with the Department's eligibility determination.

(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. The signed request (SDS 0443DD) must be received by the Department within 45 days from the date of the Department's Notice of Eligibility Determination.

(b) Upon request by the claimant, the CDDP shall assist the claimant in completing the hearing request form.

(c) A late hearing request may be granted when the claimant or the claimant's representative has good cause.

(3) CONTINUING SERVICES PENDING A HEARING OUTCOME.

(a) When an individual is determined to be no longer eligible following a redetermination of their eligibility, the individual has the right to request continuing services during the hearing process.

(b) The request for continuing services must be indicated 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.

(c) To qualify for continuing services, the DD Administrative Hearing Request (SDS 0443DD) and request for continuing services, must be received by the effective date identified on the Notice of Eligibility Determination or by 10 days following the date of the notice, whichever is later.

(d) The Department shall determine if there is good cause following receipt of a late request for continuing services.

(e) If the hearing is not in the individual's favor, the individual may be required to pay back any benefits received during the hearing process.

(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 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) The claimant or the claimant's representative may, at any time prior to the hearing date, request an additional conference with the Department representative. At the Department representative's discretion, the Department representative may grant an additional conference if it facilitates the hearing process.

(c) The Department may provide the claimant the relief sought at any time before the final order is issued.

(5) REPRESENTATION.

(a) A representative may be chosen by the claimant to represent their interests during a pre-hearing 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 and are closed to non-participants, except non-participants may attend subject to the claimant'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 Department or the Office of Administrative Hearings (OAH) receives it. The Department shall issue a final order confirming the 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 final order is issued.

(7) DISMISSAL FOR FAILURE TO APPEAR. A hearing request is dismissed by order when neither the claimant nor the claimant's representative appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing. 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 reasons beyond the claimant's control.

(8) PROPOSED AND FINAL 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 a proposed order, a proposed and final order, or a 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) When the Department authorizes either a proposed order or a proposed and final order:

(A) The claimant or the claimant's representative may file written exceptions and written argument to be considered by the Department. The exceptions and argument must be received at the location indicated in the OAH order not later than the 20th day after service of the proposed order or proposed and final order, unless subsection (1)(a)(B) of this rule applies.

(B) PROPOSED ORDERS. After OAH issues a proposed order, the Department issues the final order, unless the Department requests that OAH issue the final order under OAR 137-003-0655.

(C) PROPOSED AND FINAL ORDERS. If the claimant or the claimant's representative does not submit timely exceptions or argument following a proposed and final order, the proposed and final order becomes a final order on the 21st day after issuance of the proposed and final order unless the Department has issued a revised order or has notified the claimant or the claimant's representative and OAH that the Department shall issue the final order. When the Department receives timely exceptions

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or argument, the Department shall issue the final order, unless the Department requests that OAH issue the final order in compliance with OAR 137-003-0655.

(c) If in a contested case hearing OAH is authorized to issue a final order on behalf of the Department, the Department may issue the final order in the case of default.

(d) A petition by a claimant or the claimant's representative for reconsideration or rehearing must be filed with the entity who signed the final order, unless stated otherwise on the final order.

Stat. Auth.: ORS 409.050, 410.070, 430.640

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

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**Rule Caption:** Application and Eligibility Determination for Developmental Disability Services.

**Adm. Order No.:** SPD 31-2011

**Filed with Sec. of State:** 12-30-2011

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**Rules Amended:** 411-320-0020, 411-320-0080

**Subject:** The Department of Human Services (Department) is amending the rules in OAR chapter 411, division 320 relating to the application and eligibility determination process for developmental disability services to:

- Add nurse practitioners to the list of qualified professionals that may diagnose developmental disability conditions;
- Clarify the term “training or support similar to that required by individuals with intellectual disability”;
- Include language that is consistent with current practice around making 18-22 year olds who have developmental disabilities other than intellectual disabilities, provisionally eligible up to age 22; and
- Make changes that are considered housekeeping to reflect the Department's rule writing standards.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-320-0020

### Definitions

(1) “24-Hour Residential Program” means a comprehensive residential home or facility licensed by the Department under ORS 443.410 to provide residential care and training to individuals with developmental disabilities.

(2) “Abuse” means:

(a) Abuse of a child:

(A) As defined in ORS 419B.005; and

(B) Abuse as defined in OAR 407-045-0260, when a child resides in:

(i) Homes or facilities licensed to provide 24-hour residential services for children with developmental disabilities; or

(ii) Agencies licensed or certified by the Department to provide proctor foster care for children with developmental disabilities.

(b) Abuse of an adult as defined in OAR 407-045-0260.

(3) “Abuse Investigation and Protective Services” means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(4) “Accident” means an event that results in injury or has the potential for injury even if the injury does not appear until after the event.

(5) “Adaptive Behavior” means the degree to which an individual meets the standards of personal independence and social responsibility expected for age and culture group. Other terms used to describe adaptive behavior include but are not limited to adaptive impairment, ability to function, daily living skills, and adaptive functioning. Adaptive behaviors are everyday living skills including but not limited to walking (mobility), talking (communication), getting dressed or toileting (self-care), going to school or work (community use), and making choices (self-direction).

(a) Adaptive behavior is measured by a standardized test administered by a psychologist, social worker, or other professional with a graduate degree and specific training and experience in individual assessment, administration, and test interpretation of adaptive behavior scales for individuals with developmental disabilities.

(b) “Significant impairment” in adaptive behavior means a composite score of at least two standard deviations below the norm or two or more areas of functioning that are at least two standard deviations below the

norm including but not limited to communication, mobility, self-care, socialization, self-direction, functional academics, or self-sufficiency as indicated on a standardized adaptive test.

(6) “Administrative Review” means the formal process that is used by the Department when an individual or an individual's representative is not satisfied with the decision made by the community developmental disability program or support services brokerage about a complaint involving the provision of services or a service provider.

(7) “Adult” means an individual 18 years or older with developmental disabilities.

(8) “Advocate” means a person other than paid staff who has been selected by the individual, or by the individual's legal representative, to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(9) “Annual Plan” means:

(a) A written summary the services coordinator completes for an individual 18 years or older who is not receiving support services or comprehensive services; or

(b) The written details of the supports, activities, costs, and resources required for a child receiving family support services.

(10) “Care” means supportive services including but not limited to provision of room and board, supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation. The term “care” is synonymous with “services”.

(11) “Chemical Restraint” means the use of a psychotropic drug or other drugs for punishment, or to modify behavior, in place of a meaningful behavior or treatment plan.

(12) “Child” means an individual under the age of 18 that has a provisional determination of developmental disability.

(13) “Choice” means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication methods.

(14) “Community Developmental Disability Program (CDDP)” means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under a contract with the Department or a local mental health authority.

(15) “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.

(16) “Complaint” means a verbal or written expression of dissatisfaction with services or service providers.

(17) “Complaint Investigation” means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(18) “Comprehensive Services” mean a package of developmental disability services and supports that include 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 adult in the individual or family home costing more than the individual cost limit for support services.

(c) Comprehensive services do not include support services for adults enrolled in support services brokerages or for children enrolled in long-term supports for children or children's intensive in-home services.

(19) “County of Origin” means the individual's county of residence, unless a minor, then county of origin means the county where the jurisdiction of the child's guardianship exists.

(20) “Crisis” means:

(a) A situation as determined by a qualified services coordinator that would result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(21) “Crisis Diversion Services” mean short-term services provided for up to 90 days, or on a one-time basis, directly related to resolving a cri-

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sis, and provided to, or on behalf of, an individual eligible to receive crisis services.

(22) "Crisis Plan" means the community developmental disability program or regional crisis diversion program generated document, serving as the justification for, and the authorization of crisis supports and expenditures pertaining to an individual receiving crisis services provided under these rules.

(23) "Current Documentation" means documentation relating to an individual's developmental disability in regards to the individual's functioning within the last three years. Current documentation may include but is not limited to annual plans, behavior support plans, educational records, medical assessments related to the developmental disability, psychological evaluations, and assessments of adaptive behavior.

(24) "Department" means the Department of Human Services (DHS). The term "Department" is synonymous with "Division (SPD)".

(25) "Developmental Disability (DD)" means a neurological condition that:

(a) Originates before the individual reaches the age of 22 years, except that in the case of intellectual disability, the condition is manifested before the age of 18;

(b) Originates in and directly affects the brain and has continued, or is expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior as diagnosed and measured by a qualified professional; and

(d) Is not primarily attributed to other conditions, including but not limited to mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD).

(26) "DHS Quality Management Strategy" means the Department's Quality Assurance Plan that includes the quality assurance strategies for the Department ([http://www.oregon.gov/DHS/spd/qa/app\\_h\\_qa.pdf](http://www.oregon.gov/DHS/spd/qa/app_h_qa.pdf)).

(27) "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".

(28) "Eligibility Determination" means a decision by a community developmental disability program or by the Department regarding a person's eligibility for developmental disability services pursuant to OAR 411-320-0080 and is either a decision that a person is eligible or ineligible for developmental disability services.

(29) "Eligibility Specialist" means an employee of the community developmental disability program or other agency that contracts with the county or Department to determine developmental disability eligibility.

(30) "Entry" means admission to a Department-funded developmental disability service provider.

(31) "Exit" means either termination from a Department-funded developmental disability service provider or transfer from one Department-funded program to another. Exit does not mean transfer within a service provider's program within a county.

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

(33) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (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.

(34) "Guardian" means a parent for individuals under 18 years of age, or a person or agency appointed and authorized by the courts to make decisions about services for an individual.

(35) "Health Care Provider" means a person or health care facility licensed, certified, or otherwise authorized or permitted by Oregon law to administer health care in the ordinary course of business or practice of a profession.

(36) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505; or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.

(37) "Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a service. This is a formal process required by federal law (42 CFR 431.200-250). A hearing is also known as a Medicaid Fair Hearing, Contested Case Hearing, and Administrative Hearing.

(38) "Home" means an individual's primary residence that is not under contract with the Department to provide services to an individual as a licensed or certified foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(39) "Imminent Risk" means:

(a) An adult who is in crisis and shall be civilly court-committed to the Department under ORS 427.215 to 427.306 within 60 days without the use of crisis diversion services; or

(b) A child who is in crisis and shall require out-of-home placement within 60 days without the use of crisis diversion services.

(40) "Incident Report" means a written report of any unusual incident involving an individual.

(41) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(42) "Individual" means an adult or a child with developmental disabilities for whom services are planned and provided.

(43) "Individualized Education Plan (IEP)" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student, and a representative of the school district.

(44) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The type of service supported needed, how supports are delivered, and the frequency of provided supports are included in the ISP. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's plan of care for Medicaid purposes.

(45) "Individual Support Plan (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and may include family or other persons requested to develop the ISP or requested by the individual.

(46) "Informal Adaptive Behavior Assessment" means:

(a) Observations of the adaptive behavior impairments recorded in the individual's progress notes by a services coordinator or a trained eligibility specialist, with at least two years experience working with individuals with developmental disabilities.

(b) A standardized measurement of adaptive behavior such as a Vineland Adaptive Behavior Scale or Adaptive Behavior Assessment System that is administered and scored by a social worker, or other professional with a graduate degree and specific training and experience in individual assessment, administration, and test interpretation of adaptive behavior scales for individuals.

(47) "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.

(48) "Intellectual Disability" means significantly sub-average general intellectual functioning defined as intelligence quotient's (IQ's) under 70 as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Individuals of borderline intelligence, IQ's 70-75, may be considered to have intellectual disability if there is also significant impairment of adaptive behavior as diagnosed and measured by a qualified professional.

(49) "Intellectual Functioning" means functioning as assessed by a qualified professional using one or more individually administered general intelligence tests. For purposes of making eligibility determinations, intelligence tests do not include brief intelligence measurements.

(50) "Legal Representative" means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for an individual, or a person or agency authorized by the court to make decisions about services for the individual.

(51) "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;

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(c) The board of directors of a public or private corporation if the county declines to operate or contract for all or part of a community mental health and developmental disability program; or

(d) The advisory committee for the community developmental disability program covering a geographic service area when managed by the Department.

(52) "Majority Agreement" means for the purpose of entry, exit, transfer, and annual Individual Support Plan (ISP) team meetings, that no one member of the ISP team has the authority to make decisions for the team unless so authorized by the team process. Service providers, families, community developmental disability programs, advocacy agencies, or individuals are considered as one member of the ISP team for the purpose of reaching majority agreement.

(53) "Management Entity" means the community developmental disability program or private corporation that operates the regional crisis diversion program, including acting as the fiscal agent for regional crisis diversion funds and resources.

(54) "Mandatory Reporter" means any public or private official who:

(a) Comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

(b) 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. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(55) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the individual's body.

(56) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(57) "Mental Retardation" is synonymous with "intellectual disability".

(58) "Monitoring" means the periodic review of the implementation of services identified in the Individual Support Plan or annual summary, and the quality of services delivered by other organizations.

(59) "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.

(60) "OIT" means the Department's Office of Investigations and Training.

(61) "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.

(62) "Physician" means a person licensed under ORS chapter 677 to practice medicine and surgery.

(63) "Physician Assistant" means a person licensed under ORS 677.505 to 677.525.

(64) "Plan of Care" means a written document developed for each individual by the support team using a person-centered approach that describes the supports, services, and resources provided or accessed to address the needs of the individual.

(65) "Productivity" means:

(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

(66) "Protection" and "Protective Services" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(67) "Protective Physical Intervention (PPI)" means any manual physical holding of, or contact with, an individual that restricts the individual's freedom of movement. The term "Protective Physical Intervention" is synonymous with "Physical Restraint".

(68) "Psychologist" means:

(a) A person possessing a doctorate degree in psychology from an accredited program with course work in human growth and development, tests, and measurement; or

(b) A state certified school psychologist.

(69) "Psychotropic Medication" means medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including but not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(70) "Qualified Professional" means a:

(a) Licensed clinical psychologist (Ph.D., Psy.D.) or school psychologist;

(b) Medical doctor (MD);

(c) Doctor of osteopathy (DO); or

(d) Nurse Practitioner.

(71) "Region" means a group of Oregon counties defined by the Department that have a designated management entity to coordinate regional crisis and backup services and be the recipient and administration of funds for those services.

(72) "Regional Crisis Diversion Program" means the regional coordination of the management of crisis diversion services for a group of designated counties that is responsible for the management of the following developmental disability services:

(a) Crisis intervention services;

(b) Evaluation of requests for new or enhanced services for certain groups of individuals eligible for developmental disability services; and

(c) Other developmental disability services that the counties comprising the region agree shall be delivered more effectively or automatically on a regional basis.

(73) "Respite" means short-term care and supervision provided to an individual on a periodic or intermittent basis because of the temporary absence of, or need for relief of, the primary care giver.

(74) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(75) "Review" means a request for reconsideration of a decision made by a service provider, community developmental disability program, support services brokerage, or the Department.

(76) "School Aged" means the age at which a child is old enough to attend kindergarten through high school.

(77) "Service Element" means a funding stream to fund program or services including but not limited to foster care, 24-hour residential, case management, supported living, support services, crisis diversion services, in-home comprehensive services, or family support.

(78) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Department, or other appropriate agency, to provide these services. The term "provider" or "program" is synonymous with "service provider."

(79) "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".

(80) "State Training Center" means the Eastern Oregon Training Center.

(81) "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.

(82) "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.

(83) "Support Services Brokerage" means an entity, or distinct operating unit within an existing entity, that uses the principles of self-determination to perform the functions associated with planning and implementation of support services for individuals with developmental disabilities.

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(84) "Support Team" means a group, composed of members as determined by an individual receiving services or the individual's legal guardian, that participates in the development of the individual's plan of care.

(85) "These Rules" mean the rules in OAR chapter 411, division 320.

(86) "Transfer" means movement of an individual from a service site to another service site within a county, administered by the same service provider that has not been addressed within the Individual Support Plan.

(87) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's Individual Support Plan (ISP) is developed and approved by the ISP team. The transition plan includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the ISP development.

(88) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring abuse investigation.

(89) "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.

(90) "Volunteer" means any person providing services without pay to individuals receiving case management services.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; 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 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 31-2011, f. 12-30-11, cert. ef. 1-1-12

## 411-320-0080

### Application and Eligibility Determination

#### (1) APPLICATION.

(a) To apply for developmental disability services, an applicant must use the Department required application and apply in the county of origin as defined in OAR 411-320-0020.

(A) If the applicant is an adult, the applicant must be an Oregon resident at the time of application.

(B) If the applicant is a minor child, the legal guardian and the minor child must be Oregon residents at the time of application.

(b) The application must be completed, signed, and dated before an eligibility determination may be made.

(c) The date the CDDP receives the completed, signed, and dated application is the date of application for developmental disability services.

(d) A new application is required in the following situations:

(A) Following a closure, denial, or termination if the file has been closed for more than 12 months; or

(B) Following a closure, denial, or termination if the file has been closed for less than 12 months and the applicant does not meet all application requirements.

(2) FINANCIAL STATUS. The CDDP must identify whether the applicant receives any unearned income benefits.

(a) The CDDP must refer adults with no unearned income benefits to Social Security for a determination of financial eligibility.

(b) The CDDP must refer minor children to Social Security if it is identified that the minor child may qualify for Social Security benefits.

(3) ELIGIBILITY SPECIALIST. Each CDDP must identify at least one qualified eligibility specialist who shall act as a designee of the Department for purposes of making an eligibility determination. The eligibility specialist must meet performance qualifications and training expectations for determining developmental disability eligibility according to OAR 411-320-0030.

(4) QUALIFIED PROFESSIONAL DIAGNOSIS. For the purpose of this rule, evaluation of information and diagnosis of intellectual disability and developmental disabilities must be completed by qualified professionals as defined in OAR 411-320-0020 who are qualified to make a diagnosis of the specific developmental disability.

(5) ELIGIBILITY FOR INTELLECTUAL DISABILITY. A history demonstrating an intellectual disability, as defined in OAR 411-320-0020, must be in place by the individual's 18th birthday for the individual to receive developmental disability services.

(a) Diagnosing an intellectual disability is done by measuring intellectual functioning and adaptive behavior as assessed by standardized tests

administered by a qualified professional as described in section (4) of this rule.

(A) For individuals who have consistent IQ results of 65 and under, no assessment of adaptive behavior may be needed if current documentation supports eligibility.

(B) For individuals who have IQ results of 66-75, verification of an intellectual disability requires an assessment of adaptive behavior.

(b) The adaptive behavior impairments must be directly related to an intellectual disability and cannot be primarily attributed to other conditions, including but not limited to mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or ADHD.

(c) The condition or impairment must be expected to last indefinitely.

(6) ELIGIBILITY FOR OTHER DEVELOPMENTAL DISABILITIES. A history of a developmental disability, as defined in OAR 411-320-0020, must be in place prior to the individual's 22nd birthday for the individual to receive developmental disability services.

(a) Other developmental disabilities include:

(A) Autism, cerebral palsy, epilepsy, or other neurological disabling conditions that originate in and directly affect the brain; and

(B) The individual must require training or support similar to that required by individuals with intellectual disability. For the purpose of this rule, "training or support similar to that required by individuals with intellectual disability" means an individual has a domain category or composite score that is at least two standard deviations below the mean, as measured on a standardized assessment of adaptive behavior administered by a qualified professional.

(b) IQ scores are not used in verifying the presence of a developmental disability. Diagnosing a developmental disability requires a medical or clinical diagnosis of a developmental disability with significant impairment in adaptive behavior, as defined in OAR 411-320-0020, related to the diagnosis.

(c) The adaptive behavior impairments must be directly related to the developmental disability and cannot be primarily attributed to other conditions, including but not limited to mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or ADHD.

(d) The condition or impairment must be expected to last indefinitely.

(7) PROVISIONAL ELIGIBILITY. Eligibility may be redetermined in the future when new information is obtained.

(a) Eligibility for children is always provisional.

(b) Eligibility may be provisional for adults between their 18th and 22nd birthdays if their eligibility is based on an other developmental disability.

(8) ELIGIBILITY FOR CHILDREN. Eligibility documentation for children must be no more than three years old.

(a) Eligibility for children under 7 years of age must include:

(A) Standardized testing by a qualified professional or master's level trained early intervention evaluation specialist that demonstrates at least two standard deviations below the norm in two or more areas of adaptive behavior including but not limited to:

- (i) Self-care;
- (ii) Receptive and expressive language;
- (iii) Learning;
- (iv) Mobility;
- (v) Self-direction; OR

(B) A medical statement by a licensed medical practitioner confirming a neurological condition or syndrome that originates in and directly affects the brain and causes or is likely to cause significant impairment in at least two or more areas of adaptive behavior including but not limited to:

- (i) Self-care;
- (ii) Receptive and expressive language;
- (iii) Learning;
- (iv) Mobility;
- (v) Self-direction.

(C) The condition or syndrome cannot be primarily attributed to other conditions, including but not limited to mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or ADHD.

(D) The condition or impairment must be expected to last indefinitely.

(b) Eligibility for school aged children.

(A) Eligibility for school aged children must include:

(i) School age documents that are no more than three years old.

(ii) Documentation of an intellectual disability as described in section

(5) of this rule; or

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(iii) A diagnosis and documentation of an other developmental disability as described in section (6) of this rule.

(B) School aged eligibility may be completed on individuals:

(i) Who are at least 5 years old and who have had school aged testing completed;

(ii) Up to age 18 for individuals who are provisionally eligible based on a condition of an intellectual disability; or

(iii) Up to age 22 for individuals who are provisionally eligible based on a condition of a developmental disability other than an intellectual disability.

(9) ELIGIBILITY FOR ADULTS.

(a) Eligibility for adults must include:

(A) Documentation of an intellectual disability as described in section (5) of this rule. Adult intellectual functioning assessments are not needed if the individual has:

(i) Consistent IQ results of 65 or less; and

(ii) Significant impairments in adaptive behavior that are directly related to an intellectual disability; and

(iii) Current documentation that supports eligibility; OR

(B) A diagnosis and documentation of an other developmental disability as described in section (6) of this rule.

(b) The documentation of an other developmental disability or intellectual disability must include:

(A) Information no more than three years old for individuals under 21 years of age; or

(B) Information obtained after the individual's 17th birthday, for individuals 21 years of age and older.

(10) ABSENCE OF DATA IN DEVELOPMENTAL YEARS.

(a) In the absence of sufficient data during the developmental years, current data may be used if:

(A) There is no evidence of head trauma;

(B) There is no evidence or history of significant mental or emotional disorder; or

(C) There is no evidence or history of substance abuse.

(b) If there is evidence or a history of head trauma, significant mental or emotional disorder, or substance abuse, then a clinical impression by a qualified professional regarding how the individual's functioning may be impacted by the identified condition must be obtained in order to determine if the individual's significant impairment in adaptive behavior is directly related to a developmental disability and not primarily related to a head trauma, significant mental or emotional disorder, or substance abuse.

(11) REDETERMINATION OF ELIGIBILITY.

(a) The CDDP must notify the individual or the individual's legal representative anytime that a redetermination of eligibility is needed. Notification of the redetermination and the reason for the review of eligibility must be in writing and sent prior to the eligibility redetermination.

(b) Eligibility for school age children must be redetermined no later than age 7.

(c) Eligibility for adults must be redetermined by age 18 for an intellectual disability and by age 22 for developmental disabilities other than an intellectual disability.

(d) Any time there is evidence that contradicts the eligibility determination, the Department or the Department's designee may redetermine eligibility or obtain additional information, including securing an additional evaluation for clarification purposes.

(e) Eligibility must be redetermined using the criteria established in this rule.

(A) IQ testing, completed within the last three years, is not needed if the individual has:

(i) Consistent IQ results of 65 or less;

(ii) Significant impairments in adaptive behavior that continue to be directly related to an intellectual disability; and

(iii) Current documentation continues to support eligibility.

(B) A current medical or clinical diagnosis of a developmental disability may not be needed if:

(i) There is documentation of a developmental disability by a qualified professional, as defined in OAR 411-320-0020;

(ii) Significant impairments in adaptive behavior continue to be directly related to the developmental disability; and

(iii) Current documentation continues to support eligibility.

(C) An informal adaptive behavior assessment, as defined in OAR 411-320-0020, may be completed if all of the following apply:

(i) An assessment of adaptive behavior is required in order to redetermine eligibility;

(ii) An assessment of adaptive behavior has already been completed by a qualified professional; and

(iii) The individual has obvious significant adaptive impairments in adaptive behavior.

(12) SECURING EVALUATIONS.

(a) In the event that the eligibility specialist has exhausted all local resources to secure the necessary evaluations for an eligibility determination, the Department or the Department's designee shall assist in obtaining additional testing if required to complete the eligibility determination.

(b) In the event there is evidence that contradicts the information that an eligibility determination was based upon, the Department or the Department's designee, may obtain additional information including securing an additional evaluation for clarification purposes.

(13) PROCESSING ELIGIBILITY DETERMINATION. The CDDP in the county of origin is responsible for making the eligibility determination.

(a) The CDDP shall work in collaboration with the individual to gather historical records related to the individual's developmental disability.

(b) The CDDP must process eligibility for developmental disability services in the following time frames.

(A) The CDDP must complete an eligibility determination and issue a Notice of Eligibility Determination within 90 calendar days of the date that the application for services is received by the CDDP, except in the following circumstances:

(i) The CDDP may not make an eligibility determination because the individual or the individual's legal representative fails to complete an action;

(ii) There is an emergency beyond the CDDP's control; or

(iii) More time is needed to obtain additional records by the CDDP, the individual, or the individual's legal representative.

(B) The process of making an eligibility determination may be extended up to 90 calendar days by mutual agreement among all parties. Mutual agreement may be in verbal or written form. The CDDP must document in the individual's record the reason for the delay and type of contact made to verify the individual's agreement to an extension.

(c) The CDDP must make an eligibility determination unless the following applies and is documented in the individual's progress notes:

(A) The individual or the individual's legal representative voluntarily withdraws the individual's application;

(B) The individual dies; or

(C) The individual cannot be located.

(d) The CDDP may not use the time frames established in subsection (b) of this section as:

(A) A waiting period before determining eligibility; or

(B) A reason for denying eligibility.

(14) NOTICE OF ELIGIBILITY DETERMINATION. The CDDP, based upon a review of the documentation used to determine eligibility, must issue a written Notice of Eligibility Determination to the individual and to the individual's legal representative.

(a) The Notice of Eligibility Determination must be sent or hand delivered within:

(A) Ten working days of making an eligibility redetermination.

(B) Ten working days of making an eligibility determination or 90 calendar days of receiving an application for services, whichever comes first.

(b) The notice must be on forms prescribed by the Department. The notice must include:

(A) The specific date the notice is mailed or hand delivered;

(B) The effective date of any action proposed;

(C) The eligibility determination;

(D) The rationale for the eligibility determination, including what reports, documents, or other information that were relied upon in making the eligibility determination;

(E) The specific rules that were used in making the eligibility determination;

(F) Notification that the documents relied upon may be reviewed by the individual or the individual's legal representative; and

(G) Notification that if the individual or the individual's legal representative disagrees with the Department's eligibility determination, the individual or the individual's legal representative has the right to request a hearing on the individual's behalf, as provided in ORS chapter 183 and OAR 411-320-0175 including:

(i) The timeline for requesting a hearing;

(ii) Where and how to request a hearing;



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(iii) The right to receive assistance from the CDDP in completing and submitting a request for hearing; and

(iv) The individual's right to receive continuing services at the same level during the hearing and at the request of the individual including:

(I) Notification of the time frame within which the individual must request continuing services;

(II) Notification of how and where the individual must submit a request for continuing services; and

(III) Notification that the individual may be required to repay the state for any services received during the hearing process if the determination of ineligibility is upheld in a final order.

(15) REQUESTING A HEARING. As described in OAR 411-320-0175, an individual or an individual's representative may request a hearing if they disagree with the eligibility determination or redetermination made by the CDDP. The request for a hearing must be made by completing the DD Administrative Hearing Request (SDS 0443DD) within the timeframe identified on the Notice of Eligibility Determination.

(16) TRANSFERABILITY OF ELIGIBILITY DETERMINATION. An eligibility determination made by one CDDP must be honored by another CDDP when an individual moves from one county to another.

(a) The receiving CDDP must notify the individual, on forms prescribed by the Department, that a transfer of services to a new CDDP has taken place;

(b) The receiving CDDP must continue services for the individual as soon as it is determined that the individual is residing in the county of the receiving CDDP; and

(c) The receiving CDDP has verification of developmental disability eligibility in the form of a:

(A) Statement of an eligibility determination;

(B) Notification of eligibility determination;

(C) Evaluations and assessments supporting eligibility; or

(D) In the event that the items in subsection (c)(A-C) above cannot be located, written documentation from the sending CDDP verifying eligibility and enrollment in developmental disability services may be used. This may include documentation from the Department's electronic payment system.

(d) If the receiving CDDP receives information that suggests the individual is not eligible for developmental disability services, the CDDP that determined the individual was eligible for developmental disability services may be responsible for the services authorized on the basis of that eligibility determination.

(e) If an individual submits an application for developmental disability services and discloses that they have previously received developmental disability services in another CDDP, and the termination of case management services as described in OAR 411-320-0100(3) occurred within the past 12 months, the eligibility determination from the other CDDP shall transfer as outlined in this section of the rule.

Stat. Auth.: ORS 409.050, 410.070, & 430.640

Stats. Implemented: ORS 183.415, 427.005, 427.007, & 430.610 – 430.670

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; 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 31-2011, f. 12-30-11, cert. ef. 1-1-12

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**Rule Caption:** Program Services Rule Revisions to Implement OAR Chapter 411, Division 323 (Developmental Disability Certification and Endorsement).

**Adm. Order No.:** SPD 1-2012

**Filed with Sec. of State:** 1-6-2012

**Certified to be Effective:** 1-6-12

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**Rules Adopted:** 411-323-0035, 411-325-0025

**Rules Amended:** 411-323-0010, 411-323-0020, 411-323-0030, 411-323-0040, 411-323-0050, 411-323-0060, 411-323-0070, 411-325-0020, 411-325-0060, 411-325-0110, 411-325-0150, 411-325-0320, 411-325-0430, 411-325-0460, 411-328-0560, 411-328-0570, 411-328-0620, 411-328-0630, 411-328-0740, 411-335-0010, 411-335-0020, 411-335-0030, 411-335-0060, 411-335-0120, 411-335-0230, 411-335-0310, 411-345-0010, 411-345-0020, 411-345-0030, 411-345-0050, 411-345-0090, 411-345-0100, 411-345-0110, 411-345-0130, 411-345-0190

**Rules Repealed:** 411-325-0080, 411-325-0100, 411-325-0160, 411-325-0210, 411-325-0310, 411-325-0450, 411-328-0580, 411-328-0590, 411-328-0600, 411-328-0610, 411-328-0670, 411-328-0730,

411-328-0805, 411-328-0810, 411-328-0820, 411-328-0830, 411-335-0050, 411-335-0070, 411-335-0080, 411-335-0090, 411-335-0100, 411-335-0110, 411-335-0140, 411-335-0300, 411-335-0370, 411-335-0380, 411-335-0390, 411-345-0080, 411-323-0010(T), 411-323-0020(T), 411-323-0030(T), 411-323-0035(T), 411-323-0040(T), 411-323-0050(T), 411-323-0060(T), 411-323-0070(T), 411-325-0020(T), 411-325-0025(T), 411-325-0060(T), 411-325-0320(T), 411-325-0460(T), 411-328-0560(T), 411-328-0570(T), 411-328-0630(T), 411-328-0740(T), 411-335-0010(T), 411-335-0020(T), 411-335-0030(T), 411-335-0060(T), 411-335-0310(T), 411-345-0010(T), 411-345-0020(T), 411-345-0030(T), 411-345-0050(T), 411-345-0100(T), 411-345-0110(T), 411-345-0130(T), 411-345-0190(T)

**Subject:** The Department of Human Services (Department) is permanently updating the following rules:

- OAR chapter 411, division 323 (Developmental Disability Certification and Endorsement);

- OAR chapter 411, division 325 (24-Hour Residential Services);

- OAR chapter 411, division 328 (Supported Living Services);

- OAR chapter 411, division 335 (Proctor Care Residential Services); and

- OAR chapter 411, division 345 (Employment and Alternatives to Employment Services).

The permanent rules implement the July 1, 2011 adoption of the certification and endorsement rules; further prescribe standards, responsibilities, and procedures for endorsement; and centralize many of the program management requirements that were previously reflected in specific program rules. The program rules continue to exist but focus on rules specific to the operation of the respective service.

To reflect current Department practice and standards, the permanent rules also update:

- The 24-hour residential services rules to remove mid-cycle reviews (OAR 411-325-0080) and clarify when first aid kits must be locked (OAR 411-325-0150);

- The supported living services rules to remove the requirement of the findings of a TB test within two weeks of an individual's entry (OAR 411-328-0630);

- The proctor care residential services rules to remove mid-cycle reviews (OAR 411-335-0110);

- The employment and alternatives to employment services rules to include a definition for Individual Support Plan (ISP) as it was inadvertently left out in a previous rulemaking (OAR 411-345-0020); and

- The ISP rules in 24-hour residential services (411-325-0430) and proctor care residential services (411-335-0230) to streamline the ISP process by removing the requirement that an ISP team meet face-to-face 45 days prior to an ISP meeting. Even though the 45 day requirement is being removed, the ISP team is still expected to have conversations, although not face-to-face, and collect and summarize the information required by rule prior to the ISP meeting.

These rule changes are being made in response to the Department's transformation efforts and the need to generally streamline operations in order to meet and address current and future budget needs.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-323-0010

### Statement of Purpose

(1) The rules in OAR chapter 411, division 323 prescribe standards, responsibilities, and procedures for agencies to obtain a certificate and endorsement in order to provide the following person-centered services to individuals with developmental disabilities:

(a) 24-hour residential as described in OAR chapter 411, division 325;

(b) Supported living as described in OAR chapter 411, division 328;

(c) Proctor care as described in OAR chapter 411, division 335; or

(d) Employment and alternatives to employment as described in OAR chapter 411, division 345.

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(2) To provide person-centered services to individuals with developmental disabilities, agencies must have:

(a) A certificate to provide Medicaid services in the state of Oregon as described in OAR 411-323-0030;

(b) Endorsement for each program service provided as described in OAR 411-323-0035;

(c) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(d) For each licensed site or geographic location where direct services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

Stat. Auth. ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-323-0020

### Definitions

(1) "Abuse" means:

(a) Abuse of an adult as defined in OAR 407-045-0260.

(b) Abuse of a child

(A) As defined in ORS 419B.005; and

(B) Abuse as defined in OAR 407-045-0260, when a child resides in:

(i) Homes or facilities licensed to provide 24-hour residential services for children with developmental disabilities; or

(ii) Agencies certified by the Department to provide proctor care for children with developmental disabilities.

(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 in 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 the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(5) "Agency" means a public or private community agency or organization that provides recognized developmental disability services and is approved by the Department to provide these services. For the purpose of these rules, "provider", "service provider", "program", "applicant", and "licensee" are synonymous with "agency".

(6) "Appeal" means the process under ORS chapter 183 that the agency may use to petition conditions or the suspension, denial, or revocation of their application, certificate, or endorsement.

(7) "Applicant" means a person, agency, corporation, or governmental unit, who applies for certification to operate an agency providing services to individuals with developmental disabilities.

(8) "Assessment" means an evaluation of an individual's needs.

(9) "Audit" means an inspection completed by a Certified Public Accountant using standards and accepted practices of accounting activities to ensure all state and federal funds are expended for the purpose the funds were contracted and intended for without fraudulent activity.

(10) "Audit Review" means a Certified Public Accountant, without applying comprehensive audit procedures, assesses the standards and accepted practices of accounting activities and ensures they are in conformity with generally accepted accounting principles.

(11) "Board of Directors" means a group of persons formed to set policy and give directions to an agency designed to provide services to individuals with developmental disabilities. A board of directors includes local advisory boards used by multi-state organizations.

(12) "Certificate" means a document issued by the Department to an agency that certifies the agency is eligible to receive state funds for the provision of endorsed program services.

(13) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(14) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication methods.

(15) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities 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.

(16) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(17) "Condition" means a provision attached to:

(a) A new or existing certificate that limits or restricts the scope of the certificate or imposes additional requirements on the certified agency.

(b) A new or existing endorsement that limits or restricts the scope of program services or imposes additional requirements on the certified agency.

(18) "Denial" means the refusal of the Department to issue:

(a) A certificate to operate an agency because the Department has determined the agency is not in compliance with these rules or the corresponding program services rules.

(b) An endorsement to provide program services because the Department has determined the agency is not in compliance with these rules or the corresponding program services rules.

(19) "Department" means the Department of Human Services.

(20) "Developmental Disability" 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.

(21) "Director" means the Director of the Department's Office of Developmental Disability Services, or that person's designee.

(22) "Endorsement" means authorization to provide program services issued by the Department to a certified agency that has met the qualification criteria outlined in these rules and the corresponding program services rules.

(23) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of the agency's services for individuals.

(24) "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.

(25) "Guardian" means a parent for individuals under 18 years of age or a person or agency appointed and authorized by the courts to make decisions about services for an individual.

(26) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(27) "Individual" means an adult or a child with developmental disabilities for whom services are planned and provided.

(28) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The type of service supports needed, how supports are delivered, and the frequency of provided supports are included in the ISP. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(29) "Individual Support Plan (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and family or other persons requested to develop the ISP.

(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 the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the individual or a person or agency authorized by the court to make decisions about services for the individual.

(32) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who:

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(a) For the purpose of these rules, is a staff or volunteer working with individuals birth to 17 years of age who, comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section of this rule, OAR 411-323-0020, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(b) For the purpose of these rules, is a staff or volunteer working with adults 18 years and older 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, OAR 411-323-0020, 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.

(33) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to an agency following the agency's enrollment as described in OAR chapter 411, division 370.

(34) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(35) "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 protective physical intervention techniques that are used to maintain health and safety.

(36) "Ownership Interest" means, as defined in 42 CFR 455.101, the possession of equity in the capital, the stock, or the profits of the disclosing entity as determined by 42 CFR 455.102. Person with an ownership or control interest means a person or corporation that:

(a) Has an ownership interest totaling 5 percent or more in a disclosing entity;

(b) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;

(c) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a disclosing entity;

(d) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing agency if that interest equals at least 5 percent of the value of the property or assets of the disclosing entity;

(e) Is an officer or director of a disclosing agency that is organized as a corporation; or

(f) Is a partner in a disclosing entity that is organized as a partnership.

(37) "Person-Centered Planning" means:

(a) A process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about personal goals, activities, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(38) "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.

(39) "Program Services" mean, for the purpose of these rules, the services described in:

(a) OAR chapter 411, division 325, 24-hour Residential Services for Children and Adults with Developmental Disabilities;

(b) OAR chapter 411, division 328, Supported Living Services for Individuals with Developmental Disabilities;

(c) OAR chapter 411, division 335, Proctor Care Residential Services for Individuals with Developmental Disabilities; and

(d) OAR chapter 411, division 345, Employment and Alternatives to Employment Services for Individuals with Developmental Disabilities.

(40) "Program Services Rules" mean, for the purpose of these rules, the rules in:

(a) OAR chapter 411, division 325, 24-hour Residential Services for Children and Adults with Developmental Disabilities;

(b) OAR chapter 411, division 328, Supported Living Services for Individuals with Developmental Disabilities;

(c) OAR chapter 411, division 335, Proctor Care Residential Services for Individuals with Developmental Disabilities; and

(d) OAR chapter 411, division 345, Employment and Alternatives to Employment Services for Individuals with Developmental Disabilities.

(41) "Protection" and "Protective Services" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(42) "Protective Physical Intervention (PPI)" means any manual physical holding of, or contact with, an individual that restricts the individual's freedom of movement.

(43) "Revocation" means the action taken by the Department to rescind:

(a) An agency certificate after the Department has determined that the agency is not in compliance with these rules or the corresponding program services rules.

(b) An endorsement for an agency after the Department has determined that the agency is not in compliance with these rules or the corresponding program services rules.

(44) "Services" mean supportive services, including but not limited to supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation. Services also include being aware of the individual's general whereabouts at all times and monitoring the activities of the individual to ensure the individual's health, safety, and welfare. The term "services" is synonymous with "care".

(45) "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, and monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities.

(46) "Staff" means paid employees responsible for providing services to individuals whose wages are paid in part or in full with funds sub-contracted with the community developmental disability program or contracted directly through the Department.

(47) "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.

(48) "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 subject to change with time and circumstances.

(49) "Suspension" means an immediate temporary withdrawal of the:

(a) Certificate to operate an agency after the Department determines that the agency is not in compliance with these rules or the corresponding program services rules.

(b) Endorsement to provide program services after the Department determines that the agency is not in compliance with these rules or the corresponding program services rules.

(50) "These Rules" mean the rules in OAR chapter 411, division 323.

(51) "Unacceptable Background Check" means a check that precludes the agency from being certified or endorsed for the following reasons:

(a) The agency or any person holding 5 percent or greater ownership interest in the agency has been disqualified under OAR 407-007-0275; or

(b) A background check and fitness determination has been conducted resulting in a "denied" status, as defined in OAR 407-007-0210.

(52) "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 agency.

(53) "Volunteer" means any person assisting an agency without pay to support the services provided to an individual.

Stat. Auth. ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

# ADMINISTRATIVE RULES

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-323-0030

### Certification

(1) CERTIFICATION. No person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit intending to provide program services as defined in OAR 411-323-0020 shall establish, conduct, maintain, manage, or operate an agency without being certified by the Department under these rules.

(a) Certificates are not transferable.

(b) The Department shall issue or renew a certificate to an agency found to be in compliance with these rules and the corresponding program services rules. The certificate shall be in effect for five years from the date issued unless revoked or suspended.

(c) If an agency fails to provide complete, accurate, and truthful information during the application or renewal process, the Department may delay initial certification, deny the application, or revoke or refuse to renew the application for certification.

(d) Any applicant or person with an ownership interest in an agency shall be considered responsible for acts occurring during, and relating to, the operation of the agency for purpose of certification.

(e) The Department may consider the background and operating history of the applicant and each person with an ownership interest when determining whether to issue or renew a certificate.

(f) The Department shall conduct a review of the agency prior to the issuance or renewal of a certificate.

### (2) CURRENT AGENCY CERTIFICATION.

(a) All agencies providing program services as of July 1, 2011 shall be issued a certificate that expires in five years unless sooner revoked or suspended.

(b) Agencies licensed or certified under OAR chapter 411, division 054 for residential care and assisted living facilities, OAR chapter 309, division 035 for residential care facilities for mentally or emotionally disturbed persons, OAR chapter 413, division 215 for child welfare private child caring agencies, or OAR chapter 416, division 550 for youth offender treatment foster care do not require additional certification as an agency under these rules to provide program services. Current license or certification may be considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, and train qualified staff;

(B) Provide services according to ISPs; and

(C) Develop and implement operating policies and procedures required for managing an agency and delivering services, including provisions for safeguarding individuals receiving services.

(3) INITIAL CERTIFICATION. Notwithstanding OAR 411-323-0030(2) of this rule, an applicant intending to provide program services as defined in OAR 411-323-0020 must apply for an initial certificate and demonstrate to the satisfaction of the Department that the applicant is in compliance with these rules and the corresponding program services rules.

(a) The applicant must submit an application to the Department at least 90 days prior to anticipated certification. The completed application must be on a form provided by the Department and must include all information requested by the Department.

(b) At a minimum, the applicant must provide:

(A) A copy of any management agreements or contracts, relative to the operation and ownership of the agency.

(B) A financial plan that includes:

(i) If applying as a new agency, financial statements indicating capital and the financial plan developed to assure sustainability, partnerships, loans, and any other financial assistance; or

(ii) For agencies renewing, the last two years of financial audits as required in OAR 411-323-0030(5) of this rule.

(C) As required by 42 CFR, 455.104, the names, dates of birth, and social security numbers of those currently serving as the agency's Board of Directors and as changes are made.

(c) The applicant must develop a plan identifying the scope of program services the applicant intends to provide and request endorsement for each program service as described in OAR 411-323-0035.

(d) The applicant must demonstrate proof of liability and operational insurance coverage.

(A) The agency must, at the agency's expense, maintain in effect with respect to all occurrences taking place during the certification period, liability and operational insurance as described in the agency's contract with the Department, including automobile liability insurance, comprehensive or commercial general liability insurance, and workers' compensation coverage if required.

(B) The agency must name the State of Oregon, Department of Human Services, and the Department's divisions, officers, and employees as additional insured's on any insurance policies required by their contract with respect to agency activities being performed under the agency's certification. Such insurance must be issued by an insurance company licensed to do business in the state of Oregon and must contain a 30 day notice of cancellation endorsement.

(C) The agency must forward certificates of insurance indicating coverage to the Department as required by this rule.

(D) In the event of unilateral cancellation or restriction by the agency's insurance company of any insurance coverage required by their contract, the agency must immediately notify the Department orally of the cancellation or restriction and must confirm the oral notification in writing within three days of notification by the insurance company to the agency.

### (4) CERTIFICATE RENEWAL.

(a) To renew a certificate, the agency must:

(A) Submit an application to the Department at least 90 days prior to the expiration date of the agency's existing certificate. The completed application must be on a form provided by the Department and must include all information requested by the Department. At a minimum, the agency must provide:

(i) A copy of any management agreements or contracts, relative to the operation and ownership of the agency;

(ii) A financial plan that includes the last two years of financial audits as described in OAR 411-323-0030(5) of this rule; and

(iii) As required by 42 CFR, 455.104, the names, dates of birth, and social security numbers of those currently serving as the agency's Board of Directors and as changes are made.

(B) Develop a plan identifying the scope of program services the applicant intends to provide and request endorsement for each program service as described in OAR 411-323-0035.

(C) Demonstrate to the satisfaction of the Department that the agency is in compliance with these rules and the corresponding program services rules.

(D) Demonstrate proof of liability and operational insurance coverage as described in OAR 411-323-0030(3)(d) of this rule.

(b) An application for renewal filed with the Department before the date of expiration extends the effective date of the existing certificate until the Department takes action upon the application for renewal.

(c) If the renewal application is not submitted to the Department prior to the expiration date, the agency shall be treated as a non-certified Medicaid agency subject to termination of their Medicaid Agency Identification Number.

(5) FINANCIAL AUDITS. Agencies certified and endorsed to provide program services must obtain an audit at least once during the biennium. On alternating years, the agency may obtain an audit review as defined in OAR 411-323-0020 or another financial audit. The audit or the audit review must be submitted to the Department within 90 days of the end of the fiscal year.

(6) CERTIFICATE EXPIRATION. Unless revoked, suspended, or terminated earlier, each certificate to operate as a Medicaid agency shall expire five years following the date of issuance.

(7) CERTIFICATE TERMINATION. The certificate shall automatically terminate on the date agency operation is discontinued or if there is a change in ownership.

(8) RETURN OF CERTIFICATE. The certificate must be returned to the Department immediately upon suspension or revocation of the certificate or when agency operation is discontinued.

(9) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION.

(a) The agency must notify the Department in writing of any pending change in the agency's ownership or legal entity, legal status, or management corporation.

(b) A new certificate shall be required upon change in the agency's ownership or legal entity, legal status, or management corporation. The agency must submit a certificate application as described in OAR 411-323-0030(3) of this rule, to the Department at least 30 days prior to change in ownership or legal entity, legal status, or management corporation.

(10) CERTIFICATE ADMINISTRATIVE SANCTION. An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction on a certificate includes one or more of the following actions:

(a) Conditions;

(b) Denial, revocation, or refusal to renew a certificate; or

(c) Immediate suspension of a certificate.

# ADMINISTRATIVE RULES

## (11) CERTIFICATE CONDITIONS.

(a) The Department may attach conditions to a certificate that limit, restrict, or specify other criteria for operation of the agency. The type of condition attached to a certificate shall directly relate to a risk of harm or potential risk of harm to individuals. The Department may attach a condition to a certificate upon a finding that:

- (A) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;
- (B) A threat to the health, safety, or welfare of an individual exists;
- (C) There is reliable evidence of abuse, neglect, or exploitation; or
- (D) The agency is not being operated in compliance with these rules or the corresponding program services rules.

(b) Conditions that the Department may impose on a certificate include but are not limited to:

- (A) Restricting the total number of individuals that may be served;
- (B) Restricting the number of individuals allowed within program services based upon the capacity of the agency and staff to meet the health and safety needs of all individuals;
- (C) Restricting the support level of individuals allowed within program services based upon the capacity of the agency and staff to meet the health and safety needs of all individuals;
- (D) Requiring additional staff or staff qualifications;
- (E) Requiring additional training;
- (F) Restricting the agency from allowing persons on the premises who may be a threat to an individual's health, safety, or welfare;
- (G) Requiring additional documentation; or
- (H) Restricting admissions.

(c) NOTICE OF CERTIFICATE CONDITIONS. The Department shall notify the agency in writing of any conditions imposed, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the notice, or at such later date as indicated on the notice, and shall continue until removed by the Department.

(d) HEARING. The agency may request a contested case hearing in accordance with ORS chapter 183 and this rule upon written notice from the Department of the imposition of conditions.

(A) The agency must request a hearing within 21 days of receipt of the Department's written notice of certificate conditions.

(B) In addition to, or in-lieu of a hearing, an agency may request an administrative review as described in OAR 411-323-0030(14) of this rule. The administrative review does not diminish an agency's right to a hearing.

(e) The agency may send a written request to the Department to remove a condition if the agency believes the situation that warranted the condition has been remedied.

## (12) CERTIFICATE DENIAL, REFUSAL TO RENEW, OR REVOCATION.

(a) The Department may deny, refuse to renew, or revoke a certificate when the Department finds the agency, or any person holding 5 percent or greater ownership interest in the agency:

(A) Demonstrates substantial failure to comply with these rules or the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 calendar days of receipt of written notice of non-compliance;

(B) Has demonstrated a substantial failure to comply with these rules or the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized;

(C) Has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(D) Has been convicted of a misdemeanor associated with the operation of an agency or program services;

(E) Falsifies information required by the Department to be maintained or submitted regarding individual services, program services finances, or individuals' funds;

(F) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(G) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(b) NOTICE OF CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. The Department may issue a notice of denial, refusal to renew, or revocation of the certificate following a Department finding that there is a substantial failure to comply with these rules or the corresponding program services rules such that the health, safety, or wel-

fare of individuals is jeopardized, or that one or more of the events listed in OAR 411-323-0030(12)(a) of this section has occurred.

(c) HEARING. An applicant for a certificate or a certified agency, as applicable, may request a contested case hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Department of denial, refusal to renew, or revocation of the certificate.

(A) DENIAL. The applicant must request a hearing within 60 days of receipt of the Department's written notice of denial.

(B) REFUSAL TO RENEW. The agency must request a hearing within 60 days of receipt of the Department's written notice of refusal to renew.

(C) REVOCATION.

(i) Notwithstanding OAR 411-232-0030(12)(c)(C)(ii) of this section, the agency must request a hearing within 21 days of receipt of the Department's written notice of revocation. In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in OAR 411-323-0030(14) of this rule. The administrative review does not diminish the agency's right to a hearing.

(ii) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 must request a hearing within 10 days of receipt of the Department's written notice of revocation.

## (13) IMMEDIATE SUSPENSION OF CERTIFICATE.

(a) When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the agency, immediately suspend a certificate without a pre-suspension hearing and the agency may not continue operation.

(b) HEARING. The agency may request a contested case hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Department of the immediate suspension of the certificate.

(A) Notwithstanding OAR 411-323-0030(13)(b)(B) of this section, the agency must request a hearing within 21 days of receipt of the Department's written notice of suspension. In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in OAR 411-323-0030(14) of this rule. The administrative review does not diminish the agency's right to a hearing.

(B) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325, must request a hearing within 10 days of receipt of the Department's written notice of suspension.

## (14) ADMINISTRATIVE REVIEW.

(a) Notwithstanding OAR 411-323-0030(14)(b) of this section, the agency, in addition to the right to a contested case hearing, may request an administrative review by the Department's Director or designee.

(b) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325, may not request an administrative review for revocation or suspension. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325, may request an administrative review for imposition of conditions.

(c) The request for administrative review must be received by the Department within 10 days from the date of the Department's notice of suspension, revocation, or imposition of conditions. The agency may submit, along with the request for administrative review, any additional written materials the agency wishes to have considered during the administrative review.

(d) The Department shall conduct the administrative review and issue a decision within 10 days from the date of receipt of the request for administrative review, or by a later date as agreed to by the agency.

(e) If the decision of the Department is to affirm the suspension, revocation, or condition, the agency, notwithstanding OAR 411-323-0030(14)(b) of this section, may appeal the decision to a contested case hearing as long as the request for a contested case hearing was received by the Department within 21 days of the original written notice of suspension, revocation, or imposition of conditions.

(15) INFORMAL CONFERENCE. After the Department has received a request for hearing, the Department shall offer the applicant or the agency an opportunity for an informal conference unless an administrative review has been completed as described in OAR 411-323-0030(13) of this rule.

Stat. Auth. ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

# ADMINISTRATIVE RULES

## 411-323-0035

### Endorsement

(1) ENDORSEMENT REQUIRED. No person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit intending to provide program services as defined in OAR 411-323-0020 shall establish, conduct, maintain, manage, or operate program services without being endorsed by the Department under these rules.

(a) Endorsements are not transferable or applicable to any other program services. Separate endorsements are required for each program service provided. A certified agency intending to provide additional program services once initial endorsement has been issued must apply for the additional endorsement as described in OAR 411-323-0035(3) of this rule.

(b) The agency must report each geographic location where program services are provided to the Department and to the corresponding CDDP of the geographic location as described in this rule.

(c) The Department shall issue or renew an endorsement to a certified agency found to be in compliance with these rules and the corresponding program services rules. The effective date of each endorsement shall correspond with the effective date of the agency's certification unless sooner revoked or suspended.

(d) If an agency fails to provide complete, accurate, and truthful information during the application or renewal process, the Department may delay initial endorsement, deny the application, or revoke or refuse to renew the endorsement for program services.

(e) Any applicant or person with an ownership interest in an agency shall be considered responsible for acts occurring during, and relating to, the operation of the agency for purpose of endorsement.

(f) The Department may consider the background and operating history of the applicant and each person with an ownership interest when determining whether to issue or renew an endorsement.

(g) The Department shall conduct a review of the agency prior to the issuance or renewal of an endorsement.

### (2) CURRENT AGENCY ENDORSEMENT.

(a) All agencies providing program services as of July 1, 2011 shall be endorsed for five years for the program services being provided as of July 1, 2011 unless the endorsement is sooner revoked or suspended.

(b) Agencies intending to provide additional program services after July 1, 2011 must apply for endorsement as described in OAR 411-323-0035(3) of this rule.

(c) Agencies licensed or certified under OAR chapter 411, division 054 for residential care and assisted living facilities, OAR chapter 309, division 035 for residential care facilities for mentally or emotionally disturbed persons, OAR chapter 413, division 215 for child welfare private child caring agencies, or OAR chapter 416, division 550 for youth offender treatment foster care do not require additional endorsement as an agency under these rules to provide program services.

### (3) INITIAL ENDORSEMENT.

(a) Notwithstanding OAR 411-323-0035(2) of this rule, a certified agency intending to provide program services as defined in OAR 411-323-0020 must apply for initial endorsement and demonstrate to the satisfaction of the Department that the agency is in compliance with these rules and the corresponding program services rules.

(b) The certified agency must submit an application to the Department at least 90 days prior to providing program services that identifies the program services that the agency intends to provide and all geographic locations where program services shall be provided.

(A) The completed application must be on a form provided by the Department and must include all information requested by the Department.

(B) Each licensed site or geographic location where direct services shall be delivered must be assigned a Medicaid Performing Provider Number by the Department as described in OAR chapter 411, division 370.

### (4) ENDORSEMENT RENEWAL.

(a) To renew endorsement, the certified agency must:

(A) Submit an application prior to the expiration date of the existing endorsement. The completed application must identify the program services that the agency provides and all geographic locations where program services are provided. The completed application must be on a form provided by the Department and must include all information requested by the Department.

(B) Demonstrate to the satisfaction of the Department that the certified agency is in compliance with these rules and the corresponding program services rules.

(b) On renewal, no additional program services shall be endorsed unless specifically approved by the Department. An agency requesting to

provide additional program services must reapply for initial endorsement as described in OAR 411-323-0035(3) of this rule.

(c) An application for renewal filed with the Department before the date of expiration extends the effective date of the existing endorsement until the Department takes action upon the application for renewal.

(d) If the renewal application is not submitted to the Department prior to the expiration date, the agency may not provide program services.

(e) Renewal of endorsements for program services is contingent upon the successful renewal of the agency's certificate.

(5) EXISTING ENDORSEMENT — ADDING A GEOGRAPHIC LOCATION. Adding a geographic location to an existing endorsement must be reported by the agency to the Department and to the corresponding CDDP of the geographic location on a form provided by the Department at least 30 days prior to providing program services at the additional geographic location.

(6) ENDORSEMENT EXPIRATION. Unless revoked, suspended, or terminated earlier, the effective date of each endorsement shall correspond with the effective date of the agency's certification.

(7) ENDORSEMENT TERMINATION. Endorsement shall automatically terminate on the date program services are discontinued or agency certification is terminated.

(8) CHANGE OF CERTIFICATION. New endorsement shall be required upon change of an agency's certification. The recertified agency must submit an application for endorsement at least 30 days prior to change of an agency's certification including but not limited to change in ownership or legal entity, legal status, or management corporation.

(9) ENDORSEMENT ADMINISTRATIVE SANCTION. An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction includes one or more of the following actions:

(a) Conditions:

(b) Denial, revocation, or refusal to renew a certificate; or

(c) Immediate suspension of a certificate.

### (10) ENDORSEMENT CONDITIONS.

(a) The Department may attach conditions to an endorsement that limit, restrict, or specify other criteria for program services. The type of condition attached to an endorsement shall directly relate to a risk of harm or potential risk of harm to individuals. The Department may attach a condition to an endorsement upon a finding that:

(A) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;

(B) A threat to the health, safety, or welfare of an individual exists;

(C) There is reliable evidence of abuse, neglect, or exploitation; or

(D) The agency is not being operated in compliance with these rules or the corresponding program services rules.

(b) Conditions that the Department may impose on an endorsement include but are not limited to:

(A) Restricting the total number of individuals that may be served;

(B) Restricting the number of individuals allowed within program services based upon the capacity of the agency and staff to meet the health and safety needs of all individuals;

(C) Restricting the support level of individuals allowed within program services based upon the capacity of the agency and staff to meet the health and safety needs of all individuals;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

(F) Restricting the agency from allowing persons on the premises who may be a threat to an individual's health, safety, or welfare;

(G) Requiring additional documentation; or

(H) Restricting admissions.

(c) NOTICE OF ENDORSEMENT CONDITIONS. The Department shall notify the agency in writing of any conditions imposed, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the notice, or at such later date as indicated on the notice, and shall continue until removed by the Department.

(d) HEARING. The agency may request a contested case hearing in accordance with ORS chapter 183 and this rule upon written notice from the Department of the imposition of conditions.

(A) The agency must request a hearing within 21 days of receipt of the Department's written notice of endorsement conditions.

(B) In addition to, or in lieu of a hearing, the agency may request an administrative review as described in OAR 411-323-0035(13) of this rule. The administrative review does not diminish the agency's right to a hearing.

# ADMINISTRATIVE RULES

(e) The agency may send a written request to the Department to remove a condition if the agency believes the situation that warranted the condition has been remedied.

(11) ENDORSEMENT DENIAL, REFUSAL TO RENEW, OR REVOCATION.

(a) The Department may deny, refuse to renew, or revoke an endorsement when the Department finds the agency, or any person holding 5 percent or greater ownership interest in the agency:

(A) Fails to maintain agency certification as described in OAR 411-323-0030;

(B) Demonstrates substantial failure to comply with these rules or the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 calendar days of receipt of written notice of non-compliance;

(C) Has demonstrated a substantial failure to comply with these rules or the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized;

(D) Has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(E) Has been convicted of a misdemeanor associated with the operation of an agency or program services;

(F) Falsifies information required by the Department to be maintained or submitted regarding individual services, program services finances, or individuals' funds;

(G) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(H) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(b) NOTICE OF ENDORSEMENT DENIAL, REFUSAL TO RENEW, OR REVOCATION. The Department may issue a notice of denial, refusal to renew, or revocation of an endorsement following a Department finding that there is a substantial failure to comply with these rules or the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in OAR 411-323-0035(11)(a) of this section has occurred.

(c) HEARING. An applicant for an endorsement or an endorsed agency, as applicable, may request a contested case hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Department of denial, refusal to renew, or revocation of the endorsement.

(A) DENIAL. The applicant must request a hearing within 60 days of receipt of the Department's written notice of denial.

(B) REFUSAL TO RENEW. The agency must request a hearing within 60 days of the receipt of the Department's written notice of refusal to renew.

(C) REVOCATION.

(i) Notwithstanding OAR 411-323-0035(11)(c)(C)(ii) of this section, the agency must request a hearing within 21 days of receipt of the Department's written notice of revocation. In addition to, or in lieu of a hearing, an agency may request an administrative review as described in OAR 411-323-0035(13) of this rule. The administrative review does not diminish the agency's right to a hearing.

(ii) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325, must request a hearing within 10 days of receipt of the Department's written notice of revocation.

(12) IMMEDIATE SUSPENSION OF ENDORSEMENT.

(a) When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the agency, immediately suspend an endorsement without a pre-suspension hearing and the program service may not continue operation.

(b) HEARING. The agency may request a contested case hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Department of the immediate suspension of the endorsement.

(A) Notwithstanding OAR 411-323-0035(12)(b)(B) of this section, the endorsed agency must request a hearing within 21 days of receipt of the Department's written notice of suspension. In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in OAR 411-323-0035(13) of this rule. The administrative review does not diminish the agency's right to a hearing.

(B) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 must request a hearing within 10 days of receipt of the Department's written notice of suspension.

(13) ADMINISTRATIVE REVIEW.

(a) Notwithstanding OAR 411-323-0035(13)(b) of this section, the agency, in addition to the right to a contested case hearing, may request an administrative review by the Department's Director or designee.

(b) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may not request an administrative review for revocation or suspension. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may request an administrative review for imposition of conditions.

(c) The request for administrative review must be received by the Department within 10 days from the date of the Department's notice of suspension, revocation, or imposition of conditions. The agency may submit, along with the request for administrative review, any additional written materials the agency wishes to have considered during the administrative review.

(d) The Department shall conduct the administrative review and issue a decision within 10 days from the date of receipt of the request for administrative review, or by a later date as agreed to by the agency.

(e) If the decision of the Department is to affirm the suspension, revocation, or condition, the agency, notwithstanding OAR 411-323-0035(13)(b) of this section, may appeal the decision to a contested case hearing as long as the request for a contested case hearing was received by the Department within 21 days of the original written notice of suspension, revocation, or imposition of conditions.

(14) INFORMAL CONFERENCE. After the Department has received a request for hearing, the Department shall offer the applicant or agency an opportunity for an informal conference unless an administrative review has been completed as described in OAR 411-323-0035(13) of this rule.

Stat. Auth. ORS 409.050 & 410.070

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Hist.: SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-323-0040

### Inspections and Investigations

(1) Agencies certified and endorsed under these rules must allow the following types of investigations and inspections:

(a) Quality assurance, onsite inspections, and certificate renewal;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) The Department, the Department's designee, or proper authority shall perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by these rules must be:

(a) Open to inspection and investigation by the Department, the Department's designee, or proper authority; and

(b) Submitted to or be made available for review by the Department within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, the Department, or the Department's designee has determined to initiate an investigation, the agency may not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, OAR 411-323-0040(5), an "internal investigation" is defined as:

(a) Conducting interviews of the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions must be taken to assure individual safety.

(6) The Department or the Department's designee shall conduct abuse investigations as described in OAR 407-045-0250 to 407-045-0360 and

# ADMINISTRATIVE RULES

shall complete an abuse investigation and protective services report according to OAR 407-045-0320.

(7) Upon completion of the abuse investigation by the Department, the Department's designee, or a law enforcement agency, the agency may conduct an investigation without further Department approval to determine if any personnel actions are necessary.

(8) Upon completion of the abuse investigation and protective services report, according to OAR 407-045-0330, the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate agency. The agency must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(9) The agency must submit a plan of correction to the Department for any noncompliance found during an inspection under this rule.

Stat. Auth. ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-323-0050

### Agency Management and Personnel Practices

(1) NON-DISCRIMINATION. The agency must comply with all applicable state and federal statutes, rules, and regulations in regard to non-discrimination in employment policies and practices.

(2) BASIC PERSONNEL POLICIES AND PROCEDURES. The agency must have in place and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member or subcontractor including respite providers and volunteers has been identified as an accused person in an abuse investigation or when the allegation of abuse has been substantiated.

(3) PROHIBITION AGAINST RETALIATION. The agency or service provider may not retaliate against any staff member, subcontractor including respite providers and volunteers, or proctor providers that reports in good faith suspected abuse or retaliate against the child or adult with respect to any report. An accused person may not self-report solely for the purpose of claiming retaliation.

(a) Any community facility, community program, or person that retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, shall be subject to a penalty up to \$1000, notwithstanding any other remedy provided by law.

(b) Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. For purposes of this section, OAR 411-323-0050(3)(b), "adverse action" means any action taken by a community facility, community program, or person involved in a report against the person making the report or against the child or adult because of the report and includes but is not limited to:

- (A) Discharge or transfer from the agency, except for clinical reasons;
- (B) Discharge from or termination of employment;
- (C) Demotion or reduction in remuneration for services; or
- (D) Restriction or prohibition of access to the agency or the individuals served by the agencies.

(4) MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES.

(a) Any staff of an agency, proctor providers, substitute caregivers, independent contractors, and volunteers are mandatory reporters.

(b) The agency must notify all staff, proctor providers, substitute caregivers, independent contractors, and volunteers, of mandatory reporting status at least annually on forms provided by the Department.

(c) The agency must provide all staff, proctor providers, substitute caregivers, independent contractors, and volunteers with a Department produced card regarding abuse reporting status and abuse reporting requirements.

(d) For reporting purposes the following shall apply:

(A) Agencies providing services to adults must report to the CDDP where the adult resides and if there is reason to believe a crime has been committed a report must also be made to law enforcement.

(B) Agencies providing services to children must report to the Department or law enforcement in the county where the child resides.

(5) APPLICATION FOR EMPLOYMENT. An application for employment at the agency must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(6) BACKGROUND CHECKS. Any staff, volunteer, proctor provider, respite provider, crisis provider, advisor, skill trainer, or any subject individual defined by OAR 407-007-0200 to 407-007-0370, who has or

will have contact with an individual in services must have an approved background check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(a) Effective July 28, 2009, the agency may not use public funds to support, in whole or in part, a person as described above in OAR 411-323-0050(6) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) OAR 411-323-0050(6)(a) of this section does not apply to agency staff who were hired prior to July 28, 2009 and remain in the current position for which the staff member was hired.

(c) Any staff, volunteer, respite provider, advisor, skill trainer, or any subject individual defined by OAR 407-007-0200 to 407-007-0370 must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and 407-007-0290. The person must notify the Department or its designee within 24 hours.

(7) EXECUTIVE DIRECTOR QUALIFICATIONS. The agency must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in developmental disabilities, mental health, rehabilitation, social services, or a related field. Six years of experience in the identified fields may be substituted for a degree.

(8) GENERAL STAFF QUALIFICATIONS. Any staff member providing direct assistance to individuals must meet the following criteria:

(a) Be at least 18 years of age;

(b) Have approval to work based on current Department policy and procedures for background checks in OAR 407-007-0200 to 407-007-0370 and 411-323-0050(6) of this rule;

(c) If hired on or after July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(d) Be literate and capable of understanding written and oral orders;

(e) Be able to communicate with individuals, physicians, services coordinators, and appropriate others;

(f) Be able to respond to emergency situations at all times;

(g) Be certified in CPR and First Aid by a recognized training agency within 90 days of employment;

(h) Receive 12 hours of job-related in-service training annually;

(i) Have clear job responsibilities as described in a current signed and dated job description; and

(j) If transporting individuals, have a valid Oregon driver's license and proof of insurance.

(9) PERSONNEL FILES AND QUALIFICATION RECORDS. The agency must maintain up-to-date written job descriptions for all staff as well as a file available to the Department or the Department's designee for inspection that includes written documentation of the following for each staff member:

(a) Written documentation that references and qualifications were checked;

(b) Written documentation by the Department of an approved background check as defined in OAR 407-007-0210;

(c) Written documentation of staff notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter;

(d) Written documentation of any complaints filed against the staff member and the results of the complaint process, including, if any, disciplinary action;

(e) Written documentation of any founded report of child abuse or substantiated abuse;

(f) Written documentation of 12 hours of job-related services in-service training annually;

(g) Documentation that the staff member has been certified in CPR and First Aid by a recognized training agency within 90 days of employment and that certification is kept current; and

(h) For staff operating vehicles that transport individuals, documentation of a valid Oregon driver's license and proof of insurance.

(10) DISSOLUTION OF AN AGENCY. Prior to the dissolution of an agency, a representative of the governing body or owner of the agency must notify the Department 30 days in advance in writing and make appropriate arrangements for the transfer of individual's records.

Stat. Auth. ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12



# ADMINISTRATIVE RULES

## 411-323-0060

### Policies and Procedures

(1) **INDIVIDUAL RIGHTS.** The agency must have and implement written policies and procedures that protect an individual's rights that address the following:

(a) **ABUSE.** Individuals as defined in OAR 411-323-0020 must not be abused nor shall abuse be tolerated by any staff or volunteer of the agency.

(b) **PROTECTION AND WELLBEING.** The agency must ensure the health and safety of individuals from abuse including the protection of individual rights, as well as, encourage and assist individuals through the ISP process to understand and exercise these rights. Except for children under the age of 18, where reasonable limitations have been placed by a parent or guardian, these rights must at a minimum allow for:

(A) Assurance that each individual has the same civil and human rights accorded to other citizens of the same age except when limited by a court order:

(B) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(C) Visits with family members, guardians, friends, advocates and others of the individual's choosing, and legal and medical professionals;

(D) Confidential communication including personal mail and telephone;

(E) Personal property and fostering of personal control and freedom regarding that property;

(F) Privacy in all matters that do not constitute a documented health and safety risk to the individual;

(G) Protection from abuse and neglect, including freedom from unauthorized training, treatment, and chemical, mechanical, or protective physical intervention;

(H) Freedom to choose whether or not to participate in religious activity;

(I) The opportunity to vote for individuals over the age of 18 and training in the voting process;

(J) Expression of sexuality within the framework of state and federal laws, and for adults over the age of 18, freedom to marry and to have children;

(K) Access to community resources, including recreation, agency services, employment and community inclusion services, school, educational opportunities, and health care resources;

(L) Individual choice for children and adults that allows for decision making and control of personal affairs appropriate to age;

(M) Services that promote independence, dignity, and self-esteem and reflect the age and preferences of the individual;

(N) Individual choice for adults to consent to or refuse treatment, unless incapable, and then an alternative decision maker must be allowed to consent or refuse for the individual. For children, the child's parent or guardian must be allowed to consent to or refuse treatment except as described in ORS 109.610 or limited by court order;

(O) Individual choice to participate in community activities; and

(P) Access to a free and appropriate education for children and individuals under the age of 21 including a procedure for school attendance or refusal to attend.

(2) **HEALTH.** The agency must have and implement policies and procedures that maintain and protect the health of individuals.

(3) **INDIVIDUAL AND FAMILY INVOLVEMENT.** The agency must have and implement a written policy that addresses:

(a) Opportunities for the individual to participate in decisions regarding the operations of the agency;

(b) Opportunities for families, guardians, legal representatives, and significant others of the individuals served by the agency to interact; and

(c) Opportunities for individuals, families, guardians, legal representatives, and significant others to participate on the Board or on committees or to review policies of the agency that directly affect the individuals served by the agency.

(4) **INDEPENDENCE, PRODUCTIVITY, AND INTEGRATION.** As stated in ORS 427.007, the agency must have a written policy that states each individual's ISP is developed to meet each individual's level of independence, productivity, and integration into the local community.

(5) **CONFIDENTIALITY OF RECORDS.** The agency must have and implement written policies and procedures that ensure all individuals' records are confidential except as otherwise provided by applicable state and federal rule or laws.

(a) For the purpose of disclosure from individual medical records under this rule, an agency is considered a "public provider" as defined in ORS 179.505.

(b) For the purpose of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502.

(6) **BEHAVIOR SUPPORT.** The agency must have and implement a written policy for behavior support that utilizes individualized positive behavior support techniques and prohibits abusive practices.

(7) **PROTECTIVE PHYSICAL INTERVENTION.** The agency must have and implement written policies and procedures for protective physical interventions that address the following:

(a) Circumstances allowing the use of protective physical intervention. The agency must only employ protective physical intervention techniques that are included in the OIS curriculum approved by the Department or the OIS Steering Committee.

(b) Protective physical intervention techniques must only be applied:

(A) When the health and safety of the individual and others are at risk, and the ISP team has authorized the procedures in a documented ISP team decision that is included in the ISP and uses procedures that are intended to lead to less restrictive intervention strategies; or

(B) As an emergency measure, if absolutely necessary to protect the individual or others from immediate injury; or

(C) As a health related protection ordered by a physician, if absolutely necessary during the conduct of a specific medical or surgical procedure, or for the individual's protection during the time that a medical condition exists.

(8) **HANDLING AND MANAGING INDIVIDUALS' MONEY.** The agency must have written policies and procedures for the handling and management of individuals' money. Such policies and procedures must provide for:

(a) Financial planning and management of an individual's funds unless the ISP documents and justifies limitations to self-management;

(b) Safeguarding of an individual's funds;

(c) Individuals receiving and spending their money; and

(d) Taking into account the individual's interests and preferences.

(9) **INFORMAL COMPLAINTS AND GRIEVANCES.** The agency must develop and implement written policies and procedures regarding individual informal complaints and formal grievances. These policies and procedures must at minimum address:

(a) **INFORMAL COMPLAINT RESOLUTION.** An individual or someone acting on behalf of the individual must be given the opportunity to informally discuss and resolve any allegation that an agency has taken action which is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing this opportunity does not preclude the individual or someone acting on behalf of the individual to pursue resolution through formal grievance processes.

(b) **FORMAL GRIEVANCE AND GRIEVANCE LOG.**

(A) The agency's formal grievance policies and procedures must include:

(i) A description of how the agency receives and documents grievances from individuals and others acting on the individuals' behalf; and

(ii) Investigation of the facts supporting or disproving the grievance.

(B) The Executive Director or designee must provide a formal written response to the grievant within 15 days of receipt of the grievance, unless the grievance is informally resolved to the grievant's satisfaction prior to that time. The formal written response of the Executive Director or designee must clearly inform the grievant of the availability of assistance in appealing the grievance and how to access that assistance.

(C) The Executive Director or designee must submit to the Department for review grievances that have not been resolved to the satisfaction of the grievant, where the Executive Director or designee believes that the grievant may not have the capability to appeal an adverse decision to the Department.

(D) Documentation of each grievance and its resolution must be filed or noted in the complainant's record. In addition, the agency must maintain a grievance log, which must, at a minimum, identify the person making the complaint, the date of the grievance, the nature of the grievance, the resolution, and the date of the resolution.

(c) If a grievance is associated in any way with abuse, the recipient of the grievance must immediately report the issue to the appropriate authority, the CDDP, the Department, and notify the Executive Director or designee.

(10) **AGENCY DOCUMENTATION REQUIREMENTS.** The agency must have and implement policies and procedures that address agency documentation requirements. Documentation must:

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- (a) Be prepared at the time, or immediately following the event being recorded;
- (b) Be accurate and contain no willful falsifications;
- (c) Be legible, dated, and signed by the person making the entry; and
- (d) Be maintained for no less than three years.

Stat. Auth. ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-323-0070

### Variances

(1) The Department may grant a variance to these rules based upon a demonstration by the agency that an alternative method or different approach provides equal or greater agency effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals.

(2) The agency requesting a variance must submit, in writing, an application to the Department that contains the following:

- (a) The section of the rule from which the variance is sought;
- (b) The reason for the proposed variance;
- (c) The alternative practice, service, method, concept, or procedure proposed; and
- (d) If the variance applies to an individual's services, evidence that the variance is consistent with an individual's currently authorized ISP.

(3) The Department shall approve or deny the request for a variance.

(4) The Department's decision shall be sent to the agency, the CDDP, and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.

(5) The agency may appeal the denial of a variance request within 10 working days of the denial, by sending a written request for review to the Director and the CDDP. The Director's decision is final.

(6) The Department shall determine the duration of the variance.

(7) The agency may implement a variance only after written approval from the Department.

Stat. Auth. ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-325-0020

### Definitions

(1) "24-Hour Residential Program" means a comprehensive residential home or facility licensed by the Department under ORS 443.410 to provide residential care and training to individuals with developmental disabilities.

(2) "Abuse" means:

(a) Abuse of a child as defined in ORS 419B.005 and for the purpose of these rules, abuse of a child also means abuse as defined in OAR 407-045-0260.

(b) Abuse of an adult as defined in OAR 407-045-0260.

(3) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required in OAR 407-045-0310.

(4) "Administration of Medication" means the act of placing a medication in or on an individual's body by a staff member who is responsible for the individual's care.

(5) "Adult" means an individual 18 years or older with developmental disabilities.

(6) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(7) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(8) "Appeal" means the process under ORS Chapter 183 that the service provider may use to petition conditions or the suspension, denial, or revocation of their application, certificate, endorsement, or license.

(9) "Applicant" means a person, agency, corporation, or governmental unit, who applies for a license to operate a residential home or facility providing 24-hour comprehensive services to individuals with developmental disabilities.

(10) "Assessment" means an evaluation of an individual's needs.

(11) "Baseline Level of Behavior" means the frequency, duration, or intensity of a behavior, objectively measured, described, and documented

prior to the implementation of an initial or revised Behavior Support Plan. This baseline measure serves as the reference point by which the ongoing efficacy of the Individual Support Plan (ISP) is to be assessed. A baseline level of behavior is reviewed and reestablished at minimum yearly, at the time of the ISP team meeting.

(12) "Behavior Data Collection System" means the methodology specified within the individual's Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(13) "Behavior Data Summary" means a document composed by the service provider to summarize episodes of physical intervention. The behavior data summary serves as a substitution for the requirement of individual incident reports for each episode of physical intervention.

(14) "Board of Directors" means a group of persons formed to set policy and give directions to a service provider that provides residential services to individuals with developmental disabilities. A board of directors includes local advisory boards used by multi-state organizations.

(15) "Certificate" means a document issued by the Department to a service provider that certifies the service provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed 24-hour residential services.

(16) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(17) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(18) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication methods.

(19) "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.

(20) "Competency Based Training Plan" means a written description of a service provider's process for providing training to newly hired staff. At a minimum, the Competency Based Training Plan:

(a) Addresses health, safety, rights, values and personal regard, and the service provider's mission; and

(b) Describes competencies, training methods, timelines, how competencies of staff are determined and documented including steps for remediation, and when a competency may be waived by a service provider to accommodate a staff member's specific circumstances.

(21) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(22) "Condition" means a provision attached to a new or existing certificate, endorsement, or license that limits or restricts the scope of the certificate, endorsement, or license or imposes additional requirements on the service provider.

(23) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that may result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(24) "Denial" means the refusal of the Department to issue a certificate, endorsement, or license to operate a 24-hour residential home or facility for children or adults because the Department has determined that the service provider or the home or facility is not in compliance with these rules or the rules in OAR chapter 411, division 323.

(25) "Department" means the Department of Human Services (DHS). The term "Department" is synonymous with "Division (SPD)".

(26) "Developmental Disability" 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.

(27) "Direct Nursing Service" means the provision of individual-specific advice, plans, or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home or facility. Direct nursing service differs from administrative nursing services.

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Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for staff.

(28) "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".

(29) "Domestic Animals" mean any various animals domesticated so as to live and breed in a tame condition. Examples of domestic animals are dogs, cats, and domesticated farm stock.

(30) "Educational Surrogate" means a person who acts in place of a parent in safeguarding a child's rights in the special education decision-making process:

(a) When the parent cannot be identified or located after reasonable efforts;

(b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or

(c) At the request of a parent or adult student.

(31) "Endorsement" means authorization to provide 24-hour residential services issued by the Department to a certified service provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(32) "Entry" means admission to a Department-funded developmental disability service. For the purpose of these rules, "entry" means admission to a licensed 24-hour home or facility.

(33) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of 24-hour residential services.

(34) "Exit" means either termination from a Department-funded developmental disability service provider or transfer from one Department-funded service provider to another.

(35) "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.

(36) "Guardian" means a parent for individuals under 18 years of age or a person or agency appointed and authorized by the courts to make decisions about services for an individual.

(37) "Health Care Provider" means a person or health care facility licensed, certified, or otherwise authorized or permitted by Oregon law to administer health care in the ordinary course of business or practice of a profession.

(38) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505; or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.

(39) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or unusual incident involving an individual.

(40) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(41) "Individual" means an adult or a child with developmental disabilities for whom services are planned and provided.

(42) "Individualized Education Plan (IEP)" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student, and a representative of the school district.

(43) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The type of service supports needed, how supports are delivered, and the frequency of provided supports are included in the ISP. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(44) "Individual Support Plan (ISP) Team" means a team composed of the individual served, representatives who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and family or other persons requested to develop the ISP.

(45) "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.

(46) "Legal Representative" means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the individual or a person or agency authorized by the court to make decisions about services for the individual.

(47) "Licensee" means a person or organization to whom a certificate, endorsement, and license is granted.

(48) "Majority Agreement" means for purposes of entry, exit, transfer, and annual Individual Support Plan (ISP) team meetings, that no one member of the ISP team has the authority to make decisions for the team unless so authorized by the team process. Service providers, families, community developmental disability programs, advocacy agencies, or individuals are considered as one member of the ISP team for the purpose of reaching majority agreement.

(49) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who:

(a) For the purpose of these rules, is a staff or volunteer working with individuals birth to 17 years of age who, comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section of this rule, OAR 411-325-0020, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(b) For the purpose of these rules, is a staff or volunteer working with adults 18 years and older 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, OAR 411-325-0020, 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.

(50) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around, and that restricts freedom of movement or access to the individual's body.

(51) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a service provider following the service provider's enrollment as described in OAR chapter 411, division 370.

(52) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.

(53) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(54) "Modified Diet" means the texture or consistency of food or drink is altered or limited. Examples include but are not limited to no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

(55) "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.

(56) "Nursing Care Plan" means a plan of care 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 or delegated to the provider and staff.

(57) "Oregon Core Competencies" means:

(a) A list of skills and knowledge for newly hired staff in the areas of health, safety, rights, values and personal regard, and the service provider's mission; and

(b) The associated timelines in which newly hired staff must demonstrate competencies.

## ADMINISTRATIVE RULES

(58) "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 protective physical intervention techniques that are used to maintain health and safety.

(59) "Person-Centered Planning" means:

(a) A process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about personal goals, activities, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(60) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(61) "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.

(62) "Protection" and "Protective Services" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(63) "Protective Physical Intervention (PPI)" means any manual physical holding of, or contact with, an individual that restricts the individual's freedom of movement. The term "protective physical intervention" is synonymous with "physical restraint".

(64) "Psychotropic Medication" means medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including but not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(65) "Respite" means intermittent services provided on a periodic basis, but not more than 14 consecutive days, for the relief of, or due to the temporary absence of, persons normally providing the supports to individuals unable to care for themselves.

(66) "Revocation" means the action taken by the Department to rescind a certificate, endorsement, or 24-hour home or facility license after the Department has determined that the service provider is not in compliance with these rules or the rules in OAR chapter 411, division 323.

(67) "Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her own medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon written order of a physician, and safely maintains the medication without supervision.

(68) "Service Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323. For the purpose of these rules, "agency", "provider", "program", "applicant", or "licensee" is synonymous with "service provider."

(69) "Services" mean supportive services, including but not limited to supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation. Services also include being aware of the individual's general whereabouts at all times and monitoring the activities of the individual to ensure the individual's health, safety, and welfare. The term "services" is synonymous with "care".

(70) "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, and monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities.

(71) "Significant Other" means a person selected by the individual to be the individual's friend.

(72) "Specialized Diet" means that the amount, type of ingredients, or selection of food or drink items is limited, restricted, or otherwise regulated under a physician's order. Examples include but are not limited to low

calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. A specialized diet does not include a diet where extra or additional food is offered without physician's orders but may not be eaten, for example, offer prunes each morning at breakfast or include fresh fruit with each meal.

(73) "Staff" means paid employees responsible for providing services to individuals whose wages are paid in part or in full with funds sub-contracted with the community developmental disability program or contracted directly through the Department.

(74) "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.

(75) "Support" means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(76) "Suspension" means an immediate temporary withdrawal of the approval to operate 24-hour residential services after the Department determines that the service provider or 24-hour home or facility is not in compliance with one or more of these rules or the rules in OAR chapter 411, division 323.

(77) "These Rules" mean the rules in OAR chapter 411, division 325.

(78) "Transfer" means movement of an individual from one home or facility to another home or facility within the same county, administered by the same service provider.

(79) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's Individual Support Plan (ISP) is developed and approved by the ISP team. The Transition Plan includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for ISP development.

(80) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(81) "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 service provider.

(82) "Volunteer" means any person assisting a service provider without pay to support the services provided to an individual.

Stat. Auth.: ORS 409.050, 410.070, 443.450, & 443.455

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; 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 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

### 411-325-0025

#### Program Management

(1) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To provide 24-hour residential services, a service provider must have:

(a) A certificate and an endorsement to provide 24-hour residential services as set forth in OAR chapter 411, division 323;

(b) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(c) For each specific geographic service area where 24-hour residential services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

(2) INSPECTIONS AND INVESTIGATIONS. The service provider must allow inspections and investigations as described in OAR 411-323-0040.

(3) MANAGEMENT AND PERSONNEL PRACTICES. The service provider must comply with the management and personnel practices as described in OAR 411-323-0050.

(4) COMPETENCY BASED TRAINING PLAN. The service provider must have and implement a Competency Based Training Plan that meets, at a minimum, the competencies and timelines set forth in the Department's Oregon Core Competencies.

(5) GENERAL STAFF QUALIFICATIONS. Any staff member providing direct assistance to individuals must:

(a) Have knowledge of individuals' ISP's and all medical, behavioral, and additional supports required for the individuals; and

(b) Have met the basic qualifications in the service provider's Competency Based Training Plan. The service provider must maintain written documentation kept current that the staff member has demonstrated competency in areas identified by the service provider's Competency Based

# ADMINISTRATIVE RULES

Training Plan as required by OAR 411-325-0025(4) of this rule, and that is appropriate to their job description.

(6) **CONFIDENTIALITY OF RECORDS.** The service provider must ensure all individuals' records are confidential as described in OAR 411-323-0060.

(7) **DOCUMENTATION REQUIREMENTS.** All entries required by these rules, unless stated otherwise must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than three years.

Stat. Auth. ORS 409.050, 410.070, 443.450, & 443.455

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-325-0060

### Conditions on License

The Department may attach conditions to the license that limit, restrict, or specify other criteria for operation of the home or facility. The type of condition attached to a license shall directly relate to a risk of harm or potential risk of harm to individuals.

(1) The Department may attach a condition to a license upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;

(b) A threat to the health, safety, or welfare of an individual exists;

(c) There is reliable evidence of abuse, neglect, or exploitation;

(d) The home or facility is not being operated in compliance with these rules; or

(e) The service provider is licensed to provide services for a specific person only and further placements may not be made into that home or facility.

(2) Conditions that the Department may impose on a license include but are not limited to:

(a) Restricting the total number of individuals that may be served;

(b) Restricting the number of individuals allowed within a licensed classification level based upon the capacity of the service provider and staff to meet the health and safety needs of all individuals;

(c) Restricting the support level of individuals allowed within a licensed classification level based upon the capacity of the service provider and staff to meet the health and safety needs of all individuals;

(d) Requiring additional staff or staff qualifications;

(e) Requiring additional training;

(f) Restricting the service provider from allowing persons on the premises who may be a threat to an individual's health, safety, or welfare;

(g) Requiring additional documentation; or

(h) Restriction of admissions.

(3) The Department shall notify the service provider in writing of any conditions imposed, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the notice, or at such later date as indicated on the notice, and shall continue until removed by the Department.

(4) The service provider may request a contested case hearing in accordance with ORS chapter 183 and this rule upon written notice from the Department of the imposition of conditions.

(a) The service provider must request a hearing within 21 days of receipt of the Department's written notice of conditions.

(b) In addition to, or in lieu of a hearing, a service provider may request an administrative review as described in OAR 411-325-0060(5) of this rule. The administrative review does not diminish the service provider's right to a hearing.

(5) **ADMINISTRATIVE REVIEW.**

(a) A service provider, in addition to the right to a contested case hearing, may request an administrative review by the Department's Director or designee for imposition of conditions.

(b) The request for administrative review must be received by the Department within 10 days from the date of the Department's notice of imposition of conditions. The service provider may submit, along with the request for administrative review, any additional written materials the service provider wishes to have considered during the administrative review.

(c) The Department shall conduct the administrative review and issue a decision within 10 days from the date of receipt of the request for administrative review, or by a later date as agreed to by the service provider.

(d) If the decision of the Department is to affirm the condition, the service provider may appeal the decision to a contested case hearing as long as the request for a contested case hearing was received by the Department within 21 days of the original written notice of imposition of conditions.

(6) The service provider may send a written request to the Department to remove a condition if the service provider believes the situation that warranted the condition has been remedied.

Stat. Auth.: ORS 409.050, 410.070, 443.450, & 443.455

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-325-0110

### Variations

(1) The Department may grant a variance to these rules based upon a demonstration by the service provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals.

(2) The service provider requesting a variance must submit, in writing, an application to the CDDP that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept, or procedure proposed; and

(d) If the variance applies to an individual's services, evidence that the variance is consistent with an individual's currently authorized ISP.

(3) The CDDP must forward the signed variance request form to the Department within 30 days of receipt of the request indicating its position on the proposed variance.

(4) The Department shall approve or deny the request for a variance.

(5) The Department's decision shall be sent to the service provider, the CDDP, and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.

(6) The service provider may appeal the denial of a variance request within 10 working days of the denial, by sending a written request for review to the Director and a copy of the request to the CDDP. The Director's decision is final.

(7) The Department shall determine the duration of the variance.

(8) The service provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050, 410.070, 443.450, & 443.455

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-325-0150

### Safety: General

(1) **TOXIC MATERIALS.** All toxic materials including, but not limited to, poisons, chemicals, rodenticides and insecticides must be:

(a) Properly labeled;

(b) Stored in original container separate from all foods, food preparation utensils, linens, and medications; and

(c) Stored in a locked area unless the Risk Tracking records for all individuals residing in the home document that there is no risk present.

(2) **FLAMMABLE AND COMBUSTIBLE MATERIALS.** All flammable and combustible materials must be properly labeled, stored, and locked in accordance with State Fire Code.

(3) **KNIVES AND SHARP OBJECTS.** For children, knives and sharp kitchen utensils must be locked unless otherwise determined by a documented ISP team decision.

(4) **WINDOW COVERINGS.** Window shades, curtains, or other covering devices must be provided for all bedroom and bathroom windows to assure privacy.

(5) **HOT WATER TEMPERATURE.** Hot water in bathtubs and showers may not exceed 120 degrees Fahrenheit. Other water sources, except the dishwasher, may not exceed 140 degrees Fahrenheit.

(6) **WINDOW OPENINGS.** Sleeping rooms on ground level must have at least one window readily openable from the inside without special tools that provides a clear opening of not less than 821 square inches, with the least dimension not less than 22 inches in height or 20 inches in width. Sill height may not be more than 44 inches from the floor level. Exterior sill heights may not be greater than 72 inches from the ground, platform, deck, or landing. There must be stairs or a ramp to ground level. Those homes or facilities previously licensed having a minimum window opening of not less than 720 square inches are acceptable unless through inspection it is deemed that the window opening dimensions present a life safety hazard.

# ADMINISTRATIVE RULES

(7) **SQUARE FOOTAGE REQUIREMENTS FOR SLEEPING ROOMS.** Sleeping rooms must have 60 square feet per individual with beds located at least three feet apart.

(8) **FLASHLIGHTS.** Operative flashlights, at least one per floor, must be readily available to staff in case of emergency.

(9) **FIRST-AID KIT AND MANUAL.** First-aid kits and first-aid manuals must be available to staff within each residence in a designated location. First aid kits must be locked if, after evaluating any associated risk, items contained in the first aid kit present a hazard to individuals living in the house. First aid kits containing any medication including topical must be locked.

Stat. Auth.: ORS 409.050, 410.070, 443.450, & 443.455

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-325-0320

### Rights: Informal Complaints and Formal Grievances

(1) The service provider must implement written policies and procedures for individuals' grievances as required by OAR 411-323-0060.

(2) The service provider must send copies of the documentation on all grievances to the services coordinator within 15 working days of initial receipt of the grievance.

(3) At entry to service and as changes occur, the service provider must inform each individual and parent, guardian, or advocate orally and in writing of the service provider's grievance policy and procedures and a description of how to utilize them.

Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-325-0430

### Individual Support Plan

(1) A copy of each individual's ISP and supporting documentation on the required Department forms must be available at the residence within 60 days of entry and annually thereafter.

(2) The following information must be collected and summarized prior to the ISP meeting:

(a) Personal Focus Worksheet;

(b) Risk Tracking Record;

(c) Necessary protocols or plans that address health, behavioral, safety, and financial supports as identified on the Risk Tracking Record;

(d) A Nursing Care Plan, if applicable, including but not limited to those tasks required by the Risk Tracking Record; and

(e) Other documents required by the ISP team.

(3) A completed ISP must be documented on the Department required form and include the following:

(a) What's most important to the individual;

(b) Risk summary;

(c) Professional services the individual uses or needs;

(d) Action plan;

(e) Discussion record;

(f) Service supports; and

(g) Signature sheet.

(4) The provider must maintain documentation of implementation of each support and services specified in OAR 411-325-0430(2)(c) to (2)(e) of this rule in the individual's ISP. This documentation must be kept current and be available for review by the individual, guardian, CDDP, and Department representatives.

Stat. Auth.: ORS 409.050, 410.070, 443.450, & 443.455

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-325-0460

### Civil Penalties

(1) For purposes of imposing civil penalties, 24-hour residential homes and facilities licensed under ORS 443.400 to 443.455 and 443.991(2) are considered to be long-term care facilities subject to 441.705 to 441.745.

(2) The Department issues the following schedule of penalties applicable to 24-hour residential homes and facilities as provided for under ORS 441.705 to 441.745:

(a) Violations of any requirement within any part of the following rules may result in a civil penalty up to \$500 per day for each violation not to exceed \$6,000 for all violations for any licensed 24-hour residential home or facility within a 90-day period:

(A) 411-325-0025(3), (4), (5), (6), (7) and (8);

(B) 411-325-0120(2), and (11);

(C) 411-325-0130;

(D) 411-325-0140;

(E) 411-325-0150;

(F) 411-325-0170;

(G) 411-325-0190;

(H) 411-325-0200;

(I) 411-325-0220(1), and (2);

(J) 411-325-0230;

(K) 411-325-0240, 0250, 0260, 0270, 0280, and 0290;

(L) 411-325-0300, 0320, 0330, 0340, and 0350;

(M) 411-325-0360;

(N) 411-325-0380;

(O) 411-325-0430(3), (4), and (5); and

(P) 411-325-0440.

(b) Civil penalties of up to \$300 per day per violation may be imposed for violations of any section of these rules not listed in OAR 411-325-0460(2)(a)(A) to (2)(a)(N) of this section if a violation has been cited on two consecutive inspections or surveys of a 24-hour residential home or facility where such surveys are conducted by an employee of the Department. Penalties assessed under this section of this rule, OAR 411-325-0460(2), may not exceed \$6,000 within a 90-day period.

(3) For the purpose of this rule, OAR 411-325-0460, monitoring occurs when a 24-hour residential home or facility is surveyed, inspected, or investigated by an employee or designee of the Department or an employee or designee of the Office of State Fire Marshal.

(4) In imposing a civil penalty pursuant to the schedule published in OAR 411-325-0460(2) of this rule, the Department shall consider the following factors:

(a) The past history of the service provider incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes or rules pertaining to 24-hour residential homes or facilities;

(c) The economic and financial conditions of the service provider incurring the penalty; and

(d) The immediacy and extent to which the violation threatens or threatened the health, safety, or well-being of individuals.

(5) Any civil penalty imposed under ORS 443.455 and 441.710 shall become due and payable when the service provider incurring the penalty receives a notice in writing from the Department's Director. The notice referred to in this section of this rule, OAR 411-325-0460(5), shall be sent by registered or certified mail and shall include:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the service provider's right to request a hearing.

(6) The person representing the service provider, to whom the notice is addressed, shall have 20 days from the date of mailing of the notice in which to make a written application for a hearing before the Department.

(7) All hearings shall be conducted pursuant to the applicable provisions of ORS chapter 183.

(8) If the service provider notified fails to request a hearing within 20 days, an order may be entered by the Department assessing a civil penalty.

(9) If, after a hearing, the service provider is found to be in violation of a license, rule, or order listed in ORS 441.710(1), an order may be entered by the Department assessing a civil penalty.

(10) A civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Director considers proper and consistent with individual health and safety.

(11) If the order is not appealed, the amount of the penalty is payable within 10 days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 days after the court decision. The order, if not appealed or sustained on appeal, shall constitute a judgment and may be filed in accordance with the provisions of ORS 183.745. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(12) A violation of any general order or final order pertaining to a 24-hour residential home or facility issued by the Department shall be subject to a civil penalty in the amount of not less than \$5 and not more than \$500 for each and every violation.

# ADMINISTRATIVE RULES

(13) Judicial review of civil penalties imposed under ORS 441.710 shall be provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(14) All penalties recovered under ORS 443.455 and 441.710 to 441.740 shall be paid into the State Treasury and credited to the General Fund.

Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455  
Stats. Implemented: ORS 443.400 - 443.455  
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-328-0560

### 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 in OAR 407-045-0310.

(3) "Administration of Medication" means the act of placing a medication in or on an individual's body by a staff member who is responsible for the individual's care.

(4) "Adult" means an individual 18 years or older with developmental disabilities.

(5) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(6) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(7) "Annual Individual Support Plan (ISP) Meeting" means an annual meeting, facilitated by a services coordinator of the community developmental disability program and attended by the individual served, agency representatives who provide service to the individual, the individual's guardian, if any, relatives of the individual, or other persons, such as an advocate, as appropriate. The purpose of the meeting is to determine needs, coordinate services and training, and develop an ISP.

(8) "Board of Directors" means a group of persons formed to set policy and give directions to a service provider that provides residential services to individuals with developmental disabilities. A board of directors includes local advisory boards used by multi-state organizations.

(9) "Certificate" means a document issued by the Department to a service provider that certifies the service provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed supported living services.

(10) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication methods.

(11) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for the 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.

(12) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(13) "Controlled Substance" means any drug classified as Schedules 1 through 5 under the Federal Controlled Substance Act.

(14) "Department" means the Department of Human Services (DHS). The term "Department" is synonymous with "Division (SPD)".

(15) "Developmental Disability" 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.

(16) "Director" means the Director of the Department's Office of Developmental Disability Services, or that person's designee.

(17) "Endorsement" means authorization to provide supported living services issued by the Department to a certified service provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(18) "Entry" means the admission to a Department-funded developmental disability service.

(19) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of supported living services.

(20) "Exit" means either termination from a Department-funded developmental disability service provider or transfer from one Department-funded service provider to another.

(21) "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.

(22) "Health Care Provider" means a person or health care facility licensed, certified, or otherwise authorized or permitted by Oregon law to administer health care in the ordinary course of business or practice of a profession.

(23) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or unusual incident involving an individual.

(24) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(25) "Individual" means a person with developmental disabilities for whom services are planned and provided.

(26) "Individual Profile" means a written profile that describes the individual entering into supported living. The profile may consist of materials or assessments generated by the service provider or other related agencies, consultants, family members, or advocates.

(27) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The type of service supports needed, how supports are delivered, and the frequency of provided supports are included in the ISP. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(28) "Individual Support Plan (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and family or other persons requested to develop the ISP.

(29) "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.

(30) "Legal Representative" means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the individual or a person or agency authorized by the court to make decisions about services for the individual.

(31) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who, for the purpose of these rules, is a staff or volunteer working with adults 18 years and older 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, OAR 411-328-0560, 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.

(32) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a service provider following the service provider's enrollment as described in OAR chapter 411, division 370.

(33) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used

# ADMINISTRATIVE RULES

by the rendering service provider for identification and billing purposes associated with service authorizations and payments.

(34) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(35) "Needs Meeting" means a process in which the Individual Support Plan team defines the supports an individual needs to live in his or her own home, and makes a determination as to the feasibility of creating such services. The information generated in this meeting or discussion is used by the service provider to develop the individual's Transition Plan.

(36) "Personal Futures Planning" means an optional planning process for describing a desirable future for an individual with developmental disabilities. The planning process generally occurs around major life transitions (e.g. moving into a new home, graduation from high school, marriage, etc.). Personal futures planning helps determine activities, supports, and resources that best create a desirable future for the individual.

(37) "Person-Centered Planning" means:

(a) A process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about personal goals, activities, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(38) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(39) "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.

(40) "Protection" and "Protective Services" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(41) "Protective Physical Intervention (PPI)" means any manual physical holding of, or contact with, an individual that restricts the individual's freedom of movement. The term "protective physical intervention" is synonymous with "physical restraint".

(42) "Psychotropic Medication" means medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including but not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(43) "Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her own medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon written order of a physician, and safely maintains the medication without supervision.

(44) "Service Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323. For the purpose of these rules, "agency", "provider", or "program" is synonymous with "service provider."

(45) "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, and monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities.

(46) "Significant Other" means a person selected by the individual to be the individual's friend.

(47) "Staff" means paid employees responsible for providing services to individuals and whose wages are paid in part or in full with funds subtracted with the community developmental disability program or contracted directly through the Department.

(48) "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.

(49) "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 subject to change with time and circumstances.

(50) "Supported Living" means the endorsed service that provides the opportunity for individuals with developmental disabilities to live in a residence of their own choice within the community. Supported living is not grounded in the concept of "readiness" or in a "continuum of services model" but rather provides the opportunity for individuals to live where they want, with whom they want, for as long as they desire, with a recognition that needs and desires may change over time.

(51) "These Rules" mean the rules in OAR chapter 411, division 328.

(52) "Transfer" means movement of an individual from one type of service to another within the same county, administered by the same service provider.

(53) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's Individual Support Plan (ISP) is developed and approved by the ISP team. The Transition Plan includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for ISP development.

(54) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(55) "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 service provider.

(56) "Volunteer" means any person assisting a service provider without pay to support the services provided to an individual.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0560 by SPD 17-2009, f. & cert. ef. 12-9-09; 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 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-328-0570

### Program Management

(1) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To provide supported living services, a service provider must have:

(a) A certificate and an endorsement to provide supported living services as set forth in OAR chapter 411, division 323;

(b) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(c) For each specific geographic service area where supported living services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

(2) INSPECTIONS AND INVESTIGATIONS. The service provider must allow inspections and investigations as described in OAR 411-323-0040.

(3) MANAGEMENT AND PERSONNEL PRACTICES. The service provider must comply with the management and personnel practices as described in OAR 411-323-0050.

(4) PERSONNEL FILES AND QUALIFICATION RECORDS. The service provider must maintain written documentation of six hours of pre-service training prior to supervising individuals that includes mandatory abuse reporting training and training on individual profiles and Transition Plans or ISPs.

(5) CONFIDENTIALITY OF RECORDS. The service provider must ensure all individuals' records are confidential as described in OAR 411-323-0060.

(6) DOCUMENTATION REQUIREMENTS. All entries required by these rules, unless stated otherwise must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than five years.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0570 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 13-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12



# ADMINISTRATIVE RULES

## 411-328-0620

### Variations

(1) The Department may grant a variance to these rules based upon a demonstration by the service provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals.

(2) The service provider requesting a variance must submit, in writing, an application to the CDDP that contains the following:

- (a) The section of the rule from which the variance is sought;
- (b) The reason for the proposed variance;
- (c) The alternative practice, service, method, concept or procedure proposed; and

(d) If the variance applies to an individual's services, evidence that the variance is consistent with an individual's currently authorized ISP.

(3) The CDDP must forward the signed variance request form to the Department within 30 days of receipt of the request indicating its position on the proposed variance.

(4) The Department shall approve or deny the request for a variance.

(5) The Department's decision shall be sent to the service provider, the CDDP, and to all relevant Department programs or offices within 30 calendar days of receipt of the variance request.

(6) The service provider may appeal the denial of a variance request within 10 working days of the denial, by sending a written request for review to the Director and a copy of the request to the CDDP. The Director's decision is final.

(7) The Department shall determine the duration of the variance.

(8) The service provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0620 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-328-0630

### Health: Medical Services

(1) All individuals' medical records must be kept confidential as described in OAR 411-323-0060.

(2) Individuals must receive sufficient oversight and guidance by the service provider to ensure that the individual's health and medical needs are adequately addressed.

(3) Written health and medical supports must be developed as required by the individual's ISP team and integrated into the Transition Plan or ISP. The Plan must be based on a review or identification of the individual's health and medically related support needs and preferences, and updated annually or as significant changes occur.

(4) The service provider must have and implement written policies and procedures that maintain or improve the physical health of individuals. Policies and procedures must address:

- (a) Early detection and prevention of infectious disease;
- (b) Emergency medical intervention;
- (c) Treatment and documentation of illness and health care concerns;

and

(d) Obtaining, administering, storing, and disposing of prescription and non-prescription drugs including self administration.

(5) The service provider must ensure each individual has a primary physician whom the individual has chosen from among qualified providers.

(6) Provisions must be made for a secondary physician or clinic in the event of an emergency.

(7) The service provider must ensure that individuals have a medical evaluation by a physician no less often than every two years or as recommended by a physician. Evidence of the evaluation must be placed in the individual's record and must address:

- (a) Current health status;
- (b) Changes in health status;
- (c) Recommendations, if any, for further medical intervention;
- (d) Any remedial and corrective action required and when such actions were taken;

(e) Statement of restrictions on activities due to medical limitations; and

(f) A review of medications, treatments, special diets, and therapies prescribed.

(8) Before entry, the service provider must obtain the most complete medical profile available including:

- (a) The results of a physical exam made within 90 days prior to entry;
- (b) Results of any dental evaluation;
- (c) A record of immunizations;

(d) Status of Hepatitis B screening;

(e) A record of known communicable diseases and allergies; and

(f) A summary of the individual's medical history including chronic health concerns.

(9) The provider must ensure that all medications, treatments, and therapies:

(a) Have a written order or copy of the written order, signed by a physician or physician designee, before any medication, prescription, or non-prescription, is administered to or self-administered by the individual unless otherwise indicated by the ISP team in the written health and medical support section of the ISP or Transition Plan.

(b) Be followed per written orders.

(10) PRN orders are not allowed for psychotropic medication.

(11) The drug regimen of each individual on prescription medication must be reviewed and evaluated by a physician or physician designee, no less often than every 180 days unless otherwise indicated by the ISP team in the written health and medical support section of the ISP or Transition Plan.

(12) All prescribed medications and treatments must be self-administered unless contraindicated by the ISP team. For individuals who require assistance in the administration of their own medications, the following must be required:

(a) The ISP team has recommended that the individual be assisted with taking their medication;

(b) There is a written training program for the self-administration of medication unless contraindicated by the ISP team; and

(c) There is a written record of medications and treatments that document physician's orders are being followed.

(13) For individuals who independently self-administer medications, there must be a plan for the periodic monitoring or review of medications on each individual's ISP.

(14) The service provider must assist individuals with the use of prosthetic devices as ordered.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0630 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-328-0740

### Rights: Grievances

(1) The service provider must implement written policies and procedures for individuals' grievances as required by OAR 411-323-0060.

(2) The service provider must send copies of the documentation on all grievances to the services coordinator within 15 working days of initial receipt of the grievance.

(3) At entry to service and as changes occur, the service provider must inform each individual and parent, guardian, or advocate orally and in writing of the service provider's grievance policy and procedures and a description of how to utilize them.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0740 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-335-0010

### Statement of Purpose

The rules in OAR chapter 411, division 335 prescribe administrative, policy, procedure, documentation, and personnel requirements for proctor agencies providing intensive, person focused services to individuals with developmental disabilities experiencing significant emotional, medical, or behavioral difficulties. Proctor providers are specially trained and supported by the proctor agency. Proctor providers assist the individual in a home environment to make positive changes in the individual's adaptive skills that shall enable the individual to move to a less restrictive setting. These rules, in addition to the rules in OAR chapter 411, division 323, also prescribe standards and procedures by which the Department endorses proctor agencies to safely operate and oversee proctor care homes and provide training and support to children with developmental disabilities.

Stat. Auth.: ORS 409.050, 410.070, 427.007 & 430.215

Stats. Implemented: ORS 430.021 & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

# ADMINISTRATIVE RULES

## 411-335-0020

### Definitions

(1) "Abuse" means abuse of a child as defined in ORS 419B.005 and for the purposes of these rules, abuse of a child also means abuse 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 in OAR 407-045-0310.

(3) "Administration of Medication" means the act of placing a medication in or on an individual's body by a person who is responsible for the individual's care.

(4) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's guardian 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) "Agency Staff" means paid employees responsible for providing services to individuals whose wages or fees are paid in part or in full with funds sub-contracted with the community developmental disability program or contracted directly through the Department. For the purpose of these rules, agency staff includes skill trainers.

(6) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(7) "Alternate Caregiver" means any person 18 and older responsible for the care or supervision of a child in foster care.

(8) "Baseline Level of Behavior" means the frequency, duration, or intensity of a behavior, objectively measured, described, and documented prior to the implementation of an initial or revised Behavior Support Plan. This baseline measure serves as the reference point by which the ongoing efficacy of the Individual Support Plan (ISP) is to be assessed. A baseline level of behavior is reviewed and reestablished at minimum yearly, at the time of the ISP team meeting.

(9) "Behavior Data Collection System" means the methodology specified within the individual's Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(10) "Behavior Data Summary" means a document composed by the proctor provider to summarize episodes of physical intervention. The behavior data summary serves as a substitution for the requirement of individual incident reports for each episode of physical intervention.

(11) "Behavior Support Plan (BSP)" means a written strategy based on person-centered planning and a functional assessment that outlines specific instructions for proctor providers to follow, to cause an individual's challenging behaviors to become unnecessary, and to change the provider's own behavior, adjust environment, and teach new skills.

(12) "Board of Directors" means a group of persons formed to set policy and give directions to a proctor agency that provides residential services to individuals with developmental disabilities. A board of directors includes local advisory boards used by multi-state organizations.

(13) "Certificate" means a document issued by the Department to a proctor agency that certifies the proctor agency is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed proctor care residential services.

(14) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(15) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(16) "Choice" means the individual's and guardian's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication methods.

(17) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities according to OAR chapter 411, division 320. A CDDP operates in a specific geographic service area of the state under a contract with the Department, local mental health authority, or other entity as contracted by the Department.

(18) "Competency Based Training Plan" means a written description of the proctor agency's process for providing training to newly hired agency

staff and proctor providers. At a minimum, the Competency Based Training Plan:

(a) Addresses health, safety, rights, values and personal regard, and the proctor agency's mission; and

(b) Describes competencies, training methods, timelines, how competencies of staff are determined and documented including steps for remediation, and when a competency may be waived by the proctor agency to accommodate staff or proctor provider's specific circumstances.

(19) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(20) "Contracting Entity" means the community developmental disability program or proctor agency contracting with the Department.

(21) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that may result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(22) "Department" means the Department of Human Services (DHS). The term "Department" is synonymous with "Division (SPD)".

(23) "Developmental Disability" 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.

(24) "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".

(25) "Direct Nursing Service" means the provision of individual-specific advice, plans, or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home or facility. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for staff.

(26) "Educational Surrogate" means a person who acts in place of a parent in safeguarding a child's rights in the special education decision-making process:

(a) When the parent cannot be identified or located after reasonable efforts;

(b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or

(c) At the request of a parent or adult student.

(27) "Endorsement" means authorization to provide proctor care residential services issued by the Department to a certified proctor agency that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(28) "Entry" means admission to a Department-funded developmental disability service. For the purpose of these rules, "entry" means admission to a proctor provider home certified by the Department as described in OAR chapter 411, division 346.

(29) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of proctor care residential services.

(30) "Exit" means either termination from a Department-funded developmental disability proctor agency or transfer from one Department-funded proctor agency to another.

(31) "Foster Care" for the purpose of these rules means 24-hour substitute care for children in a foster home that is contracted with the proctor agency and certified by the Department as described in OAR chapter 411, division 346.

(32) "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.

(33) "Guardian" means a parent for individuals under 18 years of age or a person or agency appointed and authorized by the courts to make decisions about services for an individual.

(34) "Health Care Provider" means a person or health care facility licensed, certified, or otherwise authorized or permitted by Oregon law to administer health care in the ordinary course of business or practice of a profession.

(35) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or unusual incident involving an individual.

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(36) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(37) "Individual" means an adult or a child with developmental disabilities for whom services are planned and provided.

(38) "Individualized Education Plan (IEP)" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student, and a representative of the school district.

(39) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The type of service supports needed, how supports are delivered, and the frequency of provided supports are included in the ISP. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(40) "Individual Support Plan (ISP) Team" means a team composed of the individual served, the proctor provider, representatives who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and family or other persons requested to develop the ISP.

(41) "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.

(42) "Legal Representative" means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian.

(43) "Majority Agreement" means for purposes of entry, exit, transfer, and annual Individual Support Plan (ISP) team meetings, that no one member of the ISP team has the authority to make decisions for the team unless so authorized by the team process. Agency staff, proctor providers, families, the services coordinator, or advocacy agencies are considered as one member of the ISP team for the purpose of reaching majority agreement.

(44) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who, comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section of this rule, OAR 411-335-0020, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(45) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around, and that restricts freedom of movement or access to the individual's body.

(46) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a service provider following the service provider's enrollment as described in OAR chapter 411, division 370.

(47) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.

(48) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(49) "Modified Diet" means the texture or consistency of food or drink is altered or limited. Examples include but are not limited to no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

(50) "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.

(51) "Nursing Care Plan" means a plan of care 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 or delegated to the provider and staff.

(52) "Oregon Core Competencies" means:

(a) A list of skills and knowledge for newly hired staff and proctor providers in the areas of health, safety, rights, values and personal regard, and the proctor agency's mission; and

(b) The associated timelines in which newly hired staff and proctor providers must demonstrate competencies.

(53) "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 protective physical intervention techniques that are used to maintain health and safety.

(54) "Person-Centered Planning" means:

(a) A process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about personal goals, activities, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(55) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(56) "Proctor Agency" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323. For the purpose of these rules, "agency" or "program" is synonymous with "proctor agency".

(57) "Proctor Care Services" means a comprehensive residential program endorsed by the Department to provide intensive individually focused contracted foster care, training, and support to individuals with developmental disabilities experiencing emotional, medical, or behavioral difficulties.

(58) "Proctor Provider" means the certified care provider who resides at a child foster home for individuals with developmental disabilities certified by the Department as described in OAR chapter 411, division 346.

(59) "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.

(60) "Protection" and "Protective Services" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(61) "Protective Physical Intervention (PPI)" means any manual physical holding of, or contact with, an individual that restricts the individual's freedom of movement. The term "protective physical intervention" is synonymous with "physical restraint".

(62) "Psychotropic Medication" means medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including but not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(63) "Respite" means intermittent services provided on a periodic basis, but not more than 14 consecutive days, for the relief of, or due to the temporary absence of, persons normally providing the supports to individuals unable to care for themselves.

(64) "Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her own medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon the written order of a physician, and safely maintains the medication without supervision.

(65) "Services" mean supportive services, including but not limited to supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation. Services also includes being aware of the individual's general whereabouts at all times

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and monitoring the activities of the individual to ensure the individual's health, safety, and welfare. The term "services" is synonymous with "care".

(66) "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, and monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities.

(67) "Significant Other" means a person selected by the individual and guardian to be the individual's friend.

(68) "Specialized Diet" means that the amount, type of ingredients, or selection of food or drink items is limited, restricted, or otherwise regulated under a physician's order. Examples include but are not limited to low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. A specialized diet does not include a diet where extra or additional food is offered without physician's orders but may not be eaten, for example, offer prunes each morning at breakfast or include fresh fruit with each meal.

(69) "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.

(70) "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 subject to change with time and circumstances.

(71) "These Rules" mean the rules in OAR chapter 411, division 335.

(72) "Transfer" means movement of an individual from one proctor provider to another within the same county administered by the same proctor agency.

(73) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's Individual Support Plan (ISP) is developed and approved by the ISP team. The Transition Plan includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to assure health and safety, and the assessments and consultations necessary for ISP development.

(74) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(75) "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 proctor provider or proctor agency.

(76) "Volunteer" means any person assisting a proctor provider or the proctor agency without pay to support the services provided to an individual.

Stat. Auth.: ORS 409.050, 410.070, 427.007 & 430.215

Stats. Implemented: ORS 430.021 & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; 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 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-335-0030

### Management and Personnel Practices

#### (1) PROCTOR AGENCY.

(a) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To provide proctor care residential services, a proctor agency must have:

(A) A certificate and an endorsement to provide proctor care residential services as set forth in OAR chapter 411, division 323;

(B) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(C) For each specific geographic service area where proctor care residential services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

(b) INSPECTIONS AND INVESTIGATIONS. The proctor agency must allow inspections and investigations as described in OAR 411-323-0040.

(c) AGENCY MANAGEMENT AND PERSONNEL PRACTICES. The proctor agency must comply with the agency management and personnel practices as described in OAR 411-323-0050.

(d) COMPETENCY BASED TRAINING PLAN. The proctor agency must have and implement a Competency Based Training Plan that meets, at a minimum, the competencies and timelines set forth in the Department's Oregon Core Competencies.

(e) PERSONNEL FILES AND QUALIFICATION RECORDS. The proctor agency must maintain written documentation kept current that the

staff member and proctor provider has demonstrated competency in areas identified by the proctor agency's Competency Based Training Plan as required by OAR 411-335-0030(1)(d) of this section, and that is appropriate to their job.

(f) POLICIES AND PROCEDURES. The proctor agency must implement policies and procedures to:

(A) Assure support, health, safety, and crisis response for individuals served, including policies and procedures to assure training of agency staff and proctor providers.

(B) Assure that provider payment and agency support is commensurate to the support needs of individuals enrolled in proctor care services. Policies and procedures must include frequency of review.

(C) Assure support, health, safety, and crisis response for individuals placed in all types of respite care, including policies and procedures to assure training of respite care providers. The types of respite care include but are not limited to:

(i) Respite care in the proctor provider's home during day hours only;

(ii) Respite care in the home of someone other than the proctor provider for day time only;

(iii) Overnight care in the proctor provider's home; and

(iv) Overnight care at someone other than the proctor provider's home.

(D) Review and document that each child enrolled in proctor care services continues to require such services. Policies and procedures must include frequency of review and the criteria as listed below.

(i) The child's need for a formal Behavior Support Plan based on the Risk Tracking Record and functional assessment of the behavior.

(ii) The child has been stable and generally free of serious behavioral or delinquency incidents for the past 12 months.

(iii) The child has been free of psychiatric hospitalization (hospital psychiatric unit, Oregon State Hospital, and sub acute) for the last 12 months, except for assessment and evaluation.

(iv) The child poses no significant risk to self or community.

(v) The proctor provider has not needed or utilized the proctor agency's crisis services in response to the child's medical, mental health, or behavioral needs more than one time in the past 12 months.

(vi) The proctor provider is successfully supporting the child over time, with a minimum of proctor agency case management contact other than periodic monitoring and check in.

(vii) The proctor provider does not require professional support for the child, and there has been or may be a reduction in ongoing weekly professional support for the child including consultation, skill training, and staffing.

(viii) The proctor agency is not actively working with the child's family to return the child to the family home.

(g) RESPONSIBILITIES. The proctor agency must:

(A) Assure that preliminary certification for the proctor provider is completed per the relevant foster care statutes and OAR chapter 411, divisions 346. Such work must be submitted to the Department for final review and approval.

(B) Complete an initial home study for all proctor provider applicants that is updated at the certification renewal for all certified proctor providers.

(C) Provide and document training and support for agency staff, proctor providers, subcontractors, volunteers, and respite providers:

(i) To maintain the health and safety of the individuals served.

(ii) To implement the ISP process, including completion of a Risk Tracking Record, development of protocols and BSP for each individual served, and the development of the ISP.

(D) Have a plan for emergency back-up for proctor providers including but not limited to use of crisis respite, other proctor homes, additional staffing, and behavior support consultations.

(E) Coordinate and document entries, exits, and transfers.

(F) Report to the Department, and the CDDP, any placement changes due to a Crisis Plan made outside of normal working hours. Notification must be made by 9:00 a.m. of the first working day after the change has happened.

(G) Assure that each proctor provider has a current Emergency Disaster Plan on file in the proctor provider home, in the proctor agency office, and provided to the CDDP and the individual's services coordinator if not an employee of the local CDDP.

(H) Assure emergency backup in the event the proctor provider is unavailable.

(2) QUALIFICATIONS FOR PROCTOR AGENCY STAFF AND PROCTOR PROVIDERS INCLUDING SUBCONTRACTORS AND VOLUNTEERS. Any agency staff including skill trainers, respite

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providers, substitute caregivers, subcontractors, and volunteers must meet the following criteria:

(a) Be at least 18 years of age and have a valid social security card.  
(b) Have approval to work based on Department policies and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370 and OAR 411-323-0050.

(c) Disclose any founded reports of child abuse or substantiated abuse.

(d) Be literate and capable of understanding written and oral orders, be able to communicate with individual's physicians, services coordinators, and appropriate others, and be able to respond to emergency situations at all times.

(e) Have met the basic qualification in the agency's Competency Based Training Plan.

### (3) GENERAL REQUIREMENTS FOR SAFETY AND TRAINING.

All proctor providers, substitute caregivers, respite providers, child care providers, agency staff, and volunteers having contact with an individual, except for those providing services in a crisis situation, must:

(a) Receive training specific to the individual. This training must at a minimum consist of basic information on environment, health, safety, ADLs, positive behavioral supports, and behavioral needs for the individual, including the ISP, BSP, required protocols, and any emergency procedures. Training must include required documentation for health, safety, and behavioral needs of the individual.

(b) Receive OIS training. OIS certification is required if physical intervention is likely to occur as part of the BSP. Knowledge of OIS principles, not certification, is required if it is unlikely that protective physical intervention shall be required.

(c) Receive mandatory reporter training.

(d) Receive confidentiality training.

(e) Be at least 18 years of age and have a valid social security card.

(f) Be cleared by the Department's background check requirements in OAR 407-007-0200 to 407-007-0370 and OAR 411-323-0050.

(g) Receive training in applicable agency policies and procedures.

### (4) PROCTOR PROVIDERS.

(a) Proctor providers must:

(A) Meet all the standards in these rules and the rules in OAR chapter 411, division 346;

(B) Must have knowledge of these rules and the rules in OAR chapter 411, division 346; and

(C) Must receive and maintain current First Aid and CPR training.

(b) Any home managed and contracted to serve children with developmental disabilities by a proctor agency must be certified by the Department as a foster home for children with developmental disabilities in accordance with OAR chapter 411, division 346.

(5) SKILLS TRAINERS, ADVISORS, OR OTHER AGENCY STAFF. Skills trainers, advisors, or other agency staff must:

(a) Receive and maintain current First Aid and CPR training;

(b) Must have knowledge of these rules and the rules in OAR chapter 411, division 346;

(c) Anyone age 18 or older, living in an agency staff members un-certified home must have an approved Department background check per OAR 407-007-0200 to 407-007-0370 and as described in OAR 411-323-0050, prior to any visit of an individual to the staff member's home.

(d) Assure health and safety guidelines for alternative caregivers including but not limited to the following:

(A) The home and premises must be free from objects, materials, pets, and conditions that constitute a danger to the occupants and the home and premises must be clean and in good repair.

(B) Any sleeping room used for an individual in respite must be finished, attached to the house, and not a common living area, closet, storage area, or garage. If a child is staying overnight, the sleeping arrangements must be safe and appropriate to the individual's age, behavior, and support needs.

(C) The home must have tubs or showers, toilets, and sinks that are operable and in good repair with hot and cold water.

(D) The alternative caregivers must have access to a working telephone in the home, and must have a list of emergency telephone numbers and know where the numbers are located.

(E) All medications, poisonous chemicals, and cleaning materials must be stored in a way that prevents the individuals from accessing them, unless otherwise addressed in an individual's ISP.

(F) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations. Loaded firearms must never be carried in any vehicle while it is being used to transport an individual.

(G) First aid supplies must be available in the home and in the vehicles used to transport an individual.

### (6) RESPITE PROVIDERS.

(a) If respite is being provided in the proctor provider's home day or night, the respite provider must be trained on the:

(A) Basic health needs of the individuals in service; and

(B) Basic safety in the home including but not limited to first aid supplies, the Emergency Plan, and the Fire Evacuation Plan.

(b) If respite is being provided in a home other than the proctor provider's home day or night, the respite provider must assure health and safety guidelines for alternative caregivers, including but not limited to:

(A) The home and premises must be free from objects, materials, pets, and conditions that constitute a danger to the occupants and the home and premises must be clean and in good repair.

(B) Any sleeping room used for an individual in respite must be finished, have a window that may be opened, be attached to the house, and not a common living area, storage area, closet, or garage. If the individual is staying overnight, the sleeping arrangements must be safe and appropriate to the individual's age, behavior, and support needs.

(C) The home must have tubs or showers, toilets, and sinks that are operable and in good repair with hot and cold water.

(D) The alternative caregivers must have access to a working telephone in the home and must have a list of emergency telephone numbers and know where the numbers are located.

(E) All medications, poisonous chemicals, and cleaning materials must be stored in a way that prevents an individual from accessing them.

(F) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations. Loaded firearms must never be carried in any vehicle while it is being used to transport an individual.

(G) First aid supplies must be available in the home and in the vehicles used to transport individuals.

(7) DAY CARE AND CAMP. When a child is cared for by a child care provider, camp, or child care center, the proctor agency must assure that the camp, provider home, or center is certified, licensed, or registered as required by the Child Care Division (ORS 657A.280). The proctor agency must also assure that the ISP team is in agreement with the plan for the child to attend the camp, child care center, or child care provider home.

(8) SOCIAL ACTIVITIES FOR LESS THAN 24 HOURS, INCLUDING OVERNIGHT ARRANGEMENTS. The proctor agency must assure:

(a) The person providing care is capable of assuming all care responsibilities and shall be present at all times.

(b) The ISP team is in agreement with the planned social activity.

(c) The proctor provider maintains back-up responsibilities for the individual in service.

(9) GENERAL CRISIS REQUIREMENTS FOR INDIVIDUALS ALREADY IN PROCTOR AGENCY HOMES.

(a) Crisis service providers must:

(A) Be at least 18 years of age.

(B) Have initial and annual approval to work based on current Department policies and procedures for review of background checks per OAR 407-007-0200 to 407-007-0370 and as described in OAR 411-323-0050, prior to supervising any individual. Providers must also have a child welfare check completed on an annual basis.

(C) Upon placement of the individual, have knowledge of the individual's needs. This knowledge must consist of basic information on health, safety, ADLs, and behavioral needs for the individual, including the ISP, BSP, and required protocols. Be trained on required documentation for health, safety, and behavioral needs of the individual.

(b) The proctor agency must:

(A) Make follow-up contact with the crisis provider within 24 hours of the placement to assess and assure the individual's and provider's support needs are met.

(B) Initiate transition planning with the ISP team and document the plan within 72 hours.

(10) MANDATORY ABUSE REPORTING. Proctor agency staff and providers are mandatory reporters. Upon reasonable cause to believe that abuse has occurred, all members of the household and any proctor providers, substitute caregivers, agency staff, independent contractors, or volunteers must report pertinent information to the Department, the CDDP, or law enforcement. For reporting purposes the following shall apply:

(a) Notification of mandatory reporting status must be made at least annually to all proctor providers, agency employees, substitute caregivers, subcontractors, and volunteers, on forms provided by the Department.

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(b) All agency employees and proctor providers must be provided with a Department produced card regarding abuse reporting status and abuse reporting requirements.

## (11) CONFIDENTIALITY OF RECORDS.

(a) The proctor agency must ensure all individuals' records are confidential as described in OAR 411-323-0060.

(b) The proctor agency, proctor provider, and the proctor provider's family must treat personal information about an individual or an individual's family in a confidential manner. Confidential information is to be used and disclosed in accordance with OAR 407-014-0020 only on a need to know basis to law enforcement, services coordinators, the Department including child protective services staff and child welfare caseworkers, the CDDP, Office of Investigations and Training investigators, and medical professionals who are treating or providing services to the individual. The information shared must be limited to the health, safety, and service needs of the individual.

(c) The proctor agency, proctor provider, and the proctor provider's family must comply with the provisions of ORS 192.518 to 192.523 and OAR 407-014-0020 and therefore may use or disclose an individual's protected health information as defined in OAR 407-014-0000 only:

(A) To law enforcement, the Department, or the CDDP;

(B) As authorized by the individual's guardian including but not limited to a guardian appointed under ORS 125.305, 419C.481, or 419C.555;

(C) For purposes of obtaining healthcare and treatment of the individual;

(D) For purposes of obtaining payment for health care treatment; or

(E) As permitted or required by state or federal law or by order of a court.

(d) The proctor agency and the proctor provider must keep all written records for each individual in a manner that assures their confidentiality.

(12) DOCUMENTATION REQUIREMENTS. All entries required by these rules, unless stated otherwise must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsification;

(c) Be legible, dated, and signed by the person making the entry;

(d) Be maintained for no less than five years; and

(e) Be made readily available for the purposes of inspection.

Stat. Auth.: ORS 409.050, 410.070, 427.007 & 430.215

Stats. Implemented: ORS 430.021 & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 13-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-335-0060

### Admittance of Individuals

(1) A proctor agency or home contracted with the proctor agency must have prior written consent of the Department or the Department's designee to admit individuals to a home whose care needs or age exceed the home's certificate or would violate conditions on the certificate.

(2) A proctor agency or home contracted with the proctor agency must have Department approval to admit or continue to serve children whose numbers exceed the capacity on the proctor provider's child foster home certificate.

(3) A proctor agency or home contracted to provide proctor services may not admit or continue to provide proctor services to children who may be safely and appropriately supported in foster care, if available, or the individual's family home.

(4) A proctor agency or home contracted with the proctor agency may not admit an individual from another funding source without first determining that the care and safety needs of all individuals in the home may be maintained, and that there is prior written approval from the placing agency and the CDDP where the foster home is located.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-335-0120

### Variations

(1) The Department may grant a variance to these rules based upon a demonstration by the proctor agency that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals.

(2) The proctor agency requesting a variance must submit, in writing, an application either to the Department's Residential Services Coordinator

or the CDDP whichever entity holds the contract for proctor services. Variance applications must at a minimum contain the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept, or procedure proposed; and

(d) If the variance applies to an individual's services, evidence that the variance is consistent with an individual's currently authorized ISP.

(3) The manager or designee of the contracting entity must forward the signed variance request form to the Department within 30 days of receipt of the request indicating its position on the proposed variance. If the variance request affects more than one contracting entity, the variance must be reviewed and signed by each contracting entity.

(4) The Department shall approve or deny the request for a variance.

(5) The Department's decision shall be sent to the proctor agency, the contracting entity, and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.

(6) The proctor agency may appeal the denial of a variance request within 10 working days of the denial, by sending a written request for review to the Director and a copy of the request to either the Department's Residential Services Coordinator or the CDDP whichever entity holds the contract for proctor services. The Director's decision is final.

(7) The Department shall determine the duration of the variance.

(8) The proctor agency or proctor provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-335-0230

### Individual Support Plan

(1) A copy of each individual's ISP and supporting documentation on the required Department forms must be available at the proctor provider home within 60 days of entry and annually thereafter.

(2) The following information must be collected and summarized prior to the ISP meeting:

(a) Personal Focus Worksheet.

(b) Risk Tracking Record;

(c) Necessary protocols or plans that address health, behavioral, safety, and financial supports as identified on the Risk Tracking Record;

(d) A Nursing Care Plan, if applicable, including but not limited to those tasks required by the Risk Tracking Record; and

(e) Other documents required by the ISP team.

(3) A completed ISP must be documented on the Department required form and include the following:

(a) What's most important to the individual;

(b) Risk summary;

(c) Professional services the individual uses or needs;

(d) Action plan;

(e) Discussion record;

(f) Service supports; and

(g) Signature sheet.

(4) The agency must maintain documentation of implementation of each support and services specified in OAR 411-335-0230(2)(c) to (2)(e) of this rule in the individual's ISP. This documentation must be kept current and be available for review by the individual, guardian, CDDP, and Department representatives.

Stat. Auth.: ORS 409.050, 410.070, 427.007, & 430.215

Stats. Implemented: ORS 430.021 & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-335-0310

### Rights: Informal Complaints and Formal Grievances

(1) The proctor agency must implement written policies and procedures for individuals' grievances as required by OAR 411-323-0060.

(2) The proctor agency must send copies of the documentation on all grievances to the services coordinator within 15 working days of initial receipt of the grievance.

(3) At entry to service and as changes occur, the proctor agency must inform each individual and parent, guardian, or advocate orally and in writing of the proctor agency's grievance policy and procedures and a description of how to utilize them.

Stat. Auth.: ORS 409.050, 410.070, 427.007 & 430.215

Stats. Implemented: ORS 430.021 & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

# ADMINISTRATIVE RULES

## 411-345-0010

### Statement of Purpose

The rules in OAR chapter 411, division 345 prescribe standards for providing employment and alternatives to employment services for individuals with developmental disabilities receiving residential services. These rules also prescribe the standards and procedures by which the Department endorses service providers to provide employment and alternatives to employment services.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0000, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-345-0020

### 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 in OAR 407-045-0310.

(3) "Administration of Medication" means the act of placing a medication in or on an individual's body by a staff member who is responsible for the individual's care.

(4) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(5) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(6) "Alternatives to Employment Services" mean any services, conducted away from an individual's residence that addresses the academic, recreational, social, or therapeutic needs of the individuals for whom it serves.

(7) "Annual Individual Support Plan (ISP) Meeting" means an annual meeting, facilitated by a services coordinator of the community developmental disability program and attended by the ISP team members and other persons, as appropriate. The purpose of the meeting is to determine needs, coordinate services and training, and develop an ISP.

(8) "Certificate" means a document issued by the Department to a service provider that certifies the service provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed employment and alternatives to employment services.

(9) "Community Based Service" means any service or program providing opportunities for the majority of an individual's time to be spent in community participation or integration.

(10) "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.

(11) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(12) "Controlled Substance" means any drug classified as Schedules 1 to 5 under the Federal Controlled Substance Act.

(13) "Department" means the Department of Human Services (DHS). The term "Department" is synonymous with "Division (SPD)".

(14) "Developmental Disability" 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.

(15) "Director" means the Director of the Department's Office of Developmental Disability Services, or that person's designee.

(16) "Discovery" is a focused time-limited service engaging a participant in identifying their strengths, needs, and interests to prepare for integrated employment.

(17) "Employment Services" means any service that has as its primary goal the employment of individuals, including job assessment, job development, training, and ongoing supports.

(18) "Endorsement" means authorization to provide employment and alternatives to employment services issued by the Department to a certified

service provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(19) "Entry" means admission to a Department-funded developmental disability service.

(20) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of employment and alternatives to employment services.

(21) "Exit" means either termination from a Department-funded developmental disability service provider or transfer from one Department-funded service provider to another.

(22) "Facility Based Service" means any service or program operated by a service provider that occurs in a location supporting more than eight individuals as a group.

(23) "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.

(24) "Important for an Individual" means the areas of life that relate to being healthy, safe, and a valued member of the community.

(25) "Important to an Individual" means the individual's perspective on the people, places, and things they like, personal values, spirituality, and a sense of self. This is learned by listening to what is being said by words or actions. When there is a conflict between words and actions, actions are considered first.

(26) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or unusual incident involving an individual.

(27) "Independence" means the extent to which individuals exert control and choice over their own lives.

(28) "Individual" means a person with developmental disabilities for whom services are planned and provided.

(29) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The type of service supports needed, how supports are delivered, and the frequency of provided supports are included in the ISP. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(30) "Individual Support Plan (ISP) Action Plan" means the written documentation of the ISP team's commitment in supporting an individual to resolve or improve particular aspects of their life. An ISP Action Plan identifies the necessary measurable steps to be taken, who is accountable for assuring implementation, and timelines for completion.

(31) "Individual Support Plan (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual (as appropriate), the guardian (if any), the services coordinator, and family or other persons requested to develop the ISP.

(32) "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.

(33) "Job Development" means assistance and support for individuals to pursue employment and obtain job placement.

(34) "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, OAR 411-345-0020, 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.

(35) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a service provider following the service provider's enrollment as described in OAR chapter 411, division 370.

(36) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following

# ADMINISTRATIVE RULES

enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.

(37) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(38) "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 protective physical intervention techniques that are used to maintain health and safety.

(39) "Path to Employment" means a concept that identifies an individual's preferences in moving toward employment using principles of self-determination and a set of questions and strategies that assist the Individual Support Plan team when planning.

(40) "Person-Centered Planning" means:

(a) A process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about employment or personal goals, activities, and lifestyle preferences; and

(B) Identify, use, and strengthen naturally occurring opportunities for support in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(41) "Person-Centered Process" means a practice of identifying what is important to and for an individual, and the supports necessary to address issues of health, safety, behavior, and financial support.

(42) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual in work contributing to a household or community.

(43) "Protection" means the necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(44) "Protective Physical Intervention (PPI)" means any manual physical holding of, or contact with, an individual that restricts the individual's freedom of movement. The term "protective physical intervention" is synonymous with "physical restraint".

(45) "Psychotropic Medication" means medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including but not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(46) "Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her own medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon the written order of a physician, and safely maintains the medication without supervision.

(47) "Self-Determination" means, for the purpose of these rules, a philosophy and process by which individuals are empowered to gain control over the selection of services that meet their needs. The basic principles of self-determination are:

(a) Freedom. The ability for an individual, together with freely chosen family, friends, and professionals, to plan for employment beyond the parameters of a predefined program;

(b) Authority. The ability for an individual, together with the Individual Support Plan team, to declare a chosen employment path and to plan supports accordingly.

(c) Autonomy. Planning for and accessing resources that support an individual to seek employment; and

(d) Responsibility. The acceptance of a valued role in an individual's community through employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for individuals.

(48) "Service Provider" or "Service" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division

323. For the purpose of these rules, "agency", "provider", or "program" is synonymous with "service provider".

(49) "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, and monitor Individual Support Plan services and to act as a proponent for individuals with developmental disabilities.

(50) "Staff" means paid employees responsible for providing services to individuals whose wages are paid in part or in full with funds contracted with the community developmental disability program or contracted directly through the Department.

(51) "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.

(52) "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 subject to change with time and circumstances.

(53) "Supported Employment" means the provision of situational assessment, job development, job training, and ongoing support necessary to place, maintain, or change the employment of an individual in an integrated work setting. The individual is compensated in accordance with the Fair Labor Standards Act.

(54) "These Rules" mean the rules in OAR chapter 411, division 345.

(55) "Transfer" means movement of an individual from one site to another site administered by the same service provider within the same county.

(56) "Unit of Service" means the equivalent of an individual receiving services 25 hours per week, 52 weeks per year minus the following:

(a) Personal, vacation, or sick leave allowed by the service provider or employer;

(b) Holidays as recognized by the state of Oregon; and

(c) Up to four days for all-staff in-service training.

(57) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(58) "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 service provider.

(59) "Volunteer" means any person assisting a service provider without pay to support the services provided to an individual.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0005, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 12-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-345-0030

### Program Management

(1) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To provide employment and alternatives to employment services, a service provider must have:

(a) A certificate and an endorsement to provide employment and alternatives to employment services as set forth in OAR chapter 411, division 323;

(b) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(c) For each specific geographic service area where employment and alternatives to employment services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

(2) INSPECTIONS AND INVESTIGATIONS. The service provider must allow inspections and investigations as described in OAR 411-323-0040.

(3) AGENCY MANAGEMENT AND PERSONNEL PRACTICES. The service provider must comply with the agency management and personnel practices as described in OAR 411-323-0050.

(4) PERSONNEL FILES AND QUALIFICATION RECORDS. The service provider must maintain written documentation of six hours of pre-service training prior to supervising individuals including mandatory abuse reporting training, training to work with individuals with developmental



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disabilities, and training on the support needs of the individual to whom they will provide support;

(5) **CONFIDENTIALITY OF RECORDS.** The service provider must ensure all individuals' records are confidential as described in OAR 411-323-0060.

(6) **DOCUMENTATION REQUIREMENTS.** All entries required by these rules, unless stated otherwise must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than five years.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0010, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-345-0050

### Reciprocal Compliance

(1) The Department may accept compliance with other formally recognized standards as assurance of compliance with all or part of these rules.

(2) An employment or alternative to employment service seeking an endorsement based on compliance with other standards must provide the Department with a copy of the complete detailed report from the reviewing group. Where there are differences between other standards and Oregon Administrative Rules, the Oregon Administrative Rules shall take precedence.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 13-1990, f. & cert. ef. 12-7-90; Renumbered from 309-047-0018, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-345-0090

### Variations

(1) The Department may grant a variance to these rules based upon a demonstration by the service provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals.

(2) The service provider requesting a variance must submit, in writing, an application to the CDDP that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept, or procedure proposed; and

(d) If the variance applies to an individual's services, evidence that the variance is consistent with an individual's currently authorized ISP.

(3) The CDDP must forward the signed variance request form to the Department within 30 days of receipt of the request for variance indicating the CDDP's position on the proposed variance.

(4) The Department shall approve or deny the request for a variance.

(5) The Department's decision shall be sent to the service provider, the CDDP, and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.

(6) The service provider may appeal the denial of a variance, within 10 working days of the denial, by sending a written request for review to the Director and a copy of the request to the CDDP. The Director's decision is final.

(7) The Department shall determine the duration of the variance.

(8) The service provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0040, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-345-0100

### Staffing Requirements

(1) Each service provider must provide direct service staff appropriate to the number and level of individuals served as follows:

(a) Supported employment and community based service providers must provide adequate direct services staff to ensure initial service and site development, training, and ongoing support to ensure that individual's

rights, basic health, and safety are met. A staff member must contact individual's receiving services through supported employment or community based sites two times per month at minimum.

(b) Facility based service providers must provide adequate direct services staff to ensure that individual's rights, basic health, and safety are met. When individuals are present, the service provider must provide and document that there are staff trained in the following areas:

(A) At least one staff member on duty with CPR certification at all times;

(B) At least one staff member on duty with current First Aid certification at all times;

(C) At least one staff member on duty with training to meet other specific medical needs as determined through ISP processes; and

(D) At least one staff member on duty with training to meet other specific behavior intervention needs as determined through ISP processes.

(2) Each service provider must meet all additional requirements for direct service staff ratios and specialized training as specified by contract requirements.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0045, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 12-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-345-0110

### Individual Rights

(1) **ABUSE.** Any individual as defined in OAR 411-345-0020 must not be abused nor shall abuse be tolerated by any employee, staff, or volunteer of the service provider.

(2) **PROTECTION AND WELLBEING.**

(a) The service provider must have and implement written policies and procedures that protect individuals' rights during the hours the individual is receiving services. The service provider must encourage and assist individuals to understand and exercise their rights. The policies and procedures must at a minimum provide for:

(A) Assurance that each individual has the same civil and human rights accorded to other citizens;

(B) Adherence to all applicable state and federal labor rules and regulations;

(C) Opportunities for individuals to be productive;

(D) Services that promote independence and that are appropriate to the age and preferences of the individual;

(E) Confidentiality of personal information regarding the individual;

(F) Adequate medical and health care, supportive services, and training;

(G) Opportunities for visits to legal and medical professionals when necessary;

(H) Private communication, including personal mail and access to a telephone, consistent with the service provider's policies for all employees;

(I) Fostering of personal control and freedom regarding personal property;

(J) Protection from abuse and neglect, including freedom from unauthorized training, treatment, and chemical or mechanical restraints;

(K) Freedom from unauthorized personal restraints; and

(L) Transfer of individuals within a service as described in OAR 411-345-0140.

(b) At entry to service and in a timely manner as changes occur, the service provider must inform each individual and parent, guardian, or advocate orally and in writing of the service provider's policy and procedures and a description of how the individual may exercise their rights.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0050, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-345-0130

### Grievances

(1) The service provider must implement written policies and procedures for individuals' grievances as required by OAR 411-323-0060.

(2) The service provider must send copies of the documentation on all grievances to the services coordinator within 15 working days of initial receipt of the grievance.

# ADMINISTRATIVE RULES

(3) At entry to service and as changes occur, the service provider must inform each individual and parent, guardian, or advocate orally and in writing of the service provider's grievance policy and procedures and a description of how to utilize them.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0060, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

## 411-345-0190

### Medical Services

(1) All individuals' medical records must be kept confidential as described in OAR 411-323-0060.

(2) The service provider must have and implement written policies and procedures that describe the medical management system including medication administration, early detection and prevention of infectious disease, self-administration of medication, drug disposal, emergency medical procedures including the handling of bodily fluids, and confidentiality of medical records.

(3) Individuals must receive care that promotes their health and well being, as follows:

(a) The service provider must observe the health and physical condition of individuals and take action in a timely manner in response to identified changes in condition that could lead to deterioration or harm;

(b) The service provider must assist individuals with the use and maintenance of prosthetic devices as necessary for the activities of the service;

(c) The service provider, with the individual's knowledge, must share information regarding medical conditions with the individual's residential contact and the Services Coordinator; and

(d) The service provider must provide rest and lunch periods at least as required by applicable law unless the individual's needs dictate additional time.

(4) The service provider must maintain records on each individual to aid physicians, medical professionals, and the service provider in understanding the individual's medical history and current treatment program. These records must be kept current and organized in a manner that permits staff and medical persons to follow easily the individual's course of treatment. Such documentation must include:

(a) A medical history obtained prior to entry to services including where available:

(A) A copy of a record of immunizations; and

(B) A list of known communicable diseases and allergies.

(b) A record of the individual's current medical condition including:

(A) A copy of all current orders for medication administered, maintained at the service provider's site;

(B) A list of all current medications; and

(C) A record of visits to medical professionals, consultants, or therapists if facilitated or provided by the service provider.

(5) The administration of medication at the service site must be avoided whenever possible. When medications, treatments, equipment, or special diets must be administered or monitored for self-administration, the service provider must:

(a) Obtain a copy of a written order, signed by a physician, physician's designee, or a medical practitioner prescribing the medication, treatment, special diet, equipment or other medical service; and

(b) Follow written orders.

(6) PRN orders are not accepted for psychotropic medication.

(7) All medications administered or monitored in the case of self-administration must be:

(a) Kept in their original containers;

(b) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified per the physician's or licensed health care practitioner's written order;

(c) Kept in a secured locked container and stored as indicated by the product manufacturer; and

(d) Recorded on an individualized Medication Administration Record (MAR), including treatments and PRN orders.

(8) The MAR must include:

(a) The name of the individual;

(b) The brand or generic name of the medication including the prescribed dosage and frequency of administration as contained on physician order and medication;

(c) For topical medications and basic first aid treatments utilized without a physician's order, a transcription of the printed instructions from the package or the description of the basic first aid treatment provided;

(d) Times and dates of administration or self-administration of the medication;

(e) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(f) Method of administration;

(g) Documentation of any known allergies or adverse reactions to a medication;

(h) Documentation and an explanation of why a PRN medication was administered and the results of such administration; and

(i) An explanation of any medication administration irregularity with documentation of administrative review by the service provider's executive director or designee.

(9) Safeguards to prevent adverse medication reactions shall be utilized to include:

(a) Maintaining information about each prescribed medication's effects and side-effects;

(b) Communicating any concerns regarding any medication usage, effectiveness, or effects to the residential contact and the services coordinator; and

(c) Prohibiting the use of one individual's medications by another.

(10) The service site or service provider may not keep unused, discontinued, outdated, or recalled drugs, or drug containers with worn, illegible, or missing labels. All unused, discontinued, outdated, or recalled drugs, or drug containers with worn, illegible, or missing labels must be promptly disposed of in a manner consistent with federal statutes and designed to prevent illegal diversion of the substances into the possession of people other than for whom it was prescribed. A written record must be maintained by the service provider of all disposed drugs and must include:

(a) Date of disposal;

(b) A description of the medication including amount;

(c) The individual for whom the medication was prescribed;

(d) The reason for disposal;

(e) The method of disposal;

(f) Signature of staff disposing; and

(g) For controlled medications, the signature of a witness to the disposal.

(11) For any individual who is self-administering medication the service provider must:

(a) Have documentation that a training program was initiated with approval of the individual's ISP team or that training for the individual is unnecessary;

(b) If necessary, have a training program that is consistent with the self-administration training program in place at the individual's residence;

(c) If necessary, have a training program that provides for retraining when there is a change in dosage, medication, or time of delivery;

(d) Have specific supports identified and documented for the individual when training has been deemed unnecessary; and

(e) Provide for an annual review, at a minimum, as part of the ISP process, upon completion of the training program or when training for the individual has been deemed necessary by the ISP team.

(12) The service provider must ensure that individuals able to self-administer medications keep them secured, unavailable to any other person, and stored as recommended by the product manufacturer.

(13) The service provider must immediately contact the services coordinator when the individual's medical, behavioral, or physical needs change to a point that the individual's needs may not be met by the service provider. The ISP team must determine alternative placement or arrangement if necessary.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0090, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12

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## Department of Justice

### Chapter 137

**Rule Caption:** Implements 2011 legislative child support changes.

**Adm. Order No.:** DOJ 12-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-3-12

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# ADMINISTRATIVE RULES

**Rules Amended:** 137-050-0750

**Subject:** OAR 137-050-0750 is amended to reflect changes made by the 2011 Legislature to child support program processes.

**Rules Coordinator:** Lori Woltring—(503) 986-6152

## 137-050-0750

### Medical Support

(1) The scale (see OAR 137-050-0725 and its appendix) includes ordinary unreimbursed medical costs of \$250 per child per year. These costs are included in the support obligation and prorated between the parents in the support calculation performed under OAR 137-050-0710.

(2) In addition to the definitions in ORS 25.321 and 25.323, “reasonable in cost” means that:

(a) The cost to a parent of cash medical support or private health insurance is not more than four percent of the parent’s adjusted income as determined in OAR 137-050-0720. A greater amount may be ordered if compelling factors support a finding that a higher cost is reasonable;

(b) The cost to the obligated parent of cash medical support or private health insurance does not exceed the amount of the parent’s income determined in OAR 137-050-0745(2) to be available for medical support; and

(c) Except as provided in section (3), the parent’s income is greater than the Oregon minimum wage for full-time employment.

(3) If the parent’s income is equal to or less than Oregon minimum wage for full-time employment, health care coverage at no cost is reasonable in cost.

(4) In applying the reasonable in cost standard to private health care coverage, only the cost of covering the child for whom support is sought will be considered. If family coverage is provided for the joint child and other family members, prorate the out-of-pocket cost of any premium for the child for whom support is sought only.

(5) If only one parent has private health care coverage that is appropriate and available under ORS 25.323, that parent must be ordered to provide it.

(6) If both parents have access to appropriate, available private health care coverage, both parents may be ordered to provide coverage. If both parents provide coverage, neither parent will be ordered to reimburse the other for the cost of the premium, except as provided in section (11).

(7) If the obligee is ordered to provide private health care coverage and the obligor is not, the obligor must be ordered to pay cash medical support that is reasonable in cost to defray the cost of the premium and other medical expenses, or the order must include a finding explaining why cash medical support is not ordered.

(8) If neither parent has access to appropriate, available private health care coverage:

(a) One or both parents must be ordered to provide private health care coverage at any time whenever it becomes available;

(b) The party with custody of the child may be ordered to provide public health care coverage for the child; and

(c) Either or both parents must be ordered to pay cash medical support that is reasonable in cost, or the order must include a finding explaining why cash medical support is not ordered.

(9) For purposes of this rule, “to provide” health care coverage means to apply to enroll the child and pay any costs associated with the enrollment, even if the cost to the parent is zero.

(10) If the child is not in the custody of either parent and cash medical support is or will be ordered as provided in section (8) of this rule, the agency or person with legal or physical custody of the child is considered the parent for the purposes of receipt or assignment of cash medical support.

(11) A medical support clause may be contingent in that it may order a party to provide private health care coverage and may order an amount of cash medical to be paid any time private health care coverage is unavailable to that party. If cash medical support is ordered due to private health care coverage being unavailable to a party, the order may also provide that any time private health care coverage is available to that party it will be provided instead of cash medical support.

(12) For purposes of ORS 25.323, private health care coverage may be “available” to a parent from any source, including but not limited to an employer or a spouse or domestic partner.

Stat. Auth.: ORS 25.270 - 25.290, 25.323 & 180.345

Stats. Implemented: ORS 25.270 - 25.290 & 25.321 - 25.343

Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 12-2011, f. 12-30-11, cert. ef. 1-3-12

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**Rule Caption:** Implements 2011 legislative child support changes; partner access and confidentiality of support records; LEP services.

**Adm. Order No.:** DOJ 13-2011

**Filed with Sec. of State:** 12-30-2011

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**Rules Adopted:** 137-055-2100

**Rules Amended:** 137-055-1100, 137-055-1140, 137-055-1160, 137-055-1800, 137-055-2160, 137-055-3220, 137-055-3430, 137-055-3640, 137-055-4130, 137-055-4440, 137-055-4520, 137-055-5400, 137-055-5420, 137-055-6021, 137-055-6200, 137-055-6220, 137-055-6240, 137-055-6260

**Rules Repealed:** 137-055-1145, 137-055-6100

**Subject:** OAR 137-055-1100 is amended to clarify processing of continuation of services cases.

OAR 137-055-1140 is amended to remove a reference to the partner access rule (OAR 137-055-1145), which is repealed because it is no longer needed.

OAR 137-055-1160 is amended to clarify what information is protected in a child support order.

OAR 137-055-1800 is amended to clarify how services are provided to limited English proficiency customers.

OAR 137-055-2100 through 137-055-6260 are enacted or amended to reflect changes made by the 2011 Legislature to child support program processes.

**Rules Coordinator:** Lori Woltring—(503) 986-6152

## 137-055-1100

### Continuation of Services

(1) When a family’s assistance grant is closed, services under ORS 25.080 will automatically be continued. The Division of Child Support (DCS) will notify the support obligee and any child attending school under ORS 107.108 and OAR 137-055-5110, in writing, of the services to be provided and the consequences of receiving those services, including a listing of available services, fees, the state’s policy on cost recovery and its distribution policies. DCS will notify the obligee, and the child attending school that subject to the obligor’s right to request services:

(a) An obligee or applicant for services may at any time request that support enforcement services no longer be provided. If the obligee or applicant so requests and case closure procedures pursuant to OAR 137-055-1120 have been completed, all support enforcement services on behalf of the obligee or applicant will be discontinued. However, except as provided in OAR 137-055-1090, if an order has already been established, DCS will continue efforts to collect arrears assigned to the state. DCS will apply any collections received against the assigned arrears until this amount has been collected.

(b) An obligee may also request under OAR 137-055-1090 that support enforcement services no longer be provided for either the obligee or the state.

(c) A child attending school who is an applicant for services may, under subsection (1)(a), request that support enforcement services no longer be provided on his or her behalf. A child attending school who is not an applicant for services may discontinue all support enforcement services on his or her behalf by redirecting his or her to the obligee under OAR 137-055-5110(5)(b).

(2) In cases where current child support is not assigned to the state but medical support is assigned to the state, the obligee may elect to not pursue establishment and enforcement of a child support obligation other than medical child support. In those cases, if the obligee so elects, the administrator will provide only those services necessary to establish and enforce an order for medical child support, including establishment of paternity where necessary.

(3) If a case has been closed pursuant to this rule, an obligee or applicant may at any time request the child support case be reopened by completing a new application for services. If an application for services is received, arrears may be reestablished pursuant to OAR 137-055-3240 or 137-055-5120, except for permanently assigned arrears which have been satisfied or which accrued to the state prior to the reapplication for services.

Stat. Auth.: ORS 25.080 & 180.345

Stats. Implemented: ORS 25.080

Hist.: AFS 34-1986(Temp), f. & ef. 4-14-86; AFS 65-1986, f. & ef. 9-19-86; AFS 28-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0054; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0055; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1100; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered

# ADMINISTRATIVE RULES

from 461-200-1100; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 12-2009, f. & cert. ef. 10-1-09; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-1140

### Confidentiality of Records in the Child Support Program

(1)(a) As used in this rule, "employee" means a person employed by the Department of Justice (DOJ) or a district attorney office that provides Child Support Program (CSP) services;

(b) "Party" has the meaning given in OAR 137-055-1020, or a party's attorney.

(2) For purposes of this rule, and subject to the limitations set forth in section (3) of this rule, the contents of a case record include, but are not limited to:

(a) The names of the obligor, beneficiary and obligee or other payee;

(b) The addresses of the obligor, beneficiary and obligee or other payee;

(c) The contact address and address of service of the obligee, beneficiary or obligor;

(d) The name and address of the obligor's employer;

(e) The social security numbers of the obligor, the obligee and beneficiaries;

(f) The record of all legal and collection actions taken on the case;

(g) The record of all accrual and billings, payments, distribution and disbursement of payments;

(h) The narrative record; and

(i) The contents of any paper file maintained for purposes of establishment and/or enforcement of a child support order or for accounting purposes.

(3) Any data listed in section (2) of this rule or any other data that resides on the Child Support Enforcement Automated System (CSEAS) that is extracted from computer interfaces with other agencies' computer systems is not considered to be child support information until or unless the data is used for child support purposes. Until such data is used for child support purposes it is not subject to any exceptions to confidentiality and it may not be released to any other person or agency in any circumstance, except as provided in ORS 25.260(5) and as may be provided in other agency rule.

(4) Child support case related records, files, papers and communications are confidential and may not be disclosed or used for purposes other than those directly connected to the administration of the CSP except:

(a) Information may be shared as provided in ORS 25.260(5), OAR 137-055-1320 and 137-055-1360 and as may be provided in other agency rule;

(b) Information may be shared for purposes of any investigation, prosecution or criminal or civil proceeding conducted in connection with the administration of:

(A) Title IV-D of the Social Security Act, child support programs in Oregon and other states;

(B) Title IV-A of the Social Security Act, Temporary Assistance to Needy Families; or

(C) Title XIX of the Social Security Act, Medicaid programs;

(c) Information may be shared as required by state or federal statute or rule;

(d)(A) Elected federal and state legislators and the Governor are considered to be within the chain of oversight of the CSP. Information about a child support case may be shared with these elected officials and their staff in response to issues brought by constituents who are parties to the case;

(B) County commissioners exercise a constituent representative function in county government for county administered programs. District attorney offices that operate child support programs may respond to constituent issues brought by county commissioners of the same county if the constituent is a party in a case administered by that office. District attorneys are DOJ sub-recipients. CSP Administration may also respond to constituent issues brought by county commissioners on district attorney administered child support cases where the constituent is a party;

(C) Information disclosed under paragraphs (A) and (B) of this subsection is subject to the restrictions in subsections (6)(a) and (b) of this rule;

(e) When a party requires the use of an interpreter in communicating with the administrator, information given to such an interpreter is not a violation of any provision of this rule; and

(f) A person who is the executor of the estate or personal representative of a deceased party is entitled to receive any information that the deceased party would have been entitled to receive.

(5)(a) The CSP may release information to a private industry council as provided in 42 USC 654a(f)(5).

(b) The information released under subsection (a) of this section may be provided to a private industry council only for the purpose of identifying and contacting noncustodial parents regarding participation of the non-custodial parents in welfare-to-work grants under 42 USC 603(a)(5).

(c) For the purposes of this section, "private industry council" means, with respect to a service delivery area, the private industry council or local workforce investment board established for the service delivery area pursuant to Title I of the Workforce Investment Act (29 USC 2801, et seq.). "Private industry council" includes workforce centers and one-stop career centers.

(6)(a) Information from a case record may be disclosed to a party in that case outside a legal proceeding, except for the following personal information about the other party:

(A) The residence or mailing address of the other party if that other party is not the state;

(B) The social security number of the other party;

(C) The name, address and telephone number of the other party's employers;

(D) The telephone number of the other party;

(E) Financial institution account information of the other party;

(F) The driver's license number of the other party; and

(G) Any other information which may identify the location of the minor child or other party, such as day care provider's name and address.

(b) Except for personal information described in subsection (a) of this section, information from a case record may be provided to a party via the CSP web page if appropriate personal identifiers, such as social security number, case number or date of birth are required to be provided in order to access such information.

(7) Notwithstanding the provisions of subsections (6)(a) and (b) of this rule, a party's personal information may be released to a state agency under the provisions of 45 CFR 303.21.

(8) Notwithstanding the provisions of subsection (6)(a), an employee may disclose personal information described in paragraphs (6)(a)(A) through (6)(a)(G) to a party, if disclosure of the information is otherwise required by rule or statute.

(9) Any information from the case record, including any information derived from another agency, that was used for any calculations or determinations relevant to the legal action may be disclosed to a party. Where there is a finding of risk and order for nondisclosure of information pursuant to OAR 137-055-1160, all nondisclosable information must be redacted before documents are released.

(10) Requestors may be required to pay for the actual costs of staff time and materials to produce copies of case records before documents are released.

(11)(a) Information from case records may be disclosed to persons not a party to the child support case who are making contact with the CSP on behalf of a party, if the following conditions are met:

(A) The person who is not a party to the case provides the social security number of the party for whom they are making the inquiry or the child support case number;

(B) The person who is not a party to the case making the contact on behalf of the party is the current spouse or domestic partner of the party and residing with the party or a parent or legal guardian of the party; and

(C) The CSP determines that the person is making case inquiries on behalf of the party and disclosure of such information would normally be made to the party in reply to such an inquiry.

(b) Disclosure of information is limited to the specific inquiries made on behalf of the party and is subject to the restrictions in subsections (6)(a) and (b) of this rule.

(12) Except as provided in subsections (11)(a) and (b) of this rule, information from a case record may not be disclosed to a person who is not a party to the case unless:

(a) The party has granted written consent to release the information to the person; or

(b) The person has power of attorney for the party, the duration and scope of which authorizes release of information from a case record at the time that the person requests such information. The power of attorney remains in effect until a written request to withdraw the power of attorney is submitted by the party or by the person, unless otherwise noted on the power of attorney.

(13) A child support case account balance is derived from the child support judgment, which is public information, and from the record of payments, which is not. Therefore, the case balance is not public information, is confidential and may not be released to persons not a party except as otherwise provided in this rule.

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(14) Information obtained from the Internal Revenue Service and/or the Oregon Department of Revenue is subject to confidentiality rules imposed by those agencies even if those rules are more restrictive than the standards set in this rule, and may not be released for purposes other than those specified by those agencies.

(15) Criminal record information obtained from the Law Enforcement Data System or any other law enforcement source may be used for child support purposes only and may not be disclosed to parties or any other person or agency outside of the CSP. Information about the prosecution of child support related crimes initiated by the administrator may be released to parties in the child support case.

(16) Employees with access to computer records or records of any other nature available to them as employees may not access such records that pertain to their own child support case or the child support case of any relative or other person with whom the employee has a personal friendship or business association. No employee may perform casework on their own child support case or the case of any relative or other person with whom the employee has a personal friendship or business association.

(17) When an employee receives information that gives reasonable cause to believe that a child has suffered abuse as defined in ORS 419B.005(1)(a) the employee must make a report to the Department of Human Services as the agency that provides child welfare services and, if appropriate, to a law enforcement agency if abuse is discovered while providing program services.

(18) Employees who are subject to the Disciplinary Rules of the Oregon Code of Professional Responsibility must comply with those rules regarding mandatory reporting of child abuse. To the extent that those rules mandate a stricter standard than required by this rule, the Disciplinary Rules also apply.

(19) If an employee discloses or uses the contents of any child support records, files, papers or communications in violation of this rule, the employee is subject to progressive discipline, up to and including dismissal from employment.

(20) To ensure knowledge of the requirements of this rule, employees with access to computer records, or records of any other nature available to them as employees, are required annually to:

(a) Review this rule and the CSP Director's automated tutorial on confidentiality;

(b) Complete with 100 percent success the CSP Director's automated examination on confidentiality; and

(c) Sign a certificate acknowledging confidentiality requirements. The certificate must be in the form prescribed by the CSP Director.

(21)(a) For DOJ employees, each signed certificate must be forwarded to DOJ Human Resources, with a copy kept in the employee's local office drop file;

(b) For district attorney employees, each signed certificate must be kept in accordance with county personnel practices.

(22) Notwithstanding any other provision of this rule, an employee may release a party's name and address to a local law enforcement agency when necessary to prevent a criminal act that is likely to result in death or substantial bodily harm.

Stat. Auth.: ORS 25.260, 180.345

Stats. Implemented: ORS 25.260, 127.005, 411.320

Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 19-1998, f. 10-5-98, cert. ef. 10-7-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0291; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1160; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 11-2011(Temp), f. 12-1-11, cert. ef. 12-5-11 thru 5-29-12; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-1160

### Confidentiality — Finding of Risk and Order for Nondisclosure of Information

(1) For the purposes of this rule in addition to the definitions found in OAR 137-055-1020, the following definitions apply:

(a) "Claim of risk for nondisclosure of information" means a claim by a party to a paternity or support case made to the administrator, an administrative law judge or the court that there is reason to not contain or disclose the information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a) because the health, safety or liberty of a party or child would unreasonably be put at risk by disclosure of such information;

(b) "Finding of risk and order for nondisclosure of information" means a finding and order by the administrator, an administrative law judge or the court, which may be made ex parte, that there is reason to not contain or disclose the information specified in ORS 25.020(8)(a) or OAR 137-

055-1140(6)(a) because the health, safety or liberty of a party or child would unreasonably be put at risk by disclosure of such information.

(2) A claim of risk for nondisclosure of information may be made to the administrator by a party at any time that a child support case is open. Forms for making a claim of risk for nondisclosure of information will be available from all child support offices and be made available to other community resources. At the initiation of any legal process that would result in a judgment or administrative order establishing paternity or including a provision concerning support, the administrator will provide parties an opportunity to make a claim of risk for nondisclosure of information.

(3)(a) When a party makes a written and signed claim of risk for nondisclosure of information pursuant to section (2) of this rule, the administrator will make a finding of risk and order for nondisclosure of information unless the party does not provide a contact address pursuant to section (5) of this rule;

(b) When a party is accepted into the Address Confidentiality Program (ACP), the administrator will make a finding of risk and order for nondisclosure of information. The party's contact address will be the ACP substitute address designated by the Attorney General pursuant to OAR 137-079-0150.

(4) An administrative law judge will make a finding of risk and order for nondisclosure of information when a party makes a claim of risk for nondisclosure of information in a hearing unless the party does not provide a contact address pursuant to section (5) of this rule.

(5) A party who makes a claim of risk for nondisclosure of information under subsection (3)(a) or section (4) must provide a contact address that is releasable to the other party(ies) in legal proceedings. The claim of risk for nondisclosure of information form provided to the party by the administrator must have a place in which to list a contact address. If a requesting party does not provide a contact address, a finding of risk and order for nondisclosure of information will not be made.

(6) When an order for nondisclosure of information has been made, the administrator must ensure that all pleadings, returns of service, orders or any other documents that would be sent to the parties or would be available as public information in a court file does not contain or must have deleted any of the identifying information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a). Any document sent to the court that contains any of the information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a) must be in a sealed envelope with a cover sheet informing the court of the confidential nature of the contents or in the manner provided by UTCR 2.130.

(7) A finding of risk and order for nondisclosure of information entered pursuant to this rule will be documented on the child support case file and will remain in force until such time as the ACP participant or party who requested a claim of risk retracts the claim or requests dismissal in writing.

(8) A party who requested a claim of risk may retract the claim on a form provided by the administrator. When a signed retraction form is received by the administrator, the administrator will enter, or will ask the court to enter, a finding and order terminating the order for nondisclosure of information.

(9) Any information previously protected under an order for nondisclosure of information will be subject to disclosure when the order for nondisclosure of information is terminated. The retraction form provided by the administrator will advise the requestor that previously protected information may be released to the other party(ies).

(10) In cases where the administrator is not involved in the preparation of the support order or judgment establishing paternity, or when child support services under ORS 25.080 are not being provided, any claim of risk for nondisclosure of information pursuant to ORS 25.020 must be made to the court.

(11) Notwithstanding section (5) of this rule, where the court has made a finding of risk and order for nondisclosure of information and the case is receiving or subsequently receives child support services pursuant to ORS 25.080, the administrator will implement the court's finding pursuant to this rule. In such a case, the administrator will use, in order of preference, the party's contact address as contained in the court file, or the party's contact address previously provided to the Child Support Program. If no contact address is available through either of these sources, the administrator will send a written request to the party, asking that the party provide a contact address. The written request from the administrator must advise the party that if no contact address is provided within 30 days, the administrator will use, in order of preference, the party's mailing or residence address as the contact address, and the new contact address may be released to the other party(ies).

[ED. NOTE: Forms referenced are available from the agency.]

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 25.020 & 180.345  
Stats. Implemented: ORS 25.020, 192.820-192.858  
Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 19-1998, f. 10-5-98, cert. ef. 10-7-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0291; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1160; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 5-2007, f. & cert. ef. 7-2-07; DOJ 8-2009, f. 7-1-09, cert. ef. 8-1-09; DOJ 12-2010(Temp), f. 7-1-10, cert. ef. 9-1-10 thru 2-25-11; DOJ 16-2010, f. & cert. ef. 10-1-10; DOJ 8-2011(Temp), f. & cert. ef. 11-2-11 thru 4-28-12; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-1800

### Limited English Proficiency

For the purposes of providing child support services required by ORS 25.080 to Limited English Proficiency (LEP) persons, the following provisions apply:

(1)(a) "Eligible population" means persons eligible to receive child support services pursuant to ORS 25.080.

(b) "Vital information" means information that:

- (A) Affects a person's substantive rights;
- (B) Notifies a person about rights or services;
- (C) Tells a person what process to use to respond; or
- (D) Tells a person what the findings are or what to pay.

(2) At least once each biennium, the CSP will identify languages for which vital information will be translated without the need for a request from a party. To determine the languages, the CSP will use the following criteria:

(a) The estimated size of the eligible population speaking the specific language;

(b) The number of language line calls made over the last two years for the specific language; and

(c) The cost of the translation.

(3) If the number in subsection (2)(a) is 1,000 or 5% of the eligible population in Oregon, whichever is less, vital information for that language will be translated without the need for a request from a party.

(4) If the number of language line calls in subsection (2)(b) is 500 or more, vital information for that language will be translated without the need for a request from a party.

(5) Notwithstanding any other provision of this rule, if the cost of the translation for a single document is \$500 or more, the CSP may choose to not translate the document.

(6) When an LEP person needs a translation and the language needed does not meet the standards in sections (3) or (4), the CSP may choose to either translate the vital information for that language or refer the LEP person to other translation services, including language lines or other providers.

(7) When an LEP person needs to verbally communicate with the CSP, the program may use certified bilingual or multilingual staff to communicate or may use a language line.

Stat. Auth.: ORS 180.345 & 28 CFR 42.405

Stats. Implemented: ORS 25.080

Hist.: DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-2100

### Process Service

(1) The administrator may serve process in the manner provided in ORCP 7, ORS 25.085, and any other provision of law.

(2) "Mail service with delivery confirmation" includes but is not limited to registered mail, certified mail, and priority mail with delivery confirmation.

(3) When the administrator will use priority mail service as the process service method, the party who will receive the documents must verify the address to which the documents are to be mailed. Verification by the party must occur no more than 60 calendar days prior to mailing.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.085, 25.245, 25.670, 416.415, 416.429

Hist.: DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-2160

### Requests for Hearing

(1) A request for hearing must be in writing and signed by the party, the party's authorized representative, or the administrator.

(2) A request for hearing may be made on a form provided by the Child Support Program (CSP) and must contain the party's residence, mailing or contact address, a telephone number where the party can be contacted and the reasons for objection to the contested case notice.

(3) A request for hearing must be received by the CSP office which issued the action within the time provided by law or notice in order to be considered timely.

(4) A new or amended request for hearing is not required from the requesting party to obtain a hearing if the administrator amends the order being appealed, unless the administrator notifies the requesting party that an additional request is required.

(5) When a party requests a hearing after the time specified by the administrator, the administrator will handle the request pursuant to OAR 137-003-0528, except that the administrator may accept the late request only if:

(a) The request is received before or within 60 days after entry of a final order by default;

(b) The circuit court has not approved the final order or there is no appeal of the final order pending with the circuit court, and

(c) The cause for failure to timely request the hearing was beyond the reasonable control of the party, unless other applicable statutes or Oregon Child Support Program administrative rules provide a different time frame or standard.

(6) Notwithstanding the provisions of section (5) of this rule, a request for hearing is not considered a late hearing request when:

(a) Parentage testing has been conducted pursuant to ORS 109.252 and 416.430 which includes the man as the biological father of the child, and a request for hearing has been received from a party within 30 days from the date of service of the Notice of Intent to Enter Order/Judgment establishing paternity and the notice of parentage testing results; or

(b) A party has denied paternity and failed to appear for parentage tests, an order establishing paternity has been entered, and a request for hearing has been received from a party within 30 days from the date the order establishing paternity was mailed to the parties.

(7) For the purpose of computing any period of time under this rule, except as otherwise provided, any response period begins to run on the following date:

(a) If service is by certified mail, on the date the party signs a receipt for the mailing;

(b) If service is by regular mail:

(A) Three days after the mailing date if mailed to an address in Oregon;

(B) Seven days after the mailing date if mailed to an address outside Oregon; or

(c) The date evidence shows the party received the mailing.

(8) Except as provided in subsection (9)(b) the dates in section (7) are computed based on calendar days, not business days.

(9)(a) In computing any period of time under this rule, do not count the date of mailing as the first day; and

(b) If the last day falls on a Saturday, Sunday or legal holiday, do not count that day as a calendar day.

(10) The provisions of sections (7) through (9) do not apply to service on a party by regular mail to complete substitute service. For substitute service, the service date is the date the document is mailed.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 183.415

Hist.: AFS 5-1995, f. & ef. 2-6-95; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0830; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2160; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 10-2008, f. & cert. ef. 7-1-08; DOJ 2-2010(Temp), f. & cert. ef. 1-4-10 thru 7-1-10; DOJ 11-2010, f. & cert. ef. 7-1-10; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-3220

### Establishment of Past Support Orders

(1) For purposes of this rule the following definitions apply:

(a) "Past support" means the amount of child support that could have been ordered based on the Oregon Child Support Guidelines and accumulated as arrears against a parent for the benefit of a child for any period of time during which the child was not supported by the parent and for which period no support order was in effect.

(b) "Supported by the parent" in subsection (1)(a) means payments in cash or in kind in amounts or in-kind value equal to the amount that would have accrued under the Oregon Child Support Guidelines from the obligor to the obligee for purposes of support of the child.

(c) The Oregon Child Support Guidelines means the formula for calculating child support specified in ORS 25.275.

(2) The administrator may establish "past support" when establishing a child support order under ORS 416.400 through 416.470.

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(3) When an obligor has made payments in cash or in kind an obligee for the support of the child during the period for which a judgment for past support is sought, and providing that those payments were in amounts equal to or exceeding the amount of support that would have been presumed correct under the Oregon Child Support Guidelines, no past support will be ordered.

(4) When such payments as described in section (3) were made in amounts less than the amount of support presumed correct under the Oregon Child Support Guidelines, the amount of the past support judgment will be the correct amount presumed under the Oregon Child Support Guidelines minus any amounts of support paid.

(5) The obligor must provide evidence of such payments as described in sections (3) and (4) by furnishing copies of:

- (a) Canceled checks;
- (b) Cash or money order receipts;
- (c) Any other type of funds transfer records;
- (d) Merchandise receipts;
- (e) Verification of payments from the obligee;
- (f) Any other record of payment deemed acceptable by the administrator.

(6) The administrator may decide whether to accept evidence of such cash or in-kind support payments for purposes of giving credit for them. If any party disagrees, the past support calculation may be appealed to an administrative law judge as provided in ORS 416.427.

(7) Past support may not be ordered for any period of time prior to the later of:

- (a) October 1, 1995;
- (b) The date of the initiation of IV-D services from any jurisdiction by application for services; or
- (c) In case of a mandatory referral based on the receipt of TANF cash assistance, Medicaid, foster care or Oregon Youth Authority services, the date of the referral to the Child Support Program (CSP).

(8) If the support case was initiated from another jurisdiction, the date of application for services will be considered to be either:

- (a) The date the initiating jurisdiction requests past support to begin but not before October 1, 1995; or
- (b) If the initiating jurisdiction requests that past support be established for multiple periods of time, the beginning date of the most recent period but not before October 1, 1995; or
- (c) If the initiating jurisdiction does not specify a beginning date for past support, the date of the initiating petition but not before October 1, 1995.

(9) The administrator will not establish past support prior to the date of the most recent initiation of CSP services if a case was closed after a previous referral. If an initiating jurisdiction requests that past support be established for two or more periods of time, past support will be established only for the most recent period.

(10) If there is or was a child support judgment in existence in any jurisdiction for the obligor to pay support to the obligee for the same child, or if a child support judgment is in the process of being litigated, no order for past support will be entered for a period of time before entry of the child support judgment already or previously existing except as provided in OAR 137-055-3200.

(11) If the parties are filing for annulment, dissolution or separation under ORS 107.105 and a judgment will be entered for months when the proceeding was pending, any order for past support may only include amounts owed for a time period prior to the filing of the judicial action.

(12) If the order to be entered does not include current support and the past support would be owed only to the State of Oregon or another jurisdiction, the administrator will not enter an order for past support that covers a period of less than four months.

(13) Past support will be calculated under the Oregon Child Support Guidelines and will use current income for the parties in calculating past support monthly amounts. Parties may rebut use of current income by presenting evidence of income in differing amounts for the months for which past support is being ordered.

Stat. Auth.: ORS 180.345  
Stats. Implemented: ORS 416.422  
Hist.: AFS 28-1995, f. 11-2-95, cert. ef. 11-3-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1010; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3220; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-3430

### Substantial Change in Circumstance Review and Modification of Child Support Order Amounts

(1) For purposes of this rule:

(a) The definitions provided in ORS 25.321, OAR 137-050-0750 and OAR 137-055-3420 apply;

(b) A "temporary modification" is an order entered under ORS 416.425(13), which suspends and temporarily modifies a support order based on a party's employment-related change of income; and

(c) "Employment-related change of income" includes but is not limited to reduced work hours, unpaid furloughs, loss of job and wage reductions. Employment-related change of income does not include a voluntary reduction of income or self-imposed curtailment of earning capacity, if it is shown that such action was not taken in good faith but was for the primary purpose of avoiding the support obligation. A party's employment-related change of income is considered to take place "during a period of significant unemployment" even if the change occurred prior to the Attorney General's determination under ORS 416.425(13)(b), as long as the effects of the employment-related change of income continue into the time period covered by the determination.

(2) Notwithstanding OAR 137-055-3420, proceedings may be initiated at any time to review and modify a support obligation based upon a substantial change in circumstance.

(3) The administrator will conduct a review based upon a request for a change of circumstance modification when:

(a) Oregon has jurisdiction to modify;

(b) The administrator:

(A) Receives a request for modification based upon a change of circumstance and at least 60 days have passed from the date the existing support order was entered, except for those cases where a review is requested pursuant to paragraphs (3)(c)(H) or (I);

(B) Determines that a temporary modification should be initiated based on receipt of a request from a party who has experienced an employment-related change of income; or

(C) Determines that a modification should be initiated based on the administrator's own motion; and

(c) At least one of the following criteria are met:

(A) A change in the written parenting time agreement or order has taken place;

(B) The financial or household circumstances of one or more of the parties are different now than they were at the time the order was entered;

(C) Social Security benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before May 12, 2003;

(D) Veterans' benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before May 12, 2003;

(E) Survivors' and Dependents' Education Assistance benefits received by the child or on behalf of the child were not previously considered in the order;

(F) Since the date of the last order, the obligor has been incarcerated, as defined in OAR 137-055-3300;

(G) The needs of the child(ren) have changed;

(H) There is a need to add or change medical support provisions for a child;

(I) A change in the physical custody of a minor child has taken place;

(J) An order is being modified to include a subsequent child of the parties or to remove a child of the parties; or

(K) A child between 18 and 20 years old does not qualify as a child attending school under ORS 107.108 and OAR 137-055-5110 and, pursuant to ORS 107.108(10), tiered order provisions must be added, removed or changed. Tiered order has the meaning given in OAR 137-055-1020.

(d) And the requesting party (if other than the administrator):

(A) Completes a written or verbal request for modification based upon a substantial change of circumstance;

(B) Pursuant to ORS 416.425, provides appropriate documentation for the criteria in subsection (c) of this section showing that a substantial change of circumstance has occurred; and

(C) Completes a Uniform Income Statement or Uniform Support Affidavit or, if a temporary modification, provides employment status and income information sufficient to permit the administrator to have a reasonable basis to make a determination.

(4) Sections (5) through (9) do not apply to temporary modifications.

(5) Upon receipt of a request for a review and modification, or upon the administrator's own initiative, the administrator will notify the parties

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of the review in writing, allowing the parties 30 days to provide information which may affect the support calculation.

(6) A request for review will be granted unless:

(a) The conditions in section (3) have not been met; or

(b) The review was requested due to one of the criteria in paragraphs (3)(c)(A) through (3)(c)(G), and the order is in substantial compliance with the guidelines. The determination of substantial compliance will be made as outlined in OAR 137-055-3420(1)(d), except as provided in section (7).

(7) The provisions of subsection (6)(b) do not apply if the new calculation:

(a) Includes consent by the parties as provided in OAR 137-050-0765;

(b) Includes compelling factors in the reasonable-in-cost limitation, as provided in OAR 137-050-0750(2)(a);

(c) Includes application of rebuttals, as provided in OAR 137-050-0760; or

(d) Is for a modification to consider receipt of Social Security or Veterans' benefits as provided in paragraphs (3)(c)(C) or (D).

(8) If the request for review is granted, the administrator will advise the parties of the presumed correct support amount. Notification may be by motion for modification and will include a request for hearing form. If there is an adult child on the case, the proposed modification will be a tiered order as defined in OAR 137-055-1020.

(9) If the order is found to be in substantial compliance, and at least 35 months have passed since the date the most recent support order took effect, the administrator will complete the request as provided in OAR 137-055-3420(9).

(10) Sections (11) and (12) apply only to temporary modifications.

(11) The administrator will, to the extent possible, gather information from the parties which could affect the support calculation by phone or other electronic means, including facsimile and e-mail.

(12) The administrator will advise the parties of the presumed correct support amount and may seek a consent order. Notification may be by motion for modification and will include a request for hearing form.

(13) If a request under this rule is denied, the administrator will notify the requesting party of the denial in writing within 30 days and inform the party of their right to file a motion for modification as provided in ORS 416.425. The administrator will advise the party on how to obtain the Oregon Judicial Department packet that has been prescribed for this purpose.

(14) No provision of this rule precludes the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.

(15) If a request for review and modification is received because a change in the physical custody of the minor child(ren) has taken place, a party may also request a credit back to the date the change in physical custody took place in accordance with OAR 137-055-5510.

Stat. Auth.: ORS 180.345 & 416.455

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

Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 4-2009(Temp), f. 5-6-09, cert. ef. 5-7-09 thru 11-1-09; DOJ 6-2009(Temp), f. & cert. ef. 5-14-09 thru 11-1-09; DOJ 13-2009, f. & cert. ef. 10-30-09; DOJ 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-27-10; DOJ 19-2010, f. 12-20-10, cert. ef. 12-27-10; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-3640

### Enforcement of a Subpoena by License Suspension

(1) For the purposes of this rule the following definitions apply:

(a) "License" means any of the licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driving privileges granted by the Department of Transportation under ORS chapter 807 which includes all driving licenses and permits, and all hunting and fishing licenses and tags issued by the Oregon Department of Fish and Wildlife;

(b) "Administrative review" means a review of the obligor's objection to proposed action under this rule performed by the administrator to determine that:

(A) There is not a mistake in identity of the party;

(B) The party has not complied with the subpoena; or

(C) The subpoena was properly served upon the party.

(2) At the discretion of the administrator, the administrator may use the remedy set out in this rule or any other remedy allowable under Oregon law to enforce compliance with a subpoena issued pursuant to OAR 137-055-3620.

(3) When a party to a child support or paternity case has been served with a subpoena pursuant to OAR 137-055-3620 the time for compliance

set out on the subpoena has expired and the subpoenaed party has not complied with the subpoena, the administrator may serve notice to the party that a license or licenses issued to that party will be suspended.

(4) The notice of license suspension will contain:

(a) The license(s) subject to suspension;

(b) The name of the person whose license is subject to suspension, the child support case number, the social security number, if available, and date of birth, if known;

(c) The date the original subpoena had been served, the deadline the subpoena set for compliance and the documents or information that had been subpoenaed;

(d) The procedure for contesting license suspension and the bases for contesting the suspension. The only bases for contesting the suspension are:

(A) There is a mistake in identity of the party;

(B) The party has complied with the subpoena; or

(C) The subpoena was not properly served upon the party pursuant to OAR 137-055-3620.

(e) A statement that the party has 30 days to contest suspension in writing by requesting an administrative review on a form provided by the administrator;

(f) A statement that if the party provides the information or documents that were originally specified in the subpoena within 30 days of the date of the notice, the license(s) will not be suspended; and

(g) A statement that failure to contact the administrator within 30 days of the date of the notice to either request an administrative review to contest the suspension or to provide the originally subpoenaed information or documents will result in suspension of the license(s).

(5) If the party contests the suspension of the license(s), the administrator will conduct an administrative review to determine if the suspension should occur:

(6) If the administrator determines that the suspension of the license should occur, all parties will receive written notice of such determination. The notice will include the following:

(a) The basis for the determination;

(b) The right to appeal the determination and a form on which to make the appeal;

(c) The time limit for making an appeal is 30 days from the date of the notice;

(d) That if no appeal of the suspension is received within 30 days, the licensing agency will be notified to suspend the license immediately.

(7) An appeal of the determination in subsection (5) of this rule will be to an administrative law judge and the suspension of the license is stayed pending the decision of the administrative law judge. The only bases for the appeal are:

(a) There is a mistake in identity of the party;

(b) The party has complied with the subpoena; or

(c) The subpoena was not properly served upon the party pursuant to OAR 137-055-3620.

(8) If the party fails to provide the subpoenaed information or documents or fails to appeal the determination within the time period allowed, or if the administrative law judge affirms the administrative determination, the administrator will send a notice to the issuing agency to suspend the license. A copy of this order will be sent to all parties by regular mail.

(9) The notice to the issuing agency to suspend the license will contain the following:

(a) A statement that a child support or paternity case record is being maintained by the Child Support Program and that the license holder is a party in that case; and

(b) A statement that the holder of the license has failed to comply with a subpoena pursuant to OAR 137-055-3620.

(10) At any time after suspension of the license, the party may request that the administrator conduct a review to determine if the basis for the license suspension continues to exist. The administrator will review the suspension and notify the issuing agency to reinstate the license, when any of the following conditions are met:

(a) The party has furnished the originally subpoenaed information or documents;

(b) The legal action, enforcement action or other case action has been completed and there is no longer a need for the originally subpoenaed information or documents; or

(c) There is no longer a Child Support Program case.

Stat. Auth.: ORS 25.082, 25.750, and 180.345

Stats. Implemented: ORS 25.082 and 25.750

Hist.: AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0077; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3640; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03,



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Renumbered from 461-200-3640; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-4130

### Reduced Income Withholding

(1) The administrator will set an amount less than the amount prescribed by ORS 25.414 to be withheld if withholding is only for arrears and the obligor demonstrates the withholding is prejudicial to the obligor's ability to provide for:

- (a) A child the obligor has a duty to support; or
- (b) The obligor's basic needs.

(2) For the purposes of sections (3) and (4) of this rule, "the obligor's household" means the obligor's personal residence.

(3) In determining the obligor's basic needs and the number and basic needs of other persons living in the obligor's household, in addition to the factors outlined in ORS 25.414(5), the administrator will consider:

(a) The obligor's relationship to the person, including but not limited to whether the person is a relative or part of a domestic partnership with the obligor, as defined in ORS 106.310;

(b) Whether there is a duty for the obligor to support the person under ORS 108.040, 108.045 or 109.010; and

(c) Whether the person has available resources.

(4) In considering the basic needs of the obligor and other persons living in the obligor's household as outlined in ORS 25.414(5), the administrator may require the obligor to provide documentation, including but not limited to doctor's statements, pay stubs, tax return information, a uniform income statement form or other asset information. The administrator also may require the obligor to provide documentation showing that a person resides in the obligor's household.

(5) An agreement for a reduced amount of withholding may terminate and income withholding for the full amount allowable by law may be reinstated, unless the obligor otherwise qualifies for an exception pursuant to OAR 137-055-4080, when:

(a) According to the case record, the obligor is out of compliance with the agreement; or

(b) The time period covered by the agreement has expired.

Stat. Auth.: ORS 25.414, 180.345

Stats. Implemented: ORS 25.414

Hist.: DOJ 14-2001, f. 12-28-01, cert. ef. 1-2-02; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 137-050-0605; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-4440

### Liens Against Personal and Real Property

(1) A judgment for support constitutes a lien on real and personal property as provided for in Oregon law.

(2) Whenever there is a judgment for unpaid support and the administrator learns that an obligor has assets, then the administrator may cause a lien to be recorded on any real or personal property owned by the obligor unless the property is exempt from lien laws under Oregon law.

(3) An obligee from another state with a judgment for unpaid support may record a lien under the provisions of ORS 18.158, and must use the form provided by the Office of Child Support Enforcement of the United States Department of Health and Human Services.

(4) Pursuant to OAR 137-055-4300(3), the administrator may use the process described in this rule as one of several enforcement options available and may exercise discretion to optimize collection potential in individual cases. The administrator will prioritize this enforcement option in decision making based on availability and application of other enforcement options and available staff resources. Prior to forcing a sale of real or personal property, the administrator must consider the following factors:

(a) The market value of the property after subtracting the value of superior claims of senior lien holders;

(b) The market conditions for achieving maximum return;

(c) The long-term impact on the obligor's ability to comply with an unsatisfied or future support duty;

(d) The storage costs, notice and sale costs;

(e) Exemption claims;

(f) Co-ownership of the property, or impact on any existing trust on the property; and

(g) The availability of other, more effective remedies to satisfy the support debt.

(5) The administrator may not proceed with this enforcement option when a court of appropriate jurisdiction has ordered that the obligor be exempted from referral. The obligor must notify the obligee and the administrator when filing a claim for an exemption with a court.

Stat. Auth.: ORS 180.345 & 18.150

Stats. Implemented: ORS 18.158, 25.670 & 25.690

Hist.: AFS 25-1990, f. 11-21-90, cert. ef. 12-1-90; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0235; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4440; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4440; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-4520

### Garnishment

(1) The administrator may utilize garnishment proceedings in accordance with ORS Chapter 18 for the purpose of collecting past due support.

(2)(a) When the administrator receives a collection from a garnishment proceeding, the Division of Child Support (DCS) will hold the collection for 40 days if the garnishee is making a payment of other than wages or 120 days if the garnishee is making a payment of wages before disbursing any amounts due a party from the collection.

(b) This requirement is to accommodate the possibility that the administrator may have to return funds from the collection to the garnishee, the obligor, or the court, as a result of the obligor or any person who has an interest in the garnished property having made a challenge to garnishment in accordance with ORS chapter 18.

(c) The administrator will waive this requirement to hold the collection, and will apply the collection to the case for immediate distribution, in any case where the obligor provides the administrator with a signed and notarized statement expressly waiving the right to make a challenge to garnishment and requesting that the administrator apply, distribute and, as appropriate, disburse the payment immediately.

(3) Upon notice of a challenge to garnishment from the clerk of the court, the administrator will file a response to the challenge to garnishment, attaching copies of the writ of garnishment, garnishee response, debt calculation and any supporting documentation necessary or helpful to the court in making a determination of the challenge to garnishment.

(4) When a single writ of garnishment is issued for two or more cases as provided in ORS 18.645, notice of a challenge to garnishment is received and the administrator files the response required by section (3), the administrator will include copies of all judgments for which the writ is issued and a debt calculation for each referenced judgment.

(5) When the contents of a bank account are garnished and the obligor makes a timely challenge to garnishment that claims that all or some portion of the contents of the account came from lump sum payments identified in ORS 18.345, the administrator may return to the obligor the exempt portion of such lump sum payments received from that account, as appropriate.

(6) When the garnishee is a credit union, the credit union may retain the par value of the garnished account, defined as the face value of an individual credit union share necessary to maintain a customer's membership.

Stat. Auth.: ORS 25.020; 180.345

Stats. Implemented: ORS 18.345, 18.645, 25.020 & 25.080

Hist.: AFS 28-1996, f. & cert. ef. 7-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0238; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; AFS 15-2002, f. 10-30-02, f. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4520; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4520; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-5400

### Obligor Receiving Cash Assistance, Presumed Unable to Pay Child Support

(1) Cases for obligors receiving cash assistance as specified in ORS 25.245 from Oregon will be identified and processed as set forth in ORS 25.245. Obligor receiving cash assistance as specified in ORS 25.245 from another state or tribe must provide to the administrator written proof of receipt of such cash assistance. The written proof must:

(a) Be provided by the obligor to the administrator to initiate suspension and every three months thereafter;

(b) Include the date the cash assistance payment was first made, the amount of the cash assistance for each and every month in which cash assistance was received, and the ending date, if known, of the cash assistance;

(c) Be official documentation, recognized by the issuing agency, that covers each and every month that cash assistance was received, including but not limited to a benefits award letter, deposit record or receipt.

(2)(a) When an obligor has provided written proof of receipt of cash assistance pursuant to section (1) of this rule, the administrator will, subject to section (3) of this rule, credit the case for arrears accrued from the date the obligor submitted written proof of receipt of cash assistance back to the date the cash assistance was first made, but not earlier than October 6, 2001;

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(b) When an obligor notifies the administrator that the obligor is no longer receiving cash assistance, the administrator will begin accrual and billing pursuant to the support order currently in effect with the next support payment due following the end of the last month that the obligor received public assistance;

(c) If the obligor fails to provide written proof of receipt of cash assistance pursuant to section (1) of this rule, the administrator will begin accrual and billing pursuant to the support order currently in effect with the next support payment due for the month following the month for which the obligor last provided written proof;

(d) If the obligor provides written proof of receipt of cash assistance pursuant to section (1) of this rule after failing to provide timely written proof of receipt of cash assistance within three months, thereby causing the administrator to begin billing and accrual pursuant to subsection (c) of this section, support accrual may be suspended and arrears may be credited pursuant to subsection (a) of this section.

(3)(a) Within 30 days of receipt of information that the obligor is receiving cash assistance as specified in ORS 25.245(1), the administrator must send a notice to all parties to the support order. The notice will contain a statement of the presumption that support accrual ceases and include the following:

(A) A statement of the month in which cash assistance was first made;

(B) A statement that unless the party objects, that child support payments have ceased accruing beginning with the support payment due on or after the date the obligor began receiving cash assistance, but not earlier than:

(i) January 1, 1994, if the obligor received Oregon Title IV-A cash assistance, Oregon general cash assistance, Oregon Supplemental Income Program cash assistance or Supplemental Security Income Program payments by the Social Security Administration; or

(ii) October 6, 2001, if the obligor received Title IV-A cash assistance or general cash assistance from another state or Tribe;

(C) A statement that the administrator will continue providing enforcement services, including services to collect any arrears;

(D) A statement that if the obligor ceases to receive cash assistance as specified in ORS 25.245(1), accrual and billing will begin with the next support payment due following the end of the last month that the obligor receives cash assistance or for which the obligor provided written proof;

(E) A statement that any party may object to the presumption that the obligor is unable to pay support by sending to the administrator a written objection within 30 days of the date of service;

(F) A statement that the objections must include a written description of the resource or other evidence that might rebut the presumption of inability to pay; and

(G) A statement that the entity responsible for providing enforcement services represents the state and that low cost legal counsel may be available.

(b) Included with each notice under this section will be a separate form for the party to use if they choose to file an objection to the presumption that the obligor is unable to pay support.

Stat. Auth.: ORS 25.245 & 180.345

Stats. Implemented: ORS 25.245

Hist.: AFS 4-1994, f. & cert. ef. 3-4-94; AFS 20-1998, f. & cert. ef. 10-5-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0120; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5400; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5400; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-5420

### Application for Credit and Satisfaction for Child Support Owning While Obligor Received Cash Assistance

(1) The following applies to any application for credit and satisfaction under ORS 25.245:

(a) No credit or satisfaction will be given for periods for which the court or administrative law judge has previously declined to suspend the obligor's child support obligation in an action under ORS 25.245;

(b) No credit or satisfaction will be given for child support coming due before January 1, 1994, if the obligor received Oregon Title IV-A cash assistance, Oregon general assistance, Oregon supplemental Income Program cash assistance or Supplemental Security Income Program payments by the Social Security Administration;

(c) No credit or satisfaction will be given for child support coming due before October 6, 2001, if the obligor received Title IV-A cash assistance or general cash assistance from another state or Tribe;

(d) No credit or satisfaction will be given for months when the administrator had suspended accrual or where credit was already received.

(2) An application for credit and satisfaction may be made on a form provided by the administrator.

(3) The administrator will provide the application form to any person receiving services under ORS 25.080 who requests it or who raises concerns or questions regarding child support arrears incurred while receiving cash assistance.

(4) Upon receipt of a completed application, the administrator will serve any nonrequesting party notice that the application has been made. The administrator will include a form to object and request a hearing.

(5) If a party completes and returns the hearing request within 30 days of the date of service, the administrator will forward all relevant documents to the Office of Administrative Hearings to schedule a hearing and advise the parties of the time, place and manner of hearing.

(6) If no request for hearing is received, the administrator will submit an appropriate order to the administrative law judge for entry.

(7) Nothing in this rule precludes application directly to the court for the relief provided by ORS 25.245(7).

Stat. Auth.: ORS 25.020, 25.245, 180.345

Stats. Implemented: ORS 25.020 & 25.245

Hist.: AFS 23-1996, f. 5-31-96, cert. ef. 7-1-96; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0125; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5420; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5420; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-6021

### Distribution and Disbursement: General Provisions

The terms used in this rule have the meanings set out in OAR 137-055-1020 and 137-055-6010.

(1) The Department of Justice (DOJ) will disburse support payments within two business days after receipt if sufficient information identifying the payee is provided, except:

(a) Support payments received as a result of tax refund intercepts will be distributed and, as appropriate, disbursed within thirty calendar days of receipt or, if applicable, within fifteen calendar days of an administrative review or hearing. If the state is notified by the Secretary of the U.S. Treasury (the Secretary) or the Oregon Department of Revenue (DOR) that an offset on a non-assistance case is from a refund based on a joint return, distribution may be delayed, up to a maximum of six months, until notified by the Secretary or DOR that the obligor's spouse has been paid their share of the refund;

(b) Support payments received from a garnishment will be disbursed as provided in OAR 137-055-4520;

(c) Support payments for future support will be distributed and, as appropriate, disbursed as provided in section (13) of this rule;

(d) Support payments for less than five dollars;

(A) May be delayed until a future payment is received which increases the payment amount due the family to at least five dollars; or

(B) Will be retained by DOJ if case circumstances are such that there is no possibility of a future payment, unless the obligee:

(i) Has direct deposit;

(ii) Receives ReliaCard payments; or

(iii) Requests issuance of a check, if the obligee does not have direct deposit or has an exemption from receiving ReliaCard payments.

(e) When an obligor contests an order to withhold, funds will be disbursed pursuant to OAR 137-055-4160(5).

(2) DOJ will distribute support payments received on behalf of a family who has never received assistance to the family, first toward current support, then toward support arrears, not to exceed the amount of arrears.

(3)(a) DOJ may send support payments designated for the obligee to another person or entity caring for the child(ren) if physical custody has changed from the obligee to the other person or entity; however, prior to doing so, DOJ will require a notarized statement of authorization from the obligee or a court order requiring such disbursement.

(b) DOJ will change the payee to a private collection agent that the obligee has retained for support enforcement services only in accordance with OAR 137-055-6025.

(c) DOJ will redirect payments for the child who qualifies as a child attending school under ORS 107.108 and OAR 137-055-5110 only in accordance with 137-055-5110.

(4) Child support and spousal support have equal priority in the distribution of payments.

(5) Current child support and cash medical support will be distributed and disbursed on a prorated basis. To calculate the prorated distribution for each case, the administrator will determine the amount designated as child support and the amount designated as cash medical support, and divide each by the total support obligation. For example: the total support obliga-

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tion is \$400, of which \$300 is child support and \$100 is cash medical support; a payment of \$300 is received. In this example, the child support is 75 percent of the total support obligation so \$225 would be distributed and disbursed to child support; cash medical support is 25 percent of the total support obligation so \$75 would be distributed and disbursed to cash medical support.

(6)(a) For Oregon support orders or modifications, a prorated share (unless otherwise ordered) of current support payments received within the month due will be disbursed directly to the child who qualifies as a child attending school under ORS 107.108 and OAR 137-055-5110.

(b) Any arrears resulting from unpaid current support to the child attending school will accrue to the child until the child reaches the age of 21 or is otherwise emancipated, at which time arrears will revert to, and be owed to, the obligee.

(c) Any payment received on arrears will be disbursed in equal shares to the obligee and to the child if the arrears accrued while the child was a child attending school, until the child reaches the age of 21 or is otherwise emancipated.

(7) If the obligor has a current support obligation for multiple children on a single case, those children have different assistance statuses and the order does not indicate a specified amount per child, current support payments will be prorated based upon the number of children and their assistance status. Support payments in excess of current support for these cases will be distributed and, as appropriate, disbursed as provided in OAR 137-055-6022.

(8) DOJ will retain the fee charged by the Secretary for cases referred for Full Collection Services per OAR 137-055-4360 from any amount subsequently collected by the Secretary under this program. DOJ will credit the obligor's case for the full amount of collection and distribute and, as appropriate, disburse the balance as provided in OAR 137-055-6022.

(9) Unless a federal tax refund intercept collection is disbursed to assigned support, DOJ will retain the fee charged by the Secretary. Despite the fee, DOJ will credit the obligor's case for the full amount of the collection. If the collection is disbursed to assigned support, DOJ will pay the fee.

(10) Unless a state tax refund intercept collection is disbursed to assigned support, DOJ will retain the fee charged by the Department of Revenue. Despite the fee, DOJ will credit the obligor's case for the full amount of the collection. If the collection is disbursed to assigned support, DOJ will pay the fee.

(11) Within each arrears type in the sequence of payment distribution and disbursement in OAR 137-055-6022, 137-055-6023 or 137-055-6024, DOJ will apply the support payment to the oldest debt in each arrears type.

(12) Any excess funds remaining after arrears are paid in full will be processed as provided in OAR 137-055-6260 unless the obligor has elected in writing to apply the credit balance toward future support as provided in section (13) of this rule.

(13) DOJ will distribute and, as appropriate, disburse support payments representing future support on a monthly basis when each such payment actually becomes due. No amounts may be applied to future months unless current support and all arrears have been paid in full.

Stat. Auth.: ORS 25.020, 25.610 & 180.345

Stats. Implemented: ORS 18.645, 25.020 & 25.610

Hist.: DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-6200

### Adjusting Case Arrears When an Error is Identified

The purpose of this rule is to set out what the administrator will do when an error is identified which requires adjusting the arrears of a case.

(1) "Complete payment record" means that the Division of Child Support (DCS) has kept the payment record for the support judgment from the date of the first support payment required under the judgment, or the obligee or the administrator established arrears for the time period when DCS did not keep the payment record on the case.

(2) A notice will only be sent as provided for in this rule when the amount of arrears to be adjusted is at least \$5.

(3) If the error occurred within the current billing cycle, the administrator will adjust the arrears on the case record.

(4) If DCS has a complete payment record for the support payment judgment and the error occurred prior to the current billing cycle, the administrator will adjust the arrears on the case record and send a notice to the parties advising of:

(a) The change in the case arrears; and

(b) The right to, within 30 days of the date of the notice from DCS, submit a written request for an administrative review to determine if DCS's

record-keeping and accounting related to the adjustment of arrears is correct.

(5) DCS will conduct the administrative review within 30 days of receiving the party's written request, and will send written notification to the parties of the results of the review. The notice will include a citation of the parties' rights to appeal the decision under ORS 183.484.

(6) If DCS does not have a complete payment record for the support payment judgment and the error occurred prior to the current billing cycle, but within the previous 180 days, the administrator will:

(a) Send a notice to the parties that the administrator will adjust the arrears on the case record as indicated in the notice if none of the parties object within a 30-day period following the date of the notice;

(b) If none of the parties object within 30 days of the notice, the administrator will adjust the arrears on the case record as indicated in the notice;

(c) If any party objects within 30 days of the notice, the administrator will establish the arrears under the process found in ORS 25.167 or 416.429.

(7) If DCS does not have a complete payment record for the support payment judgment and the error occurred over 180 days ago, the administrator will establish the arrears under the process found in ORS 25.167 or 416.429.

(8) Notwithstanding any other provision of this rule, if under a contingency order the error is due to a failure to accurately reflect on the case record the periods of residence of the child in state care, the administrator will adjust the arrears on the case record and notify the obligor unless the Department of Human Services or Oregon Youth Authority directs otherwise.

(9) On a closed case:

(a) If all the arrears to be added to the case are assigned to the state, the administrator will not open the case if it is for a period of less than four months of accrual or less than \$500;

(b) If all the arrears to be added to the case are assigned to the state and the arrears are for a period of at least four months or \$500, the administrator will open the case and establish the arrears under the process found in ORS 25.167 or 416.429;

(c) If any of the arrears to be added to the case are owed to the obligee, the administrator will send a notice to the obligee and, if the arrears are for at least \$25, ask if the obligee wants enforcement of the arrears. If the obligee requests enforcement, the administrator will open the case and establish the arrears under the process found in ORS 25.167 or 416.429;

(d) If any of the arrears to be added to the case are owed to an adult child as defined in OAR 137-055-5110, the administrator will send a notice to the adult child but will not open the case for the adult child until the adult child qualifies as a child attending school under ORS 107.108 and OAR 137-055-5110;

(e) Except as otherwise provided in OAR 137-055-4455 or 137-055-6220, if the error was due to an accounting error of the administrator and the adjustment to arrears will cause a credit balance, the administrator will return the excess amount to the obligor if the amount is at least \$5 and the payment was applied to a state account; or

(f) If the error was not due to an accounting error of the administrator and the adjustment to arrears will cause a credit balance, the administrator will send an informational notice to the parties.

(10) Notwithstanding section (6) or section (9), on any case in which the applicant for services has requested non-enforcement and the error only affects the amount of arrears owed to the obligee, the administrator will update the case record appropriately.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020

Hist.: DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 12-2009, f. & cert. ef. 10-1-09; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-6220

### Recovery of Overpayments on Support Accounts

(1) A child support overpayment in favor of the State of Oregon is created when:

(a) The Department of Justice (DOJ) has transmitted money to an obligee, to a person or entity authorized to receive support payments or to an obligor, and that amount:

(A) Was transmitted in error or is attributable in whole or in part to a tax refund offset collection, all or part of which has been reclaimed by the Internal Revenue Service or the Oregon Department of Revenue; and

(B) Does not qualify as an advance payment under OAR 137-055-6210 or as payment for future support under 137-055-6021(13); or

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(b) DOJ receives a check from an obligor, other payor on behalf of the obligor, or withholder, transmits the appropriate amount from that check to the payee, and that check is dishonored.

(2) For overpayments described in subsection (1)(a), sections (3) through (8) of this rule apply. For overpayments described in subsection (1)(b), sections (9) through (12) of this rule apply.

(3) DOJ will determine a threshold amount for which attempts to recover the overpayment will occur. In determining the threshold, DOJ will consider the cost of:

- (a) Staff time in processing the overpayment collection request; and
- (b) An administrative hearing and the average number of cases requesting a hearing.

(4) When a notice is issued under ORS 25.125 to a person or entity described in subsection (1)(a), DOJ will include a statement that the person or entity:

(a) Must respond within 30 days from the date of the notice to object and request an administrative review; and

(b) If appropriate, may voluntarily assign any future support to repay the overpayment.

(5) If the person or entity described in subsection (1)(a) requests an administrative review, DOJ will conduct the administrative review within 30 days after receiving the request and notify the person or entity of the results of the review.

(6) Notice of the results of the administrative review will include a statement that the person or entity described in subsection (1)(a) must respond within 30 days from the date of the notice to object and request an administrative hearing.

(7) If the person or entity described in subsection (1)(a) files a written objection or request for hearing within 30 days, an administrative law judge shall then hear the objection.

(a) An order by an administrative law judge is final.

(b) The person or entity described in subsection (1)(a) may appeal the decision of an administrative law judge to the circuit court for a hearing de novo. The appeal shall be by a petition for review, filed within 60 days after the date that the final hearing order has been mailed.

(8) If a person or entity described in subsection (1)(a) fails to file a written request for administrative review, objection or request for hearing, fails to voluntarily assign future support, or if an order setting the overpayment amount is received from an administrative law judge, DOJ may refer the overpayment for collection as provided in ORS 293.231.

(9) When a notice is issued to an obligor or withholder under ORS 25.125(5), DOJ will include a statement that the obligor or withholder must respond within 30 days of the date of the notice and request an administrative review.

(10) If the obligor or withholder requests an administrative review, DOJ will conduct the administrative review within 30 days after receiving the request and notify the obligor or withholder of the results of the review.

(11) The obligor or withholder may appeal the result of the administrative review as provided in ORS 183.484.

(12) If the obligor or withholder fails to request an administrative review or if the result of an administrative review is that an overpayment occurred, DOJ may refer the overpayment for collection from the obligor or withholder as provided in ORS 293.231.

Stat. Auth.: ORS 25.125, 180.345 & 293

Stats. Implemented: ORS 25.020 & 25.125

Hist.: AFS 23-1983(Temp), f. & ef. 5-18-83; AFS 53-1983, f. 10-28-83, ef. 11-1-83; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0045; AFS 3-1992, f. 1-31-92, cert. ef. 2-1-92; AFS 16-1997, f. 9-2-97, cert. ef. 10-1-97; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0265; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6220; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-6240

### Dishonored Payments on Support Accounts

When the Department of Justice (DOJ) receives a check from an obligor, withholder, or other payor on behalf of the obligor and that check is then dishonored, DOJ will:

(1) Remove credit for the dishonored amount from the obligor's case record;

(2) Hold all future payments by check from that payor for 18 working days, or until the check clears the payor's financial institution, before forwarding payment to the obligee. DOJ may waive this requirement after a one-year period if no further payments from that payor have been dishonored, or if the dishonored payment was dishonored for reasons that DOJ has

determined were beyond the payor's control, such as an error on the part of the financial institution or on the part of DOJ.

(3) DOJ may assess a fee not to exceed \$35 against the payor of the check.

Stat. Auth.: ORS 25.125 & 180.345

Stats. Implemented: ORS 25.020; 25.125 & 30.701

Hist.: AFS 53-1983, f. 10-28-83, ef. 11-1-83; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0046; AFS 16-1997, f. 9-2-97, cert. ef. 10-1-97; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0270; AFS 4-2001, f. 3-28-01, cert. ef. 4-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6240; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6240; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

## 137-055-6260

### Return of Overcollected Support Amounts

(1) When the Division of Child Support (DCS) receives a support payment on an account for which no current order exists for ongoing support, DCS will apply the payment to any arrears the obligor may owe on the account. If any excess funds remain from the payment after any arrears are paid in full, and DCS has not forwarded the excess amount to the payee, DCS will return the excess amount to the obligor within 30 days of discovering the overcollection.

(2) On any account for which an ongoing support obligation exists, and DCS receives a payment that exceeds the total amount due for current support and arrears and has not forwarded the excess amount to the payee, DCS will return the excess amount to the obligor under the following circumstances:

(a) When an income withholding order exists and the withholder does not receive or implement a notice from the administrator to reduce withholding to the amount of the current ongoing support obligation in a timely manner, such as may occur after all arrears are collected or after the ongoing support obligation is modified downward;

(b) When a state or federal tax refund is intercepted in an amount exceeding the amount owed for arrears; or

(c) When TANF cash assistance is being granted to the obligee or children on the support case, unless the obligor and the administrator agree otherwise.

(3) Notwithstanding section (1), on any account for which no current order exists for ongoing support, when a withholder sends a payment that exceeds the total amount that should have been withheld under ORS 25.414(1)(d), there is no order for expanded withholding under 25.387, and DCS has not forwarded the excess amount to the obligee, DCS will return the excess amount to the obligor.

(4) When DCS receives a payment that exceeds the total amount due for current support and arrears and has forwarded the excess amount to the payee, DCS will notify the parties in writing within 30 days of discovering the overcollection that:

(a) A credit balance in the obligor's favor has resulted from the overcollection; and

(b) The obligee or child attending school under ORS 107.108 and OAR 137-055-5110 may, within 30 days of the date of the notice from DCS, submit a written request to DCS for an administrative review to determine if DCS's record-keeping and accounting related to calculation of the credit balance is correct.

(5) DCS will conduct the administrative review within 30 days of receiving the party's written request, and will send written notification to the parties of the results of the review.

(6) In any case where DCS is required to return overcollected funds to an obligor under section (2) of this rule, the obligor may elect to forego the return of some or all of the overcollected funds and to instead use any credit balance amount thus established under this rule to offset the obligor's future ongoing support obligation, genetic test fees or arrears. An obligor wishing to elect this option must notify DCS before DCS has returned such funds to the obligor.

Stat. Auth.: ORS 25.020, 25.125 & 180.345

Stats. Implemented: ORS 25.020 & 25.125

Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0272; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6260; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6260; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

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**Rule Caption:** Amends Attorney General's Model Rules of Procedure for the Office of Administrative Hearings.

**Adm. Order No.:** DOJ 1-2012

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# ADMINISTRATIVE RULES

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**Rules Amended:** 137-003-0501, 137-003-0505, 137-003-0510, 137-003-0520, 137-003-0525, 137-003-0528, 137-003-0530, 137-003-0545, 137-003-0550, 137-003-0555, 137-003-0560, 137-003-0575, 137-003-0580, 137-003-0600, 137-003-0605, 137-003-0625, 137-003-0635, 137-003-0640, 137-003-0645, 137-003-0655, 137-003-0665, 137-003-0670, 137-003-0672, 137-003-0690

**Rules Ren. & Amend:** 137-003-0570 to 137-003-0566, 137-003-0570 to 137-003-0567, 137-003-0570 to 137-003-0568, 137-003-0570 to 137-003-0569

**Subject: General rules for Office of Administrative Hearings:** (1) Reorganized to be more user-friendly; (2) clarifies that the Attorney General must consult with the Chief Administrative Law Judge before exempting agencies or categories of cases from the OAH model rules as required by statute; (3) adds “reasonable reliance on the statement of a party or agency relating to procedural requirements” to the definition of “good cause” that is applicable to the model rules for the OAH; and (4) clarifies that OAR 471-060-005 (establishing procedures to request a change of ALJ) applies to contested case hearings conducted by the OAH.

**Contested case notice:** (1) Adds requirements that notice include: (a) proposed sanction and; (b) statement that non-corporeal parties must be represented by Oregon attorney; (2) limits time to amend notice and establishes criteria to amend during hearing; and, (3) requires continuance, upon request of party, when agency amends notice, but exempts implied consent proceedings.

**Hearing requests:** (1) Specifies that request for hearing serves as a general denial of the facts alleged in the notice, provides exceptions; (2) provides that agencies may not reject hearing requests because not signed by Oregon attorney where representation required, but requires attorney ratification within specified time; (3) requires agencies to accept late hearing requests that are postmarked within the time specified for timely filing, if specified criteria are met; (4) changes standard to accept other late hearing requests from “beyond the reasonable control of the party” to “good cause”; and (5) clarifies rule regarding hearings on disputes over untimely hearing requests.

**Discovery:** (1) Divides the current discovery rule, OAR 137-003-0570, into four separate rules to make it more user-friendly; (2) requires certain discovery to be provided upon request, provides exceptions; (3) provides exception from duty to confer before seeking discovery order when the effort would be futile or potentially harmful; (4) removes redundant language from discovery standard; (5) eliminates the agency’s authority to immediately review ALJ or CALJ discovery orders; (6) requires ALJ to grant a continuance (including in telephone hearings) to allow the agency or party to respond to evidence that was not disclosed as ordered or requested, specifies exceptions; and (7) eliminates agency discretion to delegate their subpoena power to ALJs.

**Immediate review of ALJ decisions:** Eliminates authority of agencies, at the request of a party or on their own motion, to immediately review specified ALJ decisions, such as an order to quash a subpoena or to apply privileges.

**Prehearing Conferences:** (1) Allows parties to request additional matters to be considered at prehearing conferences; and (2) allows ALJ to set timeframes for exchange of witness lists and exhibits at prehearing conference; specifies that agency may set timeframes by rule for cases with no prehearing conferences.

**Lay Representatives:** Requires lay representatives to read and be familiar with a Code of Conduct for Non-Attorney Representatives at Administrative Hearings.

**Filing and providing documents:** (1) Amended to be more user-friendly; (2) tolls deadline for filing documents for scheduled office closures, which would include furlough days; and (3) specifies methods to accomplish filing.

**Emergency license suspensions:** (1) Specifies time limits for all phases of the emergency license suspension process, but allows licensee to waive or agree to an extension of those time limits; and

(2) prohibits consolidation of emergency license suspension hearing with the underlying licensing proceeding unless agreed to by the licensee.

**Ex parte communications with ALJ:** To conform to 2009 statutory amendment, deletes language that exempted from the ex parte rules communications made to the ALJ by an AAG if the communication was made in response to a request from the ALJ and the AAG is not advising the agency about matters at issue in the contested case.

**Transmittal of questions to the Agency:** (1) Reorganizes rule to make it more user-friendly; and (2) requires someone with authority to speak on the question to answer a transmitted question.

**Motions for summary determination:** Clarifies that OAH has authority to accept a stipulation when the parties stipulate that the case be decided on a record limited to documents.

**Default when proposed action does not become final without a hearing or default:** (1) Changes standard for excusing the failure to appear for hearing from “caused by circumstances beyond the party’s reasonable control” to “good cause”; and (2) provides a right to hearing on reasons for party’s failure to appear if in dispute.

**Default when order may become final without request for hearing:** (1) Authorizes ALJ to provide a hearing if, before dismissing hearing request, the ALJ finds that the party had good cause for not appearing; and (2) provides a right to hearing if reasons for failure to appear are in dispute.

**Changes to ALJ’s proposed order:** To reflect 2009 statutory amendment, changes standard for agency to change a finding of fact in a proposed order from “not supported by a preponderance of the evidence: to “clear and convincing evidence in the record that the finding made by the administrative law judge was wrong.”

**Time for issuing an amended proposed order or final order:** States that an agency normally should issue an amended proposed order or final order within 90 days of the date that the proposed order was issued or, if not, give notice to the ALJ and all of the parties of the date that the agency expects to issue the amended proposed or final order, provides exceptions.

**Requests for stay:** Rewritten to more closely align with the language of ORS 183.482(3)(a).

**Rules Coordinator:** Carol Riches—(503) 947-4700

## 137-003-0501

### Rules for Office of Administrative Hearings

(1) OAR 137-003-0501 to 137-003-0700 apply to the conduct of all contested case hearings conducted for an agency by an administrative law judge assigned from the Office of Administrative Hearings unless:

(a) The case is not subject to the procedural requirements for contested cases; or

(b) The Attorney General, after consultation with the Chief Administrative Law Judge, has exempted the agency or a category of the agency’s cases, by order, from the application of these rules in whole or in part.

(2) Any procedural rules adopted by the agency related to the conduct of hearings shall not apply to contested case hearings conducted for the agency by an administrative law judge assigned from the Office of Administrative Hearings unless required by state or federal law or specifically authorized by these rules or by order of the Attorney General.

(3) An agency may have rules specifying the time for requesting a contested case hearing, the permissible scope of the hearing and timelines for issuance of a proposed or final order. A request for hearing will be deemed to be a general denial of the matters alleged in the notice, unless a more specific response is required by statute or by agency rule. An agency rule establishing a different requirement for the response must be based on the agency’s determination that, due to the complexity of the program or category of cases, a more specific response is warranted. Such rules should also provide parties the opportunity to amend their responses except when doing so would be unduly prejudicial. The amendments to this subsection apply to all hearing requests filed after January 31, 2012.

(4) Agencies with authority to assess the costs of an action or proceeding against a party may have rules specifying procedures related to assessment of costs.

# ADMINISTRATIVE RULES

(5) The agency's substantive rules, including those allocating the burden of proof, shall apply to all of its hearings.

(6) If permitted by law, the agency may delegate to an administrative law judge any of the agency's functions under these rules, including the authority to issue a final order. This delegation must be in writing and may be for a category of cases or on a case-by-case basis.

(7) For purposes of OAR 137-003-0501 to 137-003-0700, "good cause" exists when an action, delay, or failure to act arises from an excusable mistake, surprise, excusable neglect, reasonable reliance on the statement of a party or agency relating to procedural requirements, or from fraud, misrepresentation, or other misconduct of a party or agency participating in the proceeding.

(8) OAR 471-060-0005, Request for Change of Administrative Law Judge, applies to contested cases conducted by the Office of Administrative Hearings.

Stat. Auth.: ORS 183.341  
Stats. Implemented: ORS 183.341 & 183.630  
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0505

### Contested Case Notice

(1) When the agency is required to issue a contested case notice pursuant to ORS 183.415, the notice shall include:

(a) A caption with the name of the agency and the name of the person or agency to whom the notice is issued;

(b) A short and plain statement of the matters asserted or charged and a reference to the particular sections of the statute and rules involved;

(c) A statement of the party's right to be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;

(d) A statement of the party's right to a hearing;

(e) A statement of the authority and jurisdiction under which a hearing is to be held on the matters asserted or charged;

(f) Either:

(A) A statement of the procedure and time to request a hearing, the agency address to which a hearing request should be sent, and a statement that if a request for hearing is not received by the agency within the time stated in the notice the person will have waived the right to a contested case hearing; or

(B) A statement of the time and place of the hearing;

(g) A statement indicating whether and under what circumstances an order by default may be entered;

(h) If the party is an agency, corporation, partnership, limited liability company, trust, government body or an unincorporated association, a statement that the party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide otherwise;

(i) If the agency proposes a sanction, the sanction that the agency proposes based on the facts alleged in the notice. If the proposed sanction is not the maximum potential sanction, the agency may also state the maximum potential sanction for each violation and that the agency may impose up to the maximum potential sanction provided in the notice, without amending the notice; and,

(j) Any other information required by law.

(2) A contested case notice may include either or both of the following:

(a) A statement that the record of the proceeding to date, including information in the agency file or files on the subject of the contested case and all materials submitted by a party, automatically become part of the contested case record upon default for the purpose of proving a prima facie case;

(b) A statement that a collaborative dispute resolution process is available as an alternative to a contested case hearing, if requested within the time period stated in the notice, and that choosing such a process will not affect the right to a contested case hearing if a hearing request is received by the agency within the time period stated in the notice and the matter is not resolved through the collaborative process.

(3) The notice requirements imposed in subsections (1)(h) and (1)(i) apply to all notices issued after January 31, 2012. The notice of sanction requirement imposed in subsection (1)(i) of this rule is effective until January 31, 2014.

Stat. Auth.: ORS 183.341  
Stats. Implemented: ORS 183.341, 183.413, 183.415, 183.630 & 183.675  
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0510

### Rights of Parties in Contested Cases

(1) The agency may request the administrative law judge to provide to each party written notice of any or all of the information required to be given under ORS 183.413(2) before the commencement of the hearing. The administrative law judge shall provide any such written notice personally or by mail.

(2) Unless otherwise precluded by law, the party and the agency, if participating in the contested case hearing, may agree to use alternative methods of dispute resolution in contested case matters. Such alternative methods of resolution may include arbitration or any collaborative method designed to encourage the agency and the parties to work together to develop a mutually agreeable solution, such as negotiation, mediation, use of a facilitator or a neutral fact-finder or settlement conferences, but may not include arbitration that is binding on the agency.

(3) Final disposition of contested cases may be by a final order following hearing or, unless precluded by law, by stipulation, agreed settlement, consent order or final order by default.

(4) A stipulation, agreed settlement or consent order disposing of a contested case must be in writing and signed by the party or parties. By signing such an agreement, the party or parties waive the right to a contested case hearing and to judicial review. The agency or administrative law judge shall incorporate the disposition into a final order. A copy of any final order incorporating an agreement must be delivered or mailed to each party and, if a party is represented by an attorney, to the party's attorney.

Stat. Auth.: ORS 183.341  
Stats. Implemented: ORS 183.341, 183.413, 183.415, 183.630 & 183.675  
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0520

### Filing and Providing Copies of Documents in Contested Case

(1) Notwithstanding any other provision of these rules, a hearing request is considered filed when actually received by the agency.

(2) Unless otherwise provided by these rules, any documents filed for the record in the contested case shall be filed as follows:

(a) Before the case is referred by the agency to the Office of Administrative Hearings, with the agency;

(b) After the case is referred to the Office of Administrative Hearings and before the assigned administrative law judge issues a proposed order, with the administrative law judge;

(c) After the assigned administrative law judge issues a proposed order, with the agency, or with the administrative law judge if the administrative law judge will issue the final order or if the document is required to be filed with the administrative law judge pursuant to OAR 137-003-0650.

(3) The agency and the Office of Administrative Hearings shall refer any document to the correct entity.

(4) Filing may be accomplished by hand delivery, facsimile or mail or by any other method permitted by the agency or administrative law judge.

(5) A party or agency filing any document for the record shall at the same time provide copies of the documents to the agency and the parties, or their counsel if the agency or party is represented.

(6) The agency may by rule or in writing waive the right to receive copies of documents filed under this rule if the administrative law judge is authorized to issue the final order or if the agency is not a participant in the contested case hearing.

(7) Each party shall notify all other parties, the agency and the administrative law judge of any change in the party's address or withdrawal or change of the party's representatives, including legal counsel. If an attorney withdraws from representing a party, the attorney shall provide written notice of the withdrawal to the administrative law judge, all other parties and the agency, unless the agency has waived the right to receive notice.

(8) The agency shall notify all parties and the administrative law judge of any change in the agency's address or withdrawal or change of the agency's representatives, including legal counsel.

(9) Documents sent through the U.S. Postal Service to the agency, Office of Administrative Hearings or assigned administrative law judge shall be considered filed on the date postmarked. Documents sent by facsimile or hand-delivered are considered filed when received by the agency, Office of Administrative Hearings or assigned administrative law judge. If the agency permits or the administrative law judge directs alternative means of filing, the agency or the administrative law judge should determine when filing is effective for each alternative method permitted or directed.

(10) Documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary.

# ADMINISTRATIVE RULES

(11) In computing any period of time prescribed or allowed by OAR 137-003-0501 through 137-003-0700, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the time period shall be included, unless it is a scheduled day of office closure, in which event the time period runs until the end of the next day that the office is open. Scheduled days of office closure include, but are not limited to, Saturdays and the legal holidays identified in ORS 187.010 and 187.020, including Sundays.

Stat. Auth.: ORS 183.341  
Stats. Implemented: ORS 183.341 & 183.630  
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 9-2007, f. 10-15-07, cert. ef. 1-1-08; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0525

### Scheduling Hearings

(1) Subject to the approval of the agency, the Office of Administrative Hearings or assigned administrative law judge shall:

(a) Set the date and time of the hearing, including a postponed or continued hearing;

(b) Determine the location of the hearing; and

(c) Determine whether cases shall be consolidated or bifurcated, except that, in accordance with OAR 137-003-0560(5), emergency suspension hearings shall not be consolidated with any related agency proceedings affecting the license, unless the party agrees to the consolidation.

(2) Unless otherwise provided by law, the Office of Administrative Hearings or assigned administrative law judge may postpone or continue a hearing:

(a) For good cause; or

(b) By agreement of the parties and the agency, if the agency is participating in the hearing.

Stat. Auth.: ORS 183.341  
Stats. Implemented: ORS 183.341 & 183.630  
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 2-2000, f. & cert. ef. 3-27-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 9-2007, f. 10-15-07, cert. ef. 1-1-08; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0528

### Late Hearing Requests

(1)(a) The agency must accept a properly addressed hearing request that was not timely filed if it was postmarked within the time specified for timely filing, unless any of the following applies:

(A) A statute prohibits the agency from accepting it;

(B) The agency has adopted an administrative rule exempting itself from this requirement based on operational conflicts; or

(C) The agency receives the request 60 calendar days or more after the entry of the final order by default or other deadline established by applicable statute or agency rule.

(b) The agency may accept any other late hearing request only if:

(A) There was good cause for the failure to timely request the hearing, unless other applicable statutes or agency rules provide a different standard; and

(B) The agency receives the request before the entry of a final order by default or before 60 calendar days after the entry of the final order by default, unless other applicable statutes or agency rules provide a different timeframe.

(c) If a final order by default has already been entered, the party requesting the hearing shall deliver or mail within a reasonable time a copy of the hearing request to all persons and agencies required by statute, rule or order to receive notice of the proceeding.

(d) In determining whether to accept a late hearing request, the agency may require the request to be supported by an affidavit or other writing that explains why the request for hearing is late and may conduct such further inquiry as it deems appropriate.

(e) Before granting a party's late hearing request, the agency will provide all other parties, if any, an opportunity to respond to the late hearing request.

(f) The requirement imposed in subsection (1) of this rule and the good cause standard adopted in subsection (2) shall apply to hearing requests on notices issued after January 31, 2012.

(2) If a party files a request for a hearing that the agency finds is untimely and the party disputes the agency finding of the date that the request was received or postmarked or that the agency mailed or delivered the notice, then the agency will refer the matter to the Office of Administrative Hearings to provide a right to a hearing on that factual dispute. The administrative law judge will issue a proposed order recommending that the agency find that the hearing request is either timely filed or late.

(3) If the agency or another party disputes the facts contained in the explanation of why the request for hearing is late, the agency will provide a right to a hearing on the reasons why the hearing request is late. The administrative law judge will issue a proposed order recommending that the agency grant or deny the late hearing request.

(4) In addition to the right to a hearing provided in (2) and (3) of this rule, the agency by rule or in writing may provide in any case or class of cases a right to a hearing on whether the late filing of a hearing request should be accepted. If a hearing is held, it must be conducted pursuant to these rules by an administrative law judge from the Office of Administrative Hearings.

(5) If the late hearing request is allowed by the agency, the agency will enter an order granting the request and refer the matter to the Office of Administrative Hearings to hold a hearing on the underlying matter. If the late hearing request is denied by the agency, the agency shall enter an order setting forth reasons for the denial.

(6) Except as otherwise provided by law, if a final order by default has been entered, that order remains in effect during consideration of a late hearing request unless the final order is stayed under OAR 137-003-0690.

(7) When a party requests a hearing more than 60 calendar days (or other time period set by statute) after the agency or administrative law judge has entered a final order by default, the agency shall not grant the request unless a statute or agency rule permits the agency to consider the request.

Stat. Auth.: ORS 183.341  
Stats. Implemented: ORS 183.341 & 183.630  
Hist.: DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0530

### Late Filing and Amendment of Documents

(1) Unless otherwise provided by law, when a party or agency fails to file any document for the contested case proceeding, except a hearing request, within the time specified by agency rules or these rules of procedure, the late filing may be accepted if the agency or administrative law judge determines that there was good cause for failure to file the document within the required time.

(2) The decision whether a late filing will be accepted shall be made:

(a) By the agency if OAR 137-003-0520 requires the document to be filed with the agency; or

(b) By the administrative law judge if OAR 137-003-0520 requires the document to be filed with the Office of Administrative Hearings or the assigned administrative law judge.

(3) The agency or administrative law judge may require a statement explaining the reasons for the late filing.

(4) Notwithstanding any other provision of these rules, after the notice required by ORS 183.415 is issued:

(a) An agency may issue an amended notice:

(A) Before the hearing; or,

(B) During the hearing, but before the evidentiary record closes, if the administrative law judge determines that permitting the amendment will not unduly delay the proceeding or unfairly prejudice the parties.

(b) If an agency issues an amended notice, any party may obtain, upon request, a continuance determined to be reasonably necessary to respond to any new material contained in the amended notice. This subsection ((4)(b)) does not apply to implied consent proceedings conducted pursuant to ORS chapter 813. The amendments to subsection (4) of this rule apply to all notices issued after January 31, 2012.

(5) Unless otherwise provided by law, when a party or agency files any document for the contested case proceeding, the agency or the administrative law judge may permit the party or agency to file an amended document if the agency or administrative law judge determines that permitting the amendment will not unduly delay the proceeding or unfairly prejudice the parties or the agency.

(6) The decision whether an amended document will be accepted shall be made:

(a) By the agency if OAR 137-003-0520(2) requires the document to be filed with the agency; or

(b) By the administrative law judge if OAR 137-003-0520(2) requires the document to be filed with the Office of Administrative Hearings or the assigned administrative law judge.

(7) The agency or administrative law judge may require a statement explaining the reasons for the amendment.

Stat. Auth.: ORS 183.341  
Stats. Implemented: ORS 183.341 & 183.630  
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

# ADMINISTRATIVE RULES

## 137-003-0545

### Representation of Agency by Attorney General or Agency Representative

(1) An agency may be represented at a contested case hearing by the Attorney General.

(2) An agency may be represented at a contested case hearing by an officer or employee of the agency if the Attorney General has consented to that representation in a particular hearing or class of hearings and the agency, by rule, has authorized an agency representative to appear on its behalf in the particular type of contested case hearing involved.

(3) The administrative law judge shall not allow an agency representative appearing under section (2) of this rule to present legal argument as defined in this rule.

(a) "Legal Argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(4) If the administrative law judge determines that statements or objections made by an agency representative appearing under section (2) involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the agency representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(5) An agency representative appearing under section (2) must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings dated June 1, 2011, as amended October 1, 2011, which is maintained by the Oregon Department of Justice and available on its website at <http://www.doj.state.or.us>.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.452 & 183.630

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04;

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0550

### Representation of Parties; Out-of-state Attorneys

(1) Natural persons who are parties in a contested case may represent themselves or may be represented by an attorney or other representative as authorized by federal or state law, including ORS 183.458.

(2) Corporations, partnerships, limited liability companies, unincorporated associations, trusts and government bodies must be represented by an attorney except as provided in OAR 137-003-0555 or as otherwise authorized by law.

(3) Unless otherwise provided by law, an out-of-state attorney may not represent a party to a contested case unless the out-of-state attorney is granted permission to appear in the matter pursuant to Oregon Uniform Trial Court Rule 3.170. Local counsel who obtained the order on behalf of the out-of-state attorney must participate meaningfully in the contested case in which the out-of-state attorney appears.

(4) Even if section (2) applies, a request for hearing will not be deemed to be invalid solely because it was not signed by a person licensed to practice law in Oregon as long as an attorney ratifies the request, in writing, within 28 days of the date that the request was received by the agency. The filing date will be determined by the date the hearing request was received, not by the ratification date. This requirement applies to hearing requests received after January 31, 2012.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 9.320, 183.341, 183.458 & 183.630

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0555

### Authorized Representative of Parties Before Designated Agencies

(1) For purposes of this rule, the following words and phrases have the following meaning:

(a) "Agency" means State Landscape Contractors Board, Office of Energy and the Energy Facility Siting Council, Environmental Quality Commission and the Department of Environmental Quality; Insurance Division of the Department of Consumer and Business Services for proceedings in which an insured appears pursuant to ORS 737.505; the Department of Consumer and Business Services and any other agency for the purpose of proceedings to enforce the state building code, as defined by 455.010; the State Fire Marshal in the Department of State Police; Division of State Lands for proceedings regarding the issuance or denial of fill or removal permits under 196.800 to 196.990; Public Utility Commission; Water Resources Commission and the Water Resources Department; Land Conservation and Development Commission and the Department of Land Conservation and Development; State Department of Agriculture for purposes of hearings under 215.705; and the Bureau of Labor and Industries.

(b) "Authorized Representative" means a member of a partnership, an authorized officer or regular employee of a corporation, association or organized group, an authorized officer or employee of a governmental authority other than a state agency or other authorized representatives recognized by state or federal law;

(c) "Legal Argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;

(C) The application of court precedent to the facts of the particular contested case proceeding.

(d) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(2) A party or limited party participating in a contested case hearing before an agency listed in subsection (1)(a) of this rule may be represented by an authorized representative as provided in this rule if the agency has by rule specified that authorized representatives may appear in the type of contested case hearing involved.

(3) Before appearing in the case, an authorized representative must provide the administrative law judge with written authorization for the named representative to appear on behalf of a party or limited party.

(4) The administrative law judge may limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to insure the orderly and timely development of the hearing records, and shall not allow an authorized representative to present legal argument as defined in subsection (1)(c) of this rule.

(5) When an authorized representative is representing a party or limited party in a hearing, the administrative law judge shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections may involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the authorized representative to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

(6) An authorized representative must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings dated June 1, 2011, as amended October 1, 2011, which is maintained by the Oregon Department of Justice and available on its website at <http://www.doj.state.or.us>.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.457 & 183.630

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12



# ADMINISTRATIVE RULES

## 137-003-0560

### Emergency License Suspension, Refusal to Renew

(1) If the agency finds there is a serious danger to the public health or safety, it may, by order, immediately suspend or refuse to renew a license. For purposes of this rule, such an order is referred to as an emergency suspension order. An emergency suspension order must be in writing. It may be issued without prior notice to the licensee and without a hearing prior to the emergency suspension order.

(2)(a) When the agency issues an emergency suspension order, the agency shall serve the order on the licensee either personally or by registered or certified mail;

(b) The order shall include the following statements:

(A) The effective date of the emergency suspension order;

(B) Findings of the specific acts or omissions of the licensee that violate applicable laws and rules and are the grounds for revocation, suspension or refusal to renew the license in the underlying proceeding affecting the license;

(C) The reasons the specified acts or omissions seriously endanger the public's health or safety;

(D) A reference to the sections of the statutes and rules involved;

(E) That the licensee has the right to demand a hearing to be held as soon as practicable to contest the emergency suspension order; and

(F) That if the demand for hearing is not received by the agency within 90 calendar days of the date of notice of the emergency suspension order the licensee shall have waived its right to a hearing regarding the emergency suspension order.

(3) If the licensee files a timely request, the matter shall be referred to the Office of Administrative Hearings, the hearing on an emergency suspension held, and the order issued as soon as practicable, and, unless a delay is explained in the final order as required by subsection (7) of this rule, in no event later than:

(a) Within seven calendar days of receiving a timely request for hearing, the agency shall refer the matter to the Office of Administrative Hearings to hold a hearing on the emergency suspension order;

(b) Within 30 calendar days of receiving a referral for a hearing on an emergency suspension order, the Office of Administrative Hearings shall complete the hearing and close the evidentiary record;

(c) Within 15 calendar days of the close of the evidentiary record in the hearing, the Office of Administrative Hearings shall issue a proposed order or a final order, if the agency has delegated authority to issue a final order;

(d) Within 15 calendar days of receiving a proposed order from the Office of Administrative Hearings, the agency shall issue a final order.

(4) The time limits established in section (3) of this rule may be waived or extended with the agreement of the agency and the licensee.

(5) The hearing on the emergency suspension order may be combined with any related agency proceeding affecting the license only with the agreement of the party.

(6) At the hearing regarding the emergency suspension order, the administrative law judge shall consider the facts and circumstances including, but not limited to:

(a) Whether the acts or omissions of the licensee pose a serious danger to the public health or safety; and

(b) Whether circumstances at the time of the hearing justify confirmation, alteration or revocation of the order.

(7) The administrative law judge shall issue a proposed order consistent with OAR 137-003-0645 unless the administrative law judge has authority to issue a final order without first issuing a proposed order. Any proposed order shall contain a recommendation whether the emergency suspension order should be confirmed, altered or revoked. The final order shall be consistent with 137-003-0665 and shall be based upon the criteria in section (6) of this rule. If any of the deadlines specified in section (3) of this rule are not met, the final order shall state the reason.

(8) The amendments to this rule apply to all emergency suspension orders issued after January 31, 2012.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, ORS 183.430 & 183.630

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0566

### Discovery in Contested Case Hearing — Methods

(1) Before the hearing, upon request by the agency or by a party, the agency and each party must provide:

(a) The names, telephone numbers, and addresses of witnesses expected to testify at the hearing, except rebuttal witnesses;

(b) Documents that the party or agency plans to offer as evidence;

(c) Objects for inspection, if the party or agency plans to offer the objects as evidence;

(d) Responses to no more than 20 requests for admission (each subpart to count as a separate request) unless otherwise authorized, limited, or prohibited by the administrative law judge; and,

(e) Responses to no more than 20 written interrogatories (each subpart to count as a separate interrogatory), unless otherwise authorized, limited, or prohibited by the administrative law judge.

(2) An agency may provide by rule that some or all discovery methods under this section do not apply to a specified program or category of cases if: it finds that the availability of discovery would unduly complicate or interfere with the hearing process in the program or cases, because of the volume of the applicable caseload and the need for speed and informality in that process, and that alternative procedures for the sharing of relevant information are sufficient to ensure the fundamental fairness of the proceedings.

(3) An agency may, by rule, limit a party's ability to obtain discovery from the agency when the agency merely is providing a forum for the parties and is not an active participant in the case.

(4) This rule is not intended to limit or otherwise conflict with a party's statutory right to obtain public records upon request. If a party knows or expects that a public record request relates to the proceeding, the party shall provide a copy of the public record request to the attorney or representative for the agency at the time the request is made.

(5) This rule is not intended to limit or otherwise conflict with the statutory authority, if any, of the agency to investigate.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & 183.630

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; Renumbered from 137-003-0570 by DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0567

### Discovery in Contested Case Hearing — Standard

Any discovery request must be reasonably likely to produce information that is generally relevant and necessary to the case, or is likely to facilitate resolution of the case.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & 183.630

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; Renumbered from 137-003-0570 by DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0568

### Discovery in Contested Case Hearing — Procedure

(1) Before filing a motion for an order requiring discovery, a party or the agency must make a good faith effort to obtain the information from the party, agency or person who has the information, unless the effort would pose a risk to any person or would be futile.

(2) A motion for an order requiring discovery should be filed with and decided by the agency or the administrative law judge, as required by OAR 137-003-0520(2) and 137-003-0630.

(3) Any party seeking an order from the administrative law judge requiring discovery shall send a copy of the motion to the agency, unless the agency has waived notice, and to all other parties. If the agency seeks an order requiring discovery, the agency shall send a copy of the motion to all parties. A request for an order requiring discovery must include a description of the attempts to obtain the requested discovery informally, or an explanation why no such attempt was made, and an explanation of how the discovery is likely to produce information that is generally relevant and necessary to the case.

(4) The agency or the administrative law judge may authorize the requested discovery if the agency or the administrative law judge determines that the requested discovery is reasonably likely to produce information that is generally relevant to the case and necessary or likely to facilitate resolution of the case. Upon request of a party, a witness, or the agency, the agency or the administrative law judge may deny, limit, or condition discovery to protect any party, any witness, or the agency from annoyance, embarrassment, oppression, undue burden or expense, or to limit the public disclosure of information that is confidential or privileged by statute or rule. In making a decision, the agency or administrative law judge shall consider any objections by the party, the witness or the agency from whom the discovery is sought.

(5) If the agency or the administrative law judge authorizes discovery, the agency or the administrative law judge shall control the methods, timing and extent of discovery. Upon request of a party or the agency, the administrative law judge or the agency may issue a protective order limit-

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ing the public disclosure of information that is confidential or privileged by law.

(6) Only the agency may issue subpoenas in support of a discovery order. The agency or the party requesting the discovery may apply to the circuit court to compel obedience to a subpoena. (Subpoenas for attendance of witnesses or production of documents at the hearing are controlled by OAR 137-003-0585.)

(7) A party or agency dissatisfied with an administrative law judge's discovery order may ask the Chief Administrative Law Judge for immediate review of the order. A request for review by the Chief Administrative Law Judge must be made in writing within 10 days of the date of the discovery order. The Chief Administrative Law Judge shall review the order and independently apply the criteria set out in OAR 137-003-0567. The Chief Administrative Law Judge's order shall be in writing and shall explain any significant changes to the discovery order.

(8) The Chief Administrative Law Judge or the agency may designate in writing a person to exercise their respective responsibilities under this rule.

(9) In addition to or in lieu of any other discovery method, a party may ask an agency for records under the Public Records Law. The party making a public records request of the agency before which the contested case is pending should serve a copy of the public records request upon the agency representative or the attorney representing the agency.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & 183.630

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03;

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06;

Renumbered from 137-003-0570 by DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0569

### Discovery in Contested Case Hearing — Enforcement

(1) The administrative law judge may refuse to admit evidence that was not disclosed in response to a discovery order or discovery request, unless the party or agency that failed to provide discovery offers a satisfactory reason for having failed to do so, or unless excluding the evidence would violate the duty to conduct a full and fair inquiry under ORS 183.417(8). If the administrative law judge admits evidence that was not disclosed as ordered or requested, the administrative law judge must, upon request, grant a continuance to allow an opportunity for the agency or other party to respond to the undisclosed evidence. The requirement to grant continuances shall not apply in implied consent proceedings conducted pursuant to ORS chapter 813.

(2) Failure to respond to a request for admissions required by a discovery order shall be deemed an admission of matters that are the subject of the request for admissions, unless the party or agency failing to respond offers a satisfactory reason for having failed to do so, or unless excluding additional evidence on the subject of the request for admissions would violate the duty to conduct a full and fair inquiry under ORS 183.417(8). If the administrative law judge does not treat failure to respond to the request for admissions as admissions, the administrative law judge may grant a continuance to enable the parties and the agency to develop the record as needed.

(3) Nothing in OAR chapter 137, division 3, shall be construed to require the agency or any party to provide information that is confidential or privileged under state or federal law, except that upon request the agency or any party must disclose all documents that the agency or party intends to introduce at the hearing.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & 183.630

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03;

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06;

Renumbered from 137-003-0570 by DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0575

### Prehearing Conferences

(1) Prior to hearing, the administrative law judge may conduct one or more prehearing conferences to facilitate the conduct and resolution of the case. The administrative law judge may convene the conference on the initiative of the administrative law judge or at the agency's or a party's request.

(2) Prior to the conference, the administrative law judge shall notify the party and the agency, if participating, of the purposes of the conference and the matters to be considered. The agency or any party may request that additional matters be considered at the conference by providing notice in writing to the administrative law judge, the parties and the agency.

(3) The party and the agency, if participating in the contested case hearing, shall appear at a prehearing conference through legal counsel or through persons authorized to represent the party or the agency in the contested case hearing.

(4) The purposes of a prehearing conference may include, but are not limited to the following:

(a) To facilitate discovery and to resolve disagreements about discovery;

(b) To identify, simplify and clarify issues;

(c) To eliminate irrelevant or immaterial issues;

(d) To obtain stipulations of fact and to admit documents into evidence;

(e) To provide to the administrative law judge, agency and parties, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;

(f) To authenticate documents;

(g) To decide the order of proof and other procedural matters pertaining to the conduct of the hearing;

(h) To assist in identifying whether the case might be appropriate for settlement or for a collaborative dispute resolution process and, if the agency agrees that the case is appropriate, to refer the case to the agency for settlement discussions or for exploration or initiation of a collaborative dispute resolution process;

(i) To schedule the date, time and location of the hearing or for any other matters connected with the hearing, including dates for pre-filed testimony and exhibits and exchange of exhibits and witness lists; and

(j) To consider any other matters that may expedite the orderly conduct of the proceeding.

(5) The prehearing conference may be conducted in person or by telephone.

(6) The failure of a party or the agency to appear at a prehearing conference convened by the administrative law judge shall not preclude the administrative law judge from making rulings on any matters identified by the administrative law judge in the notice issued under section (2) of this rule, and discussion of any of these matters at the conference in the absence of the agency or a party notified of the conference does not constitute an ex parte communication with the administrative law judge.

(7) The administrative law judge conducting the prehearing conference must make a record of any stipulations, rulings and agreements. The administrative law judge shall either make an audio or stenographic record of the pertinent portions of the conference or shall place the substance of stipulations, rulings and agreements in the record by written summary. Stipulations to facts and to the authenticity of documents and agreements to narrow issues shall be binding upon the agency and the parties to the stipulation unless good cause is shown for rescinding a stipulation or agreement.

(8) After the hearing begins, the administrative law judge may at any time recess the hearing to discuss any of the matters listed in section (4) of this rule.

(9) Nothing in this rule precludes the agency and parties from engaging in informal discussions of any of the matters listed in section (4) of this rule without the participation of the administrative law judge. Any agreement reached in an informal discussion shall be submitted to the administrative law judge in writing or presented orally on the record at the hearing.

(10) An agency may adopt rules regarding the exchange of exhibits and a list of witnesses before the hearing for cases where there are no prehearing conferences.

Stat. Auth.: ORS 183.341 & 183.502

Stats. Implemented: ORS 183.341, 183.502 & 183.630

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03;

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0580

### Motion for Summary Determination

(1) Not less than 28 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses) in the contested case. The motion, accompanied by any affidavits or other supporting documents, shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(2) Within 14 calendar days after service of the motion, the agency or a party may file a response to the motion. The response may be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(3) The administrative law judge may establish longer or shorter periods than those under section (1) and (2) of this rule for the filing of motions and responses.

(4) The agency by rule may elect not to make available this process for summary determination.

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(5) The party and the agency may stipulate to a record, including a record limited to documents, upon which a summary determination shall be made.

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's notice or answer, if any. When a motion for summary determination is made and supported as provided in this rule, the administrative law judge or the agency must explain the requirements for filing a response to any unrepresented party or parties.

(11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & 183.630

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0600

### Conducting the Contested Case Hearing

(1) The contested case hearing shall be conducted by and under the control of the administrative law judge assigned from the Office of Administrative Hearings.

(2) If the administrative law judge has an actual or potential conflict of interest as defined in ORS 244.020(1) or (12), that administrative law judge shall comply with the requirements of ORS Chapter 244 (e.g., 244.120 and 244.130).

(3) At the commencement of the hearing, the administrative law judge shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(4) The hearing shall be conducted so as to include the following:

(a) The statement and evidence of the proponent in support of its action;

(b) The statement and evidence of opponents, interested agencies, and other parties; except that limited parties may address only subjects within the area to which they have been limited;

(c) Any rebuttal evidence; and

(d) Any closing arguments.

(5) The administrative law judge, the agency through an agency representative or assistant attorney general, interested agencies through an assistant attorney general, and parties or their attorneys or authorized representatives shall have the right to question witnesses. However, limited parties may question only those witnesses whose testimony may relate to the area or areas of participation granted by the agency.

(6) The hearing may be continued with recesses as determined by the administrative law judge.

(7) The administrative law judge may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, irrelevant or immaterial matter.

(8) Exhibits shall be marked and maintained by the administrative law judge as part of the record of the proceedings.

(9) If the administrative law judge receives any written or oral ex parte communication during the contested case proceeding, the administrative

law judge shall notify all parties and otherwise comply with the requirements of OAR 137-003-0625.

(10) The administrative law judge may request that any closing arguments be submitted in writing or orally.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.417(9) and (10), 183.450(3), 183.630 & 183.695

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0605

### Telephone Hearings

(1) Unless precluded by law, the administrative law judge may hold a hearing or portion of a hearing by telephone and may permit a party or witness to appear at a hearing by telephone.

(2) If a hearing is to be held by telephone, each party and the agency, if participating in the contested case hearing, shall provide, before the commencement of the hearing, to all other parties, to the agency and to the administrative law judge copies of the exhibits it intends to offer into evidence at the hearing.

(3) If a witness is to testify by telephone, the party or agency that intends to call the witness shall provide, before commencement of the hearing, to the witness, to the other parties, to the agency, if participating in the contested case hearing, and to the administrative law judge a copy of each document about which the witness will be questioned.

(4) Nothing in this rule precludes any party or the agency from seeking to introduce documentary evidence in addition to evidence described in section (2) during the telephone hearing. The administrative law judge shall receive such evidence, subject to the applicable rules of evidence, if inclusion of the evidence in the record is necessary to conduct a full and fair hearing. If any evidence introduced during the hearing has not previously been provided to the agency and to the other parties, the hearing must be continued upon the request of any party or the agency for sufficient time to allow the party or the agency to obtain and review the evidence.

(5) The administrative law judge shall make an audio or stenographic record of any telephone hearing.

(6) As used in this rule, "telephone" means any two-way or multi-party electronic communication device, including video conferencing.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & 183.630

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0625

### Ex Parte Communications with Administrative Law Judge

(1) For purposes of this rule, an ex parte communication is:

(a) An oral or written communication;

(b) By a party, a party's representative or legal adviser, any other person who has a direct or indirect interest in the outcome of the proceeding, any other person with personal knowledge of the facts relevant to the proceeding, or any officer, employee or agent of the agency;

(c) That relates to a legal or factual issue in the contested case proceeding;

(d) Made directly or indirectly to the administrative law judge;

(e) While the contested case proceeding is pending;

(f) That is made without notice and opportunity for the agency and all parties to participate in the communication.

(2) If an administrative law judge receives an ex parte communication during the pendency of the contested case proceeding, the administrative law judge shall place in the record:

(a) The name of each individual from whom the administrative law judge received an ex parte communication;

(b) A copy of any ex parte written communication received by the administrative law judge;

(c) A memorandum reflecting the substance of any ex parte oral communication made to the administrative law judge;

(d) A copy of any written response made by the administrative law judge to any ex parte oral or written communication; and

(e) A memorandum reflecting the substance of any oral response made by the administrative law judge to any ex parte oral or written communication.

(3) The administrative law judge shall advise the agency and all parties in the proceeding that an ex parte communication has been made a part of the record. The administrative law judge shall allow the agency and parties an opportunity to respond to the ex parte communication. Any responses shall be made part of the record.

(4) The provisions of this rule do not apply to:

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(a) Communications made to an administrative law judge by other administrative law judges; or

(b) Communications made to an administrative law judge by any person employed by the Office of Administrative Hearings to assist the administrative law judge.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.630, 183.685 & Or Laws 2009, ch 866 § 9

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0635

### Transmittal of Questions to the Agency

(1) Questions regarding the following issues may be transmitted to the agency:

- (a) The agency's interpretation of its rules and applicable statutes; or
- (b) Which rules or statutes apply to a proceeding.

(2) At the request of a party, the agency, or their representatives, or on the administrative law judge's own motion, the administrative law judge may transmit a question to the agency unless the agency by rule or in writing elects not to make available this process for transmittal of questions to the agency.

(3) The administrative law judge shall submit any transmitted question in writing to the agency. The submission shall include a summary of the matter in which the question arises and shall be served on the agency representative and parties in the manner required by OAR 137-003-0520.

(4) The agency may request additional submissions by a party or the administrative law judge in order to respond to the transmitted question.

(5) Unless prohibited by statute or administrative rules governing the timing of hearings, the administrative law judge may stay the proceeding and shall not issue the proposed order or the final order, if the administrative law judge has authority to issue the final order, until the agency responds to the transmitted question.

(6) The agency shall respond in writing to the transmitted question within a reasonable time. The agency's response must be signed by a person with authority to speak on the question transmitted.

(7) The agency's response shall be made a part of the record of the contested case hearing. The agency's response may be to decline to answer the transmitted question. The agency shall provide its response to the administrative law judge and to each party. The parties may reply to the agency's response within a reasonable time.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & 183.630

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 12-2007, f. 10-30-07, cert. ef. 11-2-07; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0640

### Immediate Review by Chief Administrative Law Judge

(1) Before issuance of a proposed order or before issuance of a final order if the administrative law judge has authority to issue a final order, the agency or a party may seek immediate review by the Chief Administrative Law Judge of the administrative law judge's decision on any of the following:

(a) A ruling on a motion to quash a subpoena under OAR 137-003-0585;

(b) A ruling refusing to consider as evidence judicially or officially noticed facts presented by the agency under OAR 137-003-0615 that is not rebutted by a party;

(c) A ruling on the admission or exclusion of evidence based on a claim of the existence or non-existence of a privilege.

(2) The agency by rule or in writing may elect not to make available this process of immediate review by the Chief Administrative Law Judge.

(3) The agency or a party may file a response to the request for immediate review. The response shall be in writing and shall be filed with the Chief Administrative Law Judge within five calendar days after receipt of the request for review with service on the administrative law judge, the agency representative, if any, and any other party.

(4) The mere filing or pendency of a request for the Chief Administrative Law Judge's immediate review, even if uncontested, does not alter or extend any time limit or deadline established by statute, rule, or order.

(5) The Chief Administrative Law Judge shall rule on all requests for immediate review in writing.

(6) The request and ruling shall be made part of the record of the proceeding.

(7) The Chief Administrative Law Judge may designate in writing a person to exercise his or her responsibilities under this rule.

(8) Beginning February 1, 2014, agencies, rather than the Chief Administrative Law Judge, will be responsible for providing the immediate review set out in this rule.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & 183.630

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0645

### Proposed Orders in Contested Cases

(1) Unless the administrative law judge is authorized or required to issue a final order without first issuing a proposed order, the administrative law judge shall prepare a proposed order.

(2) The proposed order shall be based exclusively on:

- (a) The pleadings, including the contested case notice, and motions;
- (b) The applicable law;
- (c) Evidence and arguments;
- (d) Stipulations;

(e) Ex parte written communications received by the administrative law judge, memoranda prepared by the administrative law judge reflecting the substance of any ex parte oral communications made to the administrative law judge, written responses made by the administrative law judge and any memoranda prepared by the administrative law judge reflecting the substance of any oral responses made by the administrative law judge;

(f) Judicially cognizable facts and matters officially noticed;

(g) Proposed findings of fact and written argument submitted by a party or the agency;

(h) Intermediate orders or rulings by the administrative law judge or Chief Administrative Law Judge; and

(i) Any other material made part of the record of the hearing.

(3) The proposed order shall fully dispose of all issues presented to the administrative law judge that are required to resolve the case. The proposed order shall be in writing and shall include:

(a) The case caption;

(b) The name of the administrative law judge(s), the appearances of the parties and identity of witnesses;

(c) A statement of the issues;

(d) References to specific statutes or rules at issue;

(e) Rulings on issues presented to the administrative law judge, such as admissibility of offered evidence, when the rulings are not set forth in the record;

(f) Findings as to each issue of fact and as to each ultimate fact required to support the proposed order, along with a statement of the underlying facts supporting each finding;

(g) Conclusions of law based on the findings of fact and applicable law;

(h) An explanation of the reasoning that leads from the findings of fact to the legal conclusion(s);

(i) The action the administrative law judge recommends the agency take as a result of the facts found and the legal conclusions arising there from; and

(j) The name of the administrative law judge who prepared the proposed order and the date the order was issued.

(4) The agency by rule may provide that the proposed order will become a final order if no exceptions are filed within the time specified in the agency rule unless the agency notifies the parties and the administrative law judge that the agency will issue the final order. If the agency adopts such a rule, the proposed order shall include a statement to this effect.

(5) If the recommended action in the proposed order is adverse to any party, the proposed order shall also include a statement that the party may file exceptions and present argument to the agency or, if authorized to issue the final order, to the administrative law judge. The proposed order shall include information provided by the agency as to:

(a) Where and when written exceptions must be filed to be considered by the agency; and

(b) When and in what form argument may be made to the official(s) who will render the final order.

(6) The administrative law judge shall serve the proposed order on the agency and each party.

(7) The proposed order shall include a certificate of service, documenting the date the proposed order was served on the agency and each party.

(8) The administrative law judge shall transmit the hearing record to the agency when the proposed order is served or, if the administrative law judge has authority to issue a final order, when the final order is served.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.460, 183.464, 183.630 & 183.685

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Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0655

### Further Hearing and Issuance of Final Order

(1) After issuance of the proposed order, if any, the administrative law judge shall not hold any further hearing or revise or amend the proposed order except at the request of the agency, except as provided in this subsection. The administrative law judge may withdraw a proposed order for correction within three working days of issuance of the proposed order. If the administrative law judge withdraws a proposed order for correction, the time for filing exceptions shall begin on the date the administrative law judge issues the corrected proposed order.

(2) If the agency requests the administrative law judge to conduct a further hearing under section (1) of this rule, the agency shall specify the scope of the hearing and the issues to be addressed. After further hearing, the administrative law judge shall issue a proposed order.

(3) If the administrative law judge's proposed order recommended a decision favorable to a party and the agency intends to reject that recommendation and issue an order adverse to that party, the agency shall issue an amended proposed order if:

(a) The official(s) who are to render the final order have not considered the record; or

(b) The changes to the proposed order are not within the scope of any exceptions or agency comment to which there was an opportunity to respond.

(4) Any amended proposed order issued under section (3) of this rule shall comply with OAR 137-003-0665(3) and (4) and shall include a statement that the party may file exceptions and present argument to the agency. The agency shall serve the amended proposed order on each party to the contested case proceeding.

(5) The agency or, if authorized to issue a final order, administrative law judge shall consider any timely exceptions and argument before issuing a final order. If exceptions are received, the agency or the administrative law judge may not consider new or additional evidence unless the agency requests the administrative law judge to conduct further hearings under section (1) of this rule. The agency or administrative law judge may issue an amended proposed order in light of any exceptions or argument.

(6) The agency or, if authorized, the administrative law judge shall issue a final order in accordance with OAR 137-003-0665. The agency may adopt the proposed order as the final order, or modify the proposed order and issue the modified order as the final order.

(7) An agency should issue an amended proposed order or a final order within 90 days of the date of the proposed order. When an agency will not issue an amended proposed order or final order within 90 days of the proposed order, the agency shall give written notice to the administrative law judge and all parties of the date by which the agency expects to issue the amended proposed order or the final order. This rule does not apply to proceedings under ORS chapters 539 and 537.670 through 537.700. An agency may adopt a rule exempting classes of cases from the requirements of this subsection upon the agency's determination that, due to the nature of the cases, 90 days normally is an insufficient time in which to issue an amended proposed or final order. The requirements of this subsection apply to all orders for which the proposed order is issued after January 31, 2012.

(8) If an agency decision maker has an actual or potential conflict of interest as defined in ORS 244.020(1) or (7), that decision maker shall comply with the requirements of ORS Chapter 244, including but not limited to 244.120 and 244.130.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & 183.630

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0665

### Final Orders in Contested Cases

(1) Final orders in contested cases shall be in writing.

(2) Except as provided in section (5) of this rule, all final orders in contested cases shall include the following:

(a) Each of the elements identified in OAR 137-003-0645(3)(a)-(h),

(b) An Order stating the action taken by the agency as a result of the facts found and the legal conclusions arising there from; and

(c) A citation of the statutes under which the order may be appealed.

(3) If the agency modifies the proposed order issued by the administrative law judge in any substantial manner, the agency must identify the modification and explain to the parties why the agency made the modification. For purposes of this provision, an agency modifies a proposed order in

a "substantial manner" when the effect of the modification is to change the outcome or the basis for the order or to change a finding of fact.

(4) The agency may modify a finding of historical fact made by the administrative law judge only if the agency determines that there is clear and convincing evidence in the record that the finding made by the administrative law judge was wrong. For purposes of this provision, an administrative law judge makes a finding of historical fact if the administrative law judge determines that an event did or did not occur in the past or that a circumstance or status did or did not exist either before the hearing or at the time of the hearing.

(5) When informal disposition of a contested case is made by stipulation, agreed settlement or consent order as provided in OAR 137-003-0510(4), the final order need not comply with section (2) of this rule. However, the order must state the agency action and:

(a) Incorporate by reference a stipulation or agreed settlement signed by the party or parties agreeing to that action; or

(b) Be signed by the party or parties; and

(c) A copy must be delivered or mailed to each party and the attorney of record for each party that is represented.

(6) The final order shall be served on each party and, if the party is represented, on the party's attorney.

(7) The date of service of the final order on the parties or, if a party is represented, on the party's attorney shall be specified in writing and be part of or be attached to the order on file with the agency, unless service of the final order is not required by statute.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.417(3), 183.470, 183.630, 183.650(3) & Or Laws 2009, ch 866, § 7

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0670

### Default in Cases Involving a Notice of Proposed Action that Does Not Become Final Without a Hearing or Default

(1) This rule applies when the agency issues a notice of proposed action that does not become final in the absence of a request for hearing. The agency or, if authorized, the administrative law judge may issue a final order by default:

(a) When the agency gave a party an opportunity to request a hearing and the party failed to request a hearing within the time allowed to make the request;

(b) When the party that requested a hearing withdraws the request;

(c) Except as provided in section (2) of this rule, when the agency or administrative law judge notified the party of the time and place of the hearing and the party fails to appear at the hearing; or

(d) When the agency or administrative law judge notified the party of the time and place of the hearing in a matter in which only one party is before the agency and that party subsequently notifies the agency or administrative law judge that the party will not appear at the hearing, unless the agency or administrative law judge agreed to reschedule the hearing.

(2) If the party failed to appear at the hearing and, before issuing a final order by default, the agency or administrative law judge finds that the party had good cause for not appearing, the agency or administrative law judge may not issue a final order by default under section (1)(c) of this rule. In this case, the administrative law judge shall schedule a new hearing. If the reasons for the party's failure to appear are in dispute, the administrative law judge shall schedule a hearing on the reasons for the party's failure to appear.

(3)(a) An agency or administrative law judge may issue an order adverse to a party upon default under section (1) of this rule only upon a prima facie case made on the record. The agency or administrative law judge must find that the record contains evidence that persuades the agency or administrative law judge of the existence of facts necessary to support the order.

(b) Except as provided in subsection (c) of this section, if the agency designated the agency file in a matter as the record when a contested case notice for the matter was issued in accordance with OAR 137-003-0505 and no further testimony or evidence is necessary to establish a prima facie case, the agency file, including all materials submitted by a party, shall constitute the record. No hearing shall be conducted. The agency or, if authorized, the administrative law judge shall issue a final order by default under section (1) of this rule in accordance with 137-003-0665.

(c) If the agency determines that testimony or evidence is necessary to establish a prima facie case or if more than one party is before the agency and one party appears at the hearing, the administrative law judge shall conduct a hearing and, unless authorized to issue a final order without first issuing a proposed order, the administrative law judge shall issue a proposed

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order in accordance with OAR 137-003-0645. The agency or, if authorized, the administrative law judge shall issue a final order by default in accordance with 137-003-0665.

(4) The agency or administrative law judge shall notify a defaulting party of the entry of a final order by default by delivering or mailing a copy of the order.

(5) If a final order by default is entered because a party did not request a hearing within the time specified by the agency, the party may make a late hearing request as provided in OAR 137-003-0528.

Stat. Auth.: ORS 183.341  
Stats. Implemented: ORS 183.341, 183.417(4), 183.450, 183.470 & 183.630  
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0672

### Default in Cases Involving an Agency Order that May Become Final Without a Request for Hearing

(1) This rule applies when the agency has issued a contested case notice containing an order that was to become effective unless a party requested a hearing, has designated the agency file, including all materials submitted by a party, as the record, and the record constitutes a prima facie case.

(2) When the agency gives a party an opportunity to request a hearing and the party fails to request a hearing within the time allowed to make the request, the agency order is final and no further order need be served upon the party. The party may make a late hearing request as provided in OAR 137-003-0528.

(3) After a party requests a hearing, the agency or the administrative law judge will dismiss the request for hearing, and the agency order is final as if the party never requested a hearing if:

(a) The party that requested a hearing withdraws the request;

(b) The agency or administrative law judge notifies the party of the time and place of the hearing and the party fails to appear at the hearing; or

(c) In a matter in which only one party is before the agency, the agency or administrative law judge notifies the party of the time and place of the hearing, and the party notifies the agency or administrative law judge that the party will not appear at the hearing, unless the agency or administrative law judge agrees to reschedule the hearing.

(4) If the party fails to appear at the hearing and, before dismissing the request for hearing, the administrative law judge finds that the party had good cause for failing to appear, the administrative law judge may not dismiss the request for hearing under section (3)(b) of this rule. In this case, the administrative law judge shall schedule a new hearing. If the reasons for the party's failure to appear are in dispute, the administrative law judge shall schedule a hearing on the reasons for the party's failure to appear.

Stat. Auth.: ORS 183.341  
Stats. Implemented: ORS 183.341, 183.417(4), 183.470, & 183.630  
Hist.: DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

## 137-003-0690

### Stay Request — Contested Case

(1) Unless otherwise provided by law, any person who submits a hearing request after a final order by default has been issued or petitions for reconsideration, rehearing or judicial review may request the agency to stay the enforcement of the agency order that is the subject of the petition.

(2) The agency may, by rule or in writing, require the stay request to be filed with the administrative law judge.

(3) The stay request shall contain:

(a) The name, address and telephone number of the person filing the request and of that person's attorney or representative, if any;

(b) The full title of the agency decision as it appears on the order and the date of the agency decision;

(c) A summary of the agency decision;

(d) The name, address and telephone number of each other party to the agency proceeding. When the party was represented by an attorney or representative in the proceeding, then the name, address and telephone number of the attorney or representative shall be provided and the address and telephone number of the party may be omitted;

(e) A statement advising all persons whose names, addresses and telephone numbers are required to appear in the stay request as provided in subsection (3)(d) of this rule, that they may participate in the stay proceeding before the agency if they file a response in accordance with OAR 137-003-0695 within ten calendar days from delivery or mailing of the stay request to the agency;

(f) A statement of facts and reasons sufficient to show that:

(A) The petitioner will suffer irreparable injury if the order is not stayed; and,

(B) There is a colorable claim of error in the order;

(g) A statement explaining why granting the stay will not result in substantial public harm;

(h) A statement identifying any person, including the public, who may suffer injury if the stay is granted. If the purposes of the stay can be achieved with limitations or conditions that minimize or eliminate possible injury to other persons, petitioner shall propose such limitations or conditions. If the possibility of injury to other persons cannot be eliminated or minimized by appropriate limitation or conditions, petitioner shall propose an amount of bond, irrevocable letter of credit or other undertaking to be imposed on the petitioner should the stay be granted, explaining why that amount is reasonable in light of the identified potential injuries;

(i) A description of additional procedures, if any, the petitioner believes should be followed by the agency in determining the appropriateness of the stay request; and

(j) An appendix of affidavits containing evidence (other than evidence contained in the record of the contested case out of which the stay request arose) relied upon in support of the statements required under subsections (3)(f), (g) and (h) of this rule. The record of the contested case out of which the stay request arose is a part of the record of the stay proceedings.

(4) The request must be delivered or mailed to the agency and on the same date a copy delivered or mailed to all parties identified in the request as required by subsection (3)(d) of this rule.

Stat. Auth.: ORS 183.341  
Stats. Implemented: ORS 183.341, 183.482(3) & 183.630  
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

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## Department of Public Safety Standards and Training Chapter 259

**Rule Caption:** Remove references to supervisory/middle management courses and DPSST-approved supervisory and management-level training.

**Adm. Order No.:** DPSST 17-2011

**Filed with Sec. of State:** 12-23-2011

**Certified to be Effective:** 12-23-11

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 259-008-0060

**Subject:** Due primarily to budget restrictions, the Department of Public Safety Standards and Training no longer offers or approves courses for supervisory or middle-management certification levels. This rule update removes the outdated references to the supervisory and middle-management courses and DPSST-approved supervisory or management-level training.

**Rules Coordinator:** Linsay Hale—(503) 378-2431

## 259-008-0060

### Public Safety Officer Certification

(1) Basic, Intermediate, Advanced, Supervisory, Management, Executive and Instructor Certificates are awarded by the Department to law enforcement officers and telecommunications meeting prescribed standards of training, education, experience; and the levels established by the employing law enforcement units, or public or private safety agencies. Emergency medical dispatchers may be awarded basic certification only.

(2) Basic certification is mandatory and must be acquired by all police officers, parole and probation officers, telecommunications, and emergency medical dispatchers within 18 months of employment, and by all corrections officers within one year of employment unless an extension is granted by the Department.

(3) To be eligible for the award of a certificate, law enforcement officers must be full-time employees as defined by ORS 181.610 and OAR 259-008-0005 or part-time parole and probation officers, as described in ORS 181.610 and OAR 259-008-0066.

(4) To be eligible for the award of a certificate, law enforcement officers must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0010.

(5) To be eligible for the award of a certificate, telecommunications must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0011.

(6) To be eligible for the award of a certificate, law enforcement officers must subscribe to and swear or affirm to abide by the Criminal Justice

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Code of Ethics (Form F11). Telecommunicators and emergency medical dispatchers must subscribe to and swear or affirm to abide by the Telecommunicator Code of Ethics. (Form F-11T).

(7) Application for certification must be submitted on Form F7 (Application for Certification), with all applicable sections of the form completed. The form must be signed by the applicant. In order to ensure that the applicant meets the minimum standards of employment, training, education, and experience, and is competent to hold the level of certification for which the applicant has applied, the department head or authorized representative must sign the form recommending that the certificate be issued or withheld. If the department head chooses not to recommend the applicant's request for certification, the reason for this decision must be specified in writing and must accompany the Form F7.

(8) When a department head is the applicant, the above recommendation must be made by the department head's appointing authority such as the city manager or mayor, or in the case of a specialized agency, the applicant's superior. Elected department heads are authorized to sign as both applicant and department head.

(9) In addition to the requirements set forth above, each applicant must have completed the designated education and training, combined with the prescribed corrections, parole and probation, police or telecommunications experience for the award of an Intermediate, Advanced, Supervisory, Management, or Executive Certificate.

(a) Each quarter credit unit granted by an accredited college or university which operates on a quarterly schedule will equal one (1) education credit.

(b) Each semester credit unit granted by an accredited college or university operating on a semester schedule will equal one and one half (1-1/2) education credits.

(c) The Department must receive sealed official transcripts from a college prior to entering college credit on an individual's official record.

(10) Training:

(a) Basic courses certified by the Department shall be approved by the Board.

(b) The Department may record training hours for departmental or other in-service training which is recorded and documented in the personnel files of the trainee's department. These records must include the subject, instructor, classroom hours, date, sponsor, and location.

(c) Training completed in other states, military training, and other specialized training, if properly documented, may be accepted, subject to staff evaluation and approval. These records must include the subject, date, and classroom hours, and must be certified true copies of the original.

(d) College credits earned may be counted for either training hours or education credits, whichever is to the advantage of the applicant.

(e) College credit awarded based on training completed may be applied toward either training hours or education credits, whichever is to the advantage of the applicant.

(A) Prior to applying an applicant's college credit toward any upper level of certification, the Department must receive documentation of the number of college credits awarded based on training attended.

(B) The training hours identified under paragraph (A) and submitted as college credit toward an upper level of certification will not be included in any calculation of whether the applicant has earned sufficient training hours to qualify for the requested certification level.

(i) Any college credit received for practical or skills-based training attended will be calculated at a ratio of 1:20 hours for each quarter credit, for purposes of training hour deductions.

(ii) Any college credit received for academic training attended will be calculated at a ratio of 1:10 hours for each quarter credit, for purposes of training hour deductions.

(f) No credit can be applied toward both education credits and training hours when originating from the same training event.

(11) Experience/Employment:

(a) Experience gained as a corrections, parole and probation, or police officer employed full time with municipal, county, state, or federal agencies, may be accepted if the experience is in the field in which certification is requested and is approved by the Department. For the purpose of this rule, creditable service time for experience will not accrue under the following circumstances:

(A) When an individual is employed in a casual, seasonal, or temporary capacity;

(B) When an individual is on leave. A public safety professional may submit a written request for credit for military time served upon return from his or her military duty. The Department will evaluate each written request to determine whether an individual is eligible for any credit for time served;

(C) From the date a public safety professional's certification is recalled until it is reinstated by the Department; or

(D) When a public safety professional fails to obtain Basic certification within a mandated timeframe and is prohibited from being employed as a public safety professional.

(b) Experience acquired as a telecommunicator or emergency medical dispatcher employed with a public or private safety agency may be accepted if the experience is in the field in which certification is requested and is approved by the Department.

(c) Experience acquired as a certified part-time telecommunicator or emergency medical dispatcher as defined in OAR 259-008-0005, or part time parole and probation officer as defined under 259-008-0005 and 259-008-0066, will count on a pro-rated basis.

(d) Police, corrections, parole and probation, telecommunicator, or emergency medical dispatch experience in fields other than that in which certification is requested may receive partial credit when supported by job descriptions or other documentary evidence. In all cases, experience claimed is subject to evaluation and approval by the Department.

(12) The Basic Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Basic Certificate:

(a) Applicants must have completed a period of service of not less than nine (9) months with one or more law enforcement units or public or private safety agencies in a certifiable position in the field in which certification is being requested;

(b) Applicants must have satisfactorily completed the required Basic Course in the field in which certification is requested or have completed equivalent training as determined by the Department; and

(c) Applicants must have valid first aid and cardiopulmonary resuscitation (CPR) cards.

(13) The Intermediate Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Intermediate Certificate:

(a) Applicants must possess a Basic Certificate in the field in which certification is requested; and

(b) Applicants must have acquired the following combinations of education hours and training hours combined with the prescribed years of police, corrections, parole and probation or telecommunications experience, or the college degree designated combined with the prescribed years of experience: [Table not included. See ED. NOTE.]

(14) The Advanced Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Advanced Certificate:

(a) Applicants must possess or be eligible to possess the Intermediate Certificate in the field in which certification is requested; and

(b) Applicants must have acquired the following combinations of education and training hours combined with the prescribed years of corrections, parole and probation, police, telecommunications experience, or the college degree designated combined with the prescribed years of experience: [Table not included. See ED. NOTE.]

(15) The Supervisory Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Supervisory Certificate:

(a) Applicants must possess or be eligible to possess the Advanced Certificate in the field in which certification is requested;

(b) Applicants must have satisfactorily completed no less than 45 education credits as defined in section (10) of this rule;

(c) Applicants must have satisfactorily completed the prescribed Supervision training within five (5) years prior to application for the Supervisory Certificate; and

(d) Applicants must be presently employed in, or have satisfactorily performed the duties associated with, the position of a first-level supervisor as defined in OAR 259-008-0005 and as attested to by the applicant's department head during the time such duties were performed for a period of one (1) year. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, supervisory duties.

(16) The Management Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Management Certificate:

(a) Applicants must possess or be eligible to possess the Supervisory Certificate in the field in which certification is requested;

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(b) Applicants must have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule;

(c) Applicants must have satisfactorily completed the prescribed Middle Management training within five (5) years prior to application for the Management Certificate; and

(d) Applicants must be presently employed in and must have served satisfactorily in a Middle Management position as a Department Head or Assistant Department Head as defined in OAR 259-008-0005 for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, management duties.

(17) The Executive Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Executive Certificate:

(a) Applicants must possess or be eligible to possess the Management Certificate in the field in which certification is requested;

(b) Applicants must have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule;

(c) Applicants must have satisfactorily completed 100 hours of Department-approved executive level training within five (5) years prior to application for the Executive Certificate; and

(d) Applicants must be presently employed in and must have served satisfactorily in a Middle Management position as Department Head or Assistant Department Head as defined in OAR 259-008-0005 for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, the duties associated with that of a department head or assistant department head.

(18) Multi-discipline Certification. Upon receiving written request from the department head stating a justified and demonstrated need exists for the efficient operation of the employing agency, the Department may approve multi-discipline certification for law enforcement officers who meet all minimum employment, training and education standards established in OAR 259-008-0010, 259-008-0011, 259-008-0025, and this rule, in the disciplines which they are requesting certification. The officer must meet the following requirements for the award of multi-discipline certification:

(a) Basic certification. A law enforcement officer who is certified in one discipline may apply for multi-discipline certification if employed in or transferred to another discipline within the same law enforcement unit. The applicant must demonstrate completion of all training requirements in the discipline in which certification is being requested.

(b) Higher levels of certification. Law enforcement officers who possess higher levels of certification in one discipline may, upon employment in or transfer to another discipline within the same law enforcement unit, apply for the same level of certification after completion of nine (9) months experience in the discipline in which they are requesting certification and meeting the requirements for those higher levels of certification as outlined in this rule. This section does not apply to the emergency medical dispatcher discipline since it only exists at the basic certification level.

(c) Retention of multi-discipline certification. In order to maintain multi-discipline certification, each discipline in which certification is held requires successful completion and documentation of training hours by the holders of the certificates every twelve (12) months. The training must be reported to the Department, as follows:

(A) For a law enforcement officer who also holds emergency medical dispatcher certification, a minimum of four (4) hours of training specific to the emergency medical dispatcher discipline must be reported annually as required under OAR 259-008-0064.

(B) For a law enforcement officer who also holds telecommunicator certification, a minimum of twelve (12) hours of training specific to the telecommunicator discipline must be reported annually as required under OAR 259-008-0064.

(C) A minimum of twenty (20) hours of training specific to each law enforcement discipline in which certification is held must be reported annually as required under subsections (h) through (l) of this section.

(d) The same training may be used for more than one discipline if the content is specific to each discipline. It is the responsibility of the agency head to determine if the training is appropriate for more than one discipline.

(e) The maintenance training cycle for law enforcement officers who are certified in more than one discipline begins on July 1st of each year and ends on June 30th the following year.

(f) The employing agency must maintain documentation of all required maintenance training completed.

(g) If reported on a Form F-6 (Course Attendance Roster), required maintenance training must be submitted to the Department by June 30th of each year. Training reported on a Form F-6 will result in credit for training hours. No training hours will be added to a law enforcement officer's record, unless accompanied by a Form F-6 Course Attendance Roster.

(h) On or after July 1st of each year, the Department will identify all law enforcement officers who are deficient in maintenance training according to Department records and provide notification to the individual and the employing agency.

(A) Within 30 days of receipt of notification, the agency must notify the Department of the training status of any law enforcement officer identified as deficient by submitting a Form F-16 (Maintenance Training Log) to the Department identifying the maintenance training completed during the previous one (1) year reporting period.

(B) Maintenance training hours reported to the Department on a Form F-16 will be used solely to verify completion of maintenance training requirements and will not be added to an officer's training record.

(i) Failure to notify the Department of completion of any required training for individuals with identified training deficiencies will result in a notification of recall letter being sent to the agency head and the officer.

(j) The Department will recall a law enforcement officer's certification for:

(A) Failure to complete or report any required maintenance training above on or before June 30th of each year; or

(B) Failure to submit a Form F-16 within 30 days after a warning notification letter has been sent.

(k) A law enforcement officer with a recalled certification is prohibited from being employed in any position for which the certification has been recalled.

(l) Recertification following a recall may be obtained at the approval of the Department by submitting the following:

(A) A written request from the employing agency head requesting recertification, along with a justification of why the maintenance training was not completed; and

(B) Verification that the missing training was completed.

(m) Failure to complete the required maintenance training may not result in a recall of certification if the law enforcement officer is on leave from a public or private safety agency.

(19) Certificates and awards are the property of the Department. The Department has the power to revoke or recall any certificate or award as provided in the Act.

[ED. NOTE: Forms & Tables referenced are available from the agency.]

Stat. Auth.: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654, 181.665  
Stats. Implemented: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654 & 181.665  
Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1980(Temp), f. & ef. 6-26-80; PS 2-1980, f. & ef. 12-8-80; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0055, PS 1-1990, f. & cert. ef. 2-7-90; PS 1-1995, f. & cert. ef. 3-30-95, PS 2-1995, f. & cert. ef. 9-27-95; PS 7-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 6-1999, f. & cert. ef. 7-29-99; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 21-2002, f. & cert. ef. 11-21-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 2-2008, f. & cert. ef. 1-15-08; DPSST 9-2008, f. & cert. ef. 7-15-08; DPSST 22-2008, f. & cert. ef. 12-29-08; DPSST 4-2009, f. & cert. ef. 4-8-09; DPSST 1-2010, f. & cert. ef. 1-11-10; DPSST 2-2010, f. & cert. ef. 3-15-10; DPSST 4-2010, f. & cert. ef. 6-2-10; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10; DPSST 8-2010, f. & cert. ef. 8-13-10; DPSST 8-2011, f. & cert. ef. 6-24-11; DPSST 17-2011, f. & cert. ef. 12-23-11

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**Rule Caption:** Update Public Safety Memorial Fund eligibility dates.

**Adm. Order No.:** DPSST 18-2011

**Filed with Sec. of State:** 12-28-2011

**Certified to be Effective:** 12-28-11

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 259-070-0010

**Subject:** Section 12, Chapter 981, Oregon Laws 1999 allows for family members of public safety officers who suffered a qualifying death after January 1, 1997, but prior to October 23, 1999 to be eligible for Public Safety Memorial Fund benefits. Although this clause was not written into statute, the eligibility dates remain as determine when the bill passed the legislature in 1999. The grandfather clause



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is added to rule, ensuring the eligibility dates accurately mirror the statute.

**Rules Coordinator:** Linsay Hale—(503) 378-2431

## 259-070-0010

### Eligibility

(1) Eligibility of award applies to public safety officers who suffered a qualifying death or disability on or after October 23, 1999. Subject to availability of funds, the Board may award benefits to:

(a) Eligible family members of public safety officers who suffered a qualifying death or disability on or after October 23, 1999;

(b) A designee of a public safety officer who suffered a qualifying death or disability on or after January 1, 2008.

(c) Family members of public safety officers who suffered a qualifying death or disability after January 1, 1997, but prior to October 23, 1999 as described in Section 12, Chapter 981, Oregon Laws 1999.

(2) Prior to acceptance of an initial application, any individual applying for benefits based on a qualifying disability must provide satisfactory evidence that they meet the definition of “permanent total disability” found in ORS 656.206 and OAR 436-030-0055. Satisfactory evidence is established by submitting:

(a) Proof of Determination of Permanent Total Disability in compliance with the Worker’s Compensation Division of the Department of Consumer and Business Services; or

(b) Competent written vocational testimony by a person fully certified by the State of Oregon to render vocational services that the applicant meets the definition of “permanent total disability” found in ORS 656.206 and OAR 430-030-0055.

Stat. Auth.: ORS 245.950

Stats. Implemented: ORS 245.950

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 1-2007, f. & cert. ef. 1-12-07; DPSST 20-2008, f. & cert. ef. 10-15-08; DPSST 18-2011, f. & cert. ef. 12-28-11

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**Rule Caption:** Allow for application of general polygraph examiner license if awarded a GED certificate.

**Adm. Order No.:** DPSST 19-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 12-30-11

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 259-020-0015

**Subject:** This rule change implements Senate Bill 71, enacted during the 2011 legislative session, which changed the Polygraph Examiner’s Act to allow for an applicant to apply for a general polygraph examiner license if they have been awarded a GED certificate. Plain language standards and minor housekeeping changes were made for clarity.

**Rules Coordinator:** Linsay Hale—(503) 378-2431

## 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

(C) 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) 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.

(i) Submit a fully-completed Application for Polygraph Examiner’s License (DPSST Form F-203) as prescribed by OAR 259-020-0060, accompanied by documentation of qualifications as required by the Department.

(j) Submit to the Department appropriate fees as prescribed by OAR 259-020-0035.

(2) Any person who has held a trainee license for longer than 12 months and who has completed the 200 exams required under OAR 259-020-0015 must take the general license examination within 12 months of completing the required exams.

(3) The 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.

(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.

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(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

Stats. 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

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## Department of Revenue Chapter 150

**Rule Caption:** To make permanent the actions take on rules reviewed in the Fall process.

**Adm. Order No.:** REV 4-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 150-314.HB2071(B), 150-315.326, 150-314.HB2071(A)

**Rules Amended:** 150-18.385, 150-18.385(A), 150-314.360, 150-267.380(2), 150-314.280-(F), 150-317.710(5)(b), 150-294.435(1)-(A), 150-294.435(1)-(C), 150-294.480, 150-294.525-(A), 150-311.216

**Rules Repealed:** 150-315.354

**Rules Ren. & Amend:** 150-307.250(1)(c) to 150-307.250, 150-308.290(4)(b) to 150-308.290-(B)

**Subject:** Personal Tax: 150-314.HB2071(B) – This rule implements HB 2071 which allows the department to mandate the electronic filing of tax returns by paid preparers when the paid preparer is required to do so by federal law. It also delineates waivers to the mandate.

150-315.326 – This rule outlines the procedures for the tax credit auctions mandated by OR Laws 2011 Chapter 730, Sec 23 (HB 3672).

150-18.385 – The rule describes tax garnishments of wages, the numbers and examples need updating.

150-18.385(A) - HB 2682 changed the minimum wage exemption for the garnishment of wage exemption calculation. Numbers and examples are updated.

150-314.360 – This rule defines which information returns must be filed electronically. The change is to add back language explaining that DOR can require filing of informational returns for those not already required to file.

Business Tax: 150-314.HB 2071 (A) – HB 2071 from the 2011 legislative session provides the department authority to by rule require corporations to file a tax return electronically if the corporation is required to file their federal return electronically.

150-267.380(2) – Removing an incorrect statement that says tip income is not subject to withholding (and therefore, transit taxes) under ORS Chapter 316.

150-314.280-(F) – To add language to the property, payroll, sales factor provisions of the rule that clarifies the provisions apply unless

otherwise provided by rule, and to delete the invalidated provision related to other factors per OAR 150-314.670.

150-317.710(5)(b) – Based on the changes of HB 2653 from the 2009 legislative session, OAR 150-317.710(5)(b) conflicts with ORS 314.650. Per HB 2653, taxpayers in the forest products industry are no longer required or allowed to use a double-weighted sales apportionment formula. For tax years beginning on or after 1/1/2010 all forest product companies are required to apportion business income using a single sales factor.

150-315.354 – HB 3606 from the 2011 legislative session eliminated the need for the department to provide guidance by rule as to when a transferee may first claim the credit. HB 3606 removed the transferee provision from ORS 315.354 and placed it under the Department of Energy's authority in ORS 469.220. The current rule is outdated and no longer accurate.

Property Tax: 150-294.435(1)-(A): This rule clarifies ORS 294.435 in regard to the form of property tax levies that are approved by the budget committee and imposed by a local government. This amendment better reflects the language in ORS 310.060 that requires the tax amount or rate for each levy to be stated separately. The language of the existing rule could give the erroneous impression that levy amounts or rates could be combined.

150-294.435(1)-(C): This rule clarifies the requirements for publishing an amended budget. Statutes were changed by HB 2425 so existing cites in the rule are to the wrong statute, and to a statute that is now repealed.

150-294.480: Amending this rule to describe the requirements for adopting a supplemental budget and for publishing the notices required by ORS 294.480 and Chapter 473, Section 10, Oregon Laws 2011.

150-294.525-(A): This amendment removes language for a requirement that no longer exists in statute.

150-311.216: To correct the statement that property could only be added as omitted if it was "due to the assessor's lack of knowledge." Also renaming, updating language and formatting to make more readable.

Statute requires that if omitted property "has from any cause been omitted, it must be added to the roll. When the rule was revised in 1994, the intent of the rule writer was to offer one example of when omitted property could be added. However the wording did not convey the intended meaning, but rather that only property that had been omitted "due to the assessor's lack of knowledge of its existence" could be added to the roll.

150-307.250: Renumbering. Making a technical correction and inserting to the statute.

150-308.290(4)(b): Renumbering. Removing language stating the department will allow 14 days to resubmit an incomplete industrial property tax return after the date the department mailed the return to the taxpayer. The existing rule exceeds statutory authority.

**Rules Coordinator:** Ken Ross—(503) 945-8890

### 150-18.385

#### Oregon Department of Revenue Tax Garnishments and Orders to Withhold Child or Spousal Support

(1) The Department of Revenue is authorized to continuously garnish up to 25 percent of an employee's disposable earnings to recover delinquent state tax debt. Concurrently, a district attorney or the Division of Child Support of the Department of Justice is authorized to request the courts to order the withholding of delinquent and current child or spousal support from an employee's disposable earnings.

(2) Under ORS 18.385(4), the maximum disposable earnings subject to garnishment is reduced by an order to withhold wages for child or spousal support under ORS 25.378, 419B.408 or 419C.600 or ORS Chapter 110. Normally, any other existing garnishments would then be limited to 25 percent of disposable earnings after subtracting the order to withhold wages. However, ORS 18.385(6) specifies that, for garnishments to pay state tax debt, the provisions of ORS 18.385(4) do not apply. Therefore, a garnishment to pay state tax debt would be calculated upon disposable earnings and not reduced by an order to withhold child or spousal support.

Example 1: Larry has \$4,000 per month of disposable earnings.

Larry owes delinquent child support totaling \$15,000. An order to with-

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hold child support has been granted that requires Larry's employer to withhold a specified amount of \$1,400 from disposable earnings. Larry also owes a state personal income tax debt totaling \$5,000. The department has garnished Larry's employer for 25 percent of disposable earnings. The employer would calculate and pay the order to withhold child support and the garnishment as follows:

(A) Disposable earnings \$4,000

(B) Order to Withhold specified amount of \$1,400 for child or spousal support (\$1,400).

(C) Personal Income Tax Garnishment at 25 percent ( $\$4,000 \times .25$ ) (\$1,000).

(D) Net disposable earnings to Larry — \$1,600.

(E) Payment for Order to Withhold — \$1,400.

(F) Payment for Personal Income Tax Garnishment — \$1,000.

(3) If for any reason orders to withhold wages for child or spousal support and garnishments for state tax debt exceed the disposable earnings of the taxpayer, any orders to withhold wages under ORS 25.378 will have priority over any other legal process, including all garnishments for state tax debt or otherwise (ORS 25.375). The employer will reduce payments pursuant to the department's garnishment as needed.

Example 2: Renee's employer has been paying a specified amount of \$1,400 from Renee's disposable earnings under an order to withhold child support. The employer now has received a Special Notice of Garnishment from the department that causes a one-time garnishment of 100 percent of Renee's disposable earnings. Since more than 100 percent of Renee's disposable earnings has been attached, under ORS 25.375, the order to withhold now takes priority. The employer would compute and distribute payments under the order and garnishment as follows:

(A) Disposable earnings — \$4,000.

(B) Order to Withhold specified amount of \$1,400 for child or spousal support (\$1,400).

(C) Personal Income Tax Garnishment at 100 percent but limited to remainder of disposable earnings after order to withhold is paid ( $\$4,000 \times 100\% = \$4,000$  less order of \$1,400) (\$2,600).

(D) Net disposable earnings to Renee — \$0.

(E) Payment for Order to Withhold — \$1,400.

(F) Payment for Personal Income Tax Garnishment — \$2,600.

[ED. NOTE: Formulas referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 23.185

Hist.: RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; Renumbered from 150-23.185 by REV 8-2002, f. & cert. ef. 12-31-02; Renumbered from 150-23.186, REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

## 150-18.385-(A)

### Oregon Department of Revenue Other Agency Account Garnishments

(1) Under ORS 293.250, the Department of Revenue may render assistance to recover delinquent debts owed to any state officer, board, commission, corporation, institution, department or other state organization assigned by the agency to the Department of Revenue for collection, including actions to continuously garnish up to 25 percent of an employee's disposable earnings.

(2) Under ORS 18.385(4), nonexempt disposable earnings are reduced by an order to withhold child or spousal support under ORS 25.378, 419B.408 or 419C.600 or ORS Chapter 110. The maximum disposable earnings subject to garnishment for the period is determined by 18.385(2)(a) through 18.385(2)(e) minus any amount required to be withheld from an individual's disposable earnings for the period pursuant to an order to withhold child or spousal support issued under 25.378 and others. The order to withhold child or spousal support may reduce the amount available for garnishment to zero.

(3) Under ORS 18.385(2)(a) through 18.385(2)(e) the nonexempt disposable earnings subject to garnishment for the period is calculated by reducing the individual's disposable earnings for that period by the amount of disposable earnings exempt from garnishment. The amount of disposable earnings exempt from garnishment is the greater of 75 percent of the disposable earnings for the period under ORS 18.385(1) or the minimum exemption amount under ORS 18.385(2)(a) through 18.385(2)(e).

Example 1: Dick has \$1,000 per week of disposable earnings. Dick owes child support totaling \$15,000. An order to withhold for child or spousal support under ORS 25.378 has been issued to Dick's employer directing the employer to withhold a specified amount of \$225 from Dick's disposable earnings. Dick also owes a state agency for a delinquent student loan totaling \$5,000 (a state non-tax debt). The Department of Revenue has garnished Dick's employer for 25 percent of disposable earnings. The employer would calculate and pay the order to withhold for child or spousal support and the garnishment as follows:

(A) Disposable earnings A — \$1,000.

(B) Minimum weekly exemption B — \$218.

(C) 75 percent of disposable earnings C — \$750.

(D) Earnings exempt from garnishment (greater of B or C) D — \$750.

(F) Nonexempt earnings subject to garnishment (A minus D) E — \$250.

(E) Order to withhold specified amount of \$225 for child or spousal support F — \$225.

(G) Disposable earnings subject to garnishment (E minus F) G — \$25.

Although the Department of Revenue has issued a 25 percent garnishment that would normally return \$250, because of the order to withhold for child or spousal support, the amount available on the state non-tax debt garnishment is limited to \$25.

Example 2: Assume the same facts as in Example 1 except that the order to withhold child or spousal support is \$350. The employer would calculate the order to withhold child or spousal support and garnishment as follows:

(A) Disposable earnings A — \$1,000.

(B) Minimum weekly exemption B — \$218.

(C) 75 percent of disposable earnings C — \$750.

(D) Earnings exempt from garnishment (greater of B or C) D — \$750.

(E) Nonexempt earnings subject to garnishment (A minus D) E — \$250.

(F) Order to withhold specified amount of \$350 for child or spousal support F — \$350.

(G) Disposable earnings subject to garnishment (E minus F) G — \$100.

Since line (F) is greater than line (E), resulting in a negative number for line (G), the amount available for the garnishment is zero.

Example 3: John has \$250 per week disposable earnings. John owes a state agency for a delinquent student loan totaling \$5,000 (a state non-tax debt). The Department of Revenue has garnished John's employer for 25 percent of disposable earnings. John is not under an order to withhold for child or spousal support. The employer would calculate and pay the garnishment as follows:

(A) Disposable earnings A — \$250.

(B) Minimum weekly exemption B — \$218.

(C) 75 percent of disposable earnings C — \$187.50.

(D) Earnings exempt from garnishment (greater of B or C) D — 218.

(E) Nonexempt earnings subject to garnishment (A minus D) E — \$32.

(F) Order to withhold for child or spousal support F — \$0.

(G) Disposable earnings subject to garnishment (E minus F) G — \$32.

[ED. NOTE: Calculations referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 23.185

Hist.: REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; Renumbered from 150-23.185-(A) by REV 8-2002, f. & cert. ef. 12-31-02; Renumbered from 150-23.186-(A), REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

## 150-267.380(2)

### Wages Exempt From Transit Payroll Tax

For purposes of the transit district payroll taxes, certain payrolls are exempted from taxation by exclusion of the amounts paid from the definition of wages. The following are clarifications of some of the allowable exemptions:

(1) All foreign insurance companies (those formed under laws from other states), their adjusters, agents, office support staff are specifically exempted by ORS 731.840. This exemption does not extend to domestic insurers, health care contractors, and motorist service clubs.

(2) ORS 267.380(2)(h) states if remuneration is not subject to withholding under ORS Chapter 316 it is not subject to the transit payroll tax. All wages paid for domestic service described in 316.162(c) are exempt from withholding and transit payroll tax. If the remuneration is not subject to withholding under ORS Chapter 316 such wages would be exempt from the transit payroll tax but generally are subject to transit self-employment tax. Unless a real estate agent meets all the requirements of 316.209, the remuneration for services performed by that agent will be subject to transit payroll taxes.

(3) ORS 267.380(4), which subjects deferred compensation to transit tax, creates an exception to the general rule stated in 267.380(2)(h), which exempts from transit tax remuneration not subject to withholding tax.

(4) The exemption in ORS 267.380(2)(c) applies to labor not in the course of the employer's trade or business. The exemption does not apply to wages for substantial labor not in the regular course of the employer's trade or business, such as the construction of a private home where the owner is the employer.

(5) Transit payroll tax is imposed only on that portion of the payroll paid with respect to duties performed by employees within the District. If an employee performs services both inside and outside the District, the

# ADMINISTRATIVE RULES

employer shall prorate the wages paid to that particular employee based upon the relative amounts of time worked by that employee within and without the District.

(6) The exemption in ORS 267 .380(2)(e) applies solely to seasonal labor in connection with the planting, cultivating or harvesting of agricultural crops. Transit payroll tax applies to the entire wages of "regular" farm employees even though, as a part of their duties, they engage in planting, cultivating or harvesting.

(7) Certain state agencies are exempt from transit payroll tax under the provisions of ORS 267 .430.

(8) Internal Revenue Code Section 501(c)(3) institutions (charitable and other nonprofit institutions) other than hospitals are exempt from transit payroll taxes. For the purposes of ORS 267 .380(2)(a), a hospital is defined as:

(a) A permanent facility or organization with facilities that include inpatient beds, and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for but not limited to acutely ill patients and accident victims, or to provide treatment for the mentally ill.

(b) A hospital's parent or subsidiary 501(c)(3) organization that provides administrative and support functions to the hospital.

(9) Employers may be relieved of the duty to pay transit tax where it can be shown to the satisfaction of the department that subject wages paid to each individual employee will be \$300 or less in a calendar year.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 267.380

Hist.: RD 10-1984, f. 12-5-84, cert. ef. 12-31-84; RD 8-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

## 150-294.435(1)-(A)

### Property Taxes Certified

(1) The amount or rate of any property tax proposed to be certified by a municipal corporation which is subject to Local Budget Law cannot exceed the amount or rate approved by the budget committee. The budget committee must approve the amount or the rate of each tax to be lawfully certified to the assessor. Any portion of the certified tax exceeding the amount or the rate approved by the budget committee that was not included in a budget summary republished as required by ORS 294.435(1)(c) will not be extended by the assessor on the assessment roll except as provided in 294.437.

(2) The budget committee of a municipal corporation which is subject to Local Budget Law that adopts a biennial budget must approve the total amount or the rate of each tax to be certified each year. Taxes must be certified in each year of the budget period. Any portion of the certified tax exceeding the amount or the rate approved by the budget committee for either year of the budget period that was not included in a republished budget summary will not be extended by the assessor on the assessment roll except as provided in ORS 294.437.

(3) The budget document must include a complete detail of proposed expenditures requiring levy of property taxes.

Stat. Auth.: ORS 305.100 & 294.495

Stats. Implemented: ORS 294.435

Hist.: 2-69; TC 10-1978, f. 12-5-78, cert. ef. 12-31-78, Renumbered from 150-294.435; REV 4-1998, f. & cert. ef. 6-30-98; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 17-2008, f. 12-26-08, cert. ef. 1-1-09; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

## 150-294.435(1)-(C)

### Publishing of Amended Budget Document

When publishing an amended budget document, the governing body must include the following information using the same publishing procedures as the original summary described under ORS 294.421:

(1) The date, time, and place of the hearing on the amended budget.

(2) The place and times the amended budget document is available for inspection.

(3) A financial summary of the total budget described in ORS 294.416, as amended by the governing body.

(4) A reference to the date and publication that the budget as approved by the budget committee was originally published. For example: "To review the budget as approved by the budget committee prior to this amendment, see page 5 in the May 1, 2003, edition of the Beach Bugle."

Stat. Auth.: ORS 305.100 & 294.435

Stats. Implemented: ORS 294.435

Hist.: REV 6-2003, f. & cert. ef. 12-31-03; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

## 1150-294.480

### Supplemental Budget Procedures

(1) During the fiscal year or budget period, the governing body may find that an unanticipated condition requires adjustments to the budget. If the condition meets the requirements of ORS 294.480, the governing body may prepare a supplemental budget.

(2) A supplemental budget may only authorize additional expenditures during the current fiscal year or budget period. It must not authorize expenditures for a past or future fiscal year or budget period.

(3) A supplemental budget that is being prepared to create or increase an appropriation must be adopted before any expenditures are made in excess of the current annual budget appropriations.

(4) Only one supplemental budget may be prepared as a result of a single situation or condition that meets the requirements of ORS 294.480.

(5) When the estimated expenditures in the supplemental budget differ by less than 10 percent or less from the expenditures of the adopted annual or biennial budget for each fund being adjusted, the governing body may adopt the supplemental budget at one of its regular meetings. Fund expenditures do not include unappropriated ending fund balance, amounts reserved for future expenditure, interfund transfers, or contingency amounts.

(a) Notice of the regular meeting at which the supplemental budget will be adopted must be published by one of the methods in ORS 294.311(35) not less than 5 days before the meeting. The notice must include a statement that a supplemental budget will be considered at the meeting.

(b) The resolution adopting and appropriating the supplemental budget may take place at the same regular meeting.

(6) When a new fund is being established or when the estimated expenditures in the supplemental budget differ by more than 10 percent from the expenditures in the budget as most recently amended prior to the supplemental budget, the governing body must publish notice and hold a public hearing before adopting the supplemental budget. The notice of the hearing must include for each fund being adjusted by more than 10 percent: the name of the fund; and the new total for each resource line item or appropriation category being changed, added or deleted.

Example: (This example is of the published summary of a supplemental budget, in which the new total expenditure in the Utility Fund differs by more than 10 percent from the amount currently budgeted.)

The supplemental budget transfers \$20,000 in resources and appropriation authority from the General Fund to the Utility Fund Materials and Services, increasing that appropriation and the total expenditure in the Utility Fund to a new total of \$40,000.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 294.480

Hist.: TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; RD 1-1992, f. 5-28-92, cert. ef. 6-1-92; REV 4-1998, f. & cert. ef. 6-30-98; REV 8-2000, f. & cert. ef. 8-2-00; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 5-2009, f. & cert. ef. 7-31-09; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

## 150-294.525-(A)

### "Reserved for Future Expenditure" Requirement

(1) "Reserved for future expenditure" means a budget requirement which is not intended to be expended during the fiscal year or budget period in which it is budgeted. This requirement shows the amount a municipal corporation plans to "save" for future financing of a service, project, property or equipment which the municipal corporation is authorized to perform, construct or acquire.

(2) An amount reserved for future expenditure may be appropriated during the fiscal year or budget period if the situation meets the conditions for a supplemental budget outlined in ORS 294.480(1) or as otherwise authorized by law.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 294.525

Hist.: REV 4-1999, f. 12-1-99, cert. ef. 12-31-99, Renumbered from 150-280.100(A); REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

## 150-307.250

### Defining "Surviving Spouse" of a Veteran

(1) "Surviving spouse" of a veteran means:

(a) A man or woman who is legally married to a veteran at the time of the veteran's death; or

(b) A man or woman who is joined in a registered domestic partnership with a veteran at the time of the veteran's death. "Domestic partnership" has the meaning given that term as defined in ORS 106.310, and the partnership must meet the provisions of ORS 106.300 to ORS 106.340, also known as the Oregon Family Fairness Act (OFFA).

# ADMINISTRATIVE RULES

(2) “Surviving spouse remaining unmarried of a veteran” means the individual does not enter into a new marriage or registered domestic partnership following the death of the veteran.

(3) The exemption applies only to the period before the date of the first new marriage or registered domestic partnership of the surviving spouse after the death of the veteran.

(4) If a surviving spouse of a veteran enters into a new marriage or registered domestic partnership following the death of the veteran and that marriage or partnership is annulled by a court having jurisdiction to do so, the surviving spouse will be restored to his or her previous status as a surviving spouse remaining unmarried of a veteran.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 307.250

Hist.: RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98, Renumbered from 150-307.250(1)(d); REV 5-2009, f. & cert. ef. 7-31-09; Renumbered from 150-307.250(1)(c) by REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

## 150-308.290-(B)

### Industrial Property Returns — Incomplete Returns and Late Filing Penalties

(1) Industrial Property Returns are combined returns of real and personal property for principal and secondary industrial property. The Industrial Property Return forms and instructions specify the information to be included in the return and submitted to the department.

(2) A taxpayer must submit a substantially complete return by the due date of the return. A return is substantially complete if it contains sufficient information to allow the return to be processed by the department. A return is not substantially complete if:

(a) It is submitted with blank or missing schedules unless the schedules are appropriately left blank and are labeled with an identifying notation such as “no”, “none”, or “not applicable”; or

(b) It is submitted with attachments that do not include required information as specified on the schedule.

(3) For the purposes of the late filing penalty imposed by ORS 308.295, a return that is not substantially complete will not be considered “filed”.

(4) If a taxpayer submits a return that is not substantially complete, the department will send the return back to the taxpayer with a request that the return be filed with the required information. The taxpayer will be subject to a late filing penalty under ORS 308.295 if a substantially complete Industrial Property Return is not filed by the due date or within the time allowed by an extension as described in OAR 308.290(A).

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.290

Hist.: REV 4-1998, f. & cert. ef. 6-30-98; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 10-2002, f. & cert. ef. 12-31-02; Renumbered from 150-308.290(4)(b) by REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

## 150-311.216

### Property Subject to Assessment as Omitted Property

(1) Omitted property includes any real or personal property, or part thereof, that has been omitted from the certified assessment and tax roll for any reason. Omitted property may include, but is not limited to, a separate freestanding structure or improvement, an addition that increases the square footage of a structure or improvement, a remodel which increases a structure’s real market value, or real or personal property machinery and equipment.

(2) Property may be added to the roll under ORS 311.216 if:(a) Omitted due to the assessor’s lack of knowledge of its existence,

(b) Improvements are added to or made a part of a property after that property has been physically appraised, and are later discovered by the assessor,

(c) Improvements have been included in error on another account,

(d) Omitted from a return filed pursuant to ORS 308.290, including understatement of costs for new property or improvements to property, or

(e) Omitted for any other reason.

(3) Improvements which are in existence and are an integral part of property which is physically appraised may not later be revalued and added as omitted property under ORS 311.216. Undervaluation of a property due to the assessor’s failure to consider a portion of the property is not omitted property correctable under 311.216.

(4) When omitted property is discovered and its contribution to an account’s value is added under ORS 311.216, the value of the previously existing portion of the account cannot be adjusted.

Example 1: Two years after a reappraisal, a homesite is developed, and a new single family residence is constructed. The new construction and the site development are discovered on the next physical appraisal. The assessor adds the value of the single family residence and the site development as omitted property under ORS 311.216.

Example 2: “A” owns a parcel of land with a cabin on it. “A” divides the parcel and sells part to “B”, but retains the part with the cabin. The assessor incorrectly places the value of the cabin on “B’s” account. When the error is discovered, “B’s” value can be corrected under ORS 311.205, and “A’s” account must be corrected under ORS 311.216 as omitted property. Example 3: During a physical appraisal the assessor adds no value contribution for a reinforced concrete floor, and a manger with steel stanchions in a loft barn. The assessor later realizes that the loft barn is undervalued. The reinforced concrete floor and manger with steel stanchions may not be added as omitted property under ORS 311.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.216

Hist.: RD 6-1986, f. & cert. ef. 12-31-86; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98, Renumbered from 150-311.207; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

## 50-314.280-(F)

### Apportionment Factors

Property factor. Unless otherwise provided by rule, the provisions of ORS 314.655 and the rules pertaining thereto, are by this reference incorporated herein and made a part of this OAR 150-314.280-(F). Payroll factor. Unless otherwise provided by rule, the provisions of ORS 314.660 and the rules pertaining thereto, are by this reference incorporated herein and made a part of this 150-314.280-(F). Sales factor. Unless otherwise provided by rule, the provisions of ORS 314.665 and the rules pertaining thereto, are by this reference incorporated herein and made a part of this OAR 150-314.280

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.280

Hist.: 1-65; 1-70; 12-19-75; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

## 150-314.360

### Information Returns

(1) In general, taxpayers are not required to file information returns as described in ORS 314.360 except as provided in this rule.

(2) Information returns are required to be filed electronically with the department as set forth in section (4) of this rule and using federal due dates. For purposes of this rule, information returns required to be filed electronically include:

(a) 1099-MISC *Miscellaneous Income*;

(b) 1099-G *Certain Government Payments*;

(c) 1099-R *Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, etc.*

(d) W2-G *Certain Gambling Winnings*.

(3) For information regarding the reporting requirements of salaries and wages, see ORS 316.202 and related rules.

(4) Information returns listed in section (2) of this rule, where the recipient, winner, or the payer has an Oregon address must be filed electronically as follows:

(a) For payers that issue 250 or more of any one type of information return, electronic filing begins with 2011 forms due in 2012.

(b) For payers that issue 100 or more but less than 250 of any one type of information return, electronic filing begins with 2012 forms due in 2013.

(c) For payers that issue more than 10 but less than 100 of any one type of information return, electronic filing begins with 2013 forms due in 2014.

(5) The department may grant an exception to this filing requirement in section (4) upon a showing of undue hardship. Undue hardship is based on the facts and circumstances specific to each payer and determined on a case-by-case basis.

(6) In addition to any other filing requirement in this rule, the department may require the filing of any type of information return as it deems necessary. If requested under this section, an information return must be provided within 30 days of the date of our written request to be considered timely under ORS 305.217.

Stat. Auth.: ORS 305.100 & 314.360

Stats. Implemented: ORS 314.360

Hist.: 1958-59; 12-70; 12-19-75; RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88, Renumbered to 150-314.360; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 8-2010, f. 7-23-10, cert. ef. 7-31-10; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

## 150-314.HB2071(A)

### Requirement to File Returns Electronically (Corporation E-file Mandate)

(1) All corporations required to electronically file their federal corporation tax return are required to electronically file their Oregon corporation tax return.

(2) Waivers.

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(a) A waiver of the electronic filing requirement granted by the Internal Revenue Service (IRS) will be accepted by the department as a waiver to the mandate under section (1). The corporation must notify the department in writing when such a waiver is granted in accordance with the department's instructions.

(b) In addition to a waiver allowed under subsection (a), the department may grant a waiver of the mandate in section (1) if the following conditions are met:

(A) The corporation requests a waiver in accordance with the department's instructions; and

(B) The corporation's facts and circumstances are such that complying with the mandate would cause the corporation an undue financial hardship. The corporation's refusal to purchase or use the requisite software or computer equipment does not, in and of itself, satisfy the conditions for a waiver under this subsection.

(c) When circumstances warrant, the department may issue an administrative waiver of the mandate in section (1) when the department determines it is necessary to promote the effective and efficient administration of the tax system.

(3) If an electronic tax return cannot be accepted for processing electronically, the corporation must contact the department for assistance in correcting the rejected return errors. If the rejected return errors cannot be corrected, the corporation must receive authorization from the department prior to filing a paper return.

(4) This rule is applicable to corporation tax returns filed for tax years beginning on or after January 1, 2011.

Stat. Auth.: ORS 305.100 & 2011 OL Ch. 24 (HB 2071)  
Stats. Implemented: 2011 OL Ch. 24 (HB 2071)  
Hist.: REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

## 150-314.HB 2071(B)

### Requirement to File Returns Electronically

(1) All paid tax preparers filing Oregon personal income tax returns in this state are required to file them by electronic means if the paid tax preparer is required to do so by federal law. See 26 USC § 6011 and Treasury Regulation §301.6011-7 for the federal mandate and relevant definitions.

(2) Waivers.

(a) A waiver granted by the Internal Revenue Service (IRS) pursuant to Treasury Regulation § 301.6011-7(c)(1) or (2) will be accepted by the department as a waiver to the mandate under section (1). The paid preparer must notify the department in writing when such a waiver is granted in accordance with the department's instructions.

(b) In addition to a waiver allowed under subsection (a), the department may grant a waiver of the mandate in section (1) if the following conditions are met:

(A) The paid preparer requests a waiver in advance of the preparation of personal income tax returns subject to the mandate in accordance with the department's instructions; and

(B) The paid preparer's facts and circumstances are such that complying with the mandate would cause the paid preparer an undue financial hardship. The paid preparer's refusal to purchase or use the requisite software or computer equipment does not, in and of itself, satisfy the conditions for a waiver under this subsection.

(c) When circumstances warrant, the department may issue an administrative waiver of the mandate in section (1) to a paid preparer or group of paid preparers when the department determines it is necessary to promote the effective and efficient administration of the tax system.

(3) This rule is effective January 1, 2012 and applies to tax returns filed on or after that date.

**NOTE:** The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(1)(b).  
Stat. Auth.: ORS 305.100 & 2011 OL Ch. 24 (HB 2071)  
Stats. Implemented: 2011 OL Ch. 24 (HB 2071)  
Hist.: REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

## 150-315.326

### Tax Credit Auctions

(1) Definitions.

(a) "Tax Credits" means the credits authorized by Chapter 730, Section 23, Oregon Laws 2011 (HB 3672). These credits may also be referred to as the "Renewable Energy Development Contribution Credit(s)."

(b) "Qualified Bid" means a bid that is eligible to participate in the tax credit auction because:

(A) It is submitted in a manner and time prescribed by the department's instructions and this rule;

(B) It is submitted for no less than 95 percent of the tax credit value or \$950 per tax credit increment;

(C) An associated payment is received by the department in the time and manner prescribed in section (4).

(c) "Non-qualified Bid" means a bid that is not eligible to participate in the auction because it does not meet the requirements of subsection (b).

(d) "Invalid or Insufficient Payments" are payments that are:

(A) Not received by the department by 5:00 p.m. (PT) on the date for payment set by the department;

(B) In a form other than one listed in section (4) of this rule;

(C) Fraudulent or otherwise not able to be immediately banked by the department;

(D) Less than the full amount of the corresponding bid received by the department; or

(E) Not submitted in a manner consistent with department's instructions (including attaching the required completed forms).

(e) "PT" means Pacific Time (Daylight or Standard as dictated by the time of year).

(2) Auction Bidding Period. The tax credits auction bidding period is no less than seven days, not to exceed 14 days; with specific dates as announced by the department.

(3) Tax Credit Certificates. 1,500 increments of \$1,000 tax credit certificates (\$1,500,000 total) will be available for bidding at the auction. The Oregon Department of Energy will issue tax credit certificates for the prevailing qualified bids. A taxpayer to whom a certificate is issued may claim a credit in the amount shown on the certificate against Oregon personal income or corporate income or excise tax otherwise due for that tax year. The tax credit may not exceed the liability of the taxpayer in any one year. Any credit amount unused by the taxpayer may be carried forward to offset tax liabilities in the next three succeeding tax years. No transfer of the certificate (or the credit that it represents) is allowed.

(4) Determination of Qualifying Bids and Payments.

(a) Bids must be submitted on-line in a manner consistent with the department's instructions and within the bidding period as outlined in section (2). Bids received before or after the bidding period will be considered a non-qualified bid. The department will determine the order of bids received by the electronic date and time stamp.

(b) A bidder may submit multiple separate bids.

(c) After a bid is submitted, a bidder must send, and the department must receive, a payment for the total amount bid. Invalid or insufficient payments will be returned to the bidder and the associated bid considered a non-qualified. All bid payments must be received by the department no later than 5:00 p.m. (PT) on the payment date. The department will date stamp payments when they are received. The department will not consider postmarks when determining if the payment has been timely received. It is the bidder's responsibility to ensure that the department receives the payment by the deadline. The method of payment is limited to the following:

(A) Bank-issued certified check;

(B) Bank-issued cashier's check; or

(C) Money Order.

(d) All payments will be held until the outcome of the auction is determined. As soon as practicable, the department will return payments received to bidders that do not prevail at the auction. No interest will be paid on payments.

(e) A bid, once submitted, is not revocable and may not be changed. A payment will only be returned if a bid does not result in the issuance of a tax credit certificate.

(5) Determination of the Prevailing Bid(s). After the payment deadline has passed, the department will determine the prevailing bids by placing the qualifying bids in order from highest bid amount to lowest bid amount. The department will allot up to 1,500 tax credit increments of \$1,000 each to the highest qualifying bids in order from highest bid to lowest bid. In the event that two or more qualifying bids have identical bid amounts for the last tax credit increment (or increments) available, the prevailing qualifying bid will be the one the department received first as determined under section (4).

Example: Four bidders (A, B, C and D) make qualifying bids on \$10,000 worth of tax credits (sold in ten increments of \$1,000). Bidder A bids \$950 for each of four increments on October 24. Bidder B bids \$965 for each of four increments on October 26. Bidder C bids \$985 for each of three increments and \$965 for each of two increments on November 1. Bidder D bids \$990 for each of five increments on November 4. The department will place the bids in the following order:

Bid Amount/ Increment	Date Received	Bidder	Number of Increments Bid
\$990	11/04	D	5
\$985	11/01	C	3
\$965	10/26	B	4

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\$965 11/01 C 2  
\$950 10/24 A 4

The results of the auction are as follows:  
5 of the 10 increments go to D.

3 of the 10 increments go to C (for the \$985 bid).

2 of the 10 increments go to B (for the \$965 bid).

**NOTE 1:** B only received two of the four increments he bid on because no more increments were available. The department will return the payment to B for the amount of the two non-prevailing bids.

**NOTE 2:** The bid C placed at \$965 did not prevail because it tied with the bid B submitted. B's bid will prevail over C's bid in the event of a tie because it was received before C's bid. C's payment for the \$965 bid will be returned.

**NOTE 3:** A's bid was not high enough to prevail. A's bid payment will be returned.

Stat. Auth.: ORS 305.100

Stats. Implemented: 315.326

Hist.: REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

## 150-317.710(5)(b)

### Different Apportionment Factors

(1) An Oregon taxpayer that is permitted or required to use different apportionment factors under Oregon law cannot be included in an Oregon consolidated return with another Oregon taxpayer using the standard apportionment factor provided in ORS 314.650. This restriction only applies when both corporations using different apportionment factors are subject to Oregon tax under ORS Chapters 317 or 318. The only corporations that are permitted or required to use different apportionment factors are:

(a) Insurers required to apportion income as provided in ORS 317.660; and

(b) Taxpayers primarily engaged in utilities or telecommunications that elect to have income from business activity apportioned by applying the weightings used in ORS 314.650 (1999 Edition) for tax years beginning on or after May 1, 2003.

(2) Corporations other than those listed in subsections 1(a) and 1(b) of this rule use specific applications of the standard apportionment factor provided in ORS 314.650. The factors for each corporation in the unitary group of a consolidated Oregon return are computed as provided in:

(a) ORS 314.650 to 314.665 and the rule thereunder for corporations not described in subsections (b) through (l) of this section;

(b) ORS 314.682 through 314.686 and the rules thereunder for interstate broadcasters;

(c) OAR 150-314.280-(G) for carriers of freight or passengers in general;

(d) OAR 150-314.280-(H) for railroads;

(e) OAR 150-314.280-(I) for airlines;

(f) OAR 150-314.280-(J) for trucking companies;

(g) OAR 150-314.280-(K) for companies engaged in sea transportation service;

(h) OAR 150-314.280-(L) for companies involved in interstate river transportation service;

(i) OAR 150-314.280-(N) for financial organizations;

(j) OAR 150-314.615-(F) for long-term construction contractors;

(k) OAR 150-314.670-(A) for publishers; or

(l) OAR 150-314.615-(h) for movie and television production companies.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 317.710

Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 5-2006, f. & cert. ef. 7-31-06; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

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**Rule Caption:** Suspending the temporary rule as this rule was filed for permanent status.

**Adm. Order No.:** REV 5-2011(Temp)

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12 thru 3-11-12

**Notice Publication Date:**

**Rules Suspended:** 150-315.HB3672

**Subject:** This temporary rule gave guidance to taxpayers wanting to purchase renewable energy tax credits. It set the requirements for submission of a qualified bid in the credit auction.

**Rules Coordinator:** Ken Ross—(503) 945-8890

## 150-315.HB 3672

### Tax Credit Auctions

(1) Definitions.

(a) "Tax Credits" means the credits authorized by Chapter 730, Section 23, Oregon Laws 2011 (HB 3672). These credits may also be

referred to as the "Renewable Energy Development Contribution Credit(s)."

(b) "Qualified Bid" means a bid that is eligible to participate in the tax credit auction because:

(A) It is submitted in a manner and time prescribed by the department's instructions and this rule;

(B) It is submitted for no less than 95 percent of the tax credit value or \$950 per tax credit increment;

(C) An associated payment is received by the department in the time and manner prescribed in section (4).

(c) "Non-qualified Bid" means a bid that is not eligible to participate in the auction because it does not meet the requirements of subsection (b).

(d) "Invalid or Insufficient Payments" are payments that are:

(A) Not received by the department by 5:00 p.m. (PT) on the date for payment set by the department;

(B) In a form other than one listed in section (4) of this rule;

(C) Fraudulent or otherwise not able to be immediately banked by the department;

(D) Less than the full amount of the corresponding bid received by the department; or

(E) Not submitted in a manner consistent with department's instructions (including attaching the required completed forms).

(d) "PT" means Pacific Time (Daylight or Standard as dictated by the time of year).

(2) Auction Bidding Period. The tax credits auction bidding period is no less than seven days, not to exceed 14 days; with specific dates as announced by the department.

(3) Tax Credit Certificates. 1,500 increments of \$1,000 tax credit certificates (\$1,500,000 total) will be available for bidding at the auction. The Oregon Department of Energy will issue tax credit certificates for the prevailing qualified bids. A taxpayer to whom a certificate is issued may claim a credit in the amount shown on the certificate against Oregon personal income or corporate income or excise tax otherwise due for that tax year. The tax credit may not exceed the liability of the taxpayer in any one year. Any credit amount unused by the taxpayer may be carried forward to offset tax liabilities in the next three succeeding tax years. No transfer of the certificate (or the credit that it represents) is allowed.

(4) Determination of Qualifying Bids and Payments.

(a) Bids must be submitted on-line in a manner consistent with the department's instructions and within the bidding period as outlined in section (2). Bids received before or after the bidding period will be considered a non-qualified bid. The department will determine the order of bids received by the electronic date and time stamp.

(b) A bidder may submit multiple separate bids.

(c) After a bid is submitted, a bidder must send, and the department must receive, a payment for the total amount bid. Invalid or insufficient payments will be returned to the bidder and the associated bid considered a non-qualified. All bid payments must be received by the department no later than 5:00 p.m. (PT) on the payment date. The department will date stamp payments when they are received. The department will not consider postmarks when determining if the payment has been timely received. It is the bidder's responsibility to ensure that the department receives the payment by the deadline. The method of payment is limited to the following:

(A) Bank-issued certified check;

(B) Bank-issued cashier's check; or

(C) Money Order.

(d) All payments will be held until the outcome of the auction is determined. As soon as practicable, the department will return payments received to bidders that do not prevail at the auction. No interest will be paid on payments.

(e) A bid, once submitted, is not revocable and may not be changed. A payment will only be returned if a bid does not result in the issuance of a tax credit certificate.

(5) Determination of the Prevailing Bid(s). After the payment deadline has passed, the department will determine the prevailing bids by placing the qualifying bids in order from highest bid amount to lowest bid amount. The department will allot up to 1,500 tax credit increments of \$1,000 each to the highest qualifying bids in order from highest bid to lowest bid. In the event that two or more qualifying bids have identical bid amounts for the last tax credit increment (or increments) available, the prevailing qualifying bid will be the one the department received first as determined under section (4).

**Example:** Four bidders (A, B, C and D) make qualifying bids on \$10,000 worth of tax credits (sold in ten increments of \$1,000). Bidder A bids \$950 for each of four increments on October 24, 2011. Bidder B bids \$965 for each of four increments on October 26, 2011. Bidder C bids \$985 for each of three increments and \$965 for each of two increments

# ADMINISTRATIVE RULES

on November 1, 2011. Bidder D bids \$990 for each of five increments on November 4, 2011. Table not included. See Ed. Note.

[ED. NOTE: Tables & Bids referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: Ch 730, § 23, OL 2011(HB 3672)

Hist.: REV 2-2011(Temp), f. & cert. ef. 10-12-11 thru 3-11-12; REV 3-2011(Temp), f. 7 cert. ef. 11-29-11 thru 3-11-12; Suspended by REV 5-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 3-11-12

.....  
**Department of Transportation**  
**Chapter 731**

**Rule Caption:** Procurement Rules Addressing 2011 Legislative Changes and DOJ Model Rules updates for Public Contracting.

**Adm. Order No.:** DOT 4-2011

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 731-146-0010, 731-146-0015, 731-146-0020, 731-146-0025, 731-146-0030, 731-146-0050, 731-146-0060, 731-147-0010, 731-147-0040, 731-148-0010, 731-149-0010

**Rules Repealed:** 731-147-0060, 731-148-0020

**Subject:** Revisions to chapter 731, divisions 146 and 147 include the following:

- **731-146-0015** – Subsection (2)(b) changed “Information Resource Management (IRMD)” to “State Services Division”. Subsection (2)(e) changed IRMD references to “Enterprise Information Strategy and Policy Division (EISPD)”.

- **731-146-0020, 0030, 0050 and 0060** – Chapter 458 OL 2011 changed statutes regarding “Architectural, Engineering and Land Surveying Services” and added Photogrammetric Mapping and Transportation Planning as services that must be procured using qualification based selection;

- **731-146-0025** – ODOT’s Information Asset Handling Requirements requires removal of requirement to include contractor’s Social Security Number in contract. Also added language to allow ODOT to rescind award or terminate contract for failure to comply with requirements of this section.

- **731-146-0030 & 0050** – The changes are to clarify requirements and remove redundancies;

- **731-147-0010** – This section was revised to remove 137-047-0270(3) from the exceptions to DOJ Model Rules adoption. DOJ updated this rule regarding amendments to Intermediate Procurements. The ODOT Procurement Office has determined it is now unnecessary to adopt a separate rule for amendments.

- **731-147-0060** – Repealed per comment above regarding 731-147-0010.

- **731-148-0010** – Chapter 458 OL 2011 changed statutes regarding “Architectural, Engineering and Land Surveying Services” and added Photogrammetric Mapping and Transportation Planning as services that must be procured using qualification based selection;

- **731-148-0020** – Repealed. The 2012 update to Division 48 of DOJ’s Model Rules included addition of a new section regarding price agreements. The ODOT Procurement Office has determined it is now unnecessary to adopt a separate rule for price agreements.

- **731-149-0010** – The only amendment to this rule changes the effective dates.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 731-146-0010

### Application

(1) The Oregon Department of Transportation (ODOT) adopts OAR 137-046-0100 through 137-046-0480 (effective January 1, 2012), the Department of Justice Model Rules, General Provisions Related to Public Contracting including the additional provisions provided in these rules.

(2) Unless the context of a specifically applicable definition in the Code or Model Rules requires otherwise, capitalized terms used in ODOT’s public contracting rules (ODOT’s Rules) will have the meaning set forth in the division of ODOT’s Rules in which they appear, and if not defined there, the meaning set forth in Code or Model Rules.

(3) This rule applies retroactively to January 1, 2012.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.030 & 279A.065

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 5-2006(Temp), f. & cert. ef. 5-25-06 thru 11-20-06; DOT 7-2006, f. & cert. ef. 11-17-06; DOT 5-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10; DOT 1-2010, f. & cert. ef. 5-18-10; DOT 4-2011, f. 12-22-11, cert. ef. 1-10-12

## 731-146-0015

### Special Approvals for Public Contracts When Required

(1) When Attorney General legal sufficiency review and approval is required under ORS 291.047, the Oregon Department of Transportation must seek legal approval.

(2) When ODOT contracts for services normally provided by another Contracting Agency or for services for which another Contracting Agency has statutory responsibilities, ODOT is required to seek the other Contracting Agency’s approvals. Examples of these special approvals include, but are not limited to:

(a) Oregon Department of Administrative Services (DAS), Risk Management Division for providing tort liability coverage.

(b) DAS, State Services Division, Publishing and Distribution for printing services.

(c) DAS, State Controller’s Division for accounting services.

(d) Office of the Treasurer, Debt Management Division for financial and bond counsel services (bond counsel services also require the approval of the Attorney General).

(e) DAS, Enterprise Information Strategy and Policy Division (EISPD) for approval of information technology procurements above the dollar threshold set forth in DAS Policy number 107-004-130 (Information Technology Investment Review/Approval). ODOT is also encouraged to use the DAS EISPD as a resource in carrying out information system-related projects. This may include:

(A) Assistance to ODOT in developing Statements of Work related to information system projects;

(B) Reviews to assure consistency with State standards and direction; and

(C) A listing of vendors that provide information system-related services.

(f) Attorney or Financial Auditing Services.

(3) The Attorney General has sole authority to contract for attorney services. Exceptions may be granted in Writing on a case-by-case basis only by the Attorney General.

(4) The Secretary of State Audits Division has sole authority to contract for financial auditing services. Exceptions may be granted in Writing on a case-by-case basis only by the Secretary of State Audits Division.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140(2)

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 4-2011, f. 12-22-11, cert. ef. 1-1-12

## 731-146-0020

### Reporting Requirements for Personal Services Contracts

(1) Application. For the purposes of Division 146 only, “Personal Services” includes Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services.

(2) The Department of Administrative Services (DAS) State Procurement Office maintains an electronic reporting system called the Oregon Procurement Information Network (ORPIN) that maintains a report form for reporting Personal Services Contracts. ODOT must submit this report form to the DAS State Procurement Office for each Contract and subsequent Contract Amendment. The report form must include ODOT’s name, not-to-exceed amount of the Contract, the name of the Contractor, the duration of the Contract, and its basic purpose. Whenever ODOT pays in a calendar year under a Personal Services Contract for services historically performed by its employees more than ODOT would have paid to its employees performing the same Work, ODOT must so report to DAS and include in the report a statement of justification for the greater costs, pursuant to ORS 279A.140(2)(h)(A)(i).

(3) ODOT must keep in the Procurement File all Personal Services Contracts, justification statements, when applicable, documentation of the selection process for each Contract, and report forms the later of six years following the Contract’s expiration or termination, or the period as may be required by applicable law, or until the conclusion of any audit, controversy, or litigation arising out of or related to the particular Contract in the Procurement File. A Procurement File may be destroyed following the conclusion of the applicable retention period.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140(h)(A)

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 4-2011, f. 12-22-11, cert. ef. 1-1-12



# ADMINISTRATIVE RULES

## 731-146-0025

### Independent Contractor Status For Personal Services Contracts

(1) ODOT must develop a Statement of Work for services that will not result in an employee relationship with the potential Contractor.

(2) An independent contractor certification by Contractors must be included as a contract provision in each contract.

(3) If the nature of the services or project is such that an employee/employer relationship will exist, ODOT must hire the individual through normal personnel procedures.

(4) The Contract must include the Contractor's legal name and address. The Contractor must provide its federal Employer Identification Number or Social Security Number to ODOT.

(5) The Contract must provide that the Contractor is responsible for federal Social Security, except those categories excluded by law, and for any federal or state taxes applicable to the contract payment.

(6) Failure to comply with subsections (1) through (6) of this section may result in withdrawal of intent to award or termination of the Contract.

Stat. Auth.: ORS 279A.140(2)(h)(A)(i)

Stats. Implemented: ORS 279A.140 & 279A.070

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 4-2011, f. 12-22-11, cert. ef. 1-1-12

## 731-146-0030

### Procurement Files

(1) Application. This Rule applies to Procurement Files as defined in this section. "Procurement Files" means any of the following files maintained by ODOT: a solicitation, Contract, Price Agreement, Work Order, Amendment or Contract Administration file, separately or collectively.

(2) Procurement File documentation and level of detail should be directly related to the dollar value and risk of the procurement. Each Procurement File must contain:

(a) An executed Contract, if awarded;

(b) The record of the actions used to develop the Contract;

(c) A copy of the Solicitation, if any;

(d) Any required findings or statement of justification for the selection of the Contractor and sourcing method pursuant to ORS 279A.200 through 279A.220 (Cooperative Procurement); 279B.055 through 279B.085 (seven methods for Goods or Services); 279C.100 through 279C.125 (Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying and Related Services); or 279C.300 through 279C.450 (Public Improvements);

(e) A list of prospective Contractors notified of any Solicitation;

(f) The method used to advertise or notify prospective Contractors of any Solicitation;

(g) Copy of each Offer that resulted in the Award of a Contract;

(h) The method of evaluating Offers, the results of the evaluation, and basis of selection;

(i) The record of any Negotiation of the Statement of Work, costs and results;

(j) A record of any material Communications regarding the Solicitation by interested Contractors; and

(k) A copy of the Request for Special Procurement, if any.

(3) ODOT must maintain Procurement Files, including all documentation, for a period not less than six (6) years, except for ten (10) years beyond each Contract's expiration date for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services or for another period in accordance with another provision of law.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 4-2011, f. 12-22-11, cert. ef. 1-1-12

## 731-146-0050

### Contract Administration; General Provisions

(1) Authority. ODOT must conduct all Procurements, including Contract Administration, for Goods or Services, including Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services, Public Works, and Public Improvements, pursuant to ORS 279A.050 and 279A.075.

(2) Contract Administrator. ODOT must appoint, in Writing, a Contract Administrator as an ODOT representative for each Contract. The Contract Administrator may delegate in Writing a portion of the Contract Administrator's responsibilities to a technical representative for specific day-to-day administrative activities for each Contract.

(3) Documentation Requirements. Contract Administration documentation and level of detail should be directly related to the dollar value and

risk of the procurement. In accordance with OAR 731-046-0030, documentation of Contract Administration is a part of the Procurement File, whether maintained with the Procurement file or at a separate location. Contract Administration documentation must include:

(a) An executed Contract, if maintained separate from the Procurement File;

(b) The record of the actions used to administer the Contract;

(c) Contact information for the Contractor;

(d) The name and contact information for the Contract Administrator and any technical representative delegates, together with a description of duties delegated to any technical representative;

(e) All executed Amendments;

(f) Claims related to the Contract;

(g) Release of claims documents;

(h) Copies of invoices, project status reports, receiving records and Contract close-out documents, as applicable; and

(i) Other documents related to Contract Administration.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 4-2011, f. 12-22-11, cert. ef. 1-1-12

## 731-146-0060

### Payment Authorization of Cost Overruns for Goods or Services including Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contracts

(1) Payments on Contracts that exceed the maximum contract consideration require approval from ODOT's Designated Procurement Officer and may require approval from the Department of Justice pursuant to OAR 137-045-0010 et seq. Approval may be provided if there is compliance with all of the following:

(a) The Original Contract was duly executed and, if required, approved by the Attorney General.

(b) The Original Contract has not expired or been terminated as of the date Written approval to increase the Contract amount is granted.

(c) The cost overrun is not associated with any change in the Statement of Work set out in the Original Contract.

(d) The cost overrun arose out of extraordinary circumstances or conditions encountered in the course of contract performance that were reasonably not anticipated at the time the Original Contract, or the most recent Amendment, if any, was signed. Such circumstances include, but are not limited to cost overruns that:

(A) Address emergencies arising in the course of the Contract that require prompt action to protect the Work already completed.

(B) Comply with official or judicial commands or directives issued during contract performance.

(C) Ensure that the purpose of the Contract will be realized.

(e) The cost overrun was incurred in good faith, results from the good faith performance by the Contractor, and is no greater than the prescribed hourly rate or the reasonable value of the additional Work or performance rendered.

(f) Except for the cost overrun, the Contract and its objective are within the statutory authority of ODOT and ODOT currently has funds available for payment under the Contract.

(g) An officer or employee of ODOT has presented a Written report to ODOT's Designated Procurement Officer within 60 days of the discovery of the overrun that states the reasons for the cost overrun and demonstrates to the satisfaction of ODOT's Designated Procurement Officer that the Original Contract and the circumstances of the overrun satisfy the conditions stated above.

(h) ODOT's Designated Procurement Officer approves in Writing the payment of the overrun, or such portion of the overrun amount as ODOT's Designated Procurement Officer determines may be paid consistent with the conditions of this Rule. If ODOT's Designated Procurement Officer has signed the Contract, or has immediate supervisory responsibility over performance of the Contract, that Person must designate an alternate delegate to grant or deny Written approval of payment.

(2) ODOT must obtain an Attorney General's approval of the Contract Amendment, if such approval is required by ORS 291.047, before making any overrun payment.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 4-2011, f. 12-22-11, cert. ef. 1-1-12

# ADMINISTRATIVE RULES

## 731-147-0010

### Application

(1) The Oregon Department of Transportation adopts OAR 137-047-0000 through 137-047-0810 (effective January 1, 2012) with the exception of 137-047-0275, the Department of Justice Model Rules, Public Procurements for Goods or Services General Provisions including the additional provisions provided in these rules.

(2) This rule applies retroactively to January 1, 2012.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.015

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 5-2006(Temp), f. & cert. ef. 5-25-06 thru 11-20-06; DOT 7-2006, f. & cert. ef. 11-17-06; DOT 5-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10; DOT 1-2010, f. & cert. ef. 5-18-10; DOT 4-2011, f. 12-22-11, cert. ef. 1-1-12

## 731-147-0040

### Special Delegated Procurements

(1) Terms used in division 147 rules have the same meaning as defined in ORS 279B.085.

(2) Authorization. The Chief Procurement Officer of the DAS State Procurement Office has granted approval and authority per OAR 125-246-0140, and 125-247-0288 to the ODOT Designated Procurement Officer for the following Special Procurements:

(a) Brand Names or Products, "or Equal," Single Seller and Sole Source;

- (b) Equipment Repair and Overhaul;
- (c) Purchases of Used Personal Property; and
- (d) Reverse Auctions.

(3) The following apply to Brand Names or Products, "or Equal," Single Seller and Sole Source procurements:

(a) "Procurement of Brand Name 'or Equal' Products" means the Procurement of a product after specifying the registered Brand name of the product or requiring the same Specifications of the Brand Name product.

(b) Specifications. Solicitation Specifications for Public Contracts must not expressly or implicitly require any product of any particular manufacturer or seller except:

(A) "Or Equal" Specification. ODOT may specify a particular brand name, make or product suffixed by "or equal," "or approved equal," "or equivalent," "or approved equivalent," or similar language if there is no other practical method of Specification; and

(B) Specifying a particular make or product. ODOT may specify a Brand Name, make, or product without an "or equal" or equivalent suffix if there is no other practical method of Specification, after documenting the Procurement File with the following:

(i) A brief description of the Solicitation(s) to be covered including volume of contemplated future purchases;

(ii) The Brand Name, mark, or product to be specified; and

(iii) The reason ODOT is seeking this procurement method, which must include at least one of the following findings in the Procurement File:

(I) It is unlikely that Specification of the Brand Name, mark or product will encourage favoritism in the award of the Public Contracts or substantially diminish competition;

(II) Specification of the Brand Name, mark or product would result in substantial cost savings to ODOT; or

(III) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

(c) Public Notice. ODOT must make a reasonable effort to notify all known suppliers of the specified product and invite such suppliers to submit competitive bids or proposals; or must document the Procurement File with findings of current market research to support the determination that the product is available from only one seller. Posting a notice on ORPIN for a reasonable time period satisfies this requirement.

(d) Purchasing From Sole Source, Single Seller. ODOT may purchase a particular product or service (also known as Goods or Services) available from only one source if ODOT meets the requirements of paragraphs (b)(A) and (B) of this section and a Sole-Source Procurement pursuant to ORS 279B.075. ODOT, prior to purchase, must document the Procurement File with ODOT's findings of current market research to support the determination that the product or service is available from only one seller or source. ODOT's findings must also include:

(A) A brief description of the Contract or Contracts to be covered including volume of contemplated future purchases;

(B) Description of the Goods or Services to be purchased; and

(C) The reason ODOT is seeking this procurement method, that could include the following reasons:

(i) Efficient utilization of existing Goods or Services requires the acquisition of compatible Goods or Services;

(ii) The required product is data processing equipment which will be used for research where there are requirements for exchange of software and data with other research establishments; or

(iii) The particular product is for use in a pilot or an experimental project.

(e) Single Manufacturer, Multiple Sellers. ODOT may specify Goods or Services available from only one manufacturer, but available through multiple sellers, if ODOT meets the requirements of paragraphs (b)(A) and (B) of this section and the following:

(A) If the total purchase is \$5,000 or more but does not exceed \$150,000 and a comparable product or service is not available under an existing Mandatory Use Contract, competitive quotes must be obtained and retained in the Procurement File for Intermediate Procurements; or

(B) If the purchase exceeds \$150,000, and the comparable Good or Services is not available under an existing Mandatory Use Contract, ODOT must follow the Solicitation process for Competitive Sealed Bids or Competitive Sealed Proposals.

(f) Single Manufacturer, Multiple Purchases. If ODOT intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed five (5) years, ODOT must so state in the Procurement file, the Solicitation Document, if any, and the public notice described in paragraph (b)(B) of this section. Such documentation and public notice constitute sufficient notice as to subsequent purchases. If the total purchase amount is estimated to exceed \$150,000, this must be stated in the advertisement for Bids or Proposals.

(g) If ODOT competitively solicits, it must comply with the rules for that method of Solicitation pursuant to ORS 279B.055 through 279B.075 and 137-047-0255 through 137-047-0263.

(h) Nothing in this rule exempts ODOT from obtaining the approval of the Attorney General for legal sufficiency review requirement pursuant to ORS 291.047.

(i) ODOT must comply with ORS 200.035, notwithstanding this rule.

(4) The following apply to Equipment Repair and Overhaul procurements:

(a) Conditions. ODOT may enter into a Public Contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

(A) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(B) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and

(b) Process and Criteria. ODOT must use competitive methods wherever possible to achieve best value and must document in the Procurement File the reasons why a competitive process was deemed impractical. If the anticipated purchase exceeds \$5,000, ODOT must post notice on ORPIN. The resulting Contract must be in Writing and ODOT's Procurement File must document the use of this Special Procurement rule by number to identify the sourcing method. Nothing in this rule waives the Department of Justice legal sufficiency review requirement if applicable under ORS 291.047.

(5) The following apply to Purchase of Used Personal Property procurements:

(a) Authorization. Subject to the provisions of this rule, ODOT may purchase used property or equipment without competitive bidding and without obtaining competitive quotes, if, at the time of purchase, ODOT has determined and documented that the purchase will:

(A) Be unlikely to encourage favoritism or diminish competition; and

(B) Result in substantial cost savings or promote the public interest.

(b) "Used personal property or equipment" means the property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of ODOT's purchase. "Used personal property or equipment" generally does not include property or equipment if ODOT was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(c) Process and Criteria:

(A) For purchases of used personal property or equipment with a cost not exceeding \$150,000, ODOT must, where feasible, obtain three competitive Quotes, unless ODOT has determined and documented that a purchase without obtaining competitive Quotes will result in cost savings and will not diminish competition or encourage favoritism.

(B) For purchases of used personal property or equipment exceeding \$150,000, ODOT must use competitive methods wherever possible to

# ADMINISTRATIVE RULES

achieve best value and must document in the Procurement File the reasons why a competitive process was deemed impractical. If the anticipated purchase amount exceeds \$5,000, ODOT must post notice on ORPIN. The resulting Contract must be in Writing and ODOT's Procurement File must document the use of this Special Procurement rule by number to identify the sourcing method. Nothing in this rule waives the Department of Justice legal sufficiency review requirement if applicable under ORS 291.047.

(6) The following apply to Reverse Auction procurements:

(a) Process. A Reverse Auction means a process for the purchase of Goods or Services by a buyer from the lowest Bidder. ODOT, as the buyer, must conduct Reverse Auctions by first publishing a Solicitation that describes its requirements, and the Contract terms and conditions. Then, ODOT must solicit online Bids from all interested Bidders through an Internet-based program. The Solicitation must set forth a start and end time for Bids and specify any combination of the following type of information to be disclosed to Bidders during the Reverse Auction:

(A) The prices of the other Bidders or the price of the most competitive Bidder;

(B) The rank of each Bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");

(C) The scores of the Bidders if ODOT chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of paragraphs (A), (B) and (C) of this subsection.

(b) Before the Reverse Auction commences, Bidders must be required by ODOT to assent to the Contract terms and conditions, either in Writing or by an Internet "click" agreement. The Bidders then compete for the award of a Contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, disclosed by ODOT. The identity of the Bidders must not be revealed during this process. Only the successively lower price(s), ranks, scores and related details, separately or in any combination thereof, will be revealed to the participants. ODOT may cancel this Solicitation if it determines that it is in ODOT's or the State's best interest. At the end of the Bidding process, and if the solicitation has not been cancelled, ODOT must award any potential Contract to the lowest Responsible Bidder or in the case of multiple awards, lowest Responsible Bidders pursuant to ORS 279A.055(10)(b). This process allows ODOT to test and determine the suitability of the Goods or Services before making the Award. ODOT must comply with the following public notice procedures for this type of Solicitation:

(A) ODOT must disclose the Reverse Auction process in the Solicitation Documents.

(B) ODOT must provide initial notice of this Solicitation through ORPIN.

(C) ODOT must give subsequent notices of the price(s) offered, rank(s), score(s) and related details to the initial Bidders, as described in the Solicitation Document.

(D) ODOT must issue a Notice of Intent to award at least seven (7) calendar days prior to making the Award.

(c) Prequalification. For each Solicitation, under ORS 279B.085, on a case-by-case basis, ODOT may determine whether prequalification of suppliers is needed. If prequalification is used, ODOT must pre-qualify suppliers and provide an appeal process in accordance with ORS 279B.120 and related rules.

(7) The following process applies to Advertising Contracts: ODOT must use competitive methods wherever possible to achieve best value and must document in the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000, ODOT must post notice on ORPIN. The resulting Contract must be in Writing and the Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this rule waves the Department of Justice Legal Sufficiency Review requirement, if applicable under ORS 291.047.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.085

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 4-2011, f. 12-22-11, cert. ef. 1-1-12

## 731-148-0010

### Application

(1) The Oregon Department of Transportation adopts OAR 137-048-0100 through 137-048-0320 (effective January 1, 2012), the Department of Justice Model Rules, Consultant Selection: Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying, and Related Services Contracts.

(2) This rule applies retroactively to January 1, 2012.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 5-2006(Temp), f. & cert. ef. 5-25-06 thru 11-20-06; DOT 7-2006, f. & cert. ef. 11-17-06; DOT 5-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10; DOT 1-2010, f. & cert. ef. 5-18-10; DOT 4-2011, f. 12-22-11, cert. ef. 1-1-12

## 731-149-0010

### Application

(1) The Oregon Department of Transportation adopts OAR 137-049-0100 through 137-049-0910 (effective January 1, 2012), the Department of Justice Model Rules, General Provisions Related to Public Contracts for Construction Services. The adoption of the Department of Justice Model Rules by this rule does not apply to any contracts that are subject to OAR chapter 731, division 5 or 7.

(2) The Public Improvements Contracts as well as the Public Contracts for ordinary construction Services that are not Public Improvements shall also comply with OAR 731-007-0335.

(3) This rule applies retroactively to January 1, 2012.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 5-2006(Temp), f. & cert. ef. 5-25-06 thru 11-20-06; DOT 7-2006, f. & cert. ef. 11-17-06; DOT 5-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10; DOT 1-2010, f. & cert. ef. 5-18-10; DOT 4-2011, f. 12-22-11, cert. ef. 1-1-12

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**Rule Caption:** Procedures for grants and loans under the Multimodal Transportation Fund program.

**Adm. Order No.:** DOT 5-2011

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 12-22-11

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 731-035-0020, 731-035-0040, 731-035-0050, 731-035-0060, 731-035-0070, 731-035-0080

**Subject:** These amendments implement Sections 20, 21 and 22 of HB 5036, remove obsolete language and authorize the Oregon Transportation Commission to award funds available in the Multimodal Transportation Fund due to earnings, loan repayment and refunds of grant awards.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 731-035-0020

### Definitions

For the purposes of division 35 rules, the following terms have the following definitions, unless the context clearly indicates otherwise:

(1) "Agreement" means a legally binding contract between the Department (or Oregon Department of Aviation) and Recipient that contains the terms and conditions under which the Department is providing funds from the Multimodal Transportation Fund for an Approved Project.

(2) "Applicant" means a Person or Public Body that applies for funds from the Multimodal Transportation Fund.

(3) "Approved Project" means a Project that the Commission has selected to receive funding through either a grant or loan from the Multimodal Transportation Fund.

(4) "Area Commissions on Transportation" means advisory bodies chartered by the Oregon Transportation Commission (OTC) through the Policy on Formation and Operation of Area Commissions on Transportation (ACTs) approved by the OTC on June 18, 2003.

(5) "Aviation" is defined in ORS 836.005(5).

(6) "Collateral" means real or personal property subject to a pledge, lien or security interest, and includes any property included in the definition of collateral in ORS 79.0102(1), and with respect to a Public Body, any real or personal property as defined in ORS 288.594.

(7) "Commission" means the Oregon Transportation Commission.

(8) "Department" means the Oregon Department of Transportation.

(9) "Director" means the Director of the Oregon Department of Transportation.

(10) "Department of Aviation" means the Oregon Department of Aviation (ODA).

(11) "Oregon Business Development Department" means the department defined in ORS 285A.070.

(12) "Freight Advisory Committee" means the committee created in ORS 366.212.

(13) "Person" has the meaning given in ORS 174.100(5), limited to those Persons that are registered with the Oregon Secretary of State to conduct business within the State of Oregon.

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(14) "Program" means the Multimodal Transportation Fund Program established by division 35 rules to administer the Multimodal Transportation Fund.

(15) "Program Funds" means the money appropriated by the Legislature to the Multimodal Transportation Fund. These funds may be used as either grants or loans to eligible projects.

(16) "Public Body" is defined in ORS 174.109.

(17) "Public Transit Advisory Committee" means a committee appointed by the Director and approved by the Commission to advise the Department on issues, policies and programs related to public transportation in Oregon.

(18) "Rail Advisory Committee" means a committee appointed by the Director and approved by the Commission to advise the Department on issues, policies and programs that affect rail freight and rail passenger facilities and services in Oregon.

(19) "Recipient" means an Applicant that enters into Agreement with the Department to receive funds from the Multimodal Transportation Fund.

(20) "Recipient's Total Project Costs" means the funds received from the Multimodal Transportation Fund program plus the required 20 percent matching funds under Oregon Administrative Rule 731-035-0070(3)(a)(B), if applicable.

(21) "Receive Federal Grants" means execution of a grant agreement with any agency of the United States.

(22) "State Aviation Board" means the board created in ORS 835.102.

(23) "Transportation Project" or "project" is defined in ORS 367.010(11). A Multimodal Transportation Fund Program Project must involve one or more of the following modes of transportation: air, marine, rail or public transit. The term includes, but is not limited to, a project for capital infrastructure and other projects that facilitate the transportation of materials, animals, or people.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005

Stats. Implemented: Ch. 816, OL 2005

Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 3-2009, f. & cert. ef. 11-17-09; DOT 2-2010, f. & cert. ef. 7-30-10; DOT 5-2011, f. & cert. ef. 12-22-11

## 731-035-0040

### Application Requirements

Applicants interested in receiving funds from the Multimodal Transportation Fund must submit a written application to the Department. The application must be in a format prescribed by the Department and contain or be accompanied by such information as the Department may require, including the expected results from the proposed Project for each of the considerations as prescribed in 731-035-0060, documented desire for and support of the Project from the businesses and entities to be served by the Project, and documentation to validate the Project schedule and costs.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005

Stats. Implemented: Ch. 816, OL 2005

Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 2-2010, f. & cert. ef. 7-30-10; DOT 5-2011, f. & cert. ef. 12-22-11

## 731-035-0050

### Application Review

(1) The Department will review applications received to determine whether the application is complete, and the Applicant and the Project are eligible for Program Funds.

(2) Applicants that meet all of the following criteria are eligible:

(a) The Applicant is a Public Body or Person within the state of Oregon.

(b) The Applicant, if applicable, is current on all state and local taxes, fees and assessments.

(c) The Applicant has sufficient management and financial capacity to complete the Project including without limitation the ability to contribute 20 percent of the eligible grant Project cost.

(3) Projects that meet all of the following criteria are eligible:

(a) The project is a Transportation Project.

(b) The Project will assist in developing a multimodal transportation system that supports state and local government efforts to attract new businesses to Oregon or that keeps and encourages expansion of existing businesses.

(c) The Project is eligible for funding with lottery bond proceeds under the Oregon Constitution and laws of the State of Oregon.

(d) The Project will not require or rely upon continuing subsidies from the Department for ongoing operations.

(e) The Project is not a public road or other project that is eligible for funding from revenues described in section 3a, Article IX of the Oregon Constitution, i.e. the State Highway Trust Fund.

(f) The Project is feasible, including the estimated cost of the Project, the expected results from the proposed Project for each of the considerations as prescribed in 731-035-0060, the Project schedule, and all applicable and required permits may be obtained within the Project schedule.

(4) If an Applicant or Project is not eligible for Program Funds, the Department will, within 15 days of determination:

(a) Specify the additional information the Applicant must provide to establish eligibility; or

(b) Notify the Applicant that the application request is ineligible.

(5) The Department may deem an application ineligible if the Applicant fails to meet eligibility requirements of subsections (2) and (3) of this rule, or fails to provide requested information in writing by the date required by the Department, or if the application contains false or misleading information.

(6) The Director will consider protests of the eligibility determination for the Program. Only the Applicant may protest. Protests must be submitted in writing to the Director within 30 days of the event or action that is being protested. The Director's decision is final.

(7) The Department will make all eligible applications available for review, as applicable under OAR 731-035-0060, to the State Aviation Board, the Freight Advisory Committee, the Public Transit Advisory Committee, the Rail Advisory Committee, the Oregon Business Development Department and any other transportation stakeholder and advocate entities identified by the Commission to provide recommendations on Project funding including the Area Commissions on Transportation.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005

Stats. Implemented: Ch. 816, OL 2005

Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 3-2009, f. & cert. ef. 11-17-09; DOT 5-2011, f. & cert. ef. 12-22-11

## 731-035-0060

### Project Selection

(1) The Commission will select Projects to be funded through either a grant or loan with moneys in the Multimodal Transportation Fund.

(2) Prior to selecting Projects to be funded with moneys in the Multimodal Transportation Fund, the Commission shall solicit recommendations from:

(a) The State Aviation Board for aviation Transportation Projects.

(b) The Freight Advisory Committee for freight Transportation Projects.

(c) The Public Transit Advisory Committee for public transit Transportation Projects.

(d) The Rail Advisory Committee for rail Transportation Projects.

(e) The Oregon Business Development Department for marine transportation projects.

(3) Prior to selecting Projects to be funded with moneys in the Multimodal Transportation Fund, the Commission may solicit recommendations from transportation stakeholder and advocate entities not otherwise specified in section (2) of this rule including the Area Commissions on Transportation.

(4) On behalf of the Commission, the Department shall solicit recommendations from the committees and entities in section (2) of this rule before soliciting recommendations from entities in section (3) of this rule. The Department shall provide the recommendations from the committees and entities in section (2) of this rule to the entities in section (3) of this rule.

(5) The Director, in consultation with committees and entities in section (2) of this rule and the Area Commissions on Transportation, shall appoint a Final Review Committee that includes representatives from each of the committees and entities in section (2) and section (3) of this rule. Following the receipt of recommendations from the entities in section (3) of this rule and prior to selecting Projects to be funded with moneys in the Multimodal Transportation Fund, the Commission shall solicit a Final Recommendation Report from the Final Review Committee. The Department shall provide the Final Review Committee a list of recommendations from all committees and entities in section (2) and section (3) of this rule. The list shall include the evaluation results and recommendations from each of the committees and entities in sections (2) and (3) of this rule. The Final Review Committee shall provide the Commission its Final Recommendation Report of projects to be funded with moneys in the Multimodal Transportation Fund listing in priority order eligible Projects together with a reasonable number of alternate Projects in priority order.

(6) The Department shall determine the organizational guidance for the committees' and entities' processes and protocols.

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(7) The committees and entities in sections (2), (3) and (5) of this rule shall follow the organizational guidance determined by the Department under section (6) of this rule.

(8) The Commission will consider all of the following in its determination of eligible Projects to approve for receipt of funds from the Multimodal Transportation Fund:

(a) Whether a proposed Project reduces transportation costs for Oregon businesses or improves access to jobs and sources of labor.

(b) Whether a proposed transportation project results in an economic benefit to this state.

(c) Whether a proposed Project is a critical link connecting elements of Oregon's transportation system that will measurably improve utilization and efficiency of the system.

(d) How much of the cost of a proposed Project can be borne by the Applicant for the grant or loan from any source other than the Multimodal Transportation Fund.

(e) Whether a Project is ready for construction, or if the Project does not involve construction, whether the Project is ready for implementation.

(f) Whether a Project leverages other investment and public benefits from the state, other government units, or private business.

(g) Whether the Applicant proposes to contribute more than the minimum 20 percent of the eligible grant Project costs established in OAR 731-035-0070(4).

(h) Whether the Applicant is applying for a loan rather than a grant.

(9) To award funds that become available due to loan repayment, completion of an approved Project with less funds than the amount awarded, earnings on moneys held in the Multimodal Transportation Fund, withdrawal, termination as prescribed in OAR 731-035-0070(1) or sanction as prescribed in OAR 731-035-0080(5) of an approved Project the Commission shall select projects for grants or loans in accordance with ORS 367.084 solely, notwithstanding any other provision of division 35 rules.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005

Stats. Implemented: Ch. 816, OL 2005

Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 3-2009, f. & cert. ef. 11-17-09; DOT 2-2010, f. & cert. ef. 7-30-10; DOT 5-2011, f. & cert. ef. 12-22-11

## 731-035-0070

### Grant and Loan Awards and Match

(1) Once a project is selected by the Commission under 731-035-0060 the amount of monies identified by the Commission is considered allocated from the Fund to a Recipient. If an Agreement with a Recipient has not been executed within 180 days from such date, the grant or loan is deemed terminated, and the funds may be reassigned by the Commission as prescribed in 731-035-0060(9).

(2) To the extent that proposed Projects meet the qualifications established in OAR 731-035-0050 and 731-035-0060, at least 10 percent of the total net proceeds of the lottery bonds will be allocated to each of the five regions as specified in Chapter 624, OL 2011. The regions consist of the following counties:

(a) Region one consists of Clackamas, Columbia, Hood River, Multnomah and Washington Counties;

(b) Region two consists of Benton, Clatsop, Lane, Lincoln, Linn, Marion, Polk, Tillamook and Yamhill Counties;

(c) Region three consists of Coos, Curry, Douglas, Jackson and Josephine Counties;

(d) Region four consists of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Sherman, Wasco and Wheeler Counties; and

(e) Region five consists of Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union and Wallowa Counties.

(3) Applicants may use a combination of grant and loan funds to finance a Project.

(4) Grants and loans will be awarded only when there are sufficient funds available in the Multimodal Transportation Fund to cover the costs of the loans and grants.

(a) Grants:

(A) Awards must not exceed 80 percent of the total eligible Project costs.

(B) Applicant matching funds must be provided by the Applicant in the form of monetary outlay for elements necessary for implementation of the Project, including land, excavation, permits, engineering, payroll, special equipment purchase or rental, and cover at least 20 percent of the eligible Project costs.

(b) Loans:

(A) Loans may be for any portion of project costs, up to the full amount of the project.

(B) The Department will not charge fees for processing or administering a loan to a Recipient.

(C) Loans from the Multimodal Transportation Fund may be interest free if repaid according to the terms and conditions of the Agreement between the Department and Recipient.

(D) Prior to entering into a loan Agreement, the Department will determine if an application meets reasonable underwriting standards of credit-worthiness, including whether:

(i) The Project is feasible and a reasonable risk from practical and economic standpoints.

(ii) The loan has a reasonable prospect of repayment according to its terms.

(iii) The Applicant's fiscal, managerial and operational capacity is adequate to assure the successful completion and operation of the Project.

(iv) The Applicant will provide good and sufficient Collateral to mitigate risk to the Multimodal Transportation Fund.

Stat. Auth.: ORS 184.616, 184.619 & 367.082

Stats. Implemented: ORS 367.080 - 367.086

Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 3-2009, f. & cert. ef. 11-17-09; DOT 2-2010, f. & cert. ef. 7-30-10; DOT 4-2010, f. & cert. ef. 12-22-10; DOT 5-2011, f. & cert. ef. 12-22-11

## 731-035-0080

### Project Administration

(1) The Department will administer all non-aviation Projects.

(2) The Department and an Applicant of an Approved Project will execute an Agreement prior to the disbursement of Program Funds for an Approved Project. The Agreement is effective on the date all required signatures are obtained or at such later date as specified in the Agreement. Applicant will not be reimbursed for any funds expended prior to the execution of the Agreement, except for airport projects that Receive Federal Grants between July 1, 2011 and the date of Agreement execution and except for a Director granted waiver for emergency situations.

(3) The Agreement will contain provisions and requirements, including but not limited to:

(a) Documentation of the projected costs for an Approved Project must be submitted to the Department prior to the disbursement of Program Funds.

(b) Except as identified in subsection (2) of this rule, only Project costs incurred on or after the effective date of the Agreement are eligible for grant or loan funds.

(c) Disbursement of Program Funds for grants and loans will be paid on a reimbursement basis and will not exceed one disbursement per month. The Director or the OTC may make exceptions to the reimbursement basis if the Department finds that the applicant would have difficulty meeting this requirement.

(d) Upon request, a Recipient must provide the Department with a copy of documents, studies, reports and materials developed during the Project, including a written report on the activities or results of the Project and any other information that may be reasonably requested by the Department.

(e) Recipients must separately account for all moneys received from the Multimodal Transportation Fund in Project accounts in accordance with Generally Accepted Accounting Principles.

(f) Any Program Funds disbursed but not used for an Approved Project must be returned to the Department.

(g) Amendments to Agreements are required to change an Approved Project's cost, scope, objectives or timeframe.

(h) Recipients must covenant, represent and agree to use Project funds in a manner that will not adversely affect the tax-exempt status of any bonds issued under the Program.

(4) The Department may invoke sanctions against a Recipient that fails to comply with the requirements governing the Program. The Department will not impose sanctions until the Recipient has been notified in writing of such failure to comply with the Program requirements as specified in this Rule and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

(a) Work on the Approved Project has not been substantially initiated within six months of the effective date of the Agreement;

(b) State statutory requirements have not been met;

(c) There is a significant deviation from the terms and conditions of the Agreement; or

(d) The Department finds that significant corrective actions are necessary to protect the integrity of the Program Funds for the Approved

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Project and those corrective actions are not, or will not be, made within a reasonable time.

(5) The Department may impose one or more of the following sanctions:

- (a) Revoke an existing award.
- (b) Withhold unexpended Program Funds.
- (c) Require return of unexpended Program Funds or repayment of expended Program Funds.
- (d) Bar the Applicant from applying for future assistance.
- (e) Other remedies that may be incorporated into grant and loan Agreements.

(6) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the agreement.

(7) The Director will consider protests of the funding and Project administration decisions for the Program. Only the Applicant or Recipient may protest. Protests must be submitted in writing to the Director within 30 days of the event or action that is being protested. The Director's decision is final. Jurisdiction for review of the Director's decision is in the circuit court for Marion County pursuant to ORS 183.484.

(8) The Director may waive non-statutory requirements of this Program if it is demonstrated such a waiver would serve to further the goals and objectives of the Program.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005  
Stats. Implemented: Ch. 816, OL 2005  
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 2-2010, f. & cert. ef. 7-30-10; DOT 5-2011, f. & cert. ef. 12-22-11

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

**Rule Caption:** Repeal Obsolete Rules — References in DMV Documents, SSN, Financial Responsibility Hearing, Probationary Permit.

**Adm. Order No.:** DMV 13-2011

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 12-22-11

**Notice Publication Date:** 11-1-2011

**Rules Repealed:** 735-001-0030, 735-016-0080, 735-050-0090, 735-064-0085

**Subject:** DMV has repealed the following four rules as they were no longer needed.

- OAR 735-001-0030 was adopted in 1985 and amended in 1988 to establish that if a reference to a statute or rule that had been renumbered was on any DMV document with the old reference, then it actually referred to the current statute number. After twenty plus years this rule is no longer needed as all rules, orders, forms, etc. have been updated to reflect the correct statute or rule number.

- OAR 735-016-0080 was adopted in 1999 establishing that DMV may request a social security number of a person requesting a driver license, identification card or vehicle transaction for purposes of establishing identity or residency or domicile in Oregon. However ORS 807.021 now requires proof of a person's social security number on all driver license, driver permit and identification card transactions for purposes of establishing identity, if one has been assigned by the Social Security Administration. DMV does not use a social security number in determining residency or domicile and is removing this requirement from the form used by applicants. Therefore OAR 735-016-0080 was no longer necessary.

- OAR 735-050-0090 was adopted to implement ORS 809.450. DMV proposes to repeal the rule because the requirements of ORS 809.450 are non-ambiguous and do not require an administrative rule for clarification.

- OAR 735-064-0085 was adopted in 2002 when ORS 807.270 was amended to change the length of time a probationary permit is valid. The rule was no longer necessary because the transition has been completed since all permits issued prior to the law change have expired.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

**Rule Caption:** Amends DMV Rules Pertaining to Oregon Low-Emission Vehicle Program Standards.

**Adm. Order No.:** DMV 14-2011

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 735-030-0330

**Subject:** Pursuant to ORS 803.350, DMV must deny registration to new motor vehicles, with 7,500 miles or less that do not meet Oregon DEQ rules, adopted under OAR Chapter 340 as the Oregon Low Emission Vehicle Program (Oregon LEV standards).

On April 21, 2011, DEQ amended OAR 340-257-0060, which sets forth the exemptions from the Oregon LEV standards. ORS 803.350(8) requires that DMV rules be consistent with the DEQ rules. To be consistent with OAR 340-257-0060, DMV has amended OAR 735-030-0330 to exempt from the registration requirements for Oregon LEV standards, vehicles purchased by Oregon residents while assigned to active government service, outside the State of Oregon.

The exemption previously applied to vehicles purchased by Oregon residents while assigned to active military service, outside the State of Oregon.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

**735-030-0330**

**Vehicles Exempt from Oregon Low-Emission Vehicle Program Standards**

The following vehicles are exempt from Oregon Low-Emission Vehicle Program standards:

(1) Vehicles sold for registration and use in a state not subject to California motor vehicle emission standards.

(2) Previously registered vehicles with more than 7,500 miles. For vehicle dealers, vehicle mileage at the time of sale is determined by the odometer reading at the time the dealer acquired the vehicle.

(3) Vehicles available only for rent to a final destination in a state that is not subject to California motor vehicle emission standards.

(4) Vehicles purchased by a nonresident before establishing residency in the State of Oregon, regardless of the mileage on the vehicle.

(5) Vehicles purchased by Oregon residents while assigned to active government service outside the State of Oregon.

(6) Vehicles transferred from one person to another due to: death, inheritance, devise or bequest; divorce, dissolution, annulment or legal separation; merger or consolidation; bankruptcy; court judgment or decree; or possessory lien, seizure or foreclosure.

(7) A vehicle acquired by an Oregon resident to replace a vehicle registered to the resident and that was stolen, damaged or failed beyond reasonable repair while out of state, provided that the replacement vehicle is acquired out of state when the previously-owned vehicle was either stolen, damaged, or failed beyond reasonable repair.

(8) A custom, replica or assembled vehicle that:

(a) Is maintained for occasional transportation, exhibitions, club activities, parades, tours, testing of operation, repair, maintenance and similar uses; and

(b) Is not used for general daily transportation.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 803.350

Stats. Implemented: ORS 803.350

Hist.: DMV 15-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 14-2011, f. 12-22-11, cert. ef. 1-1-12

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**Rule Caption:** Amendment specifies what constitutes proof that an applicant is qualified to receive disabled veteran plates.

**Adm. Order No.:** DMV 15-2011

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 735-040-0030

**Subject:** Disabled veteran registration plates are part of a special registration program available to qualified disabled veterans pursuant to ORS 805.100. The registration is permanent with a one-time registration fee and no renewal fees.

ORS 805.100(2) specifies who qualifies as a disabled veteran entitled to receive disabled veteran registration [emphasis]. The statute

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authorizes DMV to accept a letter from the U.S. Department of Veterans Affairs (VA) or a branch of the U.S. Armed Forces as proof the person is a disabled veteran.

OAR 735-040-0030 specifies the information an applicant must submit to DMV as proof the applicant is qualified to receive disabled veteran registration plates. Previously proof was a letter issued by the U.S. Department of Veterans Affairs or branch of the U.S. Armed Forces indicating the applicant meets the requirements of ORS 805.100. Because the statute requires that the veteran be honorably discharged, DMV has only accepted letters that indicate an honorable discharge as proof of eligibility to receive disabled veteran registration.

Recently, DMV learned from the Oregon Department of Veterans Affairs that under federal law, service-related disability benefits are only granted by the VA to veterans discharged or released under honorable conditions. USC Title 38, Part II, §1110. Letters issued by the VA or military branch may or may not contain specific discharge information. Therefore, DMV amended OAR 735-040-0030 to specify that DMV will accept as proof that an applicant is qualified to receive disabled veteran registration under ORS 805.100, any letter, including a DD214 form, issued by the VA or branch of the U.S. Armed Forces that indicates the applicant received a service-related disability, regardless of whether the letter specifically shows an honorable discharge.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-040-0030

### Documents Needed to Issue Disabled Veteran Registration Plates

In addition to any other registration requirements, an applicant for disabled veteran registration plates must submit the following to DMV:

(1) A completed and signed Application for Disabled Veteran Plates (DMV Form 6736) and all applicable fees.

(2) A letter, including a form DD214, issued by the U.S. Department of Veterans Affairs or any branch of the Armed Forces of the United States showing the applicant is a disabled veteran.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 805.100

Stats. Implemented: ORS 805.100

Hist.: MV 27-1987, f. & ef. 10-1-87; Administrative Renumbering 3-1988, Renumbered from 735-100-0050; MV 22-1989, f. & cert. ef. 10-3-89; DMV 6-1996, f. & cert. ef. 8-15-96; DMV 2-1998, f. & cert. ef. 2-19-98; DMV 16-2006, f. & cert. ef. 11-17-06; DMV 15-2011, f. 12-22-11, cert. ef. 1-1-12

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**Rule Caption:** Social Security Number Requirements, Proof of Legal Presence and Applicant Temporary Permits.

**Adm. Order No.:** DMV 16-2011

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**Rules Amended:** 735-062-0005, 735-062-0010, 735-062-0015, 735-062-0032, 735-062-0033, 735-062-0120, 735-062-0125, 735-070-0010

**Subject:** DMV amended OAR 735-062-0005 to require an applicant to provide his or her SSN on the application form and if that number is verified, then no further proof of the SSN is necessary. DMV also amended this rule to allow additional documents as proof of an SSN for issuance of a temporary applicant permit when a SSN cannot be verified because the SSN was issued using a nickname or there is a mistake in the SSA record. In those cases, the temporary applicant permit is issued to give the person the opportunity to contact the SSA to correct any discrepancy so that DMV will be able to verify the SSN.

For proof of legal presence under ORS 807.021, DMV must verify certain documents through the Department of Homeland Security (DHS) Systematic Alien Verification for Entitlements (SAVE) Program. DHS has notified DMV that documents marked in a certain way cannot be verified through the SAVE program. DMV amended OAR 735-062-0015 to specify that documents marked in this way are not acceptable as proof of legal presence. DMV also repealed a provision in this rule allowing DMV to determine through means other than SAVE that a specific type of document is valid proof of the person's legal presence in the United States, as after two

and a half years experience with documents and SAVE, there is no purpose for such a provision.

Previously, DMV could issue an applicant temporary driver permit under ORS 807.310 or an applicant temporary identification card under ORS 807.405 for 90 days and provide one 60-day extension. DMV has learned that it does, at times, legitimately take longer than 150 days for a person to get the needed documentation. For instance, to receive a birth certificate from another state's vital record department, to have a delayed birth certificate issued to a person born at home 75 years ago or for a person to receive the necessary replacement permanent resident card often takes longer than 150 days. HB 2139 amends ORS 807.310 and 807.405 to authorize DMV to issue an applicant temporary driver permit or identification card for 90 days, to extend that term twice for an additional 180 days and gives DMV authority to further extend the term of a permit as provided by rule. DMV amended OAR 735-062-0032 and 735-062-0033 to implement this authority, and to describe the necessary requirements for an additional extension.

The amendments proposed to OAR 735-062-0010, 735-062-0120, 735-062-0125 and 735-070-0110 are to be consistent with the changes in OAR 735-062-0005. Other changes are made for clarity.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-062-0005

### SSN — Requirements for Collection and Verification of SSN or Proof of Ineligibility for a SSN

(1) When a person who is eligible for a SSN applies for any original, renewal or replacement driver license, driver permit or identification card, the person must provide his or her SSN on the application form.

(2) A person who applies for any original, renewal or replacement non-commercial driver license or driver permit or identification card and claims to be ineligible for a SSN must provide proof that he or she is not eligible for a SSN. A person may prove his or her ineligibility for a SSN by presenting documents issued by the SSA, the Department of Homeland Security or other federal agencies or federal courts, which demonstrate that the person is not eligible to be assigned a SSN by the SSA. The person must also certify that he or she is ineligible for a SSN.

(3) When an applicant provides a SSN as required by section (1) of this rule, DMV will submit the SSN to the SSA for verification, unless the applicant is a citizen or permanent legal resident of the United States whose SSN was previously verified under this rule. An applicant's SSN is verified when SSA notifies DMV that the applicant's SSN, name and date of birth are confirmed by SSA's records.

(4) Before issuing a temporary applicant permit as provided in OAR 735-062-0032 or 735-062-0033, DMV will require proof of the person's SSN if the SSN provided on the application is not verified as described in section (3) of this rule. Proof that the SSN is the one assigned to the person by the SSA may include, but is not limited to, one or more of the following documents:

(a) Social Security Card or other SSA documentation;

(b) Income tax form filed with the Internal Revenue Service or a state tax agency;

(c) Employment document;

(d) Military document (DD214); or

(e) Any document containing full social security number acceptable as proof of legal presence or identity and date of birth as listed in OAR 735-062-0015 or 735-062-0020.

(5) DMV will not issue, renew or replace any driver license, driver permit or identification card, except as provided in OAR 735-062-0032 and 735-062-0033, unless:

(a) The applicant has proved his or her legal presence in the United States as provided in OAR 735-062-0015, and DMV has verified the applicant's SSN as provided in section (3) of this rule; or

(b) If the applicant claims to be ineligible for a SSN, the applicant has proved his or her ineligibility for a SSN as provided in section (2) of this rule and his or her legal presence in the United States as provided in OAR 735-062-0015. DMV will not issue, renew or replace a commercial driver license or commercial driver permit to an applicant who claims to be ineligible for a SSN.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.021 & 807.050

Stats. Implemented: ORS 802.200, 807.021, 807.022 & 807.050

Hist.: MV 6-1990, f. & cert. ef. 4-2-90; DMV 11-1995, f. & cert. ef. 11-15-95; DMV 19-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 2-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-

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08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 27-2008, f. 12-15-08, cert. ef. 1-1-09; DMV 16-2011, f. 12-22-11, cert. ef. 1-1-12

## 735-062-0010

### Identification Cards

(1) Pursuant to ORS 807.400 and as provided in this rule, DMV will issue an identification card to a person who does not have a valid driver license.

(2) A person applying for an identification card must:

(a) Satisfy all identification card requirements set forth in ORS 807.400 and 807.410, except as described under section (7) of this rule;

(b) Provide a verifiable SSN or proof that the person is not eligible for a SSN as provided in OAR 735-062-0005;

(c) Provide proof of legal presence as provided in OAR 735-062-0015;

(d) Submit to the collection of biometric data for the purpose of establishing identity as provided in ORS 807.024 and OAR 735-062-0016.

(e) Provide proof of the person's identity and date of birth as provided in OAR 735-062-0020; and

(f) Provide proof of the person's residence address as provided in OAR 735-016-0070 and 735-062-0030.

(3) Identification cards issued to persons for whom DMV has created an Oregon driving record will reflect the same number as that on the existing record.

(4) An applicant in possession of a driver license issued by another jurisdiction must surrender that license to DMV before an identification card will be issued. The person must provide a statement to DMV if the person's license is lost, destroyed or the person no longer has the license in his or her possession, and must agree that the license will be surrendered to DMV if found.

(5) Applicants for an identification card must personally apply at a DMV office to receive an identification card.

(6) All identification cards must include a photograph of the cardholder.

(7) DMV will waive the fee requirements set forth in ORS 807.410 for those persons applying for an identification card when:

(a) The person voluntarily surrenders an Oregon license or driver permit to DMV based upon the person's recognition that the person is no longer competent to drive; or

(b) The person's driving privileges are suspended under ORS 809.419(1) and the person voluntarily surrenders the person's license or driver permit to DMV.

(8) An identification card of a United States citizen or permanent legal resident with a February 29 birth date expires:

(a) On February 29 if the expiration year is a leap year; or

(b) On March 1 if the expiration year is not a leap year.

(9) After determining that an applicant has met all requirements under this rule, DMV will issue the identification card and mail it to the address provided by the applicant at the time of application.

(10) After determining that an applicant has met all requirements under this rule and has provided proof of legal presence in the United States on a temporary basis, as described in OAR 735-062-0015(4), DMV will issue a limited term identification card and mail it to the address provided by the applicant at the time of the application.

(11) DMV may renew an identification card as provided in OAR 735-062-0090 or may do so using a previous photograph only as provided 735-062-0125.

(12) DMV may replace an identification card as provided in OAR 735-062-0110 or may do so using a previous photograph only as provided 735-062-0125.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.021, 807.040, 807.050 & 807.400

Stats. Implemented: ORS 807.021, 807.022 & 807.400

Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0003; MV 19-1990, f. 12-17-90, cert. ef. 1-1-91; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 24-2001, f. 12-14-01, cert. ef. 1-1-02; DMV 5-2007, f. 5-24-07, cert. ef. 8-1-07; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 25-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 16-2011, f. 12-22-11, cert. ef. 1-1-12

## 735-062-0015

### Proof of Legal Presence

(1) Except as provided in OAR 735-062-0032 and 735-062-0033, a person who applies for any original, renewal or replacement driver permit, driver license, or identification card must provide valid documentary proof that the person is a citizen or permanent legal resident of the United States or is otherwise legally present in the United States in accordance with federal immigration laws, unless the person's DMV record shows DMV has previously verified the person's SSN and shows that the person is a citizen

or permanent legal resident of the United States. The documents provided must be either original or certified copies.

(2) Documents acceptable as proof of U.S. citizenship include, but are not limited to:

(a) A birth certificate issued by a U.S. Territorial government, the District of Columbia or the government of a state or political subdivision of a state of the United States. DMV will not accept a hospital-issued birth certificate, hospital card or birth registration or baptismal certificate.

(b) U.S. Consular Report of Birth Abroad (FS-240).

(c) U.S. government-issued Certification of Report of Birth (DS-1350 or FS-545).

(d) Request for Verification of Birth (DD372).

(e) United States passport, not expired more than five years.

(f) United States passport card, not expired more than five years.

(g) U.S. Territory passport, not expired more than five years.

(h) Tribal ID card from a federally recognized tribe located in Oregon or a federally recognized tribe with an Oregon affiliation, if DMV determines:

(A) The procedures used in issuing the card are sufficient to prove that a member is a citizen or permanent resident of the United States; and

(B) The card contains security features that are sufficient to prevent alteration or counterfeiting of the card.

(i) Certificate of Citizenship (N560 and N561).

(j) Certificate of Naturalization (N550, N570 and N578).

(k) U.S. Citizen Identification Card (I-197 and I-179).

(3) Documents acceptable as proof of permanent legal residence in the U.S include, but are not limited to: Resident Alien card; Permanent Resident card (I-551); or a Permit to Re-Enter (I-327).

(4) Documents acceptable as proof that a person is not a citizen or permanent legal resident of the United States but is legally present in the United States on a temporary basis include, but are not limited to:

(a) Arrival/Departure Record (I-94 or CBP I-94A) or a valid I-797A Notice of Action issued by the Department of Homeland Security or Custom and Border Protection with a valid unexpired foreign passport.

(b) Arrival/Departure Record (I-94, CBP I-94A) with a passport issued by the Federated States of Micronesia (FSM), Republic of the Marshall Islands (RMI) or Republic of Palau, not expired more than five years.

(c) Temporary Resident ID card (I-688);

(d) Employment Authorization card (I-766); or

(e) Refugee Travel Document Form I-571.

(5) DMV will not accept any document issued by the United States Immigration and Customs Enforcement Agency containing the statement:

(a) Under Docket Control;

(b) Under the Order of Supervision; or

(c) Notice of Immigration Bond Cancelled.

(6) DMV will not accept as the proof required by sections (3) and (4) of this rule a document that is not verified through the Systematic Alien Verification for Entitlements (SAVE) system.

(7) Notwithstanding section (6) of this rule, DMV may accept a document described in sections (3) and (4) of this rule that is not verified through the SAVE system if the document is presented for the replacement of a limited term driver license, limited term driver permit, or limited term identification card under OAR 735-062-0110.

(8) An applicant who must obtain a document in order to provide proof of legal presence may apply for an applicant temporary driver permit as described in OAR 735-062-0032 that will provide driving privileges for a limited time or an applicant temporary identification card as described in 735-062-0033.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.021 & 807.022

Stats. Implemented: ORS 807.021 & 807.022

Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 23-2008(Temp), f. 9-11-08, cert. ef. 9-15-08 thru 3-13-09; DMV 27-2008, f. 12-15-08, cert. ef. 1-1-09; DMV 25-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 16-2011, f. 12-22-11, cert. ef. 1-1-12

## 735-062-0032

### Applicant Temporary Driver Permit Issued to Applicants Unable to Provide SSN and Legal Presence Documentation

(1) When an applicant for a driver license or driver permit does not provide a verifiable SSN but is able to present the documentation required by OAR 735-062-0005(4) to prove a SSN is assigned to the applicant, or certifies but fails to present documentation of ineligibility for a SSN, or is unable to present the documentation required by 735-062-0015 to prove legal presence, DMV may issue an applicant temporary driver permit to the applicant if:



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(a) The applicant is otherwise eligible and complied with all other requirements for a driver license or driver permit, including the requirements for proof of identity and date-of-birth under OAR 735-062-0020;

(b) The applicant certifies that to the best of his or her knowledge, the applicant is legally present in the United States; and

(c) DMV has not issued an applicant temporary driver permit to the applicant under this rule before, and the applicant so certifies.

(2) A holder of an applicant temporary driver permit issued under this rule must have the permit on his or her person while operating a motor vehicle. The applicant temporary driver permit will indicate the class of license granted and any endorsements granted and will list any restrictions placed on the driving privileges.

(3) An applicant temporary driver permit issued under this rule is valid for 90 days from the date of issuance, or until the applicant is able to provide to DMV the documentation required by OAR 735-062-0005 and 735-062-0015 for issuance of a driver license or driver permit, whichever is sooner.

(4) DMV may extend the term of the applicant temporary driver permit up to two times for sufficient cause. Each extension of the term of the permit may not exceed 90 days.

(5) Notwithstanding sections (3) and (4) of this rule, DMV may extend the term of the applicant temporary driver permit if the applicant presents proof the applicant has taken reasonable steps to obtain a verifiable SSN or the documentation required under OAR 735-062-0005 showing ineligibility, or taken reasonable steps to obtain the documentation required under OAR 735-062-0015, but has been unable to do so due to circumstances beyond the applicant's control. Any extension of an applicant temporary driver permit issued under this section will be for a term of 90 days.

(6) An applicant temporary driver permit issued under this rule automatically becomes invalid if the applicant's driver license or permit is issued, the permit expires and is not extended, or if the applicant's driving privileges or right to apply for driving privileges are suspended, revoked or cancelled. If and when the applicant's driver license or permit is issued or driving privileges are suspended, revoked or cancelled, the applicant must surrender to DMV his or her applicant temporary driver permit.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.310  
Stats. Implemented: ORS 807.310

Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 16-2011, f. 12-22-11, cert. ef. 1-1-12

## 735-062-0033

### Applicant Temporary Identification Cards Issued to Applicants Unable to Provide SSN and Legal Presence Documentation

(1) When an applicant for an identification card does not provide a verifiable SSN but is able to present the documentation required by OAR 735-062-0005(4) to prove a SSN is assigned to the applicant, or certifies but fails to present documentation of ineligibility for a SSN, or is unable to present the documentation required by 735-062-0015 to prove legal presence, DMV may issue an applicant temporary identification card to the applicant, if:

(a) The applicant is otherwise eligible and has complied with all other requirements for an identification card, including the requirements for proof of identity and date-of-birth under OAR 735-062-0020;

(b) The applicant certifies that, to the best of his or her knowledge, the applicant is legally present in the United States; and

(c) DMV has not issued an applicant temporary identification card to the applicant under this rule before, and the applicant so certifies.

(2) An applicant temporary identification card issued under this rule is valid for 90 days from the date of issuance, or until the applicant is able to provide to DMV the documentation required by OAR 735-062-0005 and 735-062-0015 for issuance of an identification card, whichever is sooner.

(3) DMV may extend the term of the applicant temporary identification card up to two times for sufficient cause. Each extension of the term of the permit may not exceed 90 days.

(4) Notwithstanding sections (2) and (3) of this rule, DMV may extend the term of the applicant temporary identification card if the applicant presents proof the applicant has taken reasonable steps to obtain a verifiable SSN or the documentation required under OAR 735-062-0005 showing ineligibility, or taken reasonable steps to obtain the documentation required under OAR 735-062-0015, but has been unable to do so due to circumstances beyond the applicant's control. Any extension of an applicant temporary identification card issued under this section will be for a term of 90 days.

(5) An applicant temporary identification card issued under this rule automatically becomes invalid if the applicant's identification card is issued, the applicant temporary identification card expires and is not extended, or DMV suspends or cancels the applicant temporary identifica-

tion card or right to apply for an identification card. The applicant must surrender to DMV the applicant temporary identification card if and when the applicant's identification card is issued or if it is suspended, revoked or cancelled.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.405

Stats. Implemented: ORS 807.405

Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 16-2011, f. 12-22-11, cert. ef. 1-1-12

## 735-062-0120

### Standards for Issuance of Driver's Licenses Without a Photograph

(1) DMV may, upon receipt of a written request, and for good cause, provide for issuance of a valid driver license without a photograph to any person qualified to hold an Oregon driver license:

(a) Who is a member of a religious denomination that prohibits photographing of its members because it is contrary to its religious tenets;

(b) Whose religious beliefs require the person to wear a head covering, clothing or similar material that partially or completely covers the person's face, preventing the person from being photographed as described in OAR 735-062-0016(3); or

(c) Who has severe facial disfigurement.

(2) In addition to satisfying the requirements of section (1), an applicant for issuance of a driver license under this rule must:

(a) Provide a verifiable SSN, or proof of ineligibility for a SSN, as provided in OAR 735-062-0005;

(b) Provide proof of legal presence as provided in OAR 735-062-0015;

(c) Provide proof of identity and date of birth as provided in OAR 735-062-0020; and

(d) Provide proof of residence address as provided in OAR 735-062-0030(1).

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.110

Stats. Implemented: ORS 807.110

Hist.: MV 80, f. & ef. 10-4-77; MV 15-1986, f. 9-16-86, ef. 10-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0038; DMV 21-2001, f. & cert. ef. 10-18-01; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 17-2010, f. & cert. ef. 9-27-10; DMV 16-2011, f. 12-22-11, cert. ef. 1-1-12

## 735-062-0125

### Standards for Issuance of a Renewal or Replacement Driver License or Identification Card Containing a Previous Photograph

(1) DMV may renew or replace a person's driver license or identification card by issuing a renewal or replacement license or identification card containing a photograph of the person already on file with DMV, if the applicant:

(a) Provides proof that he or she is a resident of or domiciled in Oregon as described in OAR 735-016-0040;

(b) Provides proof or previously has proven that he or she is a citizen or permanent resident of the United States as required by OAR 735-062-0015. An applicant who has not previously provided proof to DMV of citizenship or permanent legal residency in the U.S. may provide a copy, satisfactory to DMV, of one or more documents required by OAR 735-062-0015(2) or (3).

(c) Provides his or her Social Security number on the application form as required under OAR 735-062-0005. DMV will verify the SSN with the Social Security Administration unless the SSN provided has previously been verified;

(d) Submits a written statement to DMV establishing good cause why he or she is not able to appear and apply for the renewal or replacement license or identification card at a DMV field office and certifying that he or she will not be returning to Oregon within 150 days from the date of application;

(e) Provides proof that he or she is, in fact, the person to whom the license or identification card to be renewed or replaced was issued; and

(f) Meets all other qualifications for the license or identification card sought.

(2) Circumstances constituting "good cause" for purposes of subsection (1)(d) of this rule include, but are not limited to, the following:

(a) The applicant is temporarily in another jurisdiction or country for business reasons, employment or education, will be returning to Oregon, and continues to satisfy Oregon's residency requirements.

(b) The applicant is traveling outside of Oregon and the applicant's Oregon driver license or identification card is lost, stolen or mutilated;

(c) The applicant is traveling outside of Oregon and the applicant's Oregon driver license or identification card has expired or will expire before the person returns to Oregon; or

(d) The applicant has a medical condition or health problems that prevent him or her from applying for a renewal or replacement license or iden-

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tification card at a DMV field office and submits to DMV proof of the medical condition or health problems from the applicant's licensed treating physician.

(3) Notwithstanding section (1) of this rule, DMV may issue a renewal or replacement license or identification card containing a photograph of the applicant already on file with DMV, if the applicant is an Oregon licensed driver or identification card holder serving on active duty in the United States Armed Forces outside of Oregon who provides a copy of his or her:

(a) Most current Leave Earning Statement showing Oregon as his or her home on record;

(b) Federally-issued active duty Military identification card; and

(c) Social Security number to be verified with the Social Security Administration, if not previously provided.

(4) A spouse, partner in a domestic relationship or dependent of a military person on active duty in the United States Armed Forces outside of Oregon who qualifies under section (3) of this rule, who holds an Oregon driver license or identification card may qualify for a driver license or identification card using the previous photograph, if the spouse or dependent provides a copy of the following:

(a) The military member's most current Leave Earning Statement showing Oregon as his or her home on record;

(b) The military member's active duty Military identification card;

(c) The spouse, partner or dependent's Military identification card; and

(d) The spouse, partner or dependent's Social Security number. DMV must verify the SSN with the Social Security Administration, if not previously verified.

(5) DMV will not replace or renew a driver license or identification card under this rule, if the applicant's most recent photograph on file with DMV is more than nine years and two months old.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.110

Stats. Implemented: ORS 807.110 & 807.400

Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 25-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 16-2011, f. 12-22-11, cert. ef. 1-1-12

## 735-070-0010

### Reinstatement Following Cancellation or Suspension Under ORS 807.220, 807.230, 807.350, 809.310 and 809.320

(1) DMV will reissue a driver permit, driver license or identification card to a person whose driving privileges or identification card is canceled under ORS 809.310(1) because the person is not entitled only if the person corrects the condition that caused the cancellation and otherwise meets all requirements for driving privileges or an identification card.

(2) DMV will reissue a driver permit, driver license or identification card canceled under ORS 809.310(2) because there is an error, i.e. wrong class of license or permit, incorrect endorsement; incorrect date of birth, name, expiration date or issue date once the person surrenders the driver permit, driver license or identification card with the error. If the information on the driver permit, driver license or identification card is wrong because of a DMV error, a no fee replacement will be issued.

(3) DMV will reissue a driver permit, driver license or identification card canceled under ORS 809.310(2) because the address is not the person's residence address as required by law once the person surrenders the driver permit, driver license or identification card with the incorrect information and the person provides DMV with acceptable documentary proof of residence address as described in OAR 735-062-0030(1) and pays all applicable fees.

(4) Notwithstanding sections (1), (2) and (3) of this rule, when a person whose driving privileges or identification card are canceled under ORS 809.310(1) or 809.310(2) is not a resident of Oregon, DMV will rescind the cancellation to allow the person to obtain driving privileges or an identification card in another jurisdiction but will not reissue an Oregon driver license, driver permit, or identification card. The person must:

(a) Request that DMV rescind the cancellation;

(b) Have corrected all applicable conditions that caused the cancellation except for the domicile or residency requirements under ORS 807.062; and

(c) Provide verification from another jurisdiction that:

(A) The person has applied and meets the requirements for driving privileges or an identification card in that jurisdiction;

(B) The person has surrendered his or her Oregon driver license or identification card to the jurisdiction, or has stated that the card was surrendered to DMV or that it was lost, destroyed or mutilated; and

(C) The cancellation must be rescinded in order for the person to qualify for driving privileges or an identification card in the other jurisdiction.

(5) DMV will issue a driver license, driver permit or identification card when a person described in section (4) of this rule returns to Oregon and the person corrects the condition that caused the cancellation and meets all eligibility requirements for driving privileges or an identification card and pays all applicable fees.

(6) DMV will reinstate the person's driving privileges or identification card, including his or her right to apply suspended under ORS 809.310(3)(b)-(h) when:

(a) One year has elapsed since the effective date of the suspension; and

(b) The person pays the reinstatement fee.

(7) When a person's driving privileges or identification card, including the right to apply, is suspended under ORS 809.310(3)(a), DMV will reinstate the driving privileges or identification card one year from the effective date of the suspension if the person:

(a) Provides a verifiable SSN or proof that the person is not eligible for a SSN as provided in OAR 735-062-0005(2);

(b) Provides proof of legal presence as provided in OAR 735-062-0015;

(c) Submits to the collection of biometric data and establishes identity as provided in ORS 807.024 and OAR 735-062-0016;

(d) Provides proof of identity and date of birth as provided in OAR 735-062-0020;

(e) Submits proof of residence address as provided in OAR 735-062-0030(1); and

(f) Pays the reinstatement fee.

(8) Notwithstanding section (7) of this rule, when a person's driving privileges or identification card are suspended under ORS 809.310(3)(a) and is no longer a resident of Oregon, he or she may request to have his or her driving privileges, identification card or right to apply be reinstated in order to be issued in another jurisdiction. DMV will not issue an Oregon driver license, driver permit or identification card, but will reinstate the driving privileges, identification card or right to apply when:

(a) One year has elapsed since the effective date of the suspension;

(b) The person provides verification from another jurisdiction that:

(A) The person has applied and meets the requirements for driving privileges or an identification card in that jurisdiction; and

(B) The person has surrendered his or her Oregon driver license or identification card to that jurisdiction, or has stated that the card was surrendered to DMV or that it was lost, destroyed or mutilated; and

(c) The person pays the reinstatement fee.

(9) A person described in section (8) of this rule, who returns to Oregon, may be eligible for a driver license, driver permit or identification card. DMV will issue a driver license, driver permit or identification card when:

(a) Provides a verifiable SSN or proof that the person is not eligible for a SSN as provided in OAR 735-062-0005(2);

(b) Provides proof of legal presence as provided in OAR 735-062-0015;

(c) Submits to the collection of biometric data and establishes identity as provided in ORS 807.024 and OAR 735-062-0016;

(d) Provides proof of identity and date of birth as provided in OAR 735-062-0020;

(e) The person submits proof of residence address as provided in OAR 735-062-0030(1); and

(f) The person meets all eligibility requirements for driving privileges or an identification card and pays all applicable fees.

(10) When DMV cancels a person's driver permit or driver license for withdrawal of consent under ORS 809.320, DMV will reinstate driving privileges when the person:

(a) Pays a replacement driver permit or driver license fee or a renewal fee, if applicable; and

(b) Submits one of the following if the person is under 18 years of age:

(A) An application for a driver permit or driver license that is signed by the person's mother, father or legal guardian;

(B) Court papers showing that the person is declared emancipated by the court; or

(C) Evidence that the person is married.

(11) When DMV cancels a person's driving privileges because the person is not qualified or does not meet the requirements under ORS 807.350, DMV will not grant driving privileges until the person meets the requirements and demonstrates qualification for a driver license under 807.040, 807.050, 807.060, 807.062, 807.065, 807.066 and 807.070.

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(12) When the special student driver permit of a person under 16 years of age is canceled under ORS 807.230(7), DMV will only issue driving privileges when the person has reached 16 years of age and if the person is eligible and meets all applicable requirements in 807.040, 807.065 and 807.066 and OAR 735-062-0007 to obtain a driver permit or driver license. When the special student driver permit of a person over 16 years of age is canceled, DMV will not reissue a special student driver permit however the person may apply for a driver license if eligible and if the person meets all applicable requirements in ORS 807.040, 807.065, 807.066 and OAR 735-062-0007.

(13) When an emergency driver permit is canceled under ORS 807.220(3)(g), DMV will:

(a) Reissue an emergency driver permit after one year has elapsed from the effective date of the cancellation if the person is eligible and meets the requirements in OAR 735-064-0230; or

(b) Issue a driver permit or a driver license if the person is eligible and meets all applicable requirements in ORS 807.040, 807.065 and 807.066 and OAR 735-062-0007.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 807.021, 807.022, 807.220, 807.230, 807.400, 809.310 & 809.320  
Hist.: MV 16-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0064; MV 14-1992, f. & cert. ef. 10-16-92; MV 18-1993, f. 12-17-93, cert. ef. 1-1-94; DMV 16-1994, f. & cert. ef. 12-20-94; DMV 3-2002, f. & cert. ef. 3-14-02; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05; DMV 27-2005, f. 12-14-05 cert. ef. 1-1-06; DMV 13-2006, f. 9-22-06, cert. ef. 10-2-06; DMV 19-2006, f. & cert. ef. 12-13-06; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 16-2011, f. 12-22-11, cert. ef. 1-1-12

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**Rule Caption:** Rescinding Driver License Suspensions after Driver Declared No Longer Competent to Drive.

**Adm. Order No.:** DMV 17-2011

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 735-062-0135, 735-074-0140, 735-076-0020

**Subject:** A person who no longer drives due to deteriorating health or age related issues may have a suspension of the person's driving privileges under the At-Risk Driver Program. This suspension remains on the person's driving record even after the person has surrendered all driving privileges and can adversely impact the auto insurance rates of other members of the person's household who continue to drive. Chapter 126, Oregon Laws 2011 (HB 3128) amends ORS 809.419 to specify that a suspension ends when a person, whose driving privileges are suspended under the At-Risk Driver Program, voluntarily surrenders driving privileges by recognizing that he or she is no longer competent to drive. DMV amended OAR 735-062-0135, 735-074-0140 and 735-076-0020 in accordance with the amendments to ORS 809.419, plus specify what happens when a suspension ends and what is required if the person ever reapplies for driving privileges. OAR 735-076-0020 is further amended to remove redundant language about CDL medical qualifications, which are already detailed in OAR chapter 735, division 63.

**Rules Coordinator:** Lauri Kunze — (503) 986-3171

## 735-062-0135

### Voluntary Surrender of Driving Privileges

A person may surrender all or part of the driving privileges granted to that person by the State of Oregon, through the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV).

(1) To surrender all or part of a person's driving privileges, that person must sign a DMV form and must surrender to DMV any license or permit issued for the driving privilege. DMV will allow the person to surrender all driving privileges, or part of the driving privileges granted to that person under any class of license, endorsement or driver permit.

(2) When driving privileges are surrendered, the driving privileges are immediately withdrawn and the person is no longer authorized to operate vehicles pursuant to those driving privileges. A person who surrenders all driving privileges may not exercise any driving privileges, except those granted by statute under ORS 807.020. A person who surrenders part of the person's driving privileges may exercise only those driving privileges retained. Operation of a vehicle on Oregon highways or premises open to the public without appropriate driving privileges is a violation of law under ORS 807.010.

(3) In accordance with OAR 735-062-0010, DMV may issue an identification card to a person who has surrendered all driving privileges.

(4) If the person surrenders all driving privileges and declares on DMV form 735-7206 that he or she is no longer competent to drive, DMV will rescind any suspension imposed under OAR 735-074-0140 or 735-076-0020.

(5) A person may surrender only part of the driving privileges granted by DMV by canceling any endorsements or driver permits granted to the person. The person must specify those driving privileges the person seeks to surrender. A person who surrenders an endorsement must pay the renewal or replacement license fee for issuance of a license that reflects the driving privileges the person retains.

(6) Surrender of driving privileges means the driving privileges are canceled as defined in ORS 801.175(2). When a voluntary surrender of driving privileges is accepted, DMV will cancel driving privileges without providing further notice or an opportunity for hearing to the person. The person's driving record will show that the driving privileges have been surrendered.

(7) A person who seeks to regain surrendered driving privileges must reapply for the privileges and establish eligibility and qualification as provided by law, including payment of all required fees.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 809.419

Stats. Implemented: ORS 802.010(1)(c), 809.419

Hist.: DMV 1-2003, f. & cert. ef. 2-13-03; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05; DMV 17-2011, f. 12-22-11, cert. ef. 1-1-12

## 735-074-0140

### DMV Response to Mandatory Report — Suspension, Opportunity to Re-Test, Reinstatement

(1) DMV will review a report received under OAR 735-074-0120 to determine if sufficient information has been provided. If the report does not contain the information required by OAR 735-074-0120 it may be returned to the reporting physician or health care provider for completion. If the report does not meet the requirements of a mandatory report, but if the report is of a possible mental or physical condition or impairment that indicates the person is no longer qualified to hold a driver license, driver permit or endorsement or may no longer be able to drive safely, DMV will review the report under the non-mandatory program described in OAR chapter 735, division 76 to determine what action, if any, is appropriate.

(2) Using the standards set forth in OAR 735-074-0130, or when otherwise recommended by the Medical Determination Officer, DMV will suspend driving privileges or the right to apply for driving privileges under ORS 809.419(3), if it is determined from the report submitted under OAR 735-074-0120 that the person has a mental or physical condition or impairment that affects the person's ability to safely operate a motor vehicle upon the highways. Driving privileges or the right to apply for driving privileges will be immediately suspended if DMV has reason to believe the person may endanger people or property if not immediately suspended.

(3) If DMV receives a report that indicates that a person's vision does not meet the vision standards set forth in OAR 735-062-0050, DMV will immediately suspend the person's driving privileges or right to apply for driving privileges under ORS 809.419(3). To be eligible for reinstatement of driving privileges the person must: submit proof from a licensed optometrist or physician who specializes in the diagnosis and treatment of eye diseases that the person's vision, with or without corrective lenses, meets the vision standards set forth in OAR 735-062-0050, and pass a knowledge and drive test. Proof that vision meets DMV standards is only valid for six months from the date DMV receives the Certificate of Vision form and the person must pass the knowledge and drive test within this time period for reinstatement of driving privileges.

(4) A person whose driving privileges and right to apply for driving privileges are suspended because of a functional impairment may request to be tested by DMV to demonstrate that notwithstanding the impairment, the person is qualified to safely operate a motor vehicle. If the request is granted, DMV will administer a vision screening under OAR 735-062-0050, a knowledge test under 735-062-0040 and a DMV drive test under 735-062-0070. DMV will deny the request if it has reason to believe the person is unable to safely operate a motor vehicle during a drive test. If the request is denied, DMV may give the person tests if the person:

(a) Receives a determination of eligibility from the Medical Determination Officer;

(b) Submits proof of successful completion of a driver rehabilitation program conducted by a rehabilitation specialist;

(c) Submits proof of successful completion of a driver training course conducted by an ODOT certified commercial driver training school; or

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(d) Submits proof that the person's motor vehicle is equipped with an appropriate adaptive device(s), such as hand controls, and provides documentation that the person knows how to use and has practiced with the adaptive device(s).

(5) A person whose driving privileges and right to apply for driving privileges are suspended because of a cognitive impairment or a cognitive impairment in conjunction with a functional impairment reported under OAR 735-074-0110 may request to be tested by DMV to demonstrate that notwithstanding the disorder or the impairment, the person is qualified to safely operate a motor vehicle. Before DMV will grant the request to be tested, the Medical Determination Officer must determine that the person is medically eligible to take tests. If eligible for testing, the person must pass a vision screening under OAR 735-062-0050, a knowledge test under 735-062-0040 and a DMV drive test under 735-062-0070.

(6) The following apply to a request for testing under sections (4) and (5) of this rule:

(a) The request must be made by contacting DMV headquarters; and  
(b) For a cognitive impairment or a cognitive impairment in conjunction with a functional impairment, testing must be completed within six months from the date the Medical Determination Officer determines the person is medically eligible to take tests.

(7) DMV will notify the reporting physician or health care provider if the person's driving privileges are reinstated.

(8) If the person voluntarily surrenders driving privileges as set forth in OAR 735-062-0135(4), DMV will rescind any suspension imposed under sections (2), (3) or (4) of this rule. The person may be eligible for a no-fee identification card.

(9) If the person reinstates or is reissued his or her driving privileges, DMV may require the person to provide periodic medical information based on the recommendation of the Medical Determination Officer or obtain periodic vision exams based on the recommendation of the person's vision specialist. The Medical Determination Officer may review those with functional impairments who reinstate or are reissued driving privileges for determination of whether the person should be medically recertified at a later date. The Medical Determination Officer will include a determination if medical re-certification is needed on cognitive impairments at the time a determination on testing is made. If periodic medical information is required, DMV will send the person a Medical Impairment Recertification form and require the person to obtain information from his or her physician, nurse practitioner or physician assistant and return that to DMV within 30 days of the date on the requirement letter. If a periodic vision exam must be obtained, DMV will send the person a Certificate of Vision form which must be completed by the person's vision specialist and returned to DMV within 30 days of the date on the requirement letter.

(10) A person may be required to successfully complete DMV testing or may have driving privileges suspended based on information contained in the Medical Impairment Recertification form or periodic vision information report submitted under section (9) of this rule.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.340, 807.710 & 809.419

Stat. Implemented: ORS 807.340 & 807.710

Hist.: DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; DMV 1-2005, f. & cert. ef. 1-20-05; DMV 6-2006, f. & cert. ef. 5-25-06; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 17-2011, f. 12-22-11, cert. ef. 1-1-12

## 735-076-0020

### Suspension or Cancellation of Driving Privileges

(1) DMV may issue an immediate suspension of driving privileges in the following situations:

(a) If DMV determines from a non-mandatory report that the person has a mental or physical condition that makes it unsafe for the person to operate a motor vehicle upon the highways and DMV has reason to believe the person may endanger people or property if not immediately suspended;

(b) If based upon information included in a police accident report or other law enforcement report, DMV has reason to believe that a person may endanger people or property if not immediately suspended due a mental or physical condition that makes it unsafe for the person to operate a motor vehicle upon the highways;

(c) The Medical Determination Officer, upon review of medical information on a driver, recommends an immediate suspension;

(d) Information contained in a required Medical Impairment Recertification form submitted as required under OAR 735-076-0035 indicates that the person has a mental or physical condition that makes it unsafe for the person to operate a motor vehicle and DMV has reason to believe the person may endanger people or property if not immediately suspended; or

(e) Information contained in a required Certificate of Vision form indicates the person's vision does not meet minimum vision standards under OAR 735-062-0050 and DMV has reason to believe the person may endanger people or property if not immediately suspended.

(2) DMV will suspend driving privileges or the right to apply for driving privileges as follows:

(a) Under ORS 809.419(1) if the person fails to successfully complete the required tests within 60 days of the date of the requirement letter, or within the time period granted if an extension is granted under OAR 735-076-0010(2);

(b) Under ORS 809.419(2), for failure to obtain a medical clearance, if the medical report form is not completed by the person and the person's physician, nurse practitioner, or physician assistant, submitted to and received by DMV within 30 days of the date on the letter sent from DMV, unless DMV has granted an extension under OAR 735-076-0015;

(c) Under ORS 809.419(2), for failure to obtain a medical clearance, if the person fails to submit a Medical Impairment Recertification form as required under OAR 735-076-0035, unless an extension is granted by DMV;

(d) Under ORS 809.419(2), for failure to obtain a medical clearance, if the person fails to submit a Certificate of Vision form when the person is required to obtain a periodic vision exam under OAR 735-076-0035, unless an extension is granted by DMV;

(e) Under ORS 809.419(3), as incompetent to drive because of a mental or physical condition or impairment that makes it unsafe for the person operate a motor vehicle, because the Medical Determination Officer determines that a driver is medically ineligible for driving privileges under ORS 807.090, and the person has valid driving privileges;

(3) If the person voluntarily surrenders driving privileges as set forth in OAR 735-062-0135(4), DMV will rescind any suspension imposed under sections (1), (2) or (4) of this rule.

(4) DMV will suspend commercial driving privileges under ORS 809.419(3) if the Medical Determination Officer has determined that the holder of a Class A, B, or C commercial driver license no longer meets the physical qualifications outlined in 49 CFR sections 391.41 through 391.49.

(4) DMV may cancel driving privileges pursuant to ORS 807.350 and OAR 735-070-0010, 735-070-0020 and 735-074-0220 if:

(a) The person's vision does not meet the minimum vision standards set forth in OAR 735-062-0050; or

(b) DMV determines the person no longer meets the qualifications for a driver license, driver permit or endorsement because of a physical or mental condition or impairment that affects the person's ability to safely operate a motor vehicle upon the highway or a problem condition involving alcohol, inhalants or controlled substances.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.340 & 809.419

Stats. Implemented: ORS 807.340 & 809.419

Hist.: MV 19-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0460; MV 17-1992, f. 12-16-92, cert. ef. 1-1-93; DMV 16-2001, f. & cert. ef. 9-21-01; DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; DMV 6-2006, f. & cert. ef. 5-25-06; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 17-2011, f. 12-22-11, cert. ef. 1-1-12

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**Rule Caption:** Traffic Offenses used in Driver Improvement, Habitual Offender and other DMV Programs.

**Adm. Order No.:** DMV 18-2011

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 735-064-0220, 735-072-0035

**Subject:** ORS 809.605 requires DMV to adopt rules specifying which traffic offenses count for the purpose of determining that a person is a habitual offender under ORS 809.600(2). By administrative rule, those offenses are used to determine who qualifies for DMV's Driver Improvement programs, and whether a person has violated the terms of a hardship or probationary permit or has committed a serious traffic violation while operating a commercial motor vehicle. OAR 735-064-0220 specifies those traffic offense convictions DMV will use for the above described purposes. OAR 735-072-0035 is used only in the Driver Improvement Programs and contains a list of traffic offenses where it takes five offenses listed to equal one driver improvement violation. During the 2011 legislative session, two bills were enacted creating new traffic offenses or amending current traffic offense statutes where changes are required in OAR 735-064-

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0220 and 735-072-0035. DMV amended OAR 735-064-0220 and 735-072-0035 to implement these laws.

Offenses that an Oregon driver receives in another jurisdiction are posted to the record using an AAMVAnet Code Dictionary (ACD) code. AAMVA (Association of American Motor Vehicle Administrators) is instituting a few new ACD codes effective August 2011. DMV amended OAR 735-064-0220 to include new ACD codes and update the description of other ACD codes. DMV also moved from OAR 735-072-0035 to OAR 735-064-0220 the offense of failure to carry/present license to police officer. Moving this offense makes the program consistent for the offenses that Oregon links to ACD code B51.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-064-0220

### Traffic Offenses Used in Habitual Offender, Driver Improvement, CMV Serious Violations and Hardship/Probationary Driver Permit Programs

- (1) A conviction for an offense listed in this rule counts toward:
  - (a) The Habitual Offender Program pursuant to ORS 809.600(2);
  - (b) The Provisional and Adult Driver Improvement Programs outlined in Oregon Administrative Rule chapter 735, division 72;
  - (c) Motor vehicle traffic control violations connected to a fatal accident as defined in ORS 801.477(1)(k) and OAR 735-070-0037 that can lead to a suspension of commercial motor vehicle driving privileges.
  - (d) Revocation of a probationary driver permit pursuant to ORS 807.270(7); and
  - (e) Revocation of a hardship permit pursuant to OAR 735-064-0100 and 735-064-0110.

(2) This section lists the offenses and the statutory citations for Oregon offenses used in the programs identified in section (1) of this rule: [Table not included. See ED. NOTE.]

(3) The following offenses have been repealed under Oregon law but still count as a conviction for an offense as set forth in section (1) of this rule if the person was convicted of the listed offense or it is an equivalent offense as described in section (4) of this rule: [Table not included. See ED. NOTE.]

(4) Offenses from other states may be posted to driver records using an AAMVAnet Code Dictionary (ACD) code. This section identifies the code that appears on the driver record, a description of the offense and the ORS reference covering an equivalent offense(s) for Oregon: [Table not included. See ED. NOTE.]

(5) The following ACD codes are obsolete, but convictions reported under these codes may still count as a conviction for an offense as set forth in section (1) of this rule if DMV received notice from another state of a conviction using the following codes: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 184.616, 184.619, 802.010, 809.480 & 809.605  
Stats. Implemented: ORS 807.240, 807.270, 809.480, 809.600(2) & 809.605  
Hist.: MV 17-1986, f. & ef. 10-1-86; MV 33-1987, f. & ef. 11-2-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0180; MV 32-1989, f. & cert. ef. 10-3-89; MV 7-1990, f. & cert. ef. 5-16-90; MV 18-1991, f. 9-18-91, cert. ef. 9-29-91; MV 26-1991, f. & cert. ef. 11-18-91; DMV 8-1995, f. & cert. ef. 6-19-95; DMV 5-1997, f. & cert. ef. 2-20-97; DMV 8-1998, f. & cert. ef. 6-19-98; DMV 27-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-29-02; DMV 11-2002, f. 6-24-02, cert. ef. 6-30-02; DMV 33-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 4-2004, f. & cert. ef. 2-23-04; DMV 21-2005(Temp), f. 9-19-05, cert. ef. 10-1-05 thru 3-29-06; DMV 28-2005, f. & cert. ef. 12-14-05; DMV 19-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 28-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 18-2011, f. 12-22-11, cert. ef. 1-1-12

## 735-072-0035

### Driver Improvement Offenses

(1) The conviction for an offense listed below counts toward both the Provisional and Adult Driver Improvement Programs. It takes five convictions from the following list to equal one driver improvement violation. All other convictions counting in the Driver Improvement Programs are outlined in OAR 735-064-0220. [List not included. See ED. NOTE]

(2) Offenses from other states are posted to driver records using an AAMVAnet Code Dictionary (ACD) code. This section identifies the code that appears on the driver record, a description of the offense and the ORS or administrative rule reference to the equivalent offense(s) in Oregon. The offenses listed below also count towards both the Provisional and Adult Driver Improvement Programs as described in section (1) of this rule. [List not included. See ED. NOTE]

(3) The following ACD codes are obsolete but convictions reported under these codes may still count as a conviction for an offense for both the Provisional and Adult Driver Improvement Programs as described in sec-

tion (1) of this rule if DMV received notice from another state of a conviction using the following codes: [List not included. See ED. NOTE]

[ED. NOTE: Lists referenced are available from the agency.]  
Stat. Auth.: ORS 184.616, 184.619 & 809.480  
Stat. Imp.: ORS 809.480  
Hist.: DMV 29-2001(Temp), f. 12-14-01 cert. ef. 1-1-02 thru 6-29-02; DMV 12-2002, f. 6-24-02, cert. ef. 6-30-02; DMV 19-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 28-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 18-2011, f. 12-22-11, cert. ef. 1-1-12

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**Rule Caption:** Amends DMV Vehicle Dismantler Rules — Implements Chapter 433, Oregon Laws 2011.

**Adm. Order No.:** DMV 19-2011

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 735-152-0000, 735-152-0005, 735-152-0020, 735-152-0040, 735-152-0050, 735-152-0060

**Subject:** This rulemaking implements legislation enacted by the 2011 Legislative Assembly. Chapter 433, Oregon Laws 2011 creates new statutory provisions and amends ORS 822.115, 822.133, 822.145 in part to: (1) require an applicant for a dismantler certificate to include a National Motor Vehicle Title Information System identification number with the application; (2) establish requirements and definitions related to mobile motor vehicle crushers; (3) add new dismantler violations; and (4) grant DMV additional authority to impose civil penalties and sanctions on vehicle dismantlers.

The rule amendments add new definitions and revise language concerning the civil penalties and sanctions DMV may impose against dismantlers found in violation of applicable laws and rules. Other non-substantive changes are made for purposes of clarity.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-152-0000

### Definitions

As used in ORS chapters 822.100 to 822.150 and this division the following definitions apply:

(1) “Acquires,” “acquired” or “acquisition” means physical possession of a motor vehicle together with possession of the vehicle’s ownership record.

(2) “Cancellation” has the same meaning as “revocation” as defined in section (19) of this rule.

(3) “Certificate of sale” has the same meaning as defined in ORS 801.183.

(4) “Conspicuously display” as used in ORS 822.133 means letters, numbers or symbols, posted on both sides of the mobile motor vehicle crusher that are:

- (a) Six inches or larger in a color that contrasts to the background;
- (b) Clearly visible from at least 50 feet in daylight, and readable and easily understood by the public; and
- (c) Permanently affixed.

(5) “Date of sale” means the date that a purchaser takes possession of a major component purchased from a dismantler.

(6) “Destroy” has the same meaning as defined in ORS 822.133.

(7) “Dismantler” has the same meaning as defined in ORS 801.236.

(8) “Dismantle” means one or more major component parts are removed from a motor vehicle acquired by a dismantler.

(9) “Dispose” or “disposed of” means a motor vehicle acquired by a dismantler that is transferred to another person or is dismantled or destroyed.

(10) “DMV” means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(11) “Employee” means a person over whom a dismantler exercises the type of control typically associated with an employer, including:

- (a) Determining the frequency, method and amount of compensation;
- (b) Determining whether the person’s work is continuous or intermittent;
- (c) Determining the hours or frequency of a person’s work; or
- (d) Retaining the ability to terminate the relationship.

(12) “Main business location,” “primary business location,” or “place of business” as used in ORS 822.100 to 822.150 and these rules, means the location identified and listed as the dismantler’s main business location on the current business certificate application and does not include a supplemental location or temporary location as defined under sections (22) and (23) of this rule.

# ADMINISTRATIVE RULES

(13) "Major component part" has the same meaning as defined in ORS 822.137.

(14) "Mobile motor vehicle crusher" has the same meaning as defined in ORS 822.133.

(15) "Primary ownership document" or "ownership record," as used in ORS 822.135, has the same meaning as "primary ownership" record as defined in 801.402 and includes the primary ownership documents described in OAR 735-020-0010 or an abandoned vehicle certificate described in 735-024-0077.

(16) "Person" means an individual, partnership, corporation, association, or any other business organization if the context in which the term is used could also include these organizational forms.

(17) "Principal" means any owner, partner, corporate officer or other person who controls or manages the business organization or the employees or agents of the business organization.

(18) "Probation" means a period of time specified by DMV that a dismantler may continue to operate, but only under terms or conditions established by DMV.

(19) "Revocation" means to void and terminate a dismantler certificate or the principal's right to apply for a dismantler certificate.

(20) "Sanction" means an action taken by DMV against a dismantler's certificate, or the principal of a dismantler business, for non-compliance with Oregon law or DMV rule related to dismantlers or the operation of a dismantler business.

(21) "Suspension" means the temporary withdrawal of the authority to act as a dismantler.

(22) "Supplemental location," "supplemental place of business," or "additional place of business" as used in ORS 822.100 to 822.150 and these rules, means a location identified and listed on the dismantler's supplemental business location(s) business application and does not include a temporary location or the dismantler's primary business location approved by DMV to operate under the same business name as the primary business location.

(23) "Temporary location" as used in ORS 822.133 and these rules, means a location other than a dismantler's main business location or supplemental location, at which a dismantler may operate, for a period of 15 consecutive business days or less, a mobile motor vehicle crusher to render motor vehicles into crushed motor vehicles.

(24) "Vehicle Business" includes vehicle dealers as defined in OAR 735-150-0010(14), dismantlers, towing businesses, vehicle transporters and repair shops.

(25) "Violation" means any violation of Oregon law or a DMV rule applicable to a dismantler issued a certificate or any person engaged in dismantling activities.

(26) "Warning" means a documented warning or correction notice issued to a principal or employee of a dismantler business.

(27) "Wrecked vehicle" has the same meaning as defined in ORS 822.133.

(28) "Written report" means DMV Form 270, Vehicle Dismantler's Notice and the original ownership record for the vehicle.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.125, 822.130, 822.135, 822.137 & Ch. 433, OL 2011

Stats. Implemented: ORS 822.100, 822.105, 822.110, 822.115, 822.120, 822.125, 822.130, 822.133, 822.135, 822.137, 822.140, 822.145 & 822.150

Hist.: MV 7-1987, f. & cert. ef. 7-13-87; MV 10-1991, f. & cert. ef. 8-20-91; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 13-2008, f. & cert. ef. 6-23-08; DMV 19-2011, f. 12-22-11, cert. ef. 1-1-12

## 735-152-0005

### Dismantler Application

(1) In addition to the requirements for an application for a dismantler certificate under ORS 822.110, or a renewal under ORS 822.125, an applicant for a dismantler certificate must submit the following to the DMV Business Regulation Section:

(a) A completed and signed Application for Dismantler Certificate (DMV Form 735-373) that includes:

(A) A certification that the dismantler's business complies with the building, enclosure or barrier requirements under ORS 822.135(1) and OAR 734-040-0030;

(B) A state-issued picture identification (a copy of driver license or identification card) for each principal;

(C) The applicant's National Motor Vehicle Title Information System identification number; and

(D) If the applicant is a corporation, firm or partnership, the Oregon business registry number assigned by the Secretary of State, Corporation Division.

(b) All applicable fees; and

(c) A completed and signed DMV statement of compliance for surety bond or letter of credit.

(2) In addition to the requirements of section (1) of this rule, the applicant must submit a completed and signed Application for Supplemental Dismantler Certificate (DMV Form 735-373A) for each additional business location other than the dismantler's primary business location.

(3) If a dismantler changes the business location or business name on the dismantler's certificate, the dismantler must submit a completed and signed Application to Correct Dismantler Certificate (DMV Form 735-373B) and obtain a corrected dismantler certificate before business can be conducted at the new location or under the new business name.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.100 - 822.150 & Ch. 433, OL 2011

Stats. Implemented: ORS 822.100 - 822.150

Hist.: DMV 4-1996, f. & cert. ef. 7-26-96; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 19-2011, f. 12-22-11, cert. ef. 1-1-12

## 735-152-0020

### Refusal to Issue and Probationary Status of Dismantler Certificate

(1) DMV will not issue or renew an original dismantler certificate or supplemental certificate to any applicant when it determines:

(a) The application is incomplete or information contained in the application is false;

(b) A principal of the applicant is financially or operationally involved with any vehicle business whose certificate or right to apply for a certificate is currently suspended, canceled or revoked; or

(c) A principal of the applicant:

(A) Has been convicted of a violation of any provision of ORS Chapter 822 within the five years preceding the date of the application;

(B) Has been convicted in any jurisdiction outside of the state of Oregon of any violation of that jurisdiction's statutes relating to vehicle businesses, vehicle registration, title transfers or stolen vehicles within the five years preceding the date of the application; or

(C) Is currently affected by any type of administrative sanction or penalty that prohibits the principal from conducting a vehicle business and relates to vehicle businesses, vehicle registration, title transfers or stolen vehicles in a jurisdiction outside of the state of Oregon.

(2) DMV will not issue or renew an original dismantler certificate or supplemental certificate until it is satisfied the applicant meets all requirements for issuance of a certificate under ORS Chapter 822 and OAR 735, division 152.

(3) DMV may issue or renew an original dismantler certificate or supplemental certificate on a probationary basis if a principal of the applicant is financially or operationally involved with another vehicle business whose certificate or right to apply for a certificate is currently on probation.

(4) DMV will retain the fees paid with an application to cover processing costs when it refuses to issue a certificate.

(5) An applicant who has been refused issuance of a dismantler certificate is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS 183.413 to 183.500.

(6) The refused applicant's request for a hearing must be submitted in writing and received by DMV, within 60 days of the date of the refusal. A hearing request received in a timely manner will not result in issuance of a certificate, pending the outcome of the hearing. In case of a refusal to renew, the dismantler may continue to operate under the old certificate in accordance with ORS 183.430(1), pending the outcome of the hearing, except when DMV finds that such continued operation would constitute a serious danger to the public health or safety and extends the hearing request period to 90 days in accordance with ORS 183.430(2).

(7) When a dismantler or principal of the dismantler business fails to file a timely request for hearing, the charges shall be considered to have been admitted, the dismantler or principal shall be deemed in default as to those charges, DMV's file shall constitute the record of the case, and the order of refusal shall become final.

Stat. Auth.: ORS 184.616, 184.619, 802.010 822.100 - 822.150

Stats. Implemented: ORS 822.100 - 822.150

Hist.: MV 10-1991, f. & cert. ef. 8-20-91; DMV 23-2004, f. & cert. ef. 11-17-04; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 19-2011, f. 12-22-11, cert. ef. 1-1-12

## 735-152-0040

### Dismantler Violations Subject to Sanction

A dismantler is subject to the sanctions described under OAR 735-152-0050 if the dismantler:

(1) Commits the offense of improperly conducting a motor vehicle dismantling business for any of the reasons set forth in Chapter 433, Or

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Laws 2011, ORS 822.120, 822.125, 822.133, 822.135, 822.137, 822.145 or relevant rules adopted by DMV.

(2) Allows a person who is not an employee of the dismantler to imply or represent an affiliation with the dismantler business to engage in any activity that would subject that person to dismantler certification and regulatory requirements.

(3) Fails to allow DMV to conduct an inspection.

(4) Is issued notice that the dismantler's bond under ORS 822.120 is cancelled.

(5) Fails to pay any civil penalty imposed under ORS 822.133, 822.137 or 822.145.

(b) The person holding the certificate has violated ORS 803.140, 819.012, 819.016, 819.040, 822.120, 822.125, 822.133, 822.135, 822.137 or 822.150.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.120, 822.125, 822.130, 822.133, 822.135, 822.137, 822.145 & Ch. 433, OL 2011

Stats. Implemented: ORS 822.100, 822.105, 822.110, 822.115, 822.120, 822.125, 822.130, 822.133, 822.135, 822.137, 822.140, 822.145 & 822.150

Hist.: MV 10-1991, f. & cert. ef. 8-20-91; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 13-2008, f. & cert. ef. 6-23-08; DMV 19-2011, f. 12-22-11, cert. ef. 1-1-12

## 735-152-0050

### Sanctions

(1) In addition to any other penalties provided by law, DMV may impose sanctions against any person issued a valid dismantler certificate, any principal of a dismantler business, or both, if DMV determines either has violated any Oregon law or DMV rule relating to the operation of a dismantler business.

(2) Sanctions may be imposed against one or more of the following:

(a) A dismantler's certificate issued under ORS 822.110;

(b) An identification card or supplemental dismantler certificate issued under ORS 822.125; or

(c) A principal of the dismantler business.

(3) Factors DMV may consider when imposing a sanction against a dismantler include:

(a) The severity of the violation or its impact on the public;

(b) The number of similar or related violations;

(c) Whether a violation was willful or intentional; and

(d) Any previous sanction, civil penalty or warning issued or imposed against the dismantler or principal.

(4) DMV determines the appropriate sanction to impose when it determines a violation has occurred. These may include one or more of the following:

(a) Verbal or written warning, including a correction notice.

(b) Probation under conditions set by DMV, for up to three years.

(c) Suspension of the dismantler certificate and the right to apply for a dismantler certificate, for up to three years.

(d) Revocation of the dismantler certificate and the right to apply for a dismantler certificate. A person subject to permanent revocation of a dismantler certificate is ineligible to apply for a new dismantler certificate, for up to five years.

(e) Suspension of the right of a principal of a dismantler business to apply for a dismantler certificate for a different vehicle-related business, or in a different business name, for up to three years.

(f) Revocation of the right of a principal of a dismantler business to apply for a dismantler certificate for a different vehicle-related business, including a vehicle-related business with a different business name, for up to five years.

(g) Cancellation of the dismantler certificate if it is determined the applicant or a principal of the business is ineligible for a dismantler certificate.

(h) Immediate suspension or cancellation as provided in ORS 822.145(2) upon receipt of legal notice the dismantler's bond under 822.120 is canceled.

(i) Immediate suspension or cancellation for failure to pay any penalty imposed under ORS 822.135 or 822.137.

(5) A dismantler or principal whose business certificate or privileges are suspended, canceled or revoked is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS Chapter 183.

(6) Except as provided in section (7) of this rule, a dismantler's request for a hearing shall be submitted in writing to and received by DMV within 20 days of the date of the notice of revocation, suspension or cancellation. A hearing request received in a timely manner shall result in a

withdrawal of the revocation suspension or cancellation pending the outcome of the hearing.

(7) In the instance of an immediate suspension or cancellation as provided by subsection (4)(g) or (h) of this rule, a dismantler's request for a hearing shall be submitted in writing to and received by DMV within 90 days of the date the notice is issued. A hearing request received in a timely manner shall not result in a withdrawal of the suspension or cancellation pending the outcome of the hearing.

(8) In order for a request for hearing to be timely, the request must be received by DMV within the time periods established in sections (6) and (7) of this rule. If the request for hearing is not timely received, the person waives their right to a hearing, except as provided in OAR 137-003-0528. The time periods will be computed as set forth in 137-003-0520(8).

(9) When DMV does not receive a timely request for a hearing, the dismantler or principal defaults, waives the right to a hearing and DMV's file constitutes the record of the case.

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

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.120, 822.125, 822.130, 822.133, 822.135, 822.137, 822.145 & Ch. 433, OL 2011

Stats. Implemented: ORS 822.100, 822.105, 822.110, 822.115, 822.120, 822.125, 822.130, 822.133, 822.135, 822.137, 822.140, 822.145 & 822.150

Hist.: MV 10-1991, f. & cert. ef. 8-20-91; DMV 23-2004, f. & cert. ef. 11-17-04; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 13-2008, f. & cert. ef. 6-23-08; DMV 19-2011, f. 12-22-11, cert. ef. 1-1-12

## 735-152-0060

### Civil Penalty Matrix for Certified Dismantlers

DMV may impose a civil penalty against a motor vehicle dismantler for any violation described under Chapter 433, Or Laws 2011, ORS 803.140, 819.012, 819.016, 819.040, 822.120, 822.125, 822.130, 822.133, 822.135, 822.137 or DMV rules. DMV adopts this civil penalty matrix to determine civil penalty amounts that may be imposed against dismantlers for specific violations. DMV may modify a civil penalty assessed against a dismantler under the provisions of OAR 735-152-0045. Under this rule, an offense is a "second or subsequent offense" if a dismantler committed the same offense within three years of the offense under consideration.

(1) Fraudulently obtaining a dismantler certificate by submission of an application under OAR 735-152-0005 containing a false statement or omission of a material fact: \$1,000, for the first and subsequent violation(s).

(2) Failure to comply with any provision of ORS 803.140 concerning an application for salvage title:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

(3) Failure to comply with any provision of ORS 819.012 concerning procedures for a totaled vehicle:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

(4) Failure to comply with any provision of ORS 819.016 concerning when a salvage title is required:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

(5) Failure to comply with any provision of ORS 819.040 concerning illegal salvage procedures:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

(6) Failure to comply with any provision of ORS 822.120 concerning a bond or letter of credit:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

(7) Failure to comply with any provision of ORS 822.125 concerning business conducted in the location approved under the certificate:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

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- (8) Failure to comply with ORS 822.133(2)(a), 822.137(2)(j) or OAR 735-152-0025(3) concerning physically separating or visually labeling a wrecked vehicle:
- (a) For the first violation: \$250;
  - (b) For the second violation: \$500;
  - (c) For the third and subsequent violation(s): \$1,000.
- (9) Failure to comply with ORS 822.133(2)(b) or 822.137(2)(j) concerning removing parts or destroying a motor vehicle before obtaining an ownership record for the vehicle:
- (a) For the first violation: \$500;
  - (b) For the second and subsequent violation(s): \$1,000
- (10) Failure to comply with ORS 822.133(2)(c) or 822.137(2)(j) concerning failure to demolish the registration plates of a wrecked vehicle at the time the ownership record is received:
- (a) For the first violation: warning;
  - (b) For the second violation: \$250;
  - (c) For the third violation: \$500;
  - (d) For the fourth and subsequent violation(s): \$1,000.
- (11) Failure to comply with ORS 822.133(2)(d) or 822.137(2)(j) concerning failure to notify DMV of any changes in the information provided to the DMV in the application for a dismantler certificate within 30 days of the change:
- (a) For the first violation: warning;
  - (b) For the second violation: \$250;
  - (c) For the third violation: \$500;
  - (d) For the fourth and subsequent violation(s): \$1,000.
- (12) Failure to comply with ORS 822.133(2)(e), 822.137(2)(j) or OAR 735-152-0034 concerning furnishing DMV with a written report, in a form established by DMV by rule, after a wrecked vehicle is dismantled or destroyed:
- (a) For the first violation: warning;
  - (b) For the second violation: \$250;
  - (c) For the third violation: \$500;
  - (d) For the fourth and subsequent violation(s): \$1,000.
- (13) Failure to comply with ORS 822.133(3)(a)(B), 822.137(2)(j) or OAR 735-152-0034 concerning the conspicuous display of the dismantler's name and certificate number on the mobile motor vehicle crusher:
- (a) For the first violation: warning;
  - (b) For the second violation: \$250;
  - (c) For the third violation: \$500;
  - (d) For the fourth and subsequent violation(s): \$1,000.
- (14) Failure to comply with ORS 822.135(1)(a) concerning the requirements to permanently exhibit a dismantler certificate at a place of business:
- (a) For the first violation; warning;
  - (b) For the second violation: \$500;
  - (c) For the third and subsequent violation(s): \$1,000.
- (15) Failure to comply with ORS 822.135(1)(b) or (L) concerning the requirements to obtain a supplemental dismantler certificate:
- (a) For the first violation: warning;
  - (b) For the second violation: \$250;
  - (c) For the third violation: \$500;
  - (d) For the fourth and subsequent violation(s): \$1,000.
- (16) Failure to comply with ORS 822.135(1)(c) concerning the maintenance of records:
- (a) For the first violation: warning;
  - (b) For the second violation: \$250;
  - (c) For the third violation: \$500;
  - (d) For the fourth and subsequent violation(s): \$1,000.
- (17) Failure to comply with ORS 822.135(1)(d) concerning failure to timely surrender to DMV the title, a certificate of title or other primary ownership document or ownership record for a motor vehicle:
- (a) For the first violation: warning;
  - (b) For the second violation: \$250;
  - (c) For the third violation: \$500;
  - (d) For the fourth and subsequent violation(s): \$1,000.
- (18) Failure to comply with any provision of ORS 822.135 (1)(e) or (m) concerning the inspection of books, records, inventory and premises:
- (a) For the first violation: \$500;
  - (b) For the second and subsequent violation(s): \$1,000.
- (19) Failure to comply with ORS 822.135(1)(f), (g), (k), or DMV rules concerning requirements for dismantler business location and premises:
- (a) For the first violation: warning;
  - (b) For the second violation: \$250;
- (c) For the third violation: \$500;
  - (d) For the fourth and subsequent violation(s): \$1,000.
- (20) Failure to comply with ORS 822.135(1)(h) concerning conducting any wrecking, dismantling or altering of vehicles outside the building, enclosure, or barrier on the premises of the business:
- (a) For the first violation: warning;
  - (b) For the second violation: \$250;
  - (c) For the third violation: \$500;
  - (d) For the fourth and subsequent violation(s): \$1,000.
- (21) Failure to comply with ORS 822.135(1)(i) concerning the storage or display of motor vehicles or major component parts, or conducting motor vehicle dismantling outside of a main business location or supplemental location.
- (a) For the first violation: warning;
  - (b) For the second violation: \$250;
  - (c) For the third violation: \$500;
  - (d) For the fourth and subsequent violation(s): \$1,000.
- (22) Failure to comply with ORS 822.135(1)(j) concerning failure to immediately report to DMV information pertaining to the transfer of a wrecked or dismantled motor vehicle.
- (a) For the first violation: warning;
  - (b) For the second violation: \$250;
  - (c) For the third violation: \$500;
  - (d) For the fourth and subsequent violation(s): \$1,000.
- (23) Failure to comply with ORS 822.135(1)(n) or (o) concerning the deployment or removal of any air bag containing sodium azide.
- (a) For the first violation: warning;
  - (b) For the second violation: \$250;
  - (c) For the third violation: \$500;
  - (d) For the fourth and subsequent violation(s): \$1,000.
- (24) Failure to notify DMV of any change in the information provided to DMV in the application submitted under OAR 735-152-0005 within 30 days of the change:
- (a) For the first violation: warning;
  - (b) For the second violation: \$250;
  - (c) For the third violation: \$500;
  - (d) For the fourth and subsequent violation(s): \$1,000.
- (25) Failure to comply with any provision of ORS 822.137(2)(f) or OAR 735-152-0031 concerning dismantler motor vehicle records:
- (a) For the first violation: warning;
  - (b) For the second violation: \$250;
  - (c) For the third violation: \$500;
  - (d) For the fourth and subsequent violation(s): \$1,000.
- (26) Failure to comply with any provision of ORS 822.137(2)(g) or OAR 735-152-0031 concerning dismantler major component part records:
- (a) For the first violation: warning;
  - (b) For the second violation: \$250;
  - (c) For the third violation: \$500;
  - (d) For the fourth and subsequent violation(s): \$1,000.
- (27) Failure to comply with ORS 822.137(2)(a), by acquiring a motor vehicle or major component part without first obtaining a certificate of sale and, if applicable, a certificate of title:
- (a) For the first violation: warning;
  - (b) For the second violation: \$250;
  - (c) For the third violation: \$500;
  - (d) For the fourth and subsequent violation(s): \$1,000.
- (28) Failure to comply with ORS 822.137(2)(b), regarding the possession, sale or disposal of a motor vehicle or any part of a motor vehicle knowing that the vehicle or part has been stolen: \$1,000 for the first violation and subsequent violation(s).
- (29) Failure to comply with ORS 822.137(2)(c), regarding selling, buying, receiving, concealing, possessing or disposing of a motor vehicle or any part of a motor vehicle having a missing, defaced, intentionally altered or covered vehicle identification number, unless directed to do so by a law enforcement official: \$1,000 for the first violation and subsequent violation(s).
- (30) Failure to comply with ORS 822.137(2)(d) by committing a forgery in the second degree, as defined in ORS 165.007, or misstating a material fact relating to a certificate of title, registration or other document related to a motor vehicle that has been reassembled from parts of other motor vehicles: \$1,000 for the first violation and subsequent violation(s).
- (31) Failure to comply with ORS 822.137(2)(e) by fraudulently creating or modifying a dismantler certificate: \$1,000 for the first violation and subsequent violation(s).



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(32) Failure to comply with ORS 822.137(2)(h) concerning a dishonest act or omission during the sale of a motor vehicle or major component part that, as determined by DMV, causes a loss to the purchaser: \$1,000 for the first violation and subsequent violation(s).

(33) Failure to comply with ORS 822.137(2)(i) concerning being convicted of a crime involving false statements or dishonesty that directly relates to the business of the dismantler or suffers any civil judgment imposed for conduct involving fraud, misrepresentation or conversion: \$1,000 for the first violation and subsequent violation(s).

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.125, 822.130, 822.133, 822.135, 822.137, 822.150 & Ch. 433, OL 2011

Implemented: ORS 183.430, 822.105, 822.110, 822.115, 822.120, 822.125, 822.130, 822.133, 822.135, 822.137, 822.140 & 822.150

Hist.: DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 13-2008, f. & cert. ef. 6-23-08; DMV 19-2011, f. 12-22-11, cert. ef. 1-1-12

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## Department of Transportation, Highway Division Chapter 734

**Rule Caption:** Update of Oregon Coordinate Systems.

**Adm. Order No.:** HWD 13-2011

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 734-005-0005, 734-005-0010, 734-005-0015

**Subject:** Chapter 179 OL 2011 requires the Department to develop a Rule pertaining to the Oregon Coordinate System. The bill effectively moves all definitions of the existing Oregon State Plane Coordinate System from ORS Chapter 93 to an Oregon Administrative Rule (to be created by ODOT). In addition, all definitions for the new Oregon Coordinate Reference System will be added to the new OAR. Sections of ORS 93, 209, and 390 will be amended to point to the new location of these definitions.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

### 734-005-0005

#### Purpose

The purpose of this administrative rule is to define the Oregon Coordinate System, consisting of three mapping projection coordinate systems that are authorized for use in the State of Oregon.

Stat. Auth.: ORS 184.616, 184.619, Ch.179 OL 2011

Stats. Implemented: ORS 209.130, 209.155, 209.250, 390.770, Ch.179 OL 2011

Hist.: HWD 13-2011, f. 12-22-11, cert. ef. 1-1-12

### 734-005-0010

#### Oregon Coordinate Systems

(1) The **Oregon State Plane Coordinate System of 1927** consists of two zones of mapping projections defined by the National Geodetic Survey of the National Ocean Service, one for the Oregon North Zone and one for the Oregon South Zone.

(2) The **Oregon State Plane Coordinate System of 1983** consists of two zones of mapping projections defined by the National Geodetic Survey of the National Ocean Service, one for the Oregon North Zone and one for the Oregon South Zone.

(3) The **Oregon Coordinate Reference System** consists of multiple zones developed by an Oregon Department of Transportation committee of private and public land surveying, geographic information system, and academic professionals to define a system of low distortion mapping projections wherein distances computed between points on the grid plane will represent the distances measured between the same points on the ground within published zone tolerances.

Stat. Auth.: ORS 184.616, 184.619, Ch.179 OL 2011

Stats. Implemented: ORS 209.130, 209.155, 209.250, 390.770, Ch.179 OL 2011

Hist.: HWD 13-2011, f. 12-22-11, cert. ef. 1-1-12

### 734-005-0015

#### Coordinate System Parameters

(1) Oregon State Plane Coordinate System Of 1927

(a) North Zone: [Table not included. See ED. NOTE.]

(b) South Zone: [Table not included. See ED. NOTE.]

(2) Oregon State Plane Coordinate System Of 1983

(a) North Zone: [Table not included. See ED. NOTE.]

(b) South Zone: [Table not included. See ED. NOTE.]

(3) Oregon Coordinate Reference System Zones

(a) Baker Zone: [Table not included. See ED. NOTE.]

(b) Bend-Klamath Falls Zone: [Table not included. See ED. NOTE.]

(c) Bend-Redmond-Prineville Zone: [Table not included. See ED. NOTE.]

(d) Bend-Vale Zone: [Table not included. See ED. NOTE.]

(e) Canyonville-Grants Pass Zone: [Table not included. See ED. NOTE.]

(f) Columbia River East Zone: [Table not included. See ED. NOTE.]

(g) Columbia River West Zone: [Table not included. See ED. NOTE.]

(h) Cottage Grove-Canyonville Zone: [Table not included. See ED. NOTE.]

(i) Dufur-Madras Zone: [Table not included. See ED. NOTE.]

(j) Eugene Zone: [Table not included. See ED. NOTE.]

(k) Grants Pass-Ashland Zone: [Table not included. See ED. NOTE.]

(L) Gresham-Warm Springs Zone: [Table not included. See ED. NOTE.]

(m) La Grande Zone: [Table not included. See ED. NOTE.]

(n) Ontario Zone: [Table not included. See ED. NOTE.]

(o) Oregon Coast Zone: [Table not included. See ED. NOTE.]

(p) Pendleton Zone: [Table not included. See ED. NOTE.]

(q) Pendleton-La Grande Zone: [Table not included. See ED. NOTE.]

(r) Portland Zone: [Table not included. See ED. NOTE.]

(s) Salem Zone: [Table not included. See ED. NOTE.]

(t) Sweet Home-Sisters Zone: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619, Ch.179 OL 2011

Stats. Implemented: ORS 209.130, 209.155, 209.250, 390.770, Ch.179 OL 2011

Hist.: HWD 13-2011, f. 12-22-11, cert. ef. 1-1-12

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**Rule Caption:** Traffic Control Devices; Authority.

**Adm. Order No.:** HWD 14-2011

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 12-22-11

**Notice Publication Date:** 7-1-2011

**Rules Amended:** 734-020-0005

**Rules Repealed:** 734-020-0055

**Subject:** The amendment of OAR 734-020-0005 adopts the 2009 Edition of the Manual on Uniform Traffic Control Devices, Oregon Supplement to the Manual on Uniform Traffic Control Devices, and the Oregon Temporary Traffic Control Handbook as standards for traffic control devices in Oregon in accordance with ORS 810.200. The amended rule complies with federal requirements set forth in Title 23, United States Code, Section 109(d) and Title 23, Code of Federal Regulations, Part 655.603, which requires states to adopt the 2009 Edition of the Manual on Uniform Traffic Control Devices and any supplements within two years of issuance.

The amendment also recognizes the Traffic Control Devices Committee as the official advisory body to the State Traffic Engineer on uniform standards for traffic control devices in this state, and repeals OAR 734-020-0055 because it is covered in the referenced documents of OAR 734-020-0005.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

### 734-020-0005

#### Traffic Control Devices

(1) Manual on Uniform Traffic Control Devices:

(a) In accordance with ORS 810.200, the 2009 Edition of the Manual on Uniform Traffic Control Devices dated December 2009 (U.S. Department of Transportation, Federal Highway Administration) is hereby adopted by reference as the manual and specifications of uniform standards for traffic control devices for use upon highways within this state.

(b) The Oregon Supplement to the Manual on Uniform Traffic Control Devices dated December 2011 is hereby adopted by reference as a register of deviations to the 2009 Edition of the Manual on Uniform Traffic Control Devices.

(c) The Oregon Temporary Traffic Control Handbook dated December 2011 is hereby adopted by reference as a standard for temporary traffic control for operations of three days or less.

(2) Traffic Control Devices Committee

(a) The Traffic Control Devices Committee is created to serve as an advisory body to the State Traffic Engineer on uniform standards for traffic control devices in this state. The committee shall consist of the following persons:

(A) The State Traffic Engineer of the Department of Transportation;

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(B) A State Region Traffic Manager appointed by the Department of Transportation;

(C) The Superintendent of State Police or a representative designated by the superintendent;

(D) Three City Traffic Engineers appointed by the League of Oregon Cities;

(E) Three County Traffic Engineers appointed by the Association of Oregon Counties; and

(F) A Transportation Engineer appointed by the Oregon Section of the Institute of Transportation Engineers;

(b) Committee members serve a maximum three-year term and may be re-appointed to serve an additional three-year term.

(c) Six Committee members constitute a quorum.

(d) A Chair and Vice-Chair shall be elected by the Committee to serve for the calendar year. The Chair shall prepare the agenda and moderate the meetings. The Vice-Chair shall preside in the absence of the Chair. If both are absent, a temporary Chair shall be chosen by the Committee at the meeting.

(e) The State Traffic Engineer shall serve as Secretary to the Committee assisting the Chair in preparing the agenda, publishing an agenda prior to each meeting, maintaining Committee files, and publishing minutes of meetings.

(f) The Committee shall meet every other month and at such additional times as designated by the Chair or as requested by six or more members of the Committee.

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

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

Stats. Implemented: ORS 810.200 & 810.210

Hist.: HC 1270, f. & ef. 1-18-72; HC 1277, f. & ef. 3-3-72; 1 OTC 80, f. & ef. 12-27-76; 1 OTC 7-1978, f. & ef. 4-27-78; 1 OTC 15-1979(Temp), f. & ef. 7-18-79; 1 OTC 25-1979, f. & ef. 10-30-79; 1 OTC 16-1980, f. & ef. 9-18-80; 1 OTC 22-1980, f. & ef. 11-26-80; 1 OTC 23-1980, f. & ef. 11-26-80; 2HD 9-1983(Temp), f. & ef. 4-20-83; 2HD 16-1983, f. & ef. 9-23-83; 2HD 9-1984(Temp), f. & ef. 10-4-84; 2HD 1-1985, f. & ef. 3-29-85; 2HD 3-1985, f. & ef. 9-13-85; 2HD 1-1986, f. & ef. 2-14-86; 2HD 6-1986(Temp), f. & ef. 7-29-86; HWY 1-1987, f. & ef. 1-9-87; HWY 2-1988(Temp), f. & cert. ef. 5-27-88; HWY 7-1988, f. & cert. ef. 12-2-88; HWY 2-1990(Temp), f. & cert. ef. 2-1-90; HWY 10-1990, f. & cert. ef. 6-29-90; TO 3-2002, f. & cert. ef. 4-15-02; HWD 6-2005, f. & cert. ef. 7-22-05; HWD 10-2005(Temp), f. & cert. ef. 12-14-05 thru 6-11-06; HWD 4-2006, f. & cert. ef. 5-26-06; HWD 14-2011, f. & cert. ef. 12-22-11

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**Rule Caption:** Roadside Memorial Program.

**Adm. Order No.:** HWD 15-2011

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 734-026-0010, 734-026-0020, 734-026-0030, 734-026-0040, 734-026-0045

**Subject:** ODOT has adopted these new rules to implement HB 3039 enacted by the 76th Oregon Legislative Assembly. The bill requires ODOT to erect and maintain roadside memorial signs that commemorate a police officer killed in the line of duty if the Legislative Assembly adopts a concurrent resolution that recognizes the police officer killed in the line of duty and fees are paid to cover the costs of erecting, maintaining and removing the signs. The bill also requires ODOT to establish by rule the fees to be collected and the design standards for such signs.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 734-026-0010

### Purpose and Scope

The purpose of the Roadside Memorial Sign program is to provide an opportunity for citizens of the State of Oregon, through individuals or organizations identified as "Applicant" in Division 26 rules, to commemorate police officers killed in the line of duty with a sign installed along the State Highway System in accordance with Chapter 668, OL 2011, and to request a preferred location for such sign.

Stat. Auth.: ORS 184.616, 184.619, Ch. 668, OL 2011

Stats. Implemented: Ch. 668, OL 2011

Hist.: HWD 15-2011, f. 12-22-11, cert. ef. 1-1-12

## 734-026-0020

### Definitions

As used in Division 26 rules, the following definitions shall apply:

(1) "Applicant" means the individual or organization seeking to commemorate a police officer killed in the line of duty, and named in and signing the application.

(2) "Department" means the Oregon Department of Transportation.

(3) "MUTCD" means the Manual on Uniform Traffic Control Devices as adopted in OAR 734-020-0005.

(4) "Region Traffic Engineer" means a professional engineer employed by the Department who by training and experience has comprehensive knowledge of the Department's traffic engineering standards, policies, and procedures.

(5) "Roadside Memorial Sign" means a sign including the name of the police officer killed in the line of duty and complying with requirements of the MUTCD.

(6) "State Highway System" means the public way for vehicular travel that is under the jurisdiction of the Department. It also includes medians, highway shoulders, improvements appurtenant to the highway, such as support or tunnel structures, bicycle ways or sidewalks, and right of way used for the operation of the roadway.

(7) "State Traffic Engineer" means a professional engineer, or designated representative, employed by the Department in charge of the Department's traffic engineering standards, policies, and procedures.

Stat. Auth.: ORS 184.616, 184.619, Ch. 668, OL 2011

Stats. Implemented: Ch. 668, OL 2011

Hist.: HWD 15-2011, f. 12-22-11, cert. ef. 1-1-12

## 734-026-0030

### General Requirements

(1) The Applicant shall submit a written request to the State Traffic Engineer containing the following information:

(a) Name, address, and telephone number of the Applicant;

(b) A brief description of the concurrent resolution adopted by the Legislative Assembly recognizing the police officer killed in the line of duty;

(c) The preferred location on the State Highway System for a Roadside Memorial Sign to commemorate the police officer killed in the line of duty;

(d) Payment of the fee specified in OAR 734-026-0045.

(2) The Applicant, if the request meets the requirements of Chapter 668, OL 2011 and Division 26, shall be granted placement of a single Roadside Memorial Sign on the State Highway System.

Stat. Auth.: ORS 184.616, 184.619, Ch. 668, OL 2011

Stats. Implemented: Ch. 668, OL 2011

Hist.: HWD 15-2011, f. 12-22-11, cert. ef. 1-1-12

## 734-026-0040

### Specific Requirements

(1) The Department shall install Roadside Memorial Signs based on a standard design maintained by the Department that conforms to the requirements in the MUTCD.

(2) Roadside Memorial Signs shall not be installed on ramps, bridges, or urban freeways on the State Highway System.

(3) Roadside Memorial Signs shall be mounted on only one side of a support post, facing oncoming traffic, and only on the side of the road nearest the lane of that oncoming traffic.

(4) The Region Traffic Engineer shall investigate the location requested by the Applicant and make a recommendation to the State Traffic Engineer regarding sign placement based on sign priority and spacing requirements in accordance with the MUTCD. If the location requested by the Applicant does not meet MUTCD requirements, the Region Traffic Engineer may recommend an alternate location based upon an engineering investigation.

(5) The State Traffic Engineer shall determine the location of all Roadside Memorial Signs based upon the recommendation of the Region Traffic Engineer and approve a request by an Applicant that meets all the requirements in Division 26.

Stat. Auth.: ORS 184.616, 184.619, Ch. 668, OL 2011

Stats. Implemented: Ch. 668, OL 2011

Hist.: HWD 15-2011, f. 12-22-11, cert. ef. 1-1-12

## 734-026-0045

### Fee for Roadside Memorial Signs

(1) In accordance with Chapter 668, OL 2011, a fee of \$600 shall be submitted to the Department with the application to cover the direct and indirect expenses associated with erecting, maintaining and removing a Roadside Memorial Sign.

(2) Roadside Memorial Signs shall remain in place for a period of ten years or until such time that the sign becomes damaged or is no longer in serviceable condition. The Department shall replace a Roadside Memorial Sign that is damaged or is no longer in serviceable condition if the Applicant pays the fee specified in section (1) to cover the cost of replacing the sign. Replaced Roadside Memorial Signs shall remain in place for

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a period of ten years or until such time that the sign becomes damaged or is no longer in serviceable condition.

(3) The Department may remove a Roadside Memorial Sign that becomes damaged, is no longer in serviceable condition, or has been in place for a period of ten years.

(4) The Department may move and relocate a Roadside Memorial Sign if the Department determines such relocation is necessary for highway or other transportation purposes.

Stat. Auth.: ORS 184.616, 184.619, Ch. 668, OL 2011  
Stats. Implemented: Ch. 668, OL 2011  
Hist.: HWD 15-2011, f. 12-22-11, cert. ef. 1-1-12

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**Rule Caption:** Adoption of Temporary Access Management Rules to Conform to 2011 ORS Revisions made by SB 264.

**Adm. Order No.:** HWD 16-2011(Temp)

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 1-1-12 thru 6-29-12

**Notice Publication Date:**

**Rules Adopted:** 734-051-1010, 734-051-1020, 734-051-1030, 734-051-1050, 734-051-1060, 734-051-1070, 734-051-2010, 734-051-2020, 734-051-2030, 734-051-3010, 734-051-3020, 734-051-3030, 734-051-3040, 734-051-3050, 734-051-3060, 734-051-3070, 734-051-3080, 734-051-3090, 734-051-3100, 734-051-3110, 734-051-4010, 734-051-4020, 734-051-4030, 734-051-4040, 734-051-4050, 734-051-5010, 734-051-5020, 734-051-5030, 734-051-5040, 734-051-5050, 734-051-5060, 734-051-5070, 734-051-5080, 734-051-5090, 734-051-5100, 734-051-5110, 734-051-5120, 734-051-6010, 734-051-6020, 734-051-6030, 734-051-6040, 734-051-6050, 734-051-6060, 734-051-6070, 734-051-7010

**Rules Suspended:** 734-051-0010, 734-051-0020, 734-051-0035, 734-051-0040, 734-051-0045, 734-051-0070, 734-051-0080, 734-051-0085, 734-051-0095, 734-051-0105, 734-051-0115, 734-051-0125, 734-051-0135, 734-051-0145, 734-051-0155, 734-051-0165, 734-051-0175, 734-051-0185, 734-051-0195, 734-051-0205, 734-051-0215, 734-051-0225, 734-051-0245, 734-051-0255, 734-051-0265, 734-051-0275, 734-051-0285, 734-051-0295, 734-051-0305, 734-051-0315, 734-051-0325, 734-051-0335, 734-051-0345, 734-051-0355, 734-051-0500, 734-051-0510, 734-051-0520, 734-051-0530, 734-051-0540, 734-051-0550, 734-051-0560

**Subject:** The 2011 Oregon Legislative Assembly adopted Senate Bill 264 which substantially overhauled the statutory authorization for the Oregon Department of Transportation (ODOT) highway access management program. The Act replaced a very general framework for control of highway access with a much more specific and technical framework. It also specified detailed and substantially different evaluation standards for approval and denial of highway access permits compared to what ODOT had in place. The changes in ORS 374.305 et. seq. are intended to provide more clear and objective standards for determining whether any particular property can receive a highway approach permit, thus improving property development processes in Oregon.

The new rules will immediately provide needed detail to staff and applicants about how the new procedures and criteria will be administered.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 734-051-0010

### 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, 374.345 & Ch. 972 & Ch. 974, OL 1999  
Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974 OL 1999, Ch. 371, OL 2003  
Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0020

### Purpose and Applicability of Rules

(1) The purpose of division 51 rules is to provide a safe and efficient transportation system through the preservation of public safety, the improvement and development of transportation facilities, the protection of highway traffic from the hazards of unrestricted and unregulated entry from adjacent property, and the elimination of hazards due to highway grade

intersections. These rules establish procedures and criteria used by the Department to govern highway approaches, access control, spacing standards, medians and restriction of turning movements in compliance with statewide planning goals and in a manner compatible with acknowledged comprehensive plans and consistent with Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR), and the 1999 Oregon Highway Plan (OHP).

(2) The 1999 Oregon Highway Plan dated March 18, 1999 and all amendments approved by the Oregon Transportation Commission as of the adoption of this rule are hereby adopted by reference as the policy framework and investment priorities for implementing access management.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312 & 374.345

Stats. Implemented: ORS 374.305 - 374.350 & 374.990

Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0030; HWD 2-2007, f. & cert. ef. 1-26-07; HWD 8-2010(Temp), f. & cert. ef. 7-30-10 thru 1-21-11; HWD 1-2011, f. & cert. ef. 1-19-11; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0035

### Administration of Rules

(1) Approaches in existence and applications filed after March 1, 2004 are governed by these rules.

(2) Division 51 rules do not affect existing rights of owners of grandfathered approaches, except where these rules specifically state their application to grandfathered approaches, as in OAR 734-051-0045, Change of Use of an Approach. 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 in these rules.

(3) Consistent with ORS 374.312 the Department and local governments may enter into intergovernmental agreements allowing local governments to process applications and issue Construction Permits and Permits to Operate for private approaches to regional and district highways, including highways routed over city streets where the local government owns the right of way.

(4) 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 or issuance of a Construction Permit or a Permit to Operate is not a finding of compliance with statewide planning goals or an acknowledged comprehensive plan.

(5) Any notice or other communication by the Department is sufficient if mailed by first class mail to the person at the address on the application or where property tax statements for the property are sent. Any notice of an appealable decision is sufficient if sent by certified mail to the person at the address on the application or where property tax statements for the property are sent. The notice date is the date of mailing.

(6) Pursuant to ORS 374.310(3), the division 51 rules may not be exercised so as to deny any property adjoining the highway reasonable access and 374.312(1)(c) requires adoption of rules establishing criteria for reasonable access consistent with 374.310(3) criteria. These rules address "reasonable access" solely in the context of the issuance of approach permits. "Reasonable access" under these rules does not affect whether access may be reasonable for other purposes or under other reviews.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312 & 374.345

Stats. Implemented: ORS 374.305 - 347.350 & 374.990

Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0050 & 734-051-0060; HWD 2-2007, f. & cert. ef. 1-26-07; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0040

### Definitions

The following definitions apply to division 51 rules:

(1) "1999 Oregon Highway Plan" means the 1999 Oregon Highway Plan and all amendments approved by the Oregon Transportation Commission as adopted by OAR 734-051-0020.

(2) "Access Control" means no right of access exists between a property abutting the highway and the highway. The right of access may have been acquired by the Department or eliminated by law.

(3) "Access Management Strategy" means a project delivery strategy that identifies the location and type of approaches and other necessary improvements that will occur primarily within the highway right of way and that is intended to improve current conditions of the section of highway by moving in the direction of the access management spacing standards.

(4) "Access Management Plan" means a plan for managing a designated section of highway or the influence area of an interchange to maintain and improve highway performance and safety. It is intended to improve current and future conditions on a section of highway or interchange by moving in the direction of the access management spacing standards and

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may address local street connectivity, local street improvements and local plans and land use regulations. An Access Management Plan 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.

(5) "Access Mitigation Proposal" means a proposal offered by an applicant that identifies the location and type of approaches and necessary improvements to the highway and that is intended to improve current conditions of the section of highway by moving in the direction of the access management spacing standards by combining or removing approaches resulting in a net reduction of approaches to that section of highway. An Access Mitigation Proposal must be approved by the Department, agreed to by all affected property owners, and real property interests must be recorded.

(6) "Alternate Access" means the physical existence of other means to access a property than the proposed approach, such as an existing public right of way, another location on the subject state highway, an easement across adjoining property, a different highway, a service road, or an alley, including singularly or as a joint approach, but without a conclusive determination that the alternate access is "reasonable" as defined in section (51) of this rule.

(7) "Appealable decision" means a decision by the Department that may be appealed through a Region Review as set forth in OAR 734-051-0345 or a Contested Case Hearing as set forth in OAR 734-051-0355. An appealable decision includes a decision to deny an application or to deny a deviation or approval of an application with mitigation measures.

(8) "Applicant" means a person, firm or corporation, or other legal entity that applies for an approach or deviation including an owner or lessee, or an option holder of a property abutting the highway, or their designated agent.

(9) "Application" means a completed form Application for State Highway Approach including any required documentation and attachments necessary for the Department to determine if the application can be deemed complete.

(10) "Approach" means a legally constructed, approach road or private road crossing, recognized by the Department as grandfathered or existing under a valid Permit to Operate.

(11) "Approach road" means a legally constructed, public or private connection, providing vehicular access to and/or from a highway and an adjoining property.

(12) "Classification of highways" means the Department's state highway classifications defined in the 1999 Oregon Highway Plan.

(13) "Commission" means the Oregon Transportation Commission.

(14) "Construction Permit" means a Permit to Construct a State Highway Approach including all attachments, required signatures, and conditions and terms.

(15) "Crash history" means at least the three most recent years of crash data recorded by the Department's Crash Analysis and Reporting Unit.

(16) "Day" means calendar day, unless specifically stated otherwise.

(17) "Deemed complete" means an application and all required supplemental documentation necessary for the Department to review and assess the application and determine if a Construction Permit or a Permit to Operate may be issued.

(18) "Department" or "ODOT" means the Oregon Department of Transportation.

(19) "Deviation" means a departure from the access management spacing standards.

(20) "Division 51" means Oregon Administrative Rules (OAR) 734-051-0010 through 734-051-0560 and Tables 1, 2, 3, 4, 5, 6 and 7 adopted and made a part of division 51 rules and Figures 1, 2, 3 and 4 adopted and made a part of division 51 rules.

(21) "Double-Frontage Property" means a property with a right of access to more than one state highway.

(22) "Executive Deputy Director" means the Executive Deputy Director for Highway Division of the Oregon Department of Transportation.

(23) "Expressway" means a segment of highway defined in the 1999 Oregon Highway Plan and classified by the Oregon Transportation Commission.

(24) "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.

(25) "Freeway or Expressway ramp" means all types, arrangements, and sizes of turning roadways for right or left turning vehicles that connect two or more legs at an interchange and the components of a ramp area terminal at each leg and a connection road, usually with some curvature and on a grade.

(26) "Grandfathered approach" means a legally constructed approach existing prior to 1949. A property owner has the burden to prove an approach is grandfathered based upon existence prior to 1949. For purposes of this Division, grandfathered approaches also include approaches presumed in compliance as set forth in OAR 734-051-0285(7) and approaches intended to remain open that were improved in conjunction with a Department project prior to April 1, 2000, as set forth in OAR 734-051-0285(9).

(27) "Grant of Access" means the conveyance or evidence of the conveyance from the Department of a specific right of access at a location where an abutting property currently does not have that specific right of access.

(28) "Highway mobility standards" mean the established standards for maintaining mobility as defined in the 1999 Oregon Highway Plan.

(29) "Highway segment designations" mean the four categories of designations, Special Transportation Area, Commercial Centers, Urban Business Areas, and Urban, defined in the 1999 Oregon Highway Plan.

(30) "Indenture of Access" means a deeded conveyance that changes the location, width, or use restrictions of an existing reservation of access.

(31) "Infill" 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 45 miles per hour.

(32) "Influence area of an interchange" means the area 1320 feet from an interchange ramp terminal measured on the crossroad away from the mainline.

(33) "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.

(34) "Interchange Area Management Plan" means a plan for managing a grade-separated interchange area to ensure safe and efficient operation between connecting roadways and to protect the functional integrity, operations, and safety of the interchange. An Interchange Area Management Plan may be developed independent of or in conjunction with an interchange project and may address local street connectivity, local street improvements and local plans and land use regulations. An Interchange Area Management Plan is not an interchange project.

(35) "Intersection" means an area where two or more highways or an approach and a highway join or cross at grade.

(36) "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 or subdivision codes.

(37) "Median" means the portion of the roadway separating opposing traffic streams.

(38) "Mitigation Measures" mean conditions, improvements, modifications, and restrictions set forth in OAR 734-051-0145 and required by the Department or initiated by an applicant for approval of a deviation or an application.

(39) "Move in the direction of" means that changes in the approach(es) to a property abutting the highway would bring a site closer to conformance with existing highway standards including where existing approaches to the highway or expressway are combined or eliminated resulting in a net reduction in the number of approaches to the highway or expressway, improvements in spacing of private approaches or public approaches, or improvements to intersection sight distance.

(40) "Peak hour" means the highest one-hour volume observed on an urban roadway during a typical or average week or the 30th highest hourly traffic volume on a rural roadway typically observed during a year.

(41) "Permit to Construct" means a Permit to Construct a State Highway Approach including all attachments, required signatures, conditions and terms, and performance bonds or insurance.

(42) "Permit to Operate" means a Permit to Operate, Maintain and Use a State Highway Approach including all required signatures and attachments, and conditions and terms. A Permit to Operate is not required for a public approach. However the Department may issue a Permit to Operate for a public approach upon agreement with the governing city or county.

# ADMINISTRATIVE RULES

(43) "Permitee" means a person, firm or corporation, or other entity holding a valid Permit to Operate including the owner or lessee of the property abutting the highway or their designated agent.

(44) "Permitted approach" means a legally constructed private or public approach existing under a valid Permit to Operate.

(45) "Planned" means not constructed but adopted into a comprehensive plan or transportation system plan in accordance with administrative procedures of OAR 660-012 and ORS Chapter 197.

(46) "Private approach" means an approach serving one or more properties and is not a public approach as defined in section (50) of this rule.

(47) "Private road crossing" means a legally constructed, privately owned road designed for use by trucks which are prohibited by law from using state highways, county roads, or other public highways.

(48) "Professional Engineer" means a person registered and holding a valid certificate to practice engineering in the State of Oregon, as provided in ORS 672.002 through 672.325, with expertise in traffic engineering, as provided in OAR 820-040-0030.

(49) "Project Delivery" means the allocation of resources to plan and construct new highways or modify and improve existing highways.

(50) "Public approach" means an existing or planned city street or county road connection that provides vehicular access to the general public 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 734-051-0040(45) and must be or come under the authority of the city or county to be considered a public approach.

(51) "Reasonable Access" means the ability to access a property in a manner that meets the criteria under ORS 374.310(3).

(52) "Redevelopment" means the act or process of changing 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 45 miles per hour.

(53) "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 as specified in an Intergovernmental Agreement delegating permitting authority as set forth in OAR 734-051-0035(3).

(54) "Region Manager" means the person in charge of one of the Department's Transportation Regions or designated representative.

(55) "Reservation of Access" means a limitation of a common law right of access to a specific location 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 use restriction included in a reservation of access does not restrict turning movements nor does the absence of a use restriction allow unrestricted turning movements. 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.

(56) "Restricted 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. A mitigation required as a part of approach permit approval or a condition on a construction permit does not by itself create a "restricted use approach."

(57) "Right of access" means the right of ingress and egress to the roadway and includes a common law right of access, reservation of access, or grant of access.

(58) "Right of way" means real property or an interest in real property owned by the Department as defined in the 1999 Oregon Highway Plan.

(59) "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(9).

(60) "Safety factors" include the factors identified in OAR 734-051-0080(8).

(61) "Signature" means the signature of the specific individual or an 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.

(62) "Spacing Standards" mean Access Management Spacing Standards as set forth in OAR 734-051-0115 and specified in Tables 1, 2 and 3 adopted and made a part of division 51 rules and Access Management Spacing Standards for Approaches in an Interchange Area as set forth in OAR 734-051-0125 and specified in Tables 4, 5, 6 and 7 and Figures 1, 2, 3 and 4, adopted and made a part of division 51 rules.

(63) "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.

(64) "Traffic Impact Study" means a report prepared by a professional engineer that analyzes existing and future roadway conditions resulting from the applicant's development.

(65) "Trip" means a one-way vehicular movement that consists of a motor vehicle entering or exiting a property. A vehicle entering a property and later exiting that property has made two trips.

(66) "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(9).

(67) "Vehicle trips per day" 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 the current edition of the Institute of Transportation Engineers (ITE) publications Trip Generation and Trip Generation Handbook. 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.

(68) "Vehicular Access" means access by motorized vehicles to a property from a street, roadway, highway, easement, service road, or alley including singular or joint access.

(69) "Work Day" means Monday through Friday and excludes holidays.

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

[ED. NOTE: Tables & Figures referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.313 & 374.345

Stats. Implemented: ORS 374.305 - 374.345 & 374.990

Hist.: 1 OTC 43, f. 11-26-74, ef. 12-1-74; 1 OTC 20-1980, f. & ef. 10-22-80; TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered from 734-050-0010; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04; HWD 8-2005, f. & cert. ef. 9-16-05; HWD 2-2007, f. & cert. ef. 1-26-07; HWD 8-2010(Temp), f. & cert. ef. 7-30-10 thru 1-21-11; HWD 1-2011, f. & cert. ef. 1-19-11; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0045

### Change of Use of an Approach

(1) This rule applies to private approaches existing under a valid Permit to Operate and private grandfathered approaches.

(2) As used in this rule -0045 "peak hour" of the site means the hour during which the highest volume of traffic enters and exits the property during a typical week.

(3) A change of use of an approach occurs, and an application must be submitted, when an action or event identified in subsection (a) of this section, results in an effect identified in subsection (b) of this section.

(a) The Department may review an approach at the time of an action such as:

- (A) Zoning or plan amendment designation changes;
- (B) Construction of new buildings;
- (C) Floor space of existing buildings increase;
- (D) Division or consolidation of property boundaries;
- (E) Changes in the character of traffic using the approach;
- (F) Internal site circulation design or inter-parcel circulation changes;

or

(G) Reestablishment of a property's use after discontinuance for four years or more.

(b) An application must be submitted when an action in subsection (a) of this section may result in any of the following:

(A) The number of peak hour trips increases by 50 trips or more from that of the property's prior use and the increase represents a 20 percent or greater increase in the number of peak hour trips from that of the property's prior use.

(B) The number of trips on a typical day increases by 500 trips or more from that of the property's prior use and the increase represents a 20 percent or greater increase in the number of trips on a typical day from that of the property's prior use.

(C) ODOT demonstrates that safety or operational problems related to the approach are occurring.

# ADMINISTRATIVE RULES

(D) The approach does not meet a stopping sight distance requirement (measured in feet) of 10 times the posted speed of the roadway (measured in miles per hour) or 10 times the 85th percentile speed of the roadway where the 85th percentile speed is higher or lower than the posted speed. The permittee may perform a study to determine if the 85th percentile speed is higher or lower than the posted speed. The sight distance measurement 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 the state of Oregon.

(E) The daily use of an approach increases by 10 or more vehicles with a gross vehicle weight rating of 26,000 pounds or greater.

(c) An effect in subsection (b) of this section may be determined by:

- (A) Field counts;
- (B) Site observation;
- (C) Traffic Impact Study;
- (D) Field measurement;
- (E) Crash history;

(F) Institute of Transportation Engineer Trip Generation Manual; or  
(G) Information and studies provided by the local jurisdiction.

(d) Mitigation of the change of use of an approach shall be limited to addressing the identified safety or operational problems.

(4) The following actions do not constitute a change of use:

(a) Modifications in advertising, landscaping, general maintenance, or aesthetics not affecting internal or external traffic flow or safety; or

(b) Buildout or redevelopment of an approved site plan or multi-phased development within the parameters of a Traffic Impact Study that is less than five years old or where within parameters of the future year analysis of the Traffic Impact Study, whichever is greater, and that is certified by a Professional Engineer.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999

Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003

Hist.: 1 OTC 20-1980, f. & ef. 10-22-80; TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered from 734-050-0065; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04; Renumbered from 734-051-0110; HWD 8-2010(Temp), f. & cert. ef. 7-30-10 thru 1-21-11; HWD 1-2011, f. & cert. ef. 1-19-11; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0070

### Application Procedure and Timelines

(1) The Department shall document decisions made under Division 51 rules with written findings and shall provide written notice to applicants:

- (a) Written findings shall be provided to the applicant upon request;
- (b) Materials submitted by the applicant become the property of the Department;

(c) The Region Manager may waive requirements for information and documentation required from an applicant depending on the nature of the application and on the sufficiency of other information available to the Department for its evaluation of an application;

(d) Where necessary to comply with the permitting criteria under Division 51 rules, approval of an application may be conditioned upon significant changes to a proposed site plan including relocation of buildings, parking, circulation, reduction of intensity of use, or variances from local jurisdictions; and

(e) Approval of an application may require mitigation measures set forth in OAR 734-051-0145.

(2) The Department, applicant, or local government may request a pre-application meeting to discuss the approach application process.

(3) An application is required:

- (a) For a new private approach to a state highway;
- (b) When a change of use occurs as set forth in OAR 734-051-0045;
- (c) For a temporary approach to a state highway; or
- (d) For a restricted use approach to a state highway.

(4) An application accompanied by a site plan must be submitted for each approach requested. All of the following apply to an application:

(a) The Department shall not accept an application for an approach to a freeway, a freeway ramp, or an expressway ramp, or where an approach would be aligned opposite a freeway or expressway ramp terminal.

(b) The Department shall require written evidence of concurrence by the owner where an applicant is not the property owner.

(c) The Department may refuse to accept an application that is incomplete or contains insufficient information to allow the Department to determine if supplemental documentation is required or otherwise determine that the application may be deemed complete.

(5) The Department shall determine if an application is deemed complete:

(a) Within 30 days of accepting an application when section (6) of this rule does not require supplemental documentation; or

(b) When the supplemental documentation is received and the Department determines that the supplemental documentation is sufficient to evaluate the application, if section (6) of this rule requires supplemental documentation.

(6) The Department may require supplemental documentation before an application is deemed complete, and the Region Manager:

(a) May conduct an on-site review to determine the need for supplemental documentation before an application is deemed complete. The on-site review area includes both sides of the highway in the vicinity of the proposed approach including:

- (A) The site frontage;
- (B) All approaches; and
- (C) The nearest public intersections within a distance less than the applicable spacing standard distance.

(b) May meet with the applicant to discuss the supplemental documentation including definition and degree of specification;

(c) Shall notify an applicant, within 30 days of accepting an application, of the supplemental documentation necessary for an application to be deemed complete;

(d) Shall notify an applicant, within 30 days of accepting an application, that an application may not be deemed complete where no right of access exists; and

(A) An applicant may apply for an Application for a Grant of Access or Application for an Indenture of Access;

(B) An application for a Grant of Access or Application for an Indenture of Access must be submitted concurrently with an Application for State Highway Approach;

(C) OAR 734-051-0295 through 734-051-0335 govern modification of access rights:

(i) To state highways and other public roads from property where the Department has access control; and

(ii) To state highways from property owned or controlled by cities or counties where the Department has access control where a public road connection is requested.

(D) Submittal of an Application for a Grant of Access or Application for an Indenture of Access stays the 120-day timeline in section (8) of this rule;

(E) The timeline for processing an Application for a Grant of Access and completing the appraisals and property transactions may be up to 365 days depending on the complexity of the request; and

(F) The timeline for processing an Application for an Indenture of Access may be up to 60 days depending on the complexity of the request.

(e) May require a Traffic Impact Study for:

(A) Proposed developments generating vehicle trips that equal or exceed 600 daily trips or 100 hourly trips; or

(B) Proposed zone changes or comprehensive plan changes;

(f) May require a Traffic Impact Study for proposed developments or land use actions where the on-site review indicates that operational or safety problems exist or are anticipated; and

(g) Shall notify the applicant that required supplemental documentation, including an application for a grant of access or indenture of access, must be submitted within 60 days of the date of notice of supplemental documentation or the application expires.

(7) All of the following apply when a Traffic Impact Study is required:

(a) A Professional Engineer employed by the Department shall determine the scope of the study and shall review and comment on the study.

(b) Future year analyses apply to both public and private approaches and include year of each phase opening and future year beyond build out, based on vehicle trips per day and type of land use action, but not greater than the year of planning horizon for transportation system plans or 15 years, whichever is greater.

(c) A Professional Engineer 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 approach.

(e) The study must identify the data and the application of data in the analysis.

(f) The study may be sufficient to satisfy the requirements of this rule without being adequate to satisfy local government requirements or the Transportation Planning Rule.

# ADMINISTRATIVE RULES

(8) When necessary to comply with the permitting criteria of division 51 Rules the Department shall evaluate an application that is deemed complete and shall approve or deny that application within 120 days including a final order as set forth in OAR 734-051-0355:

(a) The final 60 days of the 120 days are reserved for the Contested Case Hearing process set forth in OAR 734-051-0355;

(b) The Department shall use division 51 and ORS Chapter 374 and may use other applicable statutes, administrative rules, or manuals to evaluate and act on an application;

(c) If an application is approved, the Department shall issue a Construction Permit or a Permit to Operate as set forth in sections (10) through (13) of this rule; and

(d) Denial of an application is an appealable decision.

(9) If approval of an approach requires a deviation from access management spacing standards or access management spacing standards for approaches in an interchange area, a Traffic Impact Study may be required and the Department may approve or deny the deviation as set forth in OAR 734-051-0135:

(a) Approval of a deviation may be conditioned upon changes to a proposed site plan including relocation of buildings, changes to parking or circulation, reduction of the intensity of use, or variances from local jurisdiction regulations; and

(b) Denial of a deviation from spacing standards is an appealable decision.

(10) 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 accepted and processed:

(a) Approval will be conditioned on the Department receiving notice of approval of the land use action shown on the application.

(b) A Construction Permit may be issued 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 734-051-0095(2), to ensure that the approach will be removed if the land use is not approved.

(c) A Permit to Operate shall not be issued until the applicant provides the Department with written proof of final land use decision.

(11) To obtain a Construction Permit an applicant must submit construction drawings and plans within 60 days of notice of approval of an application when use of the Department's standard drawings is not appropriate. The Region Manager determines the acceptability of submitted construction plans. If plans are not submitted within the 60 days and no request for extension is received within that time, the approval will be void.

(12) The Department shall issue a Construction Permit as set forth in OAR 734-051-0175 upon approval of an application and approval of construction drawings and plans where required; and

(a) An approach approved by a Construction Permit must be constructed as required by OAR 734-051-0175 through 734-051-0245; and

(b) An applicant must have insurance, bonds, and deposits in place before construction begins and must provide 30 days written notice of cancellation or intent not to renew insurance coverage as set forth in OAR 734-051-0215.

(13) The Department shall issue a Permit to Operate as set forth in OAR 734-051-0245, except that a Permit to Operate is not required for a public approach under ORS 374.310.

(14) An applicant may request a Region Review of an appealable decision within 21 days of notice of that decision as set forth in OAR 734-051-0345:

(a) An applicant may request a collaborative discussion within the Region Review process; and

(b) The Region Review process stays the 120-day timeline for approval or denial of an application.

(c) An applicant may request a Contested Case Hearing following a Region Review and the hearing will be on the original decision.

(15) An applicant may request a Contested Case Hearing of an appealable decision within 21 days of notice of that decision, or within 21 days of notice of a Region Review decision, as set forth in OAR 734-051-0355.

(16) Division 51 timelines may be extended if the applicant and the Department agree 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.

(17) An application will expire after 120 days of inactivity on the part of the applicant if the Department sends a reminder letter to notify the

applicant that 90 days have passed with no activity, and advising that the application will expire in 30 days if the application continues to be inactive. Submittal of any information after the date of expiration will require a new application.

(18) A new public approach shall not be located on a freeway, a freeway ramp, or an expressway ramp. A new public approach that would be aligned opposite a freeway or expressway ramp must be included in an Interchange Area Management Plan or Access Management Plan, approved by the ODOT Chief Engineer and adopted by the Oregon Transportation Commission.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312 & 374.345

Stats. Implemented: ORS 374.305 - 374.350 & 374.990

Hist.: 1 OTC 43, f. 11-26-74, ef. 12-1-74; 1 OTC 20-1980, f. & ef. 10-22-80; 2HD 13-1981, f. & ef. 10-2-81; TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered from 734-050-0015; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0090 & 734-051-0100; HWD 2-2007, f. & cert. ef. 1-26-07; HWD 8-2010(Temp), f. & cert. ef. 7-30-10 thru 1-21-11; HWD 1-2011, f. & cert. ef. 1-19-11; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0080

### Criteria for Approving an Application for an Approach

(1) The following apply to all applications:

(a) Existence of a recorded easement does not by itself establish a right of access and does not guarantee the approval of an application or the location of an approach.

(b) If an application is for a double-frontage property the approach must be located on the lower classification highway except where the Region Access Management Engineer determines that an approach to the higher classification highway would better meet the approval criteria in sections (2) through (10) of this rule.

(c) Where a 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 accepted for individual parcels or ownership.

(2) For a private approach with no alternate access to the property the Region Manager shall approve an application if the applicant demonstrates that section (9) of this rule is met.

(3) For a private approach in a rural area and on a statewide, regional, or district highway or an expressway or within the influence area of an expressway interchange or freeway interchange, with alternate access to the property, the Region Manager shall approve an application if the applicant demonstrates that:

(a) Either:

(A) The alternate access cannot be made reasonable as set forth in section (7) of this rule; or

(B) The proposal is for infill or redevelopment and approval of the proposal will result in a net reduction of approaches on the highway or the net result improves safety for any remaining approaches; and

(b) Section (9) of this rule is met.

(4) For a private approach in an urban area and on a statewide, regional, or district highway or within the influence area of an expressway interchange or freeway interchange, with alternate access to the property, the Region Manager shall approve an application, even where the Department has evidence that the alternate access is reasonable, if the applicant provides substantial evidence that demonstrates that:

(a) The alternate access is not reasonable as set forth in section (7) of this rule; and

(b) Section (9) of this rule is met.

(5) For a private approach in an urban area and on a statewide, regional, or district highway or within the influence area of an expressway interchange or freeway interchange, with alternate access to the property, the Region Manager shall approve an application if the applicant demonstrates that:

(a) The alternate access is reasonable as set forth in section (7) of this rule; and

(b) Section (9) and section (10) of this rule are met.

(6) For a private approach in an urban area and on an expressway, with alternate access to the property, the Region Manager shall approve an application if the applicant demonstrates that:

(a) The alternate access cannot be made reasonable as set forth in section (7) of this rule, and section (9) and section (10) of this rule of this rule are met; or

(b) The approach provides an immediate and long-term benefit to the state highway system, as set forth in OAR 734-051-0085, regardless of any required safety or operations mitigation measures, and section (9) of this rule is met.

# ADMINISTRATIVE RULES

(7) Which approval criteria will be applied to an application (sections (2) through (6) of this rule) depends in part upon whether alternate access to the site is or can be made reasonable, which is determined based upon the following:

(a) The Department determines that alternate access to the property is sufficient to allow the authorized uses for the property identified in the acknowledged local comprehensive plan.

(b) The Department determines that the type, number, size and location of approaches 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.

(c) The Department may require mitigation measures are set forth in OAR 734-051-0145:

(A) Including where the applicant or the local jurisdiction commits proportional shares for the cost of removal or mitigation of geographic, safety, or physical restrictions on the property or local street network; and

(B) Neither a lack of commitment by a local government to share the cost of mitigation nor the cost of mitigation alone is determinative in evaluating whether the access is or could be made reasonable.

(d) Consideration of factors including:

(A) Legal restrictions;

(B) Geographic restrictions;

(C) Historical or cultural resources;

(D) Safety factors; and

(E) Physical considerations such as planned streets, roadway width, and weight and size restrictions.

(e) Where a significant difference exists between an existing and planned local road network, a phased method addressing access may be considered:

(A) Where a planned public street or road network cannot be provided at the time of development, an application may be approved with conditions requiring connection when such connection becomes available;

(B) The approach permit may be revoked and the approach removed, or the approach permit may be modified and mitigation required when the planned street or road network becomes available; and

(C) An agreement with the local government regarding the planned street or road network may be an intergovernmental agreement.

(8) For purposes of Division 51, safety factors include:

(a) Roadway character;

(b) Traffic character;

(c) Geometric character;

(d) Environmental character; and

(e) Operational character.

(9) As required by sections (2) through (6) of this rule an applicant must demonstrate, consistent with Division 51 rules, that:

(a) The approach is consistent with safety factors in section (8) of this rule;

(b) Spacing standards are met or a deviation is approved as set forth in OAR 734-051-0135; and

(c) The effect of the approach meets traffic operations standards, signals, or signal systems standards in OAR 734-020-0400 through 734-020-0500 and 734-051-0115 and 734-051-0125.

(10) As required by sections (5) and (6) of this rule the Department may require an applicant to demonstrate that:

(a) Highway mobility standards are met on state highways;

(b) The approach is consistent with an Access Mitigation Proposal, Access Management Strategy, or Access Management Plan for the segment of highway abutting the property, if applicable;

(c) The site plan shows that the site circulation does not require vehicles, once on site, to reenter the highway to access parking or other portions of the development; and

(d) More than one approach to the highway is necessary to accommodate traffic reasonably anticipated to the site if multiple approaches are requested.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999

Stats. Implemented: ORS 374.305 to 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003

Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04; HWD 8-2010(Temp), f. & cert. ef. 7-30-10 thru 1-21-11; HWD 1-2011, f. & cert. ef. 1-19-11; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0085

### Benefit to the State Highway System

(1) For the purposes of this rule a benefit to the state highway system:

(a) Will be found only where an applicant demonstrates that an approach will provide an immediate and long-term benefit to the state highway system;

(b) Is evaluated for no less than 20 years;

(c) For an Application for a Grant of Access, must exceed any mitigation of impacts related to the development regarding safety and operations; and

(d) Is a determination requiring the professional judgment of a professional engineer employed by the Department.

(2) For an Application for State Highway Approach or for an Application for a Grant of Access the Department may determine a benefit to the state highway system exists if the requirements of subsections (a) and (b) of this section are met:

(a) The applicant demonstrates better management of access as a result of either controlling or combining approach locations, or eliminating existing or planned approaches by improving:

(A) Access management spacing standards;

(B) Public approach spacing; or

(C) Intersection sight distance.

(b) The applicant demonstrates with no degradation of the criteria in paragraphs (A) through (E) of this subsection, that any of the following occur:

(A) Highway mobility standards improve.

(B) Safety improves on the section of highway where the approach is located.

(C) Safety problems 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 problems elsewhere:

(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.

(F) The Department determines that other circumstances result in a benefit to the state highway system.

(3) For an Application for State Highway Approach, for a private or public approach in an urban area and to an expressway, the Department may presume that a benefit to the state highway system exists if the requirements of subsection (a) of this section are met, or the requirements of subsections (b) and (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 of:

(A) Access management spacing standards;

(B) Public road intersection spacing; or

(C) Intersection sight distance.

(b) The Department determines that an improvement in safety occurs on the section of expressway where an approach is requested and both 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 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; 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) A benefit to the state highway system is determined by:

(a) The Region Access Management Engineer when an Application for State Highway Approach is submitted for a private approach in an urban area and on an expressway; or

(b) The Department's Technical Services Manager when an Application for a Grant of Access is submitted.



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Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999  
Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003  
Hist.: HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0095

### Temporary Approaches

(1) The Region Manager may approve an application for a temporary approach where:

(a) The approach is consistent with safety factors;

(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.

(2) A deposit of not less than \$1000 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:

(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) The Region Manager may extend the time period for a temporary approach where extenuating circumstances beyond the control of the applicant or permittee exist.

(4) Existence of a recorded easement does 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.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999

Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003

Hist.: 1 OTC 43, f. 11-26-74, ef. 12-1-74; 1 OTC 20-1980, f. & ef. 10-22-80; TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered from 734-050-0060; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0120; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0105

### Restricted Use Approaches

(1) The Region Manager may approve an application for a restricted use approach where the approach is consistent with safety factors.

(2) The Department shall require restricted use approaches:

(a) To be restricted 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.

(3) The Region Manager may require mitigation measures to be incorporated into a Construction Permit and a Permit to Operate a Restricted Use Approach.

(4) Existence of a recorded easement does not by itself establish a right of access and does not guarantee the approval of an application for a restricted use approach or the location of a restricted use approach.

Stat. Auth.: ORS 184.616, 814.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999

Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003

Hist.: HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0115

### Access Management Spacing Standards for Approaches

(1) Access management spacing standards for approaches to state highways:

(a) Are based on the classification of the highway and highway segment designation, type of area, and posted speed;

(b) Apply to properties abutting state highways, highway or interchange construction and modernization projects, and planning processes involving state highways or other projects determined by the Region Manager; and

(c) Do not apply to approaches in existence prior to April 1, 2000 except where any of the following occur:

(A) These standards will apply to private approaches at the time of a change of use.

(B) If infill development or redevelopment occurs, spacing and safety factors will improve by moving in the direction of the access manage-

ment spacing standards, with the goal of meeting or improving compliance with the access management spacing standards.

(C) For a highway or interchange construction or modernization project or other roadway or interchange project determined by the Region Manager, the project will improve spacing and safety factors by moving in the direction of the access management spacing standards, with the goal of meeting or improving compliance with the access management spacing standards.

(2) Spacing standards in Tables 1, 2 and 3 adopted and made a part of this rule, identify the spacing standards. The Region Access Management Engineer may apply the 'urban' standards 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.

(3) An applicant may provide evidence to support a determination that an approach is located in a commercially zoned area that has the characteristics established in the Oregon Highway Plan for a Special Transportation Area (STA) or for an Urban Business Area (UBA), in which case the spacing standards for such segment designation may be applied to the application. A decision by local government or by the Oregon Transportation Commission to either designate or not designate an STA and/or UBA makes this provision unavailable. This provision may not be applied where a management plan would be required for an STA or a UBA under the provisions of the Oregon Highway Plan.

(4) Deviations must meet the criteria in OAR 734-051-0135.

(5) Location of traffic signals on state highways must meet the criteria of OAR 734-020-0400 through 734-020-0500.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.313 & 374.345

Stats. Implemented: ORS 374.305 - 374.345 & 374.990

Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04 cert. ef. 3-1-04, Renumbered from 734-051-0190; HWD 8-2005, f. & cert. ef. 9-16-05; HWD 2-2007, f. & cert. ef. 1-26-07; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0125

### Access Management Spacing Standards for Approaches in an Interchange Area

(1) Tables 4, 5, 6 and 7 identify the spacing standards for approaches in the area of an interchange, which are shown in Figures 1, 2, 3 and 4. These tables and figures are adopted and made a part of this rule. The spacing standards:

(a) Are based on classification of highway and highway segment designation, type of area, and posted speed;

(b) Apply to properties abutting state highways, highway or interchange construction and modernization projects, planning processes involving state highways, or other projects determined by the Region Manager; and

(c) Do not apply to approaches in existence prior to April 1, 2000 except where any of the following occur:

(A) These standards will apply to private approaches at the time of a change of use.

(B) If infill development or redevelopment occurs, spacing and safety factors will improve by moving in the direction of the access management spacing standards, with the goal of meeting or improving compliance with the access management spacing standards.

(C) For a highway or interchange construction or modernization project or other roadway or interchange project determined by the Region Manager, the project will improve spacing and safety factors by moving in the direction of the access management spacing standards, with the goal of meeting or improving compliance with the access management spacing standards.

(2) When the Department approves an application:

(a) Access spacing standards for approaches in the area of an interchange shown in Figures 1, 2, 3 and 4 must be met or approaches must be combined or eliminated to result in a net reduction of approaches to the state highway and improve compliance with spacing standards; and

(b) The approach must be consistent with any applicable Access Management Plan or Interchange Area Management Plan.

(3) Deviations must meet the criteria in OAR 734-051-0135.

(4) Location of traffic signals within an interchange area illustrated in Figures 1, 2, 3 and 4 must meet the criteria of OAR 734-020-0400 through 734-020-0500.

(5) The Department should acquire access control on crossroads around interchanges for a distance of 1320 feet. In some cases it may be appropriate to acquire access control beyond 1320 feet.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312 & 374.345

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Stats. Implemented: ORS 374.305 - 374.350 & 374.990  
Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04,  
Renumbered from 734-051-0200; HWD 2-2007, f. & cert. ef. 1-26-07; Suspended by HWD  
16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0135

### Deviations from Access Management Spacing Standards

(1) A deviation will be considered when an approach does not meet spacing standards and the approach is consistent with safety factors in OAR 734-051-0080(8). The information necessary to support a deviation must be submitted with an application or with the supplemental documentation as set forth in OAR 734-051-0070(5) and (6).

(2) For a private approach with no reasonable alternate access to the property, as identified in OAR 734-051-0080(2), spacing standards are met if property frontage allows or a deviation is approved as set forth in this section. The Region Manager shall approve a deviation for a property with no reasonable alternate access if the approach is located:

- (a) To maximize the spacing between adjacent approaches; or
- (b) At a different location if the maximized approach location:

(A) Causes safety or operational problems; or

(B) Would be in conflict with a significant natural or historic feature including trees and unique vegetation, a bridge, waterway, park, archaeological area, or cemetery.

(3) The Region Access Management Engineer shall approve a deviation if:

(a) Adherence to spacing standards creates safety or traffic operation problems;

(b) The applicant provides a joint approach that serves two or more properties and results in a net reduction of approaches to the highway;

(c) The applicant demonstrates that existing development patterns or land holdings make joint use approaches impossible;

(d) Adherence to spacing standards will cause the approach to conflict with a significant natural or historic feature including trees and unique vegetation, a bridge, waterway, park, archaeological area, or cemetery;

(e) The highway segment functions as a service road;

(f) 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 approaches at mid-block; or

(g) Based on the Region Access Management Engineer's determination that:

(A) Safety factors and spacing significantly improve as a result of the approach; and

(B) Approval does not compromise the intent of these rules as set forth in OAR 734-051-0020.

(4) When a deviation is considered, as set forth in section (1) of this rule, and the application results from infill or redevelopment:

(a) The Region Access Management Engineer may waive the requirements for a Traffic Impact Study and may propose an alternative solution where:

(A) The requirements of either section (2) or section (3) of this rule are met; or

(B) Safety factors and spacing improve and approaches are removed or combined resulting in a net reduction of approaches to the highway; and

(b) Applicant may accept the proposed alternative solution or may choose to proceed through the standard application review process.

(5) The Region Access Management Engineer shall require any deviation for an approach located in an interchange access management area, as defined in the Oregon Highway Plan, to be evaluated over a 20-year horizon from the date of application and may approve a deviation for an approach located in an interchange access management area if:

(a) A condition of approval, included in the Permit to Operate, is removal of the approach when reasonable alternate access becomes available;

(b) The approach is consistent with an access management plan for an interchange that includes plans to combine or remove approaches resulting in a net reduction of approaches to the highway;

(c) The applicant provides a joint approach that serves two or more properties and results in a net reduction of approaches to the highway; or

(d) The applicant demonstrates that existing development patterns or land holdings make utilization of a joint approach impracticable.

(6) The Region Access Management Engineer shall not approve a deviation for an approach if any of the following apply:

(a) Spacing standards can be met even though adherence to spacing standards results in higher site development costs.

(b) The deviation results from a self-created hardship including:

(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.

(c) The deviation creates a significant safety or traffic operation problem.

(7) The Region Access Management Engineer shall not approve a deviation for an approach in an interchange access management area where reasonable alternate access is available and the approach would increase the number of approaches to the highway.

(8) Where section (2), (3), (4) or (5) of this rule cannot be met, the Region Manager, not a designee, may approve a deviation where:

(a) The approach is consistent with safety factors; and

(b) The Region Manager identifies and documents conditions or circumstances unique to the site or the area that support the development.

(9) The Region Manager may require an intergovernmental agreement or completion of an access management plan or an interchange area management plan prior to approval of a deviation to construct a public approach.

(10) Approval of a deviation may be conditioned upon mitigation measures set forth in OAR 734-051-0145.

(11) Denial of a deviation is an appealable decision.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999

Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003

Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0320; HWD 8-2010(Temp), f. & cert. ef. 7-30-10 thru 1-21-11; HWD 1-2011, f. & cert. ef. 1-19-11; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0145

### Mitigation Measures

(1) The Department may require mitigation measures on the state highway or the subject property to comply or improve compliance with the division 51 rules for continued operation of an existing approach or construction of a new approach.

(2) 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 734-051-0205.

(3) Mitigation measures may include:

(a) Modifications to an approach;

(b) Modifications of on-site 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 required to maintain intersection sight distance;

(f) Modification or installation of traffic signals or other traffic control devices;

(g) Modification of the highway;

(h) Modification or installation of curbing;

(i) Consolidation of existing approaches or provisions for joint use accesses;

(j) Installation of raised medians;

(k) Restriction of turn movements for circumstances including:

(A) The proximity of existing approaches or offset of opposing approaches;

(B) Approaches within an Interchange Management Area;

(C) Approaches along an Expressway;

(D) Areas of insufficient decision sight distance for speed;

(E) The proximity of railroad grade crossings;

(F) Approaches with a crash history involving turning movements;

(G) The functional area of an intersection; and

(H) Areas where safety or traffic operation problems exist.

(l) Installations of sidewalks, bicycle lanes, or transit turnouts;

(m) Development of reasonable alternate access; and

(n) Modifications of local streets or roads along the frontage of the site.

(4) 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) Where safety standards can be met by mitigation measures located entirely within the property controlled by the applicant or within existing state right of way, that will be the preferred means of mitigation.

(b) Where safety standards cannot be met with measures located entirely within the property controlled by the applicant or within existing

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state right of way, ODOT will make an effort to participate in negotiations between the applicant and other affected property owners or assist the applicant to take necessary actions.

(c) When cumulative effects of existing and planned development create a situation where approval of an application would require mitigation measures that are not directly proportional to the impacts of the proposed approach, the Region Manager may allow mitigation measures to mitigate impacts as of the day of opening and defer mitigation of future impacts to ODOT project development provided the applicant conveys any necessary right of way to ODOT prior to development of the subject approach.

(5) Mitigation to an alternate access may be more significant where the property fronts a higher classification of highway than where the property fronts a lower classification of highway.

(6) An applicant may propose an Access Mitigation Proposal or an Access Management Plan to be implemented by the applicant or the local jurisdiction.

(7) 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.

(8) Where mitigation measures include traffic controls:

(a) The applicant bears the cost of the controls and constructs required traffic controls within a timeframe identified by the Department or reimburses 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.

(9) Traffic signals are approved in the following priority:

(a) Traffic signals for public approaches.

(b) Private approaches identified in a transportation system plan to become public.

(c) Private approaches.

(10) 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

(b) The effect of the private approach must meet traffic operations standards, signals, or signal systems standards in OAR 734-020-0400 through 734-020-0500 and 734-051-0115 and 734-051-0125.

(11) All highway improvements within the right of way resulting from mitigation constructed by the permittee, and inspected and accepted by the Department, become the property of the Department.

(12) Approval of an application with mitigation measures is an appealable decision.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312 & 374.345

Stats. Implemented: ORS 374.305 - 374.350 & 374.990

Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04,

Renumbered from 734-051-0210; HWD 2-2007, f. & cert. ef. 1-26-07; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0155

### Access Management Plans and Interchange Area Management Plans

(1) 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. Access Management Plans and Interchange Area Management Plans:

(a) Must be consistent with Oregon Highway Plan;

(b) Must be used to evaluate development proposals; and

(c) May be used to determine mitigation for development proposals.

(2) Access Management Plans and Interchange Area Management Plans must be adopted by the Oregon Transportation Commission as a transportation facility plan consistent with the provisions of OAR 731-015-0065. Prior to adoption by the Oregon Transportation 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 is consistent with the local plan and codes.

(3) 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) An Access Management Plan may be developed:

(a) By the Department;

(b) By local jurisdictions; or

(c) By consultants.

(5) An Access Management Plan must comply with all of the following criteria, 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 Oregon Transportation Commission.

(e) 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 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 segment designation.

(i) Consider the use of the adjoining property consistent with the comprehensive plan designation and zoning of the area.

(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) 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:

(a) Interchange Area Management Plans are developed by the Department and local governmental agencies 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 system with cross roads carrying high volumes or providing important statewide or regional connectivity.

(7) An Interchange Area Management Plan is required for new interchanges and should be developed for significant modifications to existing interchanges. An Interchange Area Management Plan must comply with the following criteria, 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 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.

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(g) Be consistent with any applicable Access Management Plan, corridor plan or other facility plan adopted by the Oregon Transportation Commission.

(h) Include polices, 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.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312 & 374.345  
Stats. Implemented: ORS 374.305 to 374.350 & 374.990  
Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0360; HWD 2-2007, f. & cert. ef. 1-26-07; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0165

### Design of Approaches

(1) Approach design must conform to standards in the 2002 Oregon Highway Design Manual and allow movement to and from the highway of vehicles reasonably expected to utilize the approach without undue conflict with other traffic.

(2) Design of an approach may require mitigation measures as set forth in OAR 734-051-0145.

(3) No person may place curbs, posts, signs, or other structures on the highway right of way without written approval of the Region Manager.

(4) An applicant is responsible for the cost of accommodating drainage from the property.

(5) Approaches that are private road crossings must be constructed by grade separation except where the Technical Services Manager determines that grade separation is not economically feasible. Where no grade separation is required, the applicant shall install signing, signalization, or other traffic safety devices the Technical Services Manager determines necessary:

(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, 374.305, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999  
Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003  
Hist.: 1 OTC 43, f. 11-26-74, ef. 12-1-74; 1 OTC 20-1980, f. & ef. 10-22-80; TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered from 734-050-0035; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0260; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0175

### Issuance of Construction Permits

(1) The Region Manager shall issue a Construction Permit when construction plans, if required, and all other required documents are received and approved.

(2) Receipt of the Construction Permit by the applicant constitutes acceptance of the special provisions, mitigation measures, conditions, or agreements, consistent with and identified and approved through the application process, unless the applicant provides written notification to the Department that the special provisions, mitigation measures, conditions, or agreements are not accepted within 21 days of the date of mailing Construction Permit.

(3) If the applicant does not accept the special provisions, mitigation measures, conditions, or agreements the Construction Permit will be void.

(4) The applicant must provide the Department with proof of liability insurance and bond or deposit in lieu of bond as required by OAR 734-051-0215 within 60 days from the date of transmittal or the Construction Permit and approval of the application are void.

(5) 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, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999  
Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003  
Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0230; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0185

### Construction of Approaches

(1) An applicant must notify the Region Manager at least two work days prior to beginning construction.

(2) 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) Upon inspection of the approach the Department shall notify the applicant if construction deficiencies exist:

(a) The applicant must correct all deficiencies within 60 days of notification that deficiencies exist and notify the Region Manager; and

(b) The Region Manager shall re-inspect the approach.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999  
Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003  
Hist.: 1 OTC 43, f. 11-26-74, ef. 12-1-74; 1 OTC 20-1980, f. & ef. 10-22-80; TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered from 734-050-0040; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0250; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0195

### Effective Period of Construction Permits

(1) 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) If an applicant fails to comply with the terms and conditions of the Construction Permit the Department may, at the applicant'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, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999  
Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003  
Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0240; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0205

### Allocation of Costs for Construction and Maintenance of Approaches

(1) Except as otherwise provided in the Division 51 rules, the applicant or 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) The Department may be responsible for 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 contractual agreement.

(3) The Department is responsible for the cost of removal or relocation of a permitted or grandfathered approach during project delivery unless the removal or relocation is at the request of a permittee or owner of a grandfathered approach.

(4) The applicant, 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 any portion of the approach on the applicant's property required to be maintained as part of the permit.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999  
Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003  
Hist.: 1 OTC 43, f. 11-26-74, ef. 12-1-74; 1 OTC 20-1980, f. & ef. 10-22-80; TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered from 734-050-0020; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0270; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0215

### Liability and Control for Construction and Maintenance, Repair, Operation and Use of Approaches

(1) An applicant or 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 applicant may be legally liable.

(2) 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.

# ADMINISTRATIVE RULES

(3) Construction of an approach may not begin until the applicant provides the Department with evidence of insurance in the following minimum amounts:

(a) \$50,000 for property damage resulting from any single occurrence, or \$500,000 combined single limit; and

(b) \$200,000 for the death or injury of any person, subject to a limit of \$500,000 for any single occurrence.

(4) Insurance policies must include as named as insured the State of Oregon, the Commission, and the Department, its officers, agents and employees, except as to claims against the applicant, 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) 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) An applicant or permittee shall provide 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) If the highway surface or highway facilities are damaged by the applicant or the applicant's contractor, the applicant must replace or restore the highway or highway facilities to a condition satisfactory to the Department.

(8) The applicant or 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 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.

(9) The applicant or permittee is responsible for relocating or adjusting any utilities located on highway right of way when required for accommodation of the approach, and no construction may be performed until the applicant furnishes evidence to the Department that satisfactory arrangements have been made with the owner of the affected utility facility.

(10) The applicant or permittee is responsible for erosion control during construction of the approach.

(11) 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 applicant's or permittee's expense, and unauthorized signs are not allowed on any portion of the right of way.

(12) The work area during any construction or maintenance performed under a Construction Permit or a Permit to Operate is protected in accordance with the Manual on Uniform Traffic Control Devices adopted under OAR 734-020-0005.

(13) 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:

(A) Require the applicant or permittee to remove the approach and restore the area to a condition acceptable to the Region Manager;

(B) Require the applicant or permittee to 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;

(C) Reconstruct or repair the approach; or

(D) Remove the approach.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999

Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003

Hist.: 1 OTC 43, f. 11-26-74, ef. 12-1-74; 1 OTC 20-1980, f. & ef. 10-22-80; TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered from 724-050-0025; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0280; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0225

### Post-Decision Review Procedure for Construction Permits

(1) An applicant may request a post-decision 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) The Region Manager shall determine if a request for a post-decision review meets the criteria in section (1) of this rule.

(3) The Region Manager may conduct a post-decision review and may modify the Construction Permit.

(4) A post-decision review does not stay the time period to request a Region Review or Contested Case Hearing.

(5) A post-decision review decision to modify a construction permit is an appealable decision.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312 & 374.345

Stats. Implemented: ORS 374.305 - 374.350 & 374.990

Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0235; HWD 2-2007, f. & cert. ef. 1-26-07; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0245

### Issuance of a Permit to Operate, Maintain and Use an Approach

(1) 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 when the approach conforms to the terms and conditions of the Construction Permit.

(2) Use of a private approach is legal only after a Permit to Operate is issued.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999

Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003

Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00 HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0290; HWD 8-2010(Temp), f. & cert. ef. 7-30-10 thru 1-21-11; HWD 1-2011, f. & cert. ef. 1-19-11; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0255

### Maintenance of Approaches

(1) An applicant, permittee, or owner of a grandfathered approach must obtain approval and necessary permits prior to performing maintenance on an approach that interferes with or interrupts traffic on or along a highway.

(2) Where traffic signals are required, signal maintenance is performed by the Department or as assigned by a Cooperative Cost Agreement.

(3) For a public approach, the Department may require an intergovernmental agreement with the city or county to define responsibilities and obligations for maintenance of the approach.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999

Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003

Hist.: 1 OTC 43, f. 11-26-74, ef. 12-1-74; 1 OTC 20-1980, f. & ef. 10-22-80; TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered from 734-050-0045; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0310; HWD 8-2010(Temp), f. & cert. ef. 7-30-10 thru 1-21-11; HWD 1-2011, f. & cert. ef. 1-19-11; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0265

### Effective Period of Permit to Operate, Maintain and Use an Approach

(1) Except as otherwise provided a Permit to Operate is effective unless:

(a) Revoked by mutual consent;

(b) Revoked for failure to abide by the terms and conditions;

(c) A change of use occurs as set forth in OAR 734-051-0045;

(d) Safety or operational problems exist as set forth in OAR 734-051-0275;

(e) The highway facility is significantly improved to meet classification of the highway, highway mobility standards, spacing standards, and safety criteria that are inconsistent with the approach; or

(f) By other operation of law.

(2) The Permit to Operate is binding on successors and assignors including successors in interest to the property being served by the approach.

(3) The operation, maintenance, and use of an approach are subject to the control of the legislature over the state highway system.

(4) A Permit to Operate should not be construed to be beyond the power or authority of the legislature to control the state highway system.

(5) Acceptance of a Permit to Operate is acceptance of all special provisions, mitigation measures, conditions, or agreements, identified and approved through the application process and acknowledgment that all rights and privileges may be changed or relinquished by legislative action.

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999  
Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003  
Hist.: 1 OTC 43, f. 11-26-74, ef. 12-1-74; 1 OTC 20-1980, f. & ef. 10-22-80; TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered from 734-050-0050; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0300; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0275

### Removal of Approaches

(1) The Department may revoke a Permit to Operate and may remove an approach:

(a) If current or potential safety or operational problems exist that are verified by an engineering analysis;

(b) If an applicant or permittee fails to comply with any terms or conditions of a Permit to Operate; or

(c) During project delivery as set forth in OAR 734-051-0285.

(2) 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) The Region Manager may determine that an approach identified for removal as described in section (1) of this rule may remain open if mitigation measures are required as set forth in OAR 734-051-0145:

(a) The Department shall provide written notification of the intent to remove the approach unless mitigation measures are taken; and

(b) The applicant must agree to comply with mitigation measure and to bear the cost of the mitigation measures.

(4) An applicant, permittee, or property owner is responsible for the expense of removing an approach except as set forth in OAR 734-051-0205 and 734-051-0285.

(5) Removal of a permitted or grandfathered approach is an appealable decision.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999  
Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003  
Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0380; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0285

### Project Delivery

(1) This rule applies to access management on 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) This rule does not create an obligation that the Department apply documentation requirements in OAR 734-051-0070(1) or the standards and criteria in 734-051-0080, 734-051-0115, 734-051-0125, 734-051-0275 or 734-051-0295 through 734-051-0335.

(3) 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) 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 734-051-0155.

(5) The Region Manager may require modification, mitigation or removal of approaches within project limits:

(a) Pursuant to either:

(A) An Access Management Plan or an Interchange Area Management Plan adopted by the Oregon Transportation Commission; or

(B) An approved Access Management Strategy; and

(b) If necessary to meet the classification of highway or highway segment designation, mobility standards, spacing standards 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) The determination made under subsections (a) through (c) of this section must conclude that the net result of the project including closures, modification and mitigations will be that 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) 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 **1999 Oregon Highway Plan**.

(c) Promote safe and efficient operation of the state highway consistent with the highway classification and the highway segment designation.

(d) Provide for reasonable use of the adjoining property consistent with the comprehensive plan designation and zoning of the area.

(e) Be developed in coordination with local governments to facilitate any actions needed on the part of local governments to implement the Access Management Strategy.

(7) All approaches in an area that is not access controlled that are identified to remain open in an Access Management Strategy or Access 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 will be measured from that status. However, that status does not convey a grant of access.

(8) 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 **1999 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) 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.

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

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312 & 374.345

Stats. Implemented: ORS 374.305 - 374.350 & 374.990

Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0370; HWD 2-2007, f. & cert. ef. 1-26-07; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0295

### Grants of Access

(1) A grant of access establishes a right of access; and

(a) For a grant of access approved prior to April 1, 2000, the grant of access does not guarantee approval of an Application for State Highway Approach or issuance of a Construction Permit or Permit to Operate; and

(b) Subsequent to April 1, 2000, the Department may approve an Application for a Grant of Access only where an Application for State Highway Approach or a Construction Permit or Permit to Operate may be approved.

(c) Subsequent to January 21, 2011, where no right of access exists for a public approach, an application for a Grant of Access must be submitted.

(2) 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.

(3) The Department shall not approve an Application for a Grant of Access for a private approach:

(a) On a freeway, freeway mainlines, or freeway ramp;

(b) On an expressway or expressway ramp;

(c) Opposite a freeway or expressway ramp terminal; or

(d) In an Interchange Management Area.

# ADMINISTRATIVE RULES

(4) The Department may approve an Application for a Grant of Access to private property abutting a state and local facility where all of the following conditions are met:

(a) An applicant submits an Application for State Highway Approach as set forth in OAR 734-051-0070 and concurrently submits an Application for a Grant of Access, as set forth in OAR 734-051-0305.

(b) An applicant meets the requirements for issuance of a Construction Permit, as set forth in OAR 734-051-0175.

(c) The applicant agrees in writing to meet any mitigation measures, terms, and conditions placed on the Construction Permit and the Permit to Operate.

(d) The grant of access is consistent with the 1999 Oregon Highway Plan.

(e) 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 (7) of this rule; or

(B) The applicant establishes that the grant of access will benefit the state highway system as set forth in OAR 734-051-0085(1) and (2).

(f) Alternate access to the property is not and cannot be made reasonable as set forth in OAR 734-051-0080(7).

(g) The property owner must agree to deed restrictions to ensure that future development intensity and trip generation can be safely accommodated by the state transportation system.

(h) The application is approved by the Region Manager and reviewed by the State Traffic Engineer, and approved by the Technical Services Manager.

(5) The Department shall not approve an Application for a Grant of Access for a public approach:

(a) On a freeway, freeway mainlines, or freeway ramp;

(b) On an expressway ramp;

(c) Opposite a freeway or expressway ramp terminal; or

(d) In an Interchange Management Area.

(6) 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) An applicant submits an Application for a Grant of Access, as set forth in OAR 734-051-0305.

(b) The applicant meets the requirements for issuance of a Construction Permit, as set forth in OAR 734-051-0175.

(c) The applicant agrees in writing to meet any mitigation measures, terms, and conditions placed on the Construction Permit and the Permit to Operate.

(d) The grant of access is consistent with the 1999 Oregon Highway Plan, an adopted corridor plan, and local transportation system plan, or in the absence of an adopted corridor plan or transportation system plan, a grant of access may be considered where the applicant has explored all possible alternatives to the connection, including parallel streets, and the purchase of additional right of way.

(e) 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 (7) of this rule; or

(B) The applicant establishes that the grant of access will benefit the state highway system as set forth in OAR 734-051-0085; and

(i) The Department may determine that a benefit to the state highway system exists where 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; and

(ii) The Department shall require supporting documentation of sufficient detail to determine that a benefit to the state highway system exists, as set forth in OAR 734-051-0085(1) and (2), to be included in the transportation system plan; and

(iii) The Department shall determine if the supporting documentation is sufficient to meet the requirements in subparagraph (ii) of this paragraph.

(f) The Department and the local jurisdiction requesting a grant of access for a public approach:

(A) Shall enter into an intergovernmental agreement that details the responsibility for construction, maintenance, operation 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 planned development intensities and trip generation can be safely supported on the state transportation system.

(g) The application is approved by the Region Manager and reviewed by the State Traffic Engineer, and approved by the Technical Services Manager.

(7) For the purposes of sections (4) and (6) of this rule, the Department shall consider the following factors in determining whether access control is still needed at the location specified in an application for a grant of access:

(a) Classification of the highways and highway segment designations;

(b) Spacing Standards;

(c) Highway mobility standards;

(d) State and local transportation system plans;

(e) Comprehensive plan and land uses in the area; and

(f) Safety factors.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312 & 374.345

Stats. Implemented: ORS 374.305 - 374.350 & 374.990

Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0430; HWD 2-2007, f. & cert. ef. 1-26-07; HWD 8-2010(Temp), f. & cert. ef. 7-30-10 thru 1-21-11; HWD 1-2011, f. & cert. ef. 1-19-11; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0305

### Application Procedure for Grants of Access

(1) An Application for a Grant of Access to a state highway must be made on the standard state form, and the processing fee must accompany the Application for a Grant of Access as set forth in OAR 734-051-0335.

(2) The Department may refuse to accept an Application for a Grant of Access if the application is:

(a) Incomplete;

(b) Not accompanied by an Application for State Highway Approach and all required documentation;

(c) Not accompanied by a current preliminary title report covering the property to be served by the approach, showing any access easements appurtenant to the property; or

(d) From anyone other than the owner of the abutting property or a designated agent.

(3) Upon acceptance of an Application for a Grant of Access and any required attachments, the Department shall use 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.

(4) The Region Manager shall review the Application for a Grant of Access, determine if the Application for a Grant of Access meets the requirements of Division 51 and Department policy, and shall:

(a) Forward the Application for a Grant of Access to the State Traffic Engineer; or

(b) Deny the Application for a Grant of Access.

(5) When the Application for a 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 a Grant of Access;

(b) Notify the applicant of any additional information required; and

(c) Make a recommendation to the Technical Services Manager.

(6) The Technical Services Manager shall approve or deny the Application for a Grant of Access and notify the applicant.

(7) If the Application for Grant of Access is 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.

(8) 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 734-051-0175.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999

Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003

Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0440; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0315

### Indentures of Access

(1) The Department may approve an Application for Indenture of Access to a property abutting a state or local facility where all of the following conditions are met:

# ADMINISTRATIVE RULES

(a) An applicant for a private approach submits an Application for State Highway Approach as set forth in OAR 734-051-0070 and concurrently submits an Application for Indenture of Access as set forth in OAR 734-051-0325;

(b) The applicant meets the requirements for issuance of a Construction Permit, as set forth in OAR 734-051-0175;

(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 Region Manager approves the Application for Indenture of Access; and

(e) The property owner agrees to the closure of one or more existing reservations of access.

(2) All of the property owners that have a right of access at and are currently being served by the existing reservation of access must be applicants for any Application for Indenture of Access.

(3) A request for removal of farm crossing or farm access restrictions requires a grant of access as set forth in OAR 734-051-0295 and 734-051-0305.

(4) Approval of an Indenture of Access for a public approach may require mitigation measures to ensure that the state transportation system can safely accommodate the traffic 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.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999  
Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003  
Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0450; HWD 8-2010(Temp), f. & cert. ef. 7-30-10 thru 1-21-11; HWD 1-2011, f. & cert. ef. 1-19-11; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0325

### Application Procedure for Indentures of Access

(1) An Application for Indenture of Access to a state highway must be made on the standard state form and the appropriate processing fee must accompany the Application for Indenture of Access as set forth in OAR 734-051-0335 except where the Region Manager, not a designee, waives the processing fee and documents in writing the reasons for the waiver.

(2) The Department may refuse to accept an Application for Indenture of Access if the application is:

(a) Incomplete;

(b) Not accompanied by an Application for State Highway Approach and all required documentation;

(c) Not accompanied by a current preliminary title report covering the property to be served by the approach showing any access easements appurtenant to the property; or

(d) From anyone other than the owner of the abutting property or a designated agent.

(3) The Department shall use division 51, ORS Chapter 374, and any other applicable state statutes, administrative rules, and Department manuals for evaluating and acting upon the Application for Indenture of Access.

(4) The Region Manager shall approve or deny the Application for Indenture of Access and shall notify the applicant.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999  
Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003  
Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0460; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0335

### Administration of Grants and Indentures of Access

(1) A processing fee must be submitted with the Application for Indenture of Access.

(2) A processing fee must be submitted with the Application for a Grant of Access. The processing fee is based on the actual documented costs incurred by the Department plus a 10 percent charge for general administration:

(a) The processing fee includes the cost to secure an appraisal of the fair market value of the grant of access;

(b) An initial deposit, applied towards the processing fee, must accompany the Application for a Grant of Access; and

(c) 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.

(3) The applicant shall pay all costs incurred by the Department in processing the Application for a Grant of Access.

(4) Upon approval of an Application for a Grant of Access and prior to issuance of the Construction Permit, 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.

(5) The Department may waive payment of the appraised value of the grant of access when:

(a) An application for a grant of access is for a public approach and the applicant has demonstrated that the public approach will benefit the State highway system as set forth in OAR 734-051-0085(1) and (2); and

(b) The benefit to the State highway system is a direct and immediate result of the public approach.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999  
Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003  
Hist.: 1 OTC 19-1980, f. & ef. 10-22-80, TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered from 734-050-0085; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0470; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0345

### Region Review Process and Collaborative Discussion Option

(1) The Region Review process is an optional process that falls outside the 120-day timeline in OAR 734-051-0070(8) and applies to appealable decisions.

(2) To request a Region Review, an applicant must submit a written request to the Region Manager within 21 days of the mailing date of notice of an appealable decision and identify documentation to be presented at the Region Review.

(3) A Region Review Committee includes members with expertise in:

(a) Access Management policies;

(b) Roadway design standards;

(c) Right-of-way;

(d) Traffic engineering; and

(e) At least one Professional Engineer with experience in the issues being reviewed.

(4) The Department may invite a representative from the affected local jurisdiction with land use or transportation knowledge to provide input to the Region Review Committee.

(5) The applicant or permittee may present additional information in writing or in person to the Region Review Committee.

(6) The Region Review Committee shall meet, consider information presented, and provide written findings to the Region Manager.

(7) The Region Manager shall review the Committee's findings and approve, modify, or reverse the original decision; and

(a) Shall notify the applicant in writing within 21 days of the committee meeting;

(b) Shall include information on the applicant's right to request a contested case hearing on the original decision; and

(c) May include mitigation measures, conditions and terms to be incorporated into the Construction Permit or Permit to Operate or intergovernmental agreement for a public approach.

(8) An applicant may request a collaborative discussion within the Region Review process:

(a) Both the applicant and the Department must agree to the collaborative discussion.

(b) The collaborative discussion:

(A) Will be conducted under the Alternative Dispute Resolution model in ORS 183.502; and

(B) Will include a time limit of 45 days, or longer if the Department and the applicant agree, in the Agreement to Collaborate.

(c) The Region Manager is the final agreement authority and may make a binding decision for the Department.

(d) Any agreement made by the Region Manager:

(A) Shall be documented in writing;

(B) May require conditions or limitations to be incorporated into the Construction Permit or Permit to Operate; and

(C) Shall include information on the applicant's right to request a contested case hearing on the original decision.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999  
Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003  
Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0390; HWD 8-2010(Temp), f. & cert. ef. 7-30-10 thru 1-21-11; HWD 1-2011, f. & cert. ef. 1-19-11; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12



# ADMINISTRATIVE RULES

## 734-051-0355

### Contested Case Hearings

(1) An applicant may request a contested case hearing as provided by the Administrative Procedures Act (ORS Chapter 183):

(a) The request for a hearing and the hearing are governed by OAR 137-003-0501 through 137-003-0700;

(b) The request for a hearing must evidence an intent to request a hearing and must be submitted to and received by the Office of Administrative Hearings within 21 days of the mailing date of the notice of an appealable decision by the Department;

(c) The hearings process falls within the 120-day timeline in OAR 734-051-0070(8) unless the Department and the applicant agree to a time extension:

(A) Time extensions fall outside the 120-day timeline; and

(B) Filing of exceptions falls outside the 120-day timeline.

(2) The Department is authorized to use agency representatives in access management contested case hearings as set forth in OAR 137-003-0545.

(3) The Department and the applicant may present additional information in writing or in person at the contested case hearing.

(4) An Administrative Law Judge will review the Region Manager'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; and

(b) May require conditions or limitations to be incorporated into the Construction Permit or the Permit to Operate.

(5) The Executive Deputy 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, 374.312, 374.345 & Ch. 972 & Ch. 974, OL 1999

Stats. Implemented: ORS 374.305 - 374.345, 374.990 & Ch. 974, OL 1999, Ch. 371, OL 2003

Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0400; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0500

### Authority and Purpose of OAR 734-051-0500 through 734-051-0560

(1) Pursuant to ORS 374.313, a person holding an interest in real property, which is or would be served by an approach may appeal the closure or denial of the approach under OAR 734-051-0355 by filing 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 statutory permit requirements for approach roads, 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 remedies upon such closure or denial.

(3) OARS 734-051-0500 through 734-051-0560:

(a) Establish administrative remedies to address issues related to real property, value, utility and use; and

(b) Provide a simplified procedure for resolving the claim.

Stat. Auth.: ORS 184.616, 184.619, 374.313 & 374.345

Stats. Implemented: ORS 374.310, 374.313 & 374.345  
Hist.: TO 7-2000, f. & cert. ef. 7-14-00; HWD 8-2005, f. & cert. ef. 9-16-05; HWD 2-2007, f. & cert. ef. 1-26-07; HWD 8-2010(Temp), f. & cert. ef. 7-30-10 thru 1-21-11; HWD 1-2011, f. & cert. ef. 1-19-11; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0510

### Definitions

The following definitions apply to OAR 734-051-0500 through 734-051-0560:

(1) "Claim for relief," means an appeal of the denial of an approach application or the closure of an existing permitted or grandfathered approach under OAR 734-051-0355.

(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" mean the monetary or non-monetary benefits to a property 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.

(4) 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.

(5) 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.

(6) 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.

(7) Offers of remedies are totally discretionary on the part of the Department and are not subject to a contested case appeal.

Stat. Auth.: ORS 184.616, 184.619, 374.313 & 374.345

Stats. Implemented: ORS 374.310, 374.313 & 374.345

Hist.: TO 7-2000, f. & cert. ef. 7-14-00; HWD 8-2005, f. & cert. ef. 9-16-05; HWD 2-2007, f. & cert. ef. 1-26-07; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0520

### 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 30 days of the denial of the application or notice of intent to close a permitted approach.

(3) 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 734-051-0355 shall be dismissed and any request for a Region Review or Collaborative Discussion pursuant to 734-051-0345 shall be withdrawn.

Stat. Auth.: ORS 184.616, 184.619, 374.313 & 374.345

Stats. Implemented: ORS 374.310, 374.313 & 374.345

Hist.: TO 7-2000, f. & cert. ef. 7-14-00; HWD 8-2005, f. & cert. ef. 9-16-05; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0530

### 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 734-051-0355.

(2) During mediation the parties may discuss any appropriate remedies in reaching agreement. Such mediation may also occur during the collaborative discussion phase of the review procedure for the denial or closure. (See OAR 734-051-0345).

(3) 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.

(a) 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.

(b) 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.

(c) 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, 374.313 & 374.345

Stats. Implemented: ORS 374.310, 374.313 & 374.345

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Hist.: TO 7-2000, f. & cert. ef. 7-14-00; HWD 8-2005, f. & cert. ef. 9-16-05; HWD 8-2010(Temp), f. & cert. ef. 7-30-10 thru 1-21-11; HWD 1-2011, f. & cert. ef. 1-19-11; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0540

### 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 734-051-0355 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 without the necessity of formal requests or discovery.

(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 effected 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, 374.313 & 374.345

Stats. Implemented: ORS 374.310, ORS 374.313 & 374.345

Hist.: TO 7-2000, f. & cert. ef. 7-14-00; HWD 8-2005, f. & cert. ef. 9-16-05; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0550

### 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 which is a subject of the settlement.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 972, OL 1999

Stats. Implemented: ORS 374.310 & Ch. 972, OL 1999

Hist.: TO 7-2000, f. & cert. ef. 7-14-00; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-0560

### Delegation

(1) For OAR 734-051-0500 through 734-051-0560, the Director delegates authority to the Right of Way Manager or the Manager's designee to:

(a) Determine the Department's offer of remedies, and

(b) Agree to any settlement which 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 734-051-0355.

Stat. Auth.: ORS 184.616, 184.619, 374.313 & 374.345

Stats. Implemented: ORS 374.310, 374.313 & 374.345

Hist.: TO 7-2000, f. & cert. ef. 7-14-00; HWD 8-2005, f. & cert. ef. 9-16-05; Suspended by HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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 approaches, access control, spacing standards, medians and restriction of turning movements in compliance with statewide planning goals and in a manner compatible with acknowledged comprehensive plans and consistent with Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR), 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 shall guide 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-1030

### Administration of Rules

(1) Approaches Subject to Division 51. Approaches in existence and applications filed after January 1, 2012 are governed by the rules of division 51.

(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 734-051-3010. 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(3), the division 51 rules may not be exercised so as to deny any property with a right of access reasonable access to the highway. ORS 374.312(1)(c) requires adoption of rules establishing criteria for reasonable access consistent with 374.310(3) criteria. 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-1050

### 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 734-051-1050(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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-1060

### Transfer of State Right-of-Way to Local Jurisdiction

(1) Jurisdictional Transfer. When it is determined by the department and a local jurisdiction that it is in the best interest of highway users to

# ADMINISTRATIVE RULES

abandon a segment of the state highway, the department and the local jurisdiction may enter into an agreement to transfer jurisdiction and ownership of the segment of state highway to the local jurisdiction.

(2) **Funding.** In addition to funds provided to a city under ORS 366.800 or to a county under ORS 366.762, the department may agree to provide funds annually to the city or county for the continued construction, repair, maintenance and improvement of the abandoned state highway from the State Highway Fund.

(3) **Freight Movement.** The agreement between the department and the local jurisdiction accepting jurisdiction must contain provisions to ensure that freight movement on the highway will not be restricted beyond the limits set in the agreement, consistent with ORS 366.215, unless the commission, in consultation with the freight industry and the local jurisdiction, concludes that the restriction is necessary for the safety of the highway users. Nothing in this section prevents a local jurisdiction from taking emergency action to protect safety or place weight restrictions on a structure that is failing or otherwise damaged.

Stat. Auth.: ORS 184.616, 184.619, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec. 2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-1070

### Definitions

(1) **“Access Control”** means no right of access exists between a property abutting the highway and the highway. The right of access may have 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 identifies the location and type of approaches and other necessary improvements that will occur primarily within the highway right of way and that is intended to improve current conditions of the section of highway by moving in the direction of the access management standards.

(3) **“Access Management Plan”** means a plan adopted by the OTC for managing a designated section of highway or the influence area of an interchange to maintain and improve highway performance and safety. It is intended to improve current and future conditions on a section of highway or interchange by moving in the direction of the access management standards and may address local street connectivity, local street improvements and local plans and land use regulations. An access management plan 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) **“Access Mitigation Proposal”** means a proposal offered by an applicant that identifies the location and type of approaches and necessary improvements to the highway and that is intended to improve current conditions of the section of highway by moving in the direction of the access management standards by combining or removing approaches resulting in a net reduction of approaches to that section of the highway. An Access Mitigation Proposal must be approved by the department and agreed to by all affected property owners, and real property interests must be recorded, before it is effective.

(5) **“Alternate Access”** means the physical existence of other means to access a property than the proposed approach, such as an existing public right of way, another location on the subject state highway, an easement across adjoining property, a different highway, a service road, or an alley, including singularly or as a joint approach, but without a conclusive determination that the alternate access is “reasonable” pursuant to sections (7) and (8) of OAR 734-051-4020.

(6) **“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.

(7) **“Appealable decision”** An appealable decision includes:

(a) A decision to approve or deny an application for an approach road permit;

(b) A decision to approve or deny an application for a deviation from approach road permitting standards;

(c) A decision to impose mitigation measures as a condition of approval of an approach road permit or for a deviation from approach road permitting standards;

(d) A decision to modify a construction permit through a post-review decision; or

(e) A decision to close or remove a permitted or grandfathered approach.

(8) **“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 road permitting standards, or their designated agent.

(9) **“Application”** means a completed application form for state highway approach including any required documentation and attachments necessary for the department to determine if the application can be deemed complete.

(10) **“Approach”** means a legally constructed connection to the highway recognized by the department as grandfathered or existing under a valid permit to operate.

(11) **“Approach road”** means a legally constructed, public or private connection, providing vehicular access to and/or from a highway and an adjoining property. An approach road includes a private road that crosses a state highway or a county road.

(12) **“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.

(13) **“Channelization”** means the roadway lane configuration necessary to safely accommodate turning movements from the highway to an intersecting approach.

(14) **“Classification of highways”** means the department’s state highway classifications defined in the Oregon Highway Plan.

(15) **“Commission”** means the Oregon Transportation Commission.

(16) **“Construction Permit”** means a permit to construct a state highway approach including all attachments, required signatures, and conditions and terms.

(17) **“Crash history”** means at least the three most recent years of crash data recorded by the department’s crash analysis and reporting unit.

(18) **“Day”** means calendar day, unless specifically stated otherwise.

(19) **“Deemed complete”** means acknowledgement by the department that it has received all required information for a completed application for an approach road permit or for a request for a deviation from approach road permit standards.

(20) **“Department”** or **“ODOT”** means the Oregon Department of Transportation.

(21) **“Deviation”** means a departure from the access management spacing, sight distance or channelization standards.

(22) **“Director”** means the director of the Oregon Department of Transportation.

(23) **“District highway”** means a state highway that has been classified by the commission as a district highway in the Oregon Highway Plan.

(24) **“Division 51”** (“this division”) means Oregon Administrative Rules (OAR) 734-051-1010 through 734-051-7010.

(25) **“Expressway”** means a state highway that has been designated by the commission as an expressway in the Oregon Highway Plan.

(26) **“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.

(27) **“Freeway or Expressway ramp”** means all types, arrangements, and sizes of turning roadways for right or left turning vehicles that connect two or more legs at an interchange and the components of a ramp area terminal at each leg and a connection road, usually with some curvature and on a grade.

(28) **“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).

(29) **“Grant of Access”** means the conveyance of a right of access from the department to an abutting property owner.

(30) **“Highway mobility standards”** mean the performance standards for maintaining mobility as adopted by the commission in the Oregon Highway Plan.

## ADMINISTRATIVE RULES

(31) "Highway peak hour" means the highest one-hour volume observed on an urban roadway during a typical or average week, or the thirtieth (30th) highest hourly traffic volume on a rural roadway typically observed during a year.

(32) "Highway segment designation" refers to three categories of designations defined in the Oregon Highway Plan: Special Transportation Areas, Commercial Centers, and Urban Business Areas.

(33) "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.

(34) "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.

(35) "Influence area of an interchange" means the area 1,320 feet from an interchange ramp terminal measured on the crossroad away from the mainline.

(36) "Interchange" means a system of grade-separated roadways that provide for the movement of traffic between two or more roadways.

(37) "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 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.

(38) "Intersection" means an at-grade connection of a public or private approach road to the highway.

(39) "Interstate highway" means a state highway that has been classified by the commission as an interstate highway in the Oregon Highway Plan.

(40) "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.

(41) "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.

(42) "Median" means the portion of the roadway separating opposing traffic streams.

(43) "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 for approval of a deviation from approach road permitting standards or an application for an approach road permit.

(44) "Move in the direction of" means a change in an approach to a property abutting the highway that would bring a property closer to conformance with existing highway standards, pursuant to OAR 734-051-4020.

(45) "Oregon Highway Plan" means the Oregon Highway Plan adopted by the Oregon Transportation Commission, pursuant to ORS 184.618.

(46) "Peak hour" means the hour during which the highest volume of traffic enters and exits the property during a typical week; this definition is used only in determining whether a new application is required for change of use of an approach as set forth in 734-051-3020.

(47) "Permit to Construct" means a permit including all attachments, required signatures, conditions and terms, and performance bonds or insurance that is issued by the department to construct an approach to the state highway.

(48) "Permit to Operate" means a permit including all required signatures and attachments, and conditions and terms that is issued by the department to operate, maintain and use an approach road to the state highway. 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.

(49) "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.

(50) "Permitted approach" means a legally constructed private or public approach road connecting to a state highway for which the department has issued a valid permit to operate.

(51) "Planned" road or street means a highway, road, street or alley identified in an adopted comprehensive plan or transportation system plan in accordance with administrative procedures of OAR 660-012 and ORS chapter 197 but has not been constructed.

(52) "Posted speed" means the designated speed under ORS 811.180.

(53) "Prior use" of an approach 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.

(54) "Private approach" means an approach that serves one or more properties and that is not a public approach.

(55) "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.

(56) "Professional Engineer" 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, as provided in OAR 820-040-0030.

(57) "Project Delivery" means the allocation of resources to plan and construct new highways or modify and improve existing highways.

(58) "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(51) and must be or come under the authority of the city or county to be considered a public approach.

(59) "Receipt of an application" means the date the department date-stamps an application as received.

(60) "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.

(61) "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 inter-governmental agreement delegating permitting authority as set forth in OAR 734-051-1050.

(62) "Region Manager" means the person in charge of one of the department's Transportation Regions or designated representative.

(63) "Regional highway" means a state highway that has been classified by the commission as a regional highway in the Oregon Highway Plan.

(64) "Reservation of Access" means a limitation of a common law right of access to a specific location 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 use restriction included in a reservation of access does not restrict turning movements nor does the absence of a use restriction allow unrestricted turning movements. 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.

(65) "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.

(66) "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.

(67) "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.

(68) "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.

# ADMINISTRATIVE RULES

(69) "Sight distance" means a length of highway that a driver can see with an acceptable level of clarity.

(70) "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.

(71) "Spacing standards" means the minimum distance between approach roads as set forth in OAR 734-051-4020.

(72) "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."

(73) "Speed limit" means the speed established in ORS 811.111.

(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) "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.

(81) "Vehicular Access" means the location where motorized vehicles move to and/or from a street, roadway, highway or alley and an abutting property. Vehicular access can serve a single property or be shared by multiple properties.

(82) "Work Day" means Monday through Friday and excludes holidays and days state offices are closed.

Stat. Auth.: ORS 184.616, 184.619, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-2010

### General Provisions

(1) Right of Access Required for Private Approach. In order for the department to process 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. 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.

(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 road.

(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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-2020

### Grants of Access

(1) Grant of Access. The department may grant a right of access as provided by this rule;

(a) For a grant of access approved prior to April 1, 2000, the grant of access does not guarantee approval of an application for state highway approach or issuance of a construction permit or permit to operate; and

(b) 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 to private property abutting a state and local facility 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 of 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 (6) 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 application for a grant of access is approved by the region manager and by the state traffic engineer, and approved by the technical services manager.

(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 application meets the requirements for issuance of a construction permit, as set forth in OAR 734-051-5020;

(c) The local jurisdiction agrees in writing to meet any mitigation measures, terms, and conditions placed on any required permits;

(d) The grant of access is consistent with the Oregon Highway Plan and a corridor plan adopted pursuant to OAR 731, Division 15, or local transportation system plan, as applicable; or in the absence of an adopted corridor plan or transportation system plan, a grant of access may be considered where the local jurisdiction has explored all possible alternatives to the connection, including parallel streets, and the purchase of additional right of way;

(e) 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 (6) of this rule; or

(B) The local jurisdiction establishes that the grant of access will benefit the state highway system as set forth in OAR 734-051-4030; and

(i) The department may determine that a benefit to the state highway system exists where 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 department shall require supporting documentation of sufficient detail to determine that a benefit to the state highway system exists, as set forth in OAR 734-051-4030, to be included in the transportation system plan; and

(iii) The department shall determine if the supporting documentation is sufficient to meet the requirements in subparagraph (ii) of this paragraph; and

# ADMINISTRATIVE RULES

(f) The department and the local jurisdiction requesting a grant of access for a public approach:

(A) Shall enter into an intergovernmental agreement that details the responsibility for construction, maintenance, operation 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 the planned development can be safely supported on the state transportation system; and

(g) The application is approved by the region manager, reviewed by the state traffic engineer, and approved by the technical services manager.

(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 segment 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 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.

Stat. Auth.: ORS 184.616, 184.619, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-3010

### Permit for Private Approach

(1) Applicability. An approach permit is required for any private approach road 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.

# ADMINISTRATIVE RULES

(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 applicant provides a statement of land use compatibility that is certified by the affected local jurisdiction.

(c) Except as provided by OAR 734-051-3020(6), that addresses a change of use for a private approach, or except as provided by OAR 734-051-4020(5), that addresses properties with no alternate access, the proposed approach meets the spacing, channelization and sight distance standards of OAR 734-051-4020; or the department finds that the application meets the requirements for a deviation from these standards under OAR 734-051-3050, and applicant agrees to mitigation measures, where mitigation is required pursuant to OAR 734-051-3070; and

(d) 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.

Stat. Auth.: ORS 184.616, 184.619, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-3020

### Change of Use of a Private Approach

(1) Applicability. An application is required for a change of use of an existing legal private approach to the state highway and 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), below, are met.

(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 an approach 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 approach are occurring as identified in OAR 734-051-4020(3); or

(e) The approach 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 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 Changes Of Use Review. Buildout or redevelopment 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 project is consistent with a department approved traffic impact analysis which is less than five years old or is consistent with the future year analysis of the traffic impact analysis, whichever is greater.

(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 section (7).

(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. 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 permitted, grandfathered, and unpermitted approaches on the subject site. An application moves in the direction of conformity with OAR 734-051-4020 when changes are made to an approach that include, but are not limited to, one or more of the following:

(a) Eliminating or combining existing approaches to the highway resulting in a net reduction in the number of approaches; or

(b) Improving the distance between approaches; or

(c) Improving sight distance; or

(d) Widening the existing driveways to accommodate truck turning radius requirements; or

(e) Widening the existing driveways to accommodate additional exit lanes; or

(f) Narrowing the existing driveways to provide the appropriate number of entry and exit lanes as required for the property; or

(g) Developing a throat on the approach entrance 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, channelization, and sight distance standards, the department shall approve the application without requiring separate deviations from those standards. The department upon application approval shall permit the approaches that the department and applicant agree will remain.

(10) Where Agreement Is Not Reached. If, after participating in a collaborative process pursuant to section (7) of this rule, the applicant and the department can not agree that a proposed approach is moving in the direction of conformity pursuant to section (8) of this rule, the department shall apply the standards of OAR 734-051-4020 to approve, deny, or approve with mitigation the application for a change of use of an approach, consistent with the procedures in OAR 734-051-3040. Decisions to deny or approve with mitigation are subject to post-decision review under OAR 734-051-3080.

Stat. Auth.: ORS 184.616, 184.619, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-3030

### Application for State Highway Approach Requirements

(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

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requirements, and any issues specific to the proposal, including understanding the economic needs and objectives that are pertinent to the subject property.

(c) 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:

(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) Information required by the department to evaluate a deviation pursuant to OAR 734-051-3050; and

(g) A Traffic Impact Analysis (TIA) where the department determines that a TIA is required to evaluate the approach permit application pursuant with OAR 734-051-3030(4);

(h) Identification and request for approval of all deviations from spacing, channelization and sight distance standards, as applicable;

(i) The completed land use compatibility statement signed by the local jurisdiction that indicates if the proposed activity, use, or development requires land use review; and, if so, that an application to the local jurisdiction has been made and is under review or approved;

(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 Required.

(a) Except as provided in subsection (b) of this section, the department may require submittal of a traffic impact analysis in conjunction with an application for an approach permit, when determined to be necessary for the review of an application for a state highway approach.

(b) The department may not require a traffic impact analysis when the application does not involve a deviation from spacing, channelization or sight distance standards, and the criteria in either subsection (A) or (B) are met:

(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 application for a highway approach 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 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.

(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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-3040

### 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 submittal requirements of OAR 734-051-3030.

(2) Notice of Completeness Determination. Upon receiving an application for state highway approach, the department shall determine 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 made complete;

(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 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, driveways, and the nearest public intersections within a distance equal to or less than the applicable spacing standard distance under OAR 734-051-4020;

(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.



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(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 Approach Permits 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.

(6) Notice of Pending Denial or Approval with Mitigation. When the department proposes to deny an approach or approve an approach with mitigation, under OAR 734-051-3070, 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 position. If the applicant declines the offer of this collaborative process, the department shall issue its decision in writing with sufficient specificity regarding any 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 stays the 120-day timeline for the concurrent application for a state highway approach in section (4) 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 stays 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 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) 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.

(11) 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-3050

### Deviations from Approach Road 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 road 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 of the approach that optimizes safety, highway operations, and site design; and

(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 Road Spacing Standards. The region access management engineer may approve a request for a deviation from the approach road 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 approaches to the highway; or

(b) The applicant agrees to remove or combine approaches to a property resulting in a net reduction of approaches to the highway; or

(c) Adherence to approach road 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; or

(d) The highway segment functions as a service road; or

(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; or

(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; or

(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; 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 Road Spacing Standards in Interchange Areas.

(a) The region access management engineer shall use a 20-year planning horizon in evaluating applications for deviations from the approach road 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

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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; or

(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; or

(C) The applicant provides a joint approach that serves two or more properties and results in a net reduction of approaches to the highway; or

(D) Approaches are combined or eliminated to result in a net reduction of approaches to the state highway.

(7) Approval of Requests for Deviations from Channelization Standards.

(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):

(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 road 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 can not be mitigated by the applicant; or

(d) The request for a deviation results from a self-created hardship including but not limited to:

(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 may approve a request for a deviation from approach road 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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 to 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 any 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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):

(a) Modifications to an existing approach;

(b) Modifications of on-site storage of queued vehicles;

(c) Installation of left turn or right turn channelization or deceleration lanes in accordance with the standards set forth in OAR 734-051-4020;

(d) Modifications to left turn or right turn channelization or deceleration lanes in accordance with the standards set forth in OAR 734-051-4020;

(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 driveways or offset of opposing driveways;

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- (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 necessary for improvements to mitigate the adverse impacts associated with a private approach road 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 mitigation measures that are not directly proportional to the impacts of the proposed approach, the region manager may require mitigation measures to mitigate impacts as of the day of opening and defer the remaining mitigation measures to ODOT project development provided the applicant conveys 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

(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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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. An applicant may request any or all of the types reviews listed in section (1) of this rule, provided the reviews must be conducted in sequence, (a) through (c), not in reverse order.

(3) Notice of Opportunity for Post Decision Reviews. 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. 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. 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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) and applies to appealable decisions.

(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) Both the applicant and the department must agree in writing to the collaborative discussion 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 conclude 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) Agreement. If the parties reach an agreement using the post-decision collaborative discussion process, the director shall issue the written decision. The written decision is a binding agreement for the department and for the applicant or permit holder. The decision is not appealable.

(4) When Agreement Not Reached. Where an agreement is not reached, the department will notify the applicant of their right to request review of the final 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-3100

### Access Management Dispute Review Board

(1) Dispute Review Board. In addition to requesting a 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 through an access management dispute review board process.

(2) Dispute Review Board Members. The department shall appoint an access management dispute review board by selecting members for a board consisting of any or all of following:

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(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.

(4) Decision. The director shall review the access management dispute review board's findings and recommendation and may approve, modify or reverse the department's original decision. The director shall notify the applicant or permit holder in writing of the department's determination following a review by an access management dispute review board appointed under this section and notify the applicant or permit holder of the right to a contested case hearing and of the 21-day appeal period.

Stat. Auth.: ORS 184.616, 184.619, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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 rules:

(a) The request for a hearing and the hearing are governed by OAR 137-003-0501 through 137-003-0700;

(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 executive deputy 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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 segment 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 road 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' 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 segment 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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 in rural areas and on expressways that are subject to reasonable access standards set forth in sections (6) and (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 Road Spacing Standards. Section (8) of this rule sets forth the approach road 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 following conditions in (A) through (C) 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's 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:

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(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 any safety or highway operations concerns relied upon in the department's decision to require mitigation when it approves an application with mitigation or to deny an application. The department may deny an application where the applicant is unable to provide adequate improvements to mitigate documented safety or highway operations concerns pursuant to OAR 734-051-3070. Safety or highway operations concerns that may be considered by the department 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 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 an approach 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) Inadequate sight distance from an intersection on district highway and regional highways where the speed limit established in ORS 811.111 or the designated speed posted under ORS 810.180 is 50 miles per hour or higher. The distance from an intersection to the nearest driveway shall be considered inadequate where it is less than the stopping sight distance, 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; 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 road spacing, sight 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 approach road 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 and the application for a proposed approach does not meet the standards of this rule, then the applicant may request approval of a deviation from the access management standards as set forth in OAR 734-051-3050.

(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 classified as an interstate highway or designated as an expressway, or for a second or subsequent approach in a rural area, as described in subsections (a) and (b) of this section.

(a) Expressways. The region manager may approve an application to an expressway for a property that has alternate access when:

(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) Rural Areas. In a rural area, the region manager may approve an application for an approach to a property that has alternate access when (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 approaches 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 (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 determinative 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 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) Approach Spacing Tables. Tables 3, 4, 5, 6, 7, 8, 9 and 10 set forth the approach spacing standards; Tables 7, 8, 9, and 10, including Figures 1, 2, 3 and 4, specifically set forth the approach spacing standards for interchanges and interchange areas. 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 or proposed private or public approach on the same side of the highway in both directions;

(b) The following exceptions apply to the spacing standards described in Tables 3 through 6:

(A) On one-way highways or highways with a raised or depressed non-traversable median, where an approach is limited to right-hand or left-

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hand turns only, the applicable approach spacing standards equal one-half the spacing standards in Tables 3 through 6.

(B) Notwithstanding the provisions of subsection (b)(i), above, the spacing standards for a statewide highway, regional highway or district highway that is designated as an expressway, regardless of average daily traffic, are the same as shown in Tables 3 through 6 for highways with annual average daily traffic greater than 5,000 motor vehicles;

(C) The spacing standards identified by special transportation areas 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 5;

(D) For a signalized private approach, the signal spacing standards as established in OAR 734-020-0400 through 734-020-0500 supersede the approach road 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 road is requested or an existing approach permit is subject to change of use under ORS 374.312 and

(B) Where infill development or infill redevelopment occurs the approach road spacing standards will be a department determination; the department shall determine whether the approach road spacing or safety is improved by moving in the direction of the spacing standards in Tables 3 through 6; and

(C) Where a highway or interchange project occurs the approach road spacing standard will be a department determination; the department shall consider whether the approach road spacing or safety is 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 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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 planning horizon of no less than twenty (20) years; 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 criteria in (a) and (b), as follows:

(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 road 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 (A) through (F) will occur, without degradation of any of the conditions that follow in (A) through (E), as follows:

(A) Highway mobility standards improve;

(B) Safety improves on the section of highway where the approach is located;

(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:

(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 toward meeting:

(A) Approach road spacing standards;

(B) Public approach spacing standards; 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) through (C) 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 consider those applications for an approach to state highway in an urban area and on an expressway; and

(b) The department's technical services manager will consider those applications for a grant of access.

Stat. Auth.: ORS 184.616, 184.619, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12

## 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 the 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:

(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.

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(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) Easements and Temporary Approaches. Existence of a recorded easement does 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.

Stat. Auth.: ORS 184.616, 184.619, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
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## 734-051-4050

### Special Use Approaches

(1) Procedure. The region manager may approve an application for a special use approach where the department determines that the 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.

(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) Easements and Special Use Approaches. Existence of a recorded easement does 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.

Stat. Auth.: ORS 184.616, 184.619, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
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Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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.

(2) Mitigation. Design of an approach shall incorporate mitigation measures required as conditions of approval of an approach road 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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 appli-

cant must do the following 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;

(b) Return the signed construction specifications to the department; and

(c) 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 time frame, 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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:

(a) Relocating or adjusting 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) Erosion control during construction of the approach;

(c) Complying with the 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) Complying 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.

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 184.616, 184.619, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-5040

### Effective Period of Construction Permits

(1) Effective Period. A construction permit is effective for the time period specified on the. 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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) The region manager may review and modify the construction permit.

(c) A decision to modify a construction permit is an appealable decision.

Stat. Auth.: ORS 184.616, 184.619, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-5090

### Maintenance of Approaches

(1) Approvals. A permittee, or owner of a grandfathered approach must obtain the department's approval and obtain necessary permits prior to performing maintenance on an approach on highway right of way.

(2) Maintenance Costs. 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.

(2) Traffic Signal Maintenance. Traffic signal maintenance on the state highway shall be performed by the department or as assigned by a cooperative improvement agreement or intergovernmental agreement.

(3) Public Approaches. The department may require an intergovernmental agreement with the city or county to define responsibilities and obligations for maintenance of a public approach.

Stat. Auth.: ORS 184.616, 184.619, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010



# ADMINISTRATIVE RULES

Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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 734-051-2040.

(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 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 segment 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 segment 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 road 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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 appeal the closure or denial of the approach under OAR 734-051-3110 by filing a claim for relief when:

# ADMINISTRATIVE RULES

(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 statutory permit requirements for approach roads, 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 provides a simplified procedure for resolving the claim.

Stat. Auth.: ORS 184.616, 184.619, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

## 734-051-6020

### Definitions

For purposes of 734-051-6020 the following definitions apply:

(1) "Claim for relief," means an appeal of the denial of an approach application 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" mean 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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 734-3090 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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 without the necessity

(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 effected 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

# ADMINISTRATIVE RULES

## 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010  
Stats. Implemented: ORS 374.305 - 374.990  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 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 is 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, 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 polices, 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 segment designation.

(i) Consider the use of the adjoining property consistent with the comprehensive plan designation and zoning of the area.

(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:

(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 cross roads 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, 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.

(h) Include polices, 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 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, 366.290, 373.015, 374.305, 374.310, 374.312, 374.315, 374.330, 374.335, 374.990, 811.430, Sec.2, Ch. 31, OL 2010

Stats. Implemented: ORS 374.305 - 374.990

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12

# ADMINISTRATIVE RULES

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

5-25-90 (Order No. 90-836); MCT 3-1996, f. & cert. ef. 3-14-96, Renumbered from 860-068-0005; MCTD 5-2011, f. & cert. ef. 12-22-11

**Rule Caption:** Legibility of highway use tax reports.  
**Adm. Order No.:** MCTD 5-2011  
**Filed with Sec. of State:** 12-22-2011  
**Certified to be Effective:** 12-22-11  
**Notice Publication Date:** 11-1-2011  
**Rules Amended:** 740-055-0010

**Subject:** This rule describes payment of weight-mile tax and reporting period variations. The amendment establishes the standard criteria for which highway use tax reports submitted to the Department will be accepted as legible and readable. A report will be considered legible and readable if the observer is able to identify enough letters and numerals to positively and quickly determine the reporter's intent. A report is readable when the observer is able to recognize a group of letters or numerals as words or complete numbers. A report considered to be illegible or unreadable will be returned to the motor carrier to correct and must be re-filed by the due date of the report to be considered received on time. The rule is necessary to provide a method in which the Department can identify highway use tax reports that are illegible or unreadable and return the report to the motor carrier.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

### 740-055-0010

#### Payment of Weight-Mile Tax, Reporting Period Variations

(1) All motor carriers must report and pay fees as provided in ORS Chapter 825 for all motor vehicles they operate.

(2) Motor carriers must retain a copy of highway use tax reports and all work papers or reference data used in, or received in, the conduct of their business and affecting the computation of fees. Unless such supporting data and other required accounting records are fully and accurately maintained, the motor carrier may, upon audit, be denied credit for any unsupported items and in addition be subject to other penalties prescribed by ORS Chapter 825.

(3) Information contained in the highway use tax report must be legible and readable. A report is legible when the observer is able to identify enough letters and numerals to positively and quickly determine the reporter's intent. A report is readable when the observer is able to recognize a group of letters or numerals as words or complete numbers.

(4) If a highway use tax report is illegible or unreadable, the Department will mark the report as illegible or unreadable and return the report to the motor carrier. The Department will consider the illegible or unreadable highway use tax report as unfiled.

(5) The date the motor carrier files a legible and readable highway use tax report will determine the report's timeliness.

(6) If a motor carrier fails to file a legible and readable highway use tax report to replace the returned, illegible or unreadable tax report, the motor carrier may be considered delinquent in reporting taxes and subject to the penalties set forth in ORS 825.139, including suspension or cancellation of authority.

(7) Motor carriers desiring to report mileage taxes on other than a calendar-month basis must submit a written request to the Department. The number of reporting periods in any 12-month period must not be less than 12. The application must specifically identify the requested reporting periods. Motor carriers must submit a new request for each calendar year:

(a) Reports will be due on or before the last day of the following reporting period. Taxes and fees incurred in the last half of any reporting period may be reported and paid to the Department on or before the end of the second reporting period following the period in which the taxes or fees were incurred. Reports, taxes, or fees that are not reported in conformance with this paragraph are subject to a 10 percent late payment charge; and

(b) If a motor carrier does not obtain approval for other than calendar month reporting, the Department may impose a 10 percent late payment charge for any operations reported outside of standard calendar month reporting pursuant to ORS 825.490(1). The Department may revoke a motor carrier's authority to report on an other than calendar-month basis for failure to comply with Weight-Mile tax requirements.

Stat. Auth.: ORS 184.616, 184.619 & 823.011

Stats. Implemented: ORS 825.137, 825.139, 825.232 & 825.490

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); Renumbered from 860-038-0005; PUC 7-1990, f. & cert. ef.

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**Rule Caption:** Revision of rule governing the Maximum Fine Schedule.

**Adm. Order No.:** MCTD 6-2011  
**Filed with Sec. of State:** 12-22-2011  
**Certified to be Effective:** 1-1-12  
**Notice Publication Date:** 11-1-2011  
**Rules Amended:** 740-100-0100

**Subject:** This rule adopts the Maximum Fine Schedule published by the Commercial Vehicle Safety Alliance (CVSA) and describes the calculation used to determine foundation fine amounts. House Bill 2712 established one presumptive fine for each class of violation and eliminated the confusing way fines have historically been calculated to determine a foundation amount.

The amendments implement HB 2712. Effective January 1, 2012, there will not be a separate unitary assessment for the Oregon Department of Revenue or county assessment; in addition, the offense surcharge will be eliminated. The assessment amounts will now be included in the presumptive fine. Minimum and maximum fines were specified for each class of traffic violation. The amendment will assign the Groups from the CVSA Maximum Fine Schedule to be equal to the Class categories from the presumptive class traffic violations. To remain revenue neutral and to simplify the fine schedule, the amendment takes the approach of assigning the Maximum Fine Schedule Groups to be equal to the presumptive traffic violation Class.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

### 740-100-0100

#### Maximum Fine Schedule

(1) The Maximum Fine Schedule, published by the Commercial Vehicle Safety Alliance revised February 2011, is adopted and incorporated in this rule.

(2) Except as provided in sections (3) and (4) of this rule, the penalty for the Groups described in the Maximum Fine Schedule will have the same presumptive fine as traffic violation categories established in ORS 153.018. The corresponding Maximum Fine Schedule Groups to traffic violation categories specified in ORS 153.012 are as follows:

(a) Maximum Fine Schedule Group 1 is equal to a Class A traffic violation.

(b) Maximum Fine Schedule Group 2 is equal to a Class B traffic violation.

(c) Maximum Fine Schedule Group 3 is equal to a Class C traffic violation.

(3) Violations of OAR 740-100-0040 related to failure to carry traction devices will have a presumptive fine amount equal to a Class C traffic violation fine.

(4) Except as provided in section (3) of this rule, violations of commercial motor carrier safety regulations found in OAR 740-100, 740-0105 and 740-100-0110, not specifically addressed in the Maximum Fine Schedule will carry a presumptive fine equal to a Class C traffic violation.

(5) Copies of the Maximum Fine Schedule are available from the Commercial Vehicle Safety Alliance: 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770-6319 or can be found at the website: <http://www.cvsa.org/members/documents/2011/Uniform%20Recommended%20Maximum%20Fine%20Schedule%20Revised%202-28-11.pdf>

Stat. Auth.: ORS 153.022, 184.616, 184.619 & 823.011

Stats. Implemented: ORS 153.012, 153.015, 153.018, 825.252, & 825.990

Hist.: PUC 4-1995, f. & ef. 6-19-95 (Order No. 95-517); MCT 2-1996, f. & cert. ef. 2-16-96; Renumbered from 860-065-0050; MCT 3-1996, f. & cert. ef. 3-14-96; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 4-1999(Temp), f. 12-21-99, cert. ef. 1-1-00 thru 6-28-00; MCTB 2-2000, f. & cert. ef. 4-28-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07; MCTD 1-2009, f. 3-20-09, cert. ef. 4-1-09; MCTD 2-2011, f. & cert. ef. 5-27-11; MCTD 6-2011, f. 12-22-11, cert. ef. 1-1-12

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**Employment Department  
Chapter 471**

**Rule Caption:** Extended Benefits Temporary Look Back Period.

**Adm. Order No.:** ED 12-2011(Temp)  
**Filed with Sec. of State:** 12-30-2011  
**Certified to be Effective:** 1-1-12 thru 6-25-12

# ADMINISTRATIVE RULES

## Notice Publication Date:

**Rules Adopted:** 471-030-0230

**Subject:** Add administrative rule to allow payment of additional, federally funded, unemployment insurance extended benefits (EB) to align with recent passage of Public Law 112-78, The Temporary Payroll Tax Cut Continuation Act of 2011. This will provide individuals with additional benefits they would not otherwise receive and allow the state to continue to receive 100% federal funding for EB payments.

**Rules Coordinator:** Courtney Brooks—(503) 947-1724

## 471-030-0230

### Extended Benefits Temporary Look Back Period

(1) Section 201 of Public Law 112-78, The Temporary Payroll Tax Cut Continuation Act of 2011, provides an opportunity for states to pay federally funded unemployment insurance extended benefits that would not otherwise be available. To permit this program to be implemented in Oregon, except as otherwise specified in this rule, the provisions of ORS 657.321 through 657.329 apply to benefits paid under Section 201 of Public Law 112-78.

(2) For benefits for weeks of unemployment beginning January 1, 2012 through the week ending February 25, 2012, for purposes of determining an “extended benefit period” or “high unemployment period,” the average rate of total unemployment in the state (seasonally adjusted), as determined by the United States Secretary of Labor, for the three-month period referred to in ORS 657.321(3)(c)(C)(i), must equal or exceed 110 percent of such average for any or all of the corresponding three-month periods ending in the three preceding calendar years.

Stat. Auth.: ORS 657.610, 657.895

Stats. Implemented: ORS 657.895

Hist.: ED 12-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12

## Employment Relations Board Chapter 115

**Rule Caption:** Makes permanent temporary rules amending fees charged for unfair labor practice and mediation services.

**Adm. Order No.:** ERB 3-2011

**Filed with Sec. of State:** 12-28-2011

**Certified to be Effective:** 12-29-11

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 115-035-0000, 115-035-0035, 115-035-0045, 115-040-0005, 115-070-0000, 115-070-0035, 115-070-0050, 115-080-0010

**Subject:** Amends agency rules to conform with Senate Bill 5556, which was adopted by the 2011 Legislature and became effective July 1, 2011. Filing fees for unfair labor practice complaints and charges, answers, and intervention are increased to \$300. Mediation fees are based on a sliding scale.

**Rules Coordinator:** Leann G. Wilcox—(503) 378-8610

## 115-035-0000

### Filing an Unfair Labor Practice Complaint

(1) Who may file. An injured party may file a complaint alleging that a person(s) has engaged in or is engaging in an unfair labor practice as defined in ORS 243.672. Such complaint shall be filed in triplicate with the Board on forms approved by the Board.

(2) Contents of Complaint. The complaint shall contain the following information:

(a) The name and address of the person(s) making the complaint (referred to in these rules as complainant);

(b) The name and address of the person(s) against whom the complaint is made (referred to in these rules as respondent);

(c) A clear and concise statement of the facts constituting each alleged violation followed by the specific section and subsection of the law allegedly violated. Such statements shall include the names of persons committing specific complained of acts and the dates when such acts allegedly occurred; and

(d) The signature of the person filing the complaint.

(3) Supporting Data. At the time the complaint is filed, the complainant shall submit a written statement setting forth its version of the relevant facts, including names, dates, and places together with any documentary evidence which may be relevant to the issues raised by the complaint.

(4) Filing fee. A filing fee of \$300 must be paid at the time the complaint is filed. Complaints that are filed without a filing fee are subject to dismissal for that reason.

Stat. Auth.: ORS 240.086(3) & 243.766(7)

Stats. Implemented: ORS 243.672(3)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1994, f. 6-23-94, cert. ef. 7-1-94; ERB 2-1995(Temp), f. 7-17-95, cert. ef. 8-1-95; ERB 4-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 3-1998, f. & cert. ef. 1-26-98; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; ERB 3-2011, f. 12-28-11, cert. ef. 12-29-11

## 115-035-0035

### Answer to Complaint

(1) Answer. The respondent shall have 14 days from date of service of the complaint in which to file an answer. All allegations in the complaint not denied by the answer, unless the respondent states in the answer that it is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown. Complainant shall be required to establish a prima facie case. The answer will be deemed sufficient if it generally denies all allegations of the complaint. Respondent shall specifically admit by way of answer any undisputed allegations and set forth any affirmative defenses.

(2) Service of Answer. Upon filing an answer, the respondent shall serve a copy upon the complainant or its representative of record. Proof of such service, setting forth the time and manner thereof, shall be filed with the answer.

(3) Failure to File. If the respondent fails to file a timely answer, absent a showing of good cause, it will not be allowed to present evidence at the hearing, and will be restricted to making legal arguments.

(4) Filing Fee. A filing fee of \$300 must be paid by the respondent when the answer is filed. The answer will not be considered to be filed until the fee is paid.

**NOTE:** Former (2) Motion to Make More Definite is now renumbered as 115-035-0007.

Stat. Auth.: ORS 240.086(3) & 243.766(7)

Stats. Implemented: ORS 243.672(3) & 243.676

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 8-1985, f. 10-29-85, ef. 10-31-85; ERB 2-1995(Temp), f. 7-17-95, cert. ef. 8-1-95; ERB 4-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 3-1998, f. & cert. ef. 1-26-98; ERB 1-2000, f. & cert. ef. 12-1-00; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; ERB 3-2011, f. 12-28-11, cert. ef. 12-29-11

## 115-035-0045

### Motions; Intervention

(1) Motions. All motions, including motions for intervention, shall be typewritten or, if made at the hearing, may be stated orally on the record and shall briefly state the order or relief sought and the grounds for such motion. Written motions shall be filed with the Board agent, together with proof of service of a copy thereof upon the other parties.

(2) Motions to Intervene. Any person desiring to intervene in any proceeding shall make a motion for intervention no later than seven days before the date set for hearing, stating the grounds upon which such person claims to have an interest in the proceeding. The Board agent may permit intervention to such extent and upon such terms as he/she may deem proper.

(3) Filing Fee. A filing fee of \$300 must be paid by the intervenor when the motion for intervention is filed. The motion will not be considered to be filed until the fee is paid.

Stat. Auth.: ORS 240.086(3) & 243.766(7)

Stats. Implemented: ORS 243.676(1)(c) & 243.672(3)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; ERB 3-2011, f. 12-28-11, cert. ef. 12-29-11

## 115-040-0005

### Conciliation Service Fees

(1) Interest Mediation: When mediation concerns negotiations over the terms of a collective bargaining agreement, the board will charge a fee for mediation services. The local public employer and the exclusive representative shall each pay one-half of the amount of the fee to the board. The fee charged by the board may not exceed:

(a) \$1,000 for the first two mediation sessions (\$500 per party);

(b) \$500 for the third mediation session (\$250 per party);

(c) \$750 for the fourth mediation session (\$375 per party); and

(d) \$1,000 for each additional mediation session (\$500 per party).

(2) Grievance Mediation: When mediation concerns a grievance arising under a collective bargaining agreement, a local public employer and an exclusive representative each will be charged \$250.

(3) Unfair Labor Practice Mediation: When mediation concerns a pending unfair labor practice complaint, a local public employer and an exclusive representative each will be charged \$250.

# ADMINISTRATIVE RULES

(4) **Interest-Based Training:** The Conciliation Service shall offer training in interest-based bargaining, labor/management cooperation, problem solving and similar programs specifically designed for particular local public employer/exclusive representative needs. Fees for such training shall be \$2,500 for two-day training programs, \$1,500 for one-day refresher training, and \$700 for half-day training programs. The fees for facilitations and related travel time shall be \$60 per hour.

(5) **Billing:** For mediation services, parties will be billed when the first mediation session occurs. For training, parties will be billed when the training session occurs, with the employer and exclusive representative sharing equally the costs unless the parties agree otherwise.

(6) **Definitions:** "Local public employer" means any political subdivision in this state, including a city, county, community college, school district, special district, mass transit district, metropolitan service district, public service corporation or municipal corporation and a public and quasi-public corporation. "Exclusive representative" has the meaning given that term in ORS 243.650(8).

Stat. Auth.: ORS 240.086(3) & 243.766(7)

Stats. Implemented: ORS 240.610(2)

Hist.: ERB 1-1995(Temp), f. 6-26-95, cert. ef. 7-1-95; ERB 5-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; ERB 3-2011, f. 12-28-11, cert. ef. 12-29-11

## 115-070-0000

### Filing an Unfair Labor Practice Charge

(1) **Who May File.** An injured party may file a charge alleging that a person(s) has engaged in or is engaging in an unfair labor practice. Such charge shall be filed in triplicate with the Board on forms provided by the Board.

(2) **Content of Charge.** The charge shall contain the following information:

(a) The name and address of the person making the charge;

(b) The name and address of the person(s) against whom the charge is made;

(c) A description of the nature of the business involved;

(d) A clear and concise statement of the facts constituting each alleged violation followed by the specific section and subsection of the law allegedly violated. Such statements shall include the names of persons committing specific complained of acts and the dates when such acts allegedly occurred; and

(e) The signature of the person filing the charge.

(3) **Supporting Data.** At the time the charge is filed, the charging party shall submit a written statement setting forth its version of the relevant facts, including names, dates, and places, together with any documentary evidence which may be relevant to the issues raised by the charge.

(4) **Service of Charge.** Concurrent with the filing of the charge, the filing party shall serve a copy of the charge upon the person against whom the charge is made and certify such service to the Board.

(5) **Filing fee.** A filing fee of \$300 must be paid at the time the charge is filed. Charges that are filed without a filing fee are subject to dismissal for that reason.

Stat. Auth.: ORS 240.086(3) & 243.766(7)

Stats. Implemented: ORS 663.175 & 663.180

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; ERB 3-2011, f. 12-28-11, cert. ef. 12-29-11

## 115-070-0035

### Answer to the Complaint

(1) **Answer.** The respondent shall have 14 days from date of service of the complaint in which to file an answer. All allegations in the complaint not denied by the answer, unless the respondent shall state in the answer that he/she is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown. The answer will be deemed sufficient if it generally denies all allegations of the complaint. Respondent shall specifically admit by way of answer any undisputed allegations and shall set forth any affirmative defenses.

(2) **Service of Answer.** Upon filing an answer, the respondent shall serve a copy upon the charging party or his/her attorney of record. Proof of such service, setting forth the time and manner thereof, shall be filed with the answer.

(3) **Filing Fee.** A filing fee of \$300 must be paid by the respondent when the answer is filed. The answer will not be considered to be filed until the fee is paid.

Stat. Auth.: ORS 240.086(3) & 243.766(7)

Stats. Implemented: ORS 663.185(2)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; ERB 3-2011, f. 12-28-11, cert. ef. 12-29-11

## 115-070-0050

### Motions; Intervention

(1) **Motions.** All motions, including motions for intervention, shall be typewritten or, if made at the hearing, may be stated orally on the record and shall briefly state the order or relief sought and the grounds for such motion. Written motions shall be filed with the Board agent, together with proof of service of a copy thereof upon the other parties.

(2) **Motions to Intervene.** Any person desiring to intervene in any proceeding shall make a motion for intervention no later than seven days before the date set for hearing, stating the grounds upon which such person claims to have an interest in the proceeding. The Board Agent may permit intervention to such extent and upon such terms as he/she may deem proper.

(3) **Filing Fee.** A filing fee of \$300 must be paid by the intervenor when the motion for intervention is filed. The motion will not be considered to be filed until the fee is paid.

Stat. Auth.: ORS 240.086(3) & 243.766(7)

Stats. Implemented: ORS 663.185(2) & ORS 663.190

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; ERB 3-2011, f. 12-28-11, cert. ef. 12-29-11

## 115-080-0010

### Mediation

(1) Upon a request for mediation, the Board may, in its discretion, assign a mediator to the dispute [at no expense to the parties], or it may decline and direct the parties to resume good faith bargaining. When a mediator is assigned to the dispute, both parties shall participate actively and in good faith in the mediation of the dispute.

(2) When mediation concerns negotiations over the terms of a collective bargaining agreement, the board will charge a fee for mediation services. The employer and the exclusive representative shall each pay one-half of the amount of the fee to the board. The fee charged by the board may not exceed:

(a) \$1,000 for the first two mediation sessions (\$500 per party);

(b) \$500 for the third mediation session (\$250 per party);

(c) \$750 for the fourth mediation session (\$375 per party); and

(d) \$1,000 for each additional mediation session (\$500 per party).

Stat. Auth.: ORS 240.086(3) & 243.766(7)

Stats. Implemented: ORS 662.425(1)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; ERB 3-2011, f. 12-28-11, cert. ef. 12-29-11

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**Rule Caption:** Makes permanent temporary rules relating to computation of time to account for closure days.

**Adm. Order No.:** ERB 4-2011

**Filed with Sec. of State:** 12-28-2011

**Certified to be Effective:** 12-29-11

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 115-010-0012

**Subject:** Amends agency rules to account for statewide closure days and the possibility of other closure days (e.g., natural disaster, inclement weather) in the computation of time for filing of documents.

**Rules Coordinator:** Leann G. Wilcox—(503) 378-8610

## 115-010-0012

### Computation of Time

Unless otherwise specifically provided in these rules, time will be computed by excluding the first day and including the last day unless the last day falls upon a legal holiday, Saturday, or a day when the office is closed before the end of or all of the normal workday, in which case the last day also is excluded.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 240.086(3), 243.766(7) & 663.320

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 2-2011(Temp), f. 8-25-11, cert. ef. 9-1-11 thru 12-31-11; ERB 4-2011, f. 12-28-11, cert. ef. 12-29-11

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## Land Conservation and Development Department Chapter 660

**Rule Caption:** Amend the administrative rule establishing a process for assessing agricultural land capability.

# ADMINISTRATIVE RULES

**Adm. Order No.:** LCDD 10-2011  
**Filed with Sec. of State:** 12-20-2011  
**Certified to be Effective:** 12-20-11  
**Notice Publication Date:** 9-1-2011  
**Rules Amended:** 660-033-0030

**Subject:** Amendment implements legislative authorization for a person to obtain information for use in the determination of whether land qualifies as agricultural land by requiring professional certification of soil assessment consultants.

**Rules Coordinator:** Casaria Tuttle—(503) 373-0050, ext. 322

## 660-033-0030

### Identifying Agricultural Land

(1) All land defined as “agricultural land” in OAR 660-033-0020(1) shall be inventoried as agricultural land.

(2) When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is “suitable for farm use” requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for farm use, Goal 3 nonetheless defines as agricultural “lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands.” A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in OAR 660-033-0020(1).

(3) Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either “suitable for farm use” or “necessary to permit farm practices to be undertaken on adjacent or nearby lands” outside the lot or parcel.

(4) When inventoried land satisfies the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

(5)(a) More detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the NRCS land capability classification system.

(b) If a person concludes that more detailed soils information than that contained in the Internet soil survey of soil data and information produced by the National Cooperative Soil Survey operated by the NRCS of the USDA as of January 2, 2012, would assist a county to make a better determination of whether land qualifies as agricultural land, the person must request that the department arrange for an assessment of the capability of the land by a professional soil classifier who is chosen by the person, using the process described in section (9) of this rule.

(c) This section and section (9) of this rule apply to:

(A) A change to the designation of land planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land; and

(B) Excepting land use decisions under section (7) of this rule, any other proposed land use decision in which more detailed data is used to demonstrate that land planned and zoned for exclusive farm use does not meet the definition of agricultural land under OAR 660-033-0020(1)(a)(A).

(d) This section and section (9) of this rule implement Oregon Laws 2010, chapter 44, section 1, effective on October 1, 2011. After this date, only those soils assessments certified by the department under section (9) of this rule may be considered by local governments in land use proceedings described in subsection (c) of this section. However, a local government may consider soils assessments that have been completed and submitted prior to October 1, 2011.

(e) This section and section (9) of this rule authorize a person to obtain additional information for use in the determination of whether land qualifies as agricultural land, but do not otherwise affect the process by which a county determines whether land qualifies as agricultural land as defined by Goal 3 and OAR 660-033-0020.

(6) Any county that adopted marginal lands provisions before January 1, 1993, may continue to designate lands as “marginal lands” according to those provisions and criteria in former ORS 197.247 (1991), as long as the county has not applied the provisions of ORS 215.705 to 215.750 to lands zoned for exclusive farm use.

(7)(a) For the purposes of approving a land use application on high-value farmland under ORS 215.705, the county may change the soil class, soil rating or other soil designation of a specific lot or parcel if the property owner:

(A) Submits a statement of agreement from the NRCS that the soil class, soil rating or other soil designation should be adjusted based on new information; or

(B) Submits a report from a soils scientist whose credentials are acceptable to the Oregon Department of Agriculture that the soil class, soil rating or other soil designation should be changed; and

(C) Submits a statement from the Oregon Department of Agriculture that the Director of Agriculture or the director’s designee has reviewed the report described in subsection (7)(B) of this section and finds the analysis in the report to be soundly and scientifically based.

(b) Soil classes, soil ratings or other soil designations used in or made pursuant to this section are those of the NRCS Internet soil survey for that class, rating or designation before November 4, 1993, except for changes made pursuant to subsection (a) of this section.

(9) For the purposes of approving a land use application on high-value farmland under OAR 660-033-0090, 660-033-0120, 660-033-0130 and 660-033-0135, soil classes, soil ratings or other soil designations used in or made pursuant to this definition are those of the NRCS Internet survey as of January 2, 2012 for that class, rating or designation.

(9) Soils Assessments by Professional Soil Classifiers.

(a) A “professional soil classifier” means any professional in good standing with the Soil Science Society of America (SSSA) who the SSSA certified to have met its requirements that existed as of October 1, 2011 for:

(A) Certified Professional Soil Classifier; or

(B) Certified Professional Soil Scientist, and who has been determined by an independent panel of soils professionals as defined in subsection (h) of this section to have:

(i) Completed five semester hours in soil genesis, morphology and classification;

(ii) At least five years of field experience in soils classification and mapping that meets National Cooperative Soil Survey standards, as maintained by the NRCS, or three years of field experience if the applicant holds an MS or PhD degree; and

(iii) Demonstrated competence in practicing soils classification and mapping without direct supervision, based on published SSSA standards.

(b) The department will develop, update quarterly and post a list of professional soil classifiers (henceforth ‘soils professionals’) who are qualified to perform soils assessments under this rule.

(A) Qualified soils professionals shall include those individuals who have either met the requirements of paragraph (a)(A) of this section or the requirements of paragraph (a)(B) of this section as determined by a majority vote of an independent panel of soils professionals.

(i) A person must apply to the department for initial inclusion on the list described in subsection (b) of this section.

(ii) Qualified soils professionals must reapply to the department for listing on a biennial basis.

(B) A soils assessment auditing committee as defined in subsection (i) of this section will periodically reevaluate qualifications of soils professionals by auditing soils assessments, considering sample department reviews and field checks as described in subsection (f) of this section and verifying continued good standing of soils professionals with the SSSA.

(i) When reviewing applications for relisting, the department will consider the recommendations of the auditing committee and make final determinations as to the continued qualifications of soils professionals to perform soils assessments under this rule.

(ii) The department will re-approve soils professionals for listing when both audits, sample reviews and field checks reveal a pattern of demonstrated competence in practicing soils classification and mapping consistent with subparagraph (a)(B)(iii) of this section, and the SSSA verifies that the soils professional is in good standing with the SSSA.

(c) A person requesting a soils assessment shall:

(A) Choose a soils professional from the posted list described in subsection (b) of this section:

(B) Privately contract for a soils assessment to be prepared; and

(C) On completion of the soils assessment, submit to the department payment of the non-refundable administrative fee established by the department as provided in statute to meet department costs to administer this section.

(d) On completion of the soils assessment, the selected soils professional shall submit to the department:

# ADMINISTRATIVE RULES

(A) A Soils Assessment Submittal Form that includes the property owner's and soils professional's authorized signatures and a liability waiver for the department; and

(B) A soils assessment that is soundly and scientifically based and that meets reporting requirements as established by the department.

(e) The department shall deposit fees collected under this rule in the Soils Assessment Fund established under Oregon Laws 2010, chapter 44, section 2.

(f) The department shall review the soils assessment by:

(A) Performing completeness checks for consistency with reporting requirements for all submitted soils assessments; and

(B) Performing sample reviews and field checks for some submitted soils assessments, as follows:

(i) The department shall arrange for a person who meets the qualifications of "professional soil classifier" in subsection (a) of this section to conduct systematic sample reviews and field checks of soils assessments and make recommendations to the department as to whether they are soundly and scientifically based.

(ii) Within 30 days of the receipt of a soils assessment subject to review under this paragraph, the department shall determine whether the soils assessment is soundly and scientifically based. Where soils assessments are determined not to be soundly and scientifically based, the department will provide an opportunity to the soils professional to correct any noted deficiencies. Where noted deficiencies are not corrected to the satisfaction of the department, the department will provide written notification of the noted deficiencies to the soils professional, property owner and person who requested the soils assessment.

(g) A soils assessment produced under this rule is not a public record, as defined in ORS 192.410, unless the person requesting the assessment utilizes the assessment in a land use proceeding. If the person decides to utilize a soils assessment produced under this section in a land use proceeding, the person shall inform the department and consent to the release by the department of certified copies of all assessments produced under this section regarding the land to the local government conducting the land use proceeding. The department may not disclose a soils assessment prior to its utilization in a land use proceeding as described in this rule without written consent of the person paying the fee for the assessment and the property owner.

(A) On receipt of written consent, the department shall release to the local government all soils assessments produced under this rule as well as any department notifications provided under subsection (f) of this section regarding land to which the land use proceeding applies.

(h) As used in this rule, "Independent panel of soils professionals" means a committee of three professionals appointed by the department that, quarterly or as needed, reviews and makes determinations regarding the qualifications of individuals seeking to be listed as soils professionals to perform soils analyses.

(A) Such panel shall consist of:

(i) A member of the SSSA;

(ii) The Oregon State Soil Scientist; and

(iii) An Oregon college or university soils professional.

(B) Panel members shall meet the qualifications of professional soil classifiers as defined in this rule or shall have experience mapping and teaching soil genesis, morphology and classification in a college or university setting.

(C) The department's farm and forest lands specialist shall serve as staff to the panel.

(D) In reviewing qualifications of applicants with respect to required semester hours of academic study under subparagraph (a)(B)(i) of this section, panel members may adjust for differences in academic calendars.

(i) As used in this rule, "Soils assessment auditing committee" means a group of three professionals that, annually or as needed, reviews and makes recommendations to the department regarding the continuing qualifications of soils professionals to perform soils analyses under this rule.

(A) Committee members shall be appointed by the independent panel of soils professionals and shall meet the qualifications of professional soil classifier as defined in subsection (a) of this section.

(B) The department's farm and forest lands specialist shall serve as staff to the committee.

(j) As used in this rule, "person" shall have the meaning set forth in ORS 197.015(18).

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700 - 215.710

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 4-2011, f. & cert. ef. 3-16-11; LCDD 10-2011, f. & cert. ef. 12-20-11

**Rule Caption:** Amend Transportation Planning Rules to simplify, clarify and streamline local plan amendments and rezonings.

**Adm. Order No.:** LCDD 11-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 660-012-0005, 660-012-0060

**Subject:** Three new sections were added to OAR 660-012-0060. Section (11) was added to facilitate economic development by allowing for partial mitigation of the transportation effects of a rezoning (or amendment to a plan or development regulation). Section (10) was added to allow local governments to designate areas where congestion standards will not be applied when evaluating rezonings (or amendments to plans or development regulations). Section (9) was added to exempt a rezoning from the rule if it is consistent with the acknowledged comprehensive map plan designation and with an acknowledged transportation system plan. Existing sections within the rule were amended to clarify the definition of a significant effect to the transportation system and to allow more options for how a local government responds when the rezoning (or amendment to a plan or development regulation) would have a significant effect.

**Rules Coordinator:** Casaria Tuttle—(503) 373-0050, ext. 322

## 660-012-0005

### Definitions

(1) "Access Management" means measures regulating access to streets, roads and highways from public roads and private driveways. Measures may include but are not limited to restrictions on the siting of interchanges, restrictions on the type and amount of access to roadways, and use of physical controls, such as signals and channelization including raised medians, to reduce impacts of approach road traffic on the main facility.

(2) "Accessway" means a walkway that provides pedestrian and or bicycle passage either between streets or from a street to a building or other destination such as a school, park, or transit stop. Accessways generally include a walkway and additional land on either side of the walkway, often in the form of an easement or right-of-way, to provide clearance and separation between the walkway and adjacent uses. Accessways through parking lots are generally physically separated from adjacent vehicle parking or parallel vehicle traffic by curbs or similar devices and include landscaping, trees and lighting. Where accessways cross driveways, they are generally raised, paved or marked in a manner which provides convenient access for pedestrians.

(3) "Affected Local Government" means a city, county or metropolitan service district that is directly impacted by a proposed transportation facility or improvement.

(4) "Approach Road" means a legally constructed, public or private connection that provides vehicular access either to or from or to and from a highway and an adjoining property.

(5) "At or near a major transit stop": "At" means a parcel or ownership which is adjacent to or includes a major transit stop generally including portions of such parcels or ownerships that are within 200 feet of a transit stop. "Near" generally means a parcel or ownership that is within 300 feet of a major transit stop. The term "generally" is intended to allow local governments through their plans and ordinances to adopt more specific definitions of these terms considering local needs and circumstances consistent with the overall objective and requirement to provide convenient pedestrian access to transit.

(6) "Committed Transportation Facilities" means those proposed transportation facilities and improvements which are consistent with the acknowledged comprehensive plan and have approved funding for construction in a public facilities plan or the Six-Year Highway or Transportation Improvement Program.

(7) "Demand Management" means actions which are designed to change travel behavior in order to improve performance of transportation facilities and to reduce need for additional road capacity. Methods may include, but are not limited to, the use of alternative modes, ride-sharing and vanpool programs, trip-reduction ordinances, shifting to off-peak periods, and reduced or paid parking.

(8) "Influence area of an interchange" means the area 1,320 feet from an interchange ramp terminal measured on the crossroad away from the mainline.



# ADMINISTRATIVE RULES

(9) "Local streets" means streets that are functionally classified as local streets to serve primarily local access to property and circulation within neighborhoods or specific areas. Local streets do not include streets functionally classified as collector or arterials.

(10) "Local Street Standards" include but are not limited to standards for right-of-way, pavement width, travel lanes, parking lanes, curb turning radius, and accessways.

(11) "Major" means, in general, those facilities or developments which, considering the size of the urban or rural area and the range of size, capacity or service level of similar facilities or developments in the area, are either larger than average, serve more than neighborhood needs or have significant land use or traffic impacts on more than the immediate neighborhood:

(a) "Major" as it modifies transit corridors, stops, transfer stations and new transportation facilities means those facilities which are most important to the functioning of the system or which provide a high level, volume or frequency of service;

(b) "Major" as it modifies industrial, institutional and retail development means such developments which are larger than average, serve more than neighborhood needs or which have traffic impacts on more than the immediate neighborhood;

(c) Application of the term "major" will vary from area to area depending upon the scale of transportation improvements, transit facilities and development which occur in the area. A facility considered to be major in a smaller or less densely developed area may, because of the relative significance and impact of the facility or development, not be considered a major facility in a larger or more densely developed area with larger or more intense development or facilities.

(12) "Major transit stop" means:

(a) Existing and planned light rail stations and transit transfer stations, except for temporary facilities;

(b) Other planned stops designated as major transit stops in a transportation system plan and existing stops which:

(A) Have or are planned for an above average frequency of scheduled, fixed-route service when compared to region wide service. In urban areas of 1,000,000 or more population major transit stops are generally located along routes that have or are planned for 20 minute service during the peak hour; and

(B) Are located in a transit oriented development or within 1/4 mile of an area planned and zoned for:

(i) Medium or high density residential development; or

(ii) Intensive commercial or institutional uses within 1/4 mile of subsection (i); or

(iii) Uses likely to generate a relatively high level of transit ridership.

(13) "Metropolitan area" means the local governments that are responsible for adopting local or regional transportation system plans within a metropolitan planning organization (MPO) boundary. This includes cities, counties, and, in the Portland Metropolitan area, Metro.

(14) "Metropolitan Planning Organization (MPO)" means an organization located within the State of Oregon and designated by the Governor to coordinate transportation planning in an urbanized area of the state including such designations made subsequent to the adoption of this rule. The Longview-Kelso-Rainier MPO is not considered an MPO for the purposes of this rule.

(15) "Minor transportation improvements" include, but are not limited to, signalization, addition of turn lanes or merge/deceleration lanes on arterial or collector streets, provision of local streets, transportation system management measures, modification of existing interchange facilities within public right of way and design modifications located within an approved corridor. Minor transportation improvements may or may not be listed as planned projects in a TSP where the improvement is otherwise consistent with the TSP. Minor transportation improvements do not include new interchanges; new approach roads within the influence area of an interchange; new intersections on limited access roadways, highways or expressways; new collector or arterial streets, road realignments or addition of travel lanes.

(16) "ODOT" means the Oregon Department of Transportation.

(17) "Parking Spaces" means on and off street spaces designated for automobile parking in areas planned for industrial, commercial, institutional or public uses. The following are not considered parking spaces for the purposes of OAR 660-012-0045(5)(c): park and ride lots, handicapped parking, and parking spaces for carpools and vanpools.

(18) "Pedestrian connection" means a continuous, unobstructed, reasonably direct route between two points that is intended and suitable for pedestrian use. Pedestrian connections include but are not limited to side-

walks, walkways, accessways, stairways and pedestrian bridges. On developed parcels, pedestrian connections are generally hard surfaced. In parks and natural areas, pedestrian connections may be soft-surfaced pathways. On undeveloped parcels and parcels intended for redevelopment, pedestrian connections may also include rights of way or easements for future pedestrian improvements.

(19) "Pedestrian district" means a comprehensive plan designation or implementing land use regulations, such as an overlay zone, that establish requirements to provide a safe and convenient pedestrian environment in an area planned for a mix of uses likely to support a relatively high level of pedestrian activity. Such areas include but are not limited to:

(a) Lands planned for a mix of commercial or institutional uses near lands planned for medium to high density housing; or

(b) Areas with a concentration of employment and retail activity; and

(c) Which have or could develop a network of streets and accessways which provide convenient pedestrian circulations.

(20) "Pedestrian plaza" means a small semi-enclosed area usually adjoining a sidewalk or a transit stop which provides a place for pedestrians to sit, stand or rest. They are usually paved with concrete, pavers, bricks or similar material and include seating, pedestrian scale lighting and similar pedestrian improvements. Low walls or planters and landscaping are usually provided to create a semi-enclosed space and to buffer and separate the plaza from adjoining parking lots and vehicle maneuvering areas. Plazas are generally located at a transit stop, building entrance or an intersection and connect directly to adjacent sidewalks, walkways, transit stops and buildings. A plaza including 150–250 square feet would be considered "small."

(21) "Pedestrian scale" means site and building design elements that are dimensionally less than those intended to accommodate automobile traffic, flow and buffering. Examples include ornamental lighting of limited height; bricks, pavers or other modules of paving with small dimensions; a variety of planting and landscaping materials; arcades or awnings that reduce the height of walls; and signage and signpost details that can only be perceived from a short distance.

(22) "Planning Period" means the twenty-year period beginning with the date of adoption of a TSP to meet the requirements of this rule.

(23) "Preliminary Design" means an engineering design which specifies in detail the location and alignment of a planned transportation facility or improvement.

(24) "Reasonably direct" means either a route that does not deviate unnecessarily from a straight line or a route that does not involve a significant amount of out-of-direction travel for likely users.

(25) "Refinement Plan" means an amendment to the transportation system plan, which resolves, at a systems level, determinations on function, mode or general location which were deferred during transportation system planning because detailed information needed to make those determinations could not reasonably be obtained during that process.

(26) "Regional Transportation Plan" or "RTP" means the long-range transportation plan prepared and adopted by a metropolitan planning organization for a metropolitan area as provided for in federal law.

(27) "Roads" means streets, roads and highways.

(28) "Rural community" means areas defined as resort communities and rural communities in accordance with OAR 660-022-0010(6) and (7). For the purposes of this division, the area need only meet the definitions contained in the Unincorporated Communities Rule although the area may not have been designated as an unincorporated community in accordance with OAR 660-022-0020.

(29) "Transit-Oriented Development (TOD)" means a mix of residential, retail and office uses and a supporting network of roads, bicycle and pedestrian ways focused on a major transit stop designed to support a high level of transit use. The key features of transit oriented development include:

(a) A mixed-use center at the transit stop, oriented principally to transit riders and pedestrian and bicycle travel from the surrounding area;

(b) High density of residential development proximate to the transit stop sufficient to support transit operation and neighborhood commercial uses within the TOD;

(c) A network of roads, and bicycle and pedestrian paths to support high levels of pedestrian access within the TOD and high levels of transit use.

(30) "Transportation Facilities" means any physical facility that moves or assist in the movement of people or goods including facilities identified in OAR 660-012-0020 but excluding electricity, sewage and water systems.

# ADMINISTRATIVE RULES

(31) "Transportation System Management Measures" means techniques for increasing the efficiency, safety, capacity or level of service of a transportation facility without increasing its size. Examples include, but are not limited to, traffic signal improvements, traffic control devices including installing medians and parking removal, channelization, access management, ramp metering, and restriping of high occupancy vehicle (HOV) lanes.

(32) "Transportation Needs" means estimates of the movement of people and goods consistent with acknowledged comprehensive plan and the requirements of this rule. Needs are typically based on projections of future travel demand resulting from a continuation of current trends as modified by policy objectives, including those expressed in Goal 12 and this rule, especially those for avoiding principal reliance on any one mode of transportation.

(33) "Transportation Needs, Local" means needs for movement of people and goods within communities and portions of counties and the need to provide access to local destinations.

(34) "Transportation Needs, Regional" means needs for movement of people and goods between and through communities and accessibility to regional destinations within a metropolitan area, county or associated group of counties.

(35) "Transportation Needs, State" means needs for movement of people and goods between and through regions of the state and between the state and other states.

(36) "Transportation Project Development" means implementing the transportation system plan (TSP) by determining the precise location, alignment, and preliminary design of improvements included in the TSP based on site-specific engineering and environmental studies.

(37) "Transportation Service" means a service for moving people and goods, such as intercity bus service and passenger rail service.

(38) "Transportation System Plan (TSP)" means a plan for one or more transportation facilities that are planned, developed, operated and maintained in a coordinated manner to supply continuity of movement between modes, and within and between geographic and jurisdictional areas.

(39) "Urban Area" means lands within an urban growth boundary, two or more contiguous urban growth boundaries, and urban unincorporated communities as defined by OAR 660-022-0010(9). For the purposes of this division, the area need only meet the definition contained in the Unincorporated Communities Rule although the area may not have been designated as an unincorporated community in accordance with OAR 660-022-0020.

(40) "Urban Fringe" means:

(a) Areas outside the urban growth boundary that are within 5 miles of the urban growth boundary of an MPO area; and

(b) Areas outside the urban growth boundary within 2 miles of the urban growth boundary of an urban area containing a population greater than 25,000.

(41) "Vehicle Miles of Travel (VMT)": means automobile vehicle miles of travel. Automobiles, for purposes of this definition, include automobiles, light trucks, and other similar vehicles used for movement of people. The definition does not include buses, heavy trucks and trips that involve commercial movement of goods. VMT includes trips with an origin and a destination within the MPO boundary and excludes pass through trips (i.e., trips with a beginning and end point outside of the MPO) and external trips (i.e., trips with a beginning or end point outside of the MPO boundary). VMT is estimated prospectively through the use of metropolitan area transportation models.

(42) "Walkway" means a hard surfaced area intended and suitable for use by pedestrians, including sidewalks and surfaced portions of accessways.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.012, 197.040, 197.712, 197.717 & 197.732

Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDC 3-1995, f. & cert. ef. 3-31-95; LCDC 4-1995, f. & cert. ef. 5-8-95; LCDD 6-1998, f. & cert. ef. 10-30-98; LCDD 3-2005, f. & cert. ef. 4-11-05; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06; LCDD 11-2011, f. 12-30-11, cert. ef. 1-1-12

## 660-012-0060

### Plan and Land Use Regulation Amendments

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

(2) If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below, unless the amendment meets the balancing test in subsection (2)(e) of this section or qualifies for partial mitigation in section (11) of this rule. A local government using subsection (2)(e), section (3), section (10) or section (11) to approve an amendment recognizes that additional motor vehicle traffic congestion may result and that other facility providers would not be expected to provide additional capacity for motor vehicles in response to this congestion.

(a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.

(b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

(c) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.

(d) Providing other measures as a condition of development or through a development agreement or similar funding method, including, but not limited to, transportation system management measures or minor transportation improvements. Local governments shall, as part of the amendment, specify when measures or improvements provided pursuant to this subsection will be provided.

(e) Providing improvements that would benefit modes other than the significantly affected mode, improvements to facilities other than the significantly affected facility, or improvements at other locations, if the provider of the significantly affected facility provides a written statement that the system-wide benefits are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards.

(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

(a) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;

(b) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;

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(c) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

(d) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (c) of this section.

(4) Determinations under sections (1)–(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

(a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.

(b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:

(A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.

(B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.

(C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally approved, financially constrained regional transportation system plan.

(D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.

(E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.

(c) Within interstate interchange areas, the improvements included in (b)(A)–(C) are considered planned facilities, improvements and services, except where:

(A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system, then local governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section; or

(B) There is an adopted interchange area management plan, then local governments may also rely on the improvements identified in that plan and which are also identified in paragraphs (b)(D) and (E) of this section.

(d) As used in this section and section (3):

(A) Planned interchange means new interchanges and relocation of existing interchanges that are authorized in an adopted transportation system plan or comprehensive plan;

(B) Interstate highway means Interstates 5, 82, 84, 105, 205 and 405; and

(C) Interstate interchange area means:

(i) Property within one-quarter mile of the ramp terminal intersection of an existing or planned interchange on an Interstate Highway; or

(ii) The interchange area as defined in the Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.

(e) For purposes of this section, a written statement provided pursuant to paragraphs (b)(D), (b)(E) or (c)(A) provided by ODOT, a local govern-

ment or transportation facility provider, as appropriate, shall be conclusive in determining whether a transportation facility, improvement or service is a planned transportation facility, improvement or service. In the absence of a written statement, a local government can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b)(A)–(C) to determine whether there is a significant effect that requires application of the remedies in section (2).

(5) The presence of a transportation facility or improvement shall not be a basis for an exception to allow residential, commercial, institutional or industrial development on rural lands under this division or OAR 660-004-0022 and 660-004-0028.

(6) In determining whether proposed land uses would affect or be consistent with planned transportation facilities as provided in sections (1) and (2), local governments shall give full credit for potential reduction in vehicle trips for uses located in mixed-use, pedestrian-friendly centers, and neighborhoods as provided in subsections (a)–(d) below;

(a) Absent adopted local standards or detailed information about the vehicle trip reduction benefits of mixed-use, pedestrian-friendly development, local governments shall assume that uses located within a mixed-use, pedestrian-friendly center, or neighborhood, will generate 10% fewer daily and peak hour trips than are specified in available published estimates, such as those provided by the Institute of Transportation Engineers (ITE) Trip Generation Manual that do not specifically account for the effects of mixed-use, pedestrian-friendly development. The 10% reduction allowed for by this section shall be available only if uses which rely solely on auto trips, such as gas stations, car washes, storage facilities, and motels are prohibited;

(b) Local governments shall use detailed or local information about the trip reduction benefits of mixed-use, pedestrian-friendly development where such information is available and presented to the local government. Local governments may, based on such information, allow reductions greater than the 10% reduction required in subsection (a) above;

(c) Where a local government assumes or estimates lower vehicle trip generation as provided in subsection (a) or (b) above, it shall assure through conditions of approval, site plans, or approval standards that subsequent development approvals support the development of a mixed-use, pedestrian-friendly center or neighborhood and provide for on-site bike and pedestrian connectivity and access to transit as provided for in OAR 660-012-0045(3) and (4). The provision of on-site bike and pedestrian connectivity and access to transit may be accomplished through application of acknowledged ordinance provisions which comply with 660-012-0045(3) and (4) or through conditions of approval or findings adopted with the plan amendment that assure compliance with these rule requirements at the time of development approval; and

(d) The purpose of this section is to provide an incentive for the designation and implementation of pedestrian-friendly, mixed-use centers and neighborhoods by lowering the regulatory barriers to plan amendments which accomplish this type of development. The actual trip reduction benefits of mixed-use, pedestrian-friendly development will vary from case to case and may be somewhat higher or lower than presumed pursuant to subsection (a) above. The Commission concludes that this assumption is warranted given general information about the expected effects of mixed-use, pedestrian-friendly development and its intent to encourage changes to plans and development patterns. Nothing in this section is intended to affect the application of provisions in local plans or ordinances which provide for the calculation or assessment of systems development charges or in preparing conformity determinations required under the federal Clean Air Act.

(7) Amendments to acknowledged comprehensive plans and land use regulations which meet all of the criteria listed in subsections (a)–(c) below shall include an amendment to the comprehensive plan, transportation system plan the adoption of a local street plan, access management plan, future street plan or other binding local transportation plan to provide for on-site alignment of streets or accessways with existing and planned arterial, collector, and local streets surrounding the site as necessary to implement the requirements in OAR 660-012-0020(2)(b) and 660-012-0045(3):

(a) The plan or land use regulation amendment results in designation of two or more acres of land for commercial use;

(b) The local government has not adopted a TSP or local street plan which complies with OAR 660-012-0020(2)(b) or, in the Portland Metropolitan Area, has not complied with Metro's requirement for street connectivity as contained in Title 6, Section 3 of the Urban Growth Management Functional Plan; and

(c) The proposed amendment would significantly affect a transportation facility as provided in section (1).

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(8) A “mixed-use, pedestrian-friendly center or neighborhood” for the purposes of this rule, means:

(A) Any one of the following:

(B) An existing central business district or downtown;

(C) An area designated as a central city, regional center, town center or main street in the Portland Metro 2040 Regional Growth Concept;

(D) An area designated in an acknowledged comprehensive plan as a transit oriented development or a pedestrian district; or

(E) An area designated as a special transportation area as provided for in the Oregon Highway Plan.

(F) An area other than those listed in subsection (a) above which includes or is planned to include the following characteristics:

(G) A concentration of a variety of land uses in a well-defined area, including the following:

(i) Medium to high density residential development (12 or more units per acre);

(ii) Offices or office buildings;

(iii) Retail stores and services;

(iv) Restaurants; and

(v) Public open space or private open space which is available for public use, such as a park or plaza.

(B) Generally include civic or cultural uses;

(C) A core commercial area where multi-story buildings are permitted;

(D) Buildings and building entrances oriented to streets;

(E) Street connections and crossings that make the center safe and conveniently accessible from adjacent areas;

(F) A network of streets and, where appropriate, accessways and major driveways that make it attractive and highly convenient for people to walk between uses within the center or neighborhood, including streets and major driveways within the center with wide sidewalks and other features, including pedestrian-oriented street crossings, street trees, pedestrian-scale lighting and on-street parking;

(G) One or more transit stops (in urban areas with fixed route transit service); and

(H) Limit or do not allow low-intensity or land extensive uses, such as most industrial uses, automobile sales and services, and drive-through services.

(9) Notwithstanding section (1) of this rule, a local government may find that an amendment to a zoning map does not significantly affect an existing or planned transportation facility if all of the following requirements are met.

(a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;

(b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and

(c) The area subject to the zoning map amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d), or the area was exempted from this rule but the local government has a subsequently acknowledged TSP amendment that accounted for urbanization of the area.

(10) Notwithstanding sections (1) and (2) of this rule, a local government may amend a functional plan, a comprehensive plan or a land use regulation without applying performance standards related to motor vehicle traffic congestion (e.g. volume to capacity ratio or V/C), delay or travel time if the amendment meets the requirements of subsection (a) of this section. This section does not exempt a proposed amendment from other transportation performance standards or policies that may apply including, but not limited to, safety for all modes, network connectivity for all modes (e.g. sidewalks, bicycle lanes) and accessibility for freight vehicles of a size and frequency required by the development.

(a) A proposed amendment qualifies for this section if it:

(A) Is a map or text amendment affecting only land entirely within a multimodal mixed-use area (MMA); and

(B) Is consistent with the definition of an MMA and consistent with the function of the MMA as described in the findings designating the MMA.

(b) For the purpose of this rule, “multimodal mixed-use area” or “MMA” means an area:

(A) With a boundary adopted by a local government as provided in subsection (d) or (e) of this section and that has been acknowledged;

(B) Entirely within an urban growth boundary;

(C) With adopted plans and development regulations that allow the uses listed in paragraphs (8)(b)(A) through (C) of this rule and that require

new development to be consistent with the characteristics listed in paragraphs (8)(b)(D) through (H) of this rule;

(D) With land use regulations that do not require the provision of off-street parking, or regulations that require lower levels of off-street parking than required in other areas and allow flexibility to meet the parking requirements (e.g. count on-street parking, allow long-term leases, allow shared parking); and

(E) Located in one or more of the categories below:

(i) At least one-quarter mile from any ramp terminal intersection of existing or planned interchanges;

(ii) Within the area of an adopted Interchange Area Management Plan (IAMP) and consistent with the IAMP; or

(iii) Within one-quarter mile of a ramp terminal intersection of an existing or planned interchange if the mainline facility provider has provided written concurrence with the MMA designation as provided in subsection (c) of this section.

(c) When a mainline facility provider reviews an MMA designation as provided in subparagraph (b)(E)(iii) of this section, the provider must consider the factors listed in paragraph (A) of this subsection.

(A) The potential for operational or safety effects to the interchange area and the mainline highway, specifically considering:

(i) Whether the interchange area has a crash rate that is higher than the statewide crash rate for similar facilities;

(ii) Whether the interchange area is in the top ten percent of locations identified by the safety priority index system (SPIS) developed by ODOT; and

(iii) Whether existing or potential future traffic queues on the interchange exit ramps extend onto the mainline highway or the portion of the ramp needed to safely accommodate deceleration.

(B) If there are operational or safety effects as described in paragraph (A) of this subsection, the effects may be addressed by an agreement between the local government and the facility provider regarding traffic management plans favoring traffic movements away from the interchange, particularly those facilitating clearing traffic queues on the interchange exit ramps.

(d) A local government may designate an MMA by adopting an amendment to the comprehensive plan or land use regulations to delineate the boundary following an existing zone, multiple existing zones, an urban renewal area, other existing boundary, or establishing a new boundary. The designation must be accompanied by findings showing how the area meets the definition of an MMA. Designation of an MMA is not subject to the requirements in sections (1) and (2) of this rule.

(e) A local government may designate an MMA on an area where comprehensive plan map designations or land use regulations do not meet the definition, if all of the other elements meet the definition, by concurrently adopting comprehensive plan or land use regulation amendments necessary to meet the definition. Such amendments are not subject to performance standards related to motor vehicle traffic congestion, delay or travel time.

(11) A local government may approve an amendment with partial mitigation as provided in section (2) of this rule if the amendment complies with subsection (a) of this section, the amendment meets the balancing test in subsection (b) of this section, and the local government coordinates as provided in subsection (c) of this section.

(a) The amendment must meet paragraphs (A) and (B) of this subsection or meet paragraph (D) of this subsection.

(A) Create direct benefits in terms of industrial or traded-sector jobs created or retained by limiting uses to industrial or traded-sector industries.

(B) Not allow retail uses, except limited retail incidental to industrial or traded sector development, not to exceed five percent of the net developable area.

(C) For the purpose of this section:

(i) “Industrial” means employment activities generating income from the production, handling or distribution of goods including, but not limited to, manufacturing, assembly, fabrication, processing, storage, logistics, warehousing, importation, distribution and transshipment and research and development.

(ii) “Traded-sector” means industries in which member firms sell their goods or services into markets for which national or international competition exists.

(D) Notwithstanding paragraphs (A) and (B) of this subsection, an amendment complies with subsection (a) if all of the following conditions are met:

(i) The amendment is within a city with a population less than 10,000 and outside of a Metropolitan Planning Organization.

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(ii) The amendment would provide land for "Other Employment Use" or "Prime Industrial Land" as those terms are defined in OAR 660-009-0005.

(iii) The amendment is located outside of the Willamette Valley as defined in ORS 215.010.

(E) The provisions of paragraph (D) of this subsection are repealed on January 1, 2017.

(b) A local government may accept partial mitigation only if the local government determines that the benefits outweigh the negative effects on local transportation facilities and the local government receives from the provider of any transportation facility that would be significantly affected written concurrence that the benefits outweigh the negative effects on their transportation facilities. If the amendment significantly affects a state highway, then ODOT must coordinate with the Oregon Business Development Department regarding the economic and job creation benefits of the proposed amendment as defined in subsection (a) of this section. The requirement to obtain concurrence from a provider is satisfied if the local government provides notice as required by subsection (c) of this section and the provider does not respond in writing (either concurring or non-concurring) within forty-five days.

(c) A local government that proposes to use this section must coordinate with Oregon Business Development Department, Department of Land Conservation and Development, area commission on transportation, metropolitan planning organization, and transportation providers and local governments directly impacted by the proposal to allow opportunities for comments on whether the proposed amendment meets the definition of economic development, how it would affect transportation facilities and the adequacy of proposed mitigation. Informal consultation is encouraged throughout the process starting with pre-application meetings. Coordination has the meaning given in ORS 197.015 and Goal 2 and must include notice at least 45 days before the first evidentiary hearing. Notice must include the following:

(A) Proposed amendment.

(B) Proposed mitigating actions from section (2) of this rule.

(C) Analysis and projections of the extent to which the proposed amendment in combination with proposed mitigating actions would fall short of being consistent with the function, capacity, and performance standards of transportation facilities.

(D) Findings showing how the proposed amendment meets the requirements of subsection (a) of this section.

(E) Findings showing that the benefits of the proposed amendment outweigh the negative effects on transportation facilities.

Stat. Auth.: ORS 183 & 197.040

Stats. Implemented: ORS 195.025, 197.040, 197.230, 197.245, 197.610 - 197.625, 197.628 - 197.646, 197.712, 197.717 & 197.732

Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDD 6-1998, f. & cert. ef. 10-30-98; LCDD 6-1999, f. & cert. ef. 8-6-99; LCDD 3-2005, f. & cert. ef. 4-11-05; LCDD 11-2011, f. 12-30-11, cert. ef. 1-1-12

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**Rule Caption:** Temporary rules establishing 35 day notice for amendments to local land use plans and ordinances.

**Adm. Order No.:** LCDD 12-2011(Temp)

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12 thru 5-1-12

**Notice Publication Date:**

**Rules Amended:** 660-018-0020, 660-018-0021, 660-018-0022, 660-018-0040

**Subject:** These temporary rules amend OAR 660-018-0020 through 660-018-0022 and OAR 660-018-0040 in order to establish a 35 day notice period for amendments to local land use plans and ordinances. The current notice period established by the amended rules is 45 days, but that conflicts with statutes that take effect on January 1, 2012. The temporary rules will be in effect until permanent rules are adopted to clarify the notice period.

**Rules Coordinator:** Casaria Tuttle—(503) 373-0050, ext. 322

## 660-018-0020

### Filing of a Proposed Amendment to or Adoption of a Comprehensive Plan or Land Use Regulation with the Director

(1) A proposal to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation must:

(a) Be submitted to the director at least 35 days before the first evidentiary hearing on adoption. The submittal must be received by the department at its Salem office;

(b) Be accompanied by appropriate forms provided by the department;

(c) Contain two copies of the text and any supplemental information the local government believes is necessary to inform the director as to the effect of the proposal. One of the required copies may be an electronic copy;

(d) Indicate the date of the final hearing on adoption. If a final hearing on adoption is continued or delayed, following proper procedures, the local government is not required to submit a new notice under OAR 660-018-0020.

(e) In the case of a map change, include a map showing the area to be changed as well as the existing and proposed designations. Wherever possible, this map should be on 8-1/2 by 11-inch paper;

(f) Where a goal exception is being proposed, include the proposed language of the exception. The commission urges the local government to submit information that explains the relationship of the proposal to the acknowledged plan and the goals, where applicable.

(2) The text submitted to comply with subsection (1)(c) of this rule must include the specific language being proposed as an addition to or deletion from the acknowledged plan or land use regulations. A general description of the proposal or its purpose is not sufficient. In the case of map changes, the text must include a graphic depiction of the change, and not just a legal description, tax account number, address or other similar general description.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.610 - 197.625

Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 12-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 5-1-12

## 660-018-0021

### Submittal of Joint Amendments

Where two or more local governments are required to jointly consider or agree on a comprehensive plan or land use regulation amendment, the local governments shall jointly submit the proposed amendment and adopt action. Notice of jointly proposed amendments must be provided 35 days prior to the first evidentiary hearing. For purposes of notice and appeal, the date of the final decision is the date of the last local government's adoption.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.610 - 197.625

Hist.: LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 12-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 5-1-12

## 660-018-0022

### Exemptions to Filing Requirements Under OAR 660-018-0020

When a local government determines that no goals, commission rules, or land use statutes apply to a particular proposed amendment or new regulation, filing under OAR 660-018-0020 is not required. In addition, a local government may submit an amendment or new regulation with less than 35 days' notice if the local government determines that there are emergency circumstances requiring expedited review. In both cases:

(1) The amendment or new regulation shall be submitted after adoption as provided in ORS 197.615(1) and (2); and

(2) Notwithstanding the requirements of ORS 197.830(2) to have appeared before the local government in the proceedings concerning the proposal, the director or any other person may appeal the decision to the board under ORS 197.830 to 197.845.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.610(2)

Hist.: LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 12-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 5-1-12

## 660-018-0040

### Submittal of Adopted Material

(1) Amendments to acknowledged comprehensive plans or land use regulations, new land use regulations adopted by local government, and findings to support the adoption shall be mailed or otherwise submitted to the director within five working days after the final decision by the governing body and shall be accompanied by appropriate forms provided by the department. If the text and findings are mailed, they shall include a signed statement by the person mailing them indicating the date of deposit in the mail.

(2) Local government must notify the department of withdrawals or denials of proposals previously sent to the department under requirements of OAR 660-018-0020.

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(3) The local government must clearly indicate in its transmittal which provisions of ORS 197.610(2) are applicable where the adopted amendment was not submitted for review 35 days prior to the first evidentiary hearing on adoption.

**NOTE:** ORS 197.610 clearly requires all adopted plan and land use regulation amendments and new land use regulations to be submitted to the director even if they were not required to be submitted for review prior to adoption.

(4) Where amendments or new land use regulations, including supplementary materials, exceed 100 pages, a summary of the amendment briefly describing its purpose and requirements shall be included with the submittal to the director. Such amendments or new land use regulations may be submitted by electronic mail notwithstanding the requirement of OAR 660-018-0020 for at least one paper copy.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.610 - 197.625

Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 12-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 5-1-12

## Landscape Contractors Board Chapter 808

**Rule Caption:** Requires a description of the materials to be installed on a landscape job and that changes or amendments to landscaping contracts and subcontracts to identify the scope of the change and be in writing.

**Adm. Order No.:** LCB 11-2011

**Filed with Sec. of State:** 12-29-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 808-002-0020

**Subject:** 808-002-0020 – requires a general description of materials on all landscaping contracts and subcontracts. Requires changes or amendments to landscaping contracts and subcontracts to identify the scope of the change or amendment, to be agreed to by both parties and to be in writing.

**Rules Coordinator:** Kim Gladwill-Rowley—(503) 967-6291, ext. 223

### 808-002-0020

#### Minimum Standards for Written Contracts and Billings

(1) Landscaping contracts and subcontracts shall include, but not be limited to, the following:

(a) Landscape contracting business name, license number, business address and telephone number;

(b) Consumer's name and address;

(c) Address or location of work to be performed if different from the consumer's address;

(d) General description of the work to be performed and materials to be installed;

(e) Estimated time for completion or estimated completion date;

(f) Price and payment schedule;

(g) Description of guarantee; if no guarantee such a statement shall be included;

(h) Signatures of the authorized business representative and consumer;

(i) Statement that the business is licensed by the State Landscape Contractors Board and the current address and phone number of the board.

(j) Effective January 1, 2012: If subcontractors will be used for the performance of landscaping work, the contract must include a statement notifying the consumer that there will be subcontractors used to perform landscaping work.

(2) Changes or amendments to landscaping contracts and subcontracts shall identify the scope of the change or amendment, be agreed to by both parties, and be in writing.

(3) All billings by a licensed landscape contracting business shall include the following:

(a) Name, address and telephone number of the licensed landscape contracting business;

(b) Name and address of the consumer;

(c) Total contract price and amount paid to date;

(d) The amount now due and the work performed for the amount due.

Stat. Auth.: ORS 183, 671.670 & 670.310

Stats. Implemented: ORS 671.625

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988,

f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-020-0010 & 808-020-0020; LCB 1-1991, f. & cert. ef. 7-22-91; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 7-2010, f. & cert. ef. 10-25-10; LCB 8-2010(Temp), f. 10-25-10, cert. ef. 10-26-10 thru 4-24-11; LCB 1-2011(Temp), f. 1-27-11, cert. ef. 1-28-11 thru 7-27-11; LCB 6-2011, f. & cert. ef. 6-17-11; LCB 11-2011, f. 12-29-11, cert. ef. 1-1-12

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**Rule Caption:** Removes full time employment for managing employee and clarifies requirements prior to planting on a structure.

**Adm. Order No.:** LCB 12-2011

**Filed with Sec. of State:** 12-29-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 808-003-0126

**Rules Amended:** 808-002-0625, 808-003-0040

**Subject:** 808-002-0625 – Removes requirement that managing employee be a full time employee.

808-003-0040 – Moves a section to 808-003-0126.

808-003-0126 – New section to clarify requirements prior to planting on a structure.

**Rules Coordinator:** Kim Gladwill-Rowley—(503) 967-6291, ext. 223

### 808-002-0625

#### Managing Employee

The term “Managing Employee” is defined as any individual, including a general manager, business manager, or administrator employed by a landscape contracting business who exercises operational or managerial control over the business activities of the landscape contracting business. An individual can only be a managing employee of one landscaping business at a time.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: Ch. 249 OL 2007

Hist.: LCB 5-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 12-2011, f. 12-29-11, cert. ef. 1-1-12

### 808-003-0040

#### Scope of License; Sanctions for Claims Filed against Probationary License

(1) A licensed landscape contracting business may only advertise for or perform those phases of landscaping work for which its owners or employees hold a valid landscape construction professional license.

(2) The landscaping work a licensed landscape contracting business advertises for or performs shall be limited to the following:

(a) For an all phase license holder, all areas of landscaping work, plus the installation of backflow prevention assemblies unless, in lieu of Backflow Prevention, the landscape construction professional contractor has signed an agreement with the Board prior to April 30, 1996 stating that the landscape construction professional will not perform Backflow Prevention work;

(b) For an irrigation, no backflow limited license holder, irrigation functions, including the maintenance of irrigation systems with the use of compressed air;

(c) For a sod and seed limited license holder, grass seed planting or sod laying;

(d) For a tree limited license holder, install new or transplant trees;

(e) For a standard limited license holder, all areas of landscaping work except irrigation functions and the installation of backflow assemblies;

(f) For an irrigation plus backflow license holder, irrigation functions, including the maintenance of irrigation systems with the use of compressed air and the installation of backflow assemblies.

(g) For a probationary All Phase Plus Backflow license holder, all areas of landscaping work, provided all landscaping work on any given landscape job as defined in OAR 808-002-0495 must not exceed a total contract amount of \$15,000.

(3) A landscape contracting business may bid on a job or enter into a contract that includes the phase of landscaping work for which it is not licensed if that landscape contracting business:

(a) Upgrades the landscape contracting business license by employing a landscape construction professional licensed for that phase of landscaping work and notifies the board of this change in license prior to performing this landscaping work, or

(b) Subcontracts the landscaping work that is outside the phase of the license to another licensed landscape contracting business licensed for that phase of landscaping work and provides the consumer with the subcontrac-

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tors name, license number and a description of the work to be subcontracted as required in OAR 808-002-0020(1)(k).

(4) If a landscape contracting business holds a probationary license and two or more claims are filed against the landscape contracting business within a 12 month period the owner or employee who holds the probationary landscape construction professional license and is providing supervision as described in ORS 671.540(15) and (16) or 671.565(1)(b) may be required to take specific continuing education hours (CEH) or approved courses as required by the board that are related to the claim issues. Failure to complete the required CEH or courses within the specified time frame may result, in addition to any civil penalties, revocation, refusal to renew or suspension of the probationary license of the landscape construction professional.

Stat. Auth.: ORS 670.310 & 671.670  
Stats. Implemented: ORS 447.060 & 671.560  
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0021; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 2-1993, f. & cert. ef. 2-1-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 7-2003(Temp), f. 11-28-03, cert. ef. 12-1-03 thru 5-29-04; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 9-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08; LCB 10-2008, f. & cert. ef. 11-6-08; LCB 13-2009, f. 12-23-09, cert. ef. 1-1-10; LCB 7-2010, f. & cert. ef. 10-25-10; LCB 12-2011, f. 12-29-11, cert. ef. 1-1-12

## 808-003-0126

### Permits and Other Requirements for Work Performed by a Landscape Contracting Business

(1) Prior to the performance of work a landscape contracting business must obtain a permit, if required. This includes but is not limited to the installation of:

- (a) a backflow assembly for irrigation systems or water features;
- (b) a retaining wall, driveway, deck, fence, walkway, arbor, landscape edging or patio;
- (c) low voltage wiring for irrigation systems or landscape lighting;
- (d) plantings on structures; and
- (e) drainage systems for landscaping work.

(2) Prior to the performance of landscaping work on a structure the landscape contracting business must confirm that the structure has been properly engineered and municipal approval has been obtained in writing or by issuance of a municipal permit for construction.

(3)(a) Tapping into the potable water supply and installation of irrigation or ornamental water feature backflow assemblies shall be done by a licensed landscape construction professional who holds a backflow license and who is either an employee or owner of a landscape contracting business. The landscape construction professional or landscape contracting business shall obtain all required permits prior to the installation of the backflow assembly and the landscape construction professional shall install the backflow assembly in conformance with the applicable code requirements.

(b) If a landscape construction professional or landscape contracting business fails to obtain permits to tap into the potable water system for the installation of backflow assemblies for irrigation or ornamental water feature or fails to comply with applicable code requirements, the Board, in addition to any other remedy, may suspend, condition or revoke the landscape construction professional and/or landscape contracting business license.

Stat. Auth.: ORS 670.310 & 671.670  
Stats. Implemented: ORS 671.310 & 671.595  
Hist.: LCB 12-2011, f. 12-29-11, cert. ef. 1-1-12

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**Rule Caption:** Nonexempt business with employees must submit proof of workers' compensation, exempt business using a leasing company must verify leasing agency has workers' compensation coverage.

**Adm. Order No.:** LCB 13-2011

**Filed with Sec. of State:** 12-29-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 808-002-0390, 808-003-0620

**Rules Amended:** 808-003-0015, 808-003-0090, 808-005-0020

**Subject:** 808-002-0390 – Adds new rule to define Family Members  
808-003-0015 – Requires certificates of insurance verifying workers' compensation insurance coverage for all employees if the applicant qualifies as nonexempt

808-003-0090 – Clarifies exempt and nonexempt classifications and what is required for documentation for each classification. Also requires an exempt business to notify the agency in writing within 30 days, register as "nonexempt" and submit documentation when that business hires employees or no longer qualifies for the exempt status.

808-003-0620 – Clarifies what documentation is required for nonexempt applicant, that workers' compensation must be continuously in effect and a new certificate must be on file prior to the expiration date of the previous certificate. Clarifies when an exempt business enters into a contract with a leasing company for workers that documentation shall be provided to the agency within 10 days of entering into that contract, during a investigator or site check or at any other time the agency requests it to verify the maintenance of workers' compensation coverage for all employees.

808-005-0020 – Sets civil penalty amounts and suspensions for failure to verify workers' compensation coverage, hiring employees while licensed as exempt and conduct that is dishonest or fraudulent or that the board finds injurious to the welfare of the public; updates reference.

**Rules Coordinator:** Kim Gladwill-Rowley—(503) 967-6291, ext. 223

## 808-002-0390

### Family Members

"Family members" means members of the same family and are related as parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, or grandchildren.

Stat. Auth.: ORS 670.310 & 671.670  
Stats. Implemented: ORS 671.525, 671.560, 671.565 & Chapter 283 (2011 Laws)  
Hist.: LCB 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 808-003-0015

### Application for Landscape Contracting Business and Landscape Construction Professional License

(1) Application for a landscape contracting business license shall be on forms provided by the agency. Information provided on the form must include, but not be limited to:

(a) Name of business entity, all additional assumed business names under which the landscaping work is conducted and Corporation Division registry numbers (if applicable). The business entity name and all assumed business names listed must be the same as what appears on record with the Corporation Division, if applicable;

(b) Mailing and physical address of the business entity;

(c) Name of all owners and percent of ownership of each owner;

(d) Name and license number of all licensed landscape construction professionals employed by the business as required under ORS 671.565 along with a signed and notarized verification of employment form provided by the agency. A business may meet the requirements of ORS 671.565, notwithstanding the conditions of 657.044, if the licensed landscape construction professional is a sole proprietor, a member of an LLC, a general partner in a partnership, or a stockholder of a Sub Chapter S-Corp and is actively involved in the landscape contracting business' operations and is receiving remuneration, whether by salary or other payment, for services provided;

(e) Name and address of owner or managing employee;

(f) Independent contractor certification statement;

(g) A signed statement by the owner of the business, on which the landscape contracting business estimates the total maximum job charges for a single landscape job during the term of the license for the purpose of determining the correct bonding amount for that specific term of the license;

(h) Social security number of the owner of a sole proprietorship or partners in a general partnership (where the partners are human beings);

(i) Complete questions to Licensing and Litigation History and Criminal Background sections;

(j) State Tax Identification number, if applicable;

(k) Federal Employer ID Number (EIN), if applicable;

(l) Workers Compensation Information, if nonexempt; and

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(m) Signature of owner, partner, joint venturer, corporate officer, member or trustee, signifying that the information provided in the application is true and correct.

(2) Application for a landscape contracting business license must be accompanied by:

- (a) A non-refundable application fee;
- (b) A required license fee;

(b) A properly executed surety bond, irrevocable letter of credit or deposit as required under ORS 671.690;

(c) A Certificate of Liability Insurance as required under ORS 671.565 for an amount not less than \$100,000 listing the Landscape Contractors Board as the certificate holder;

(d) A Certificate of Completion of Owner/Managing Employee course from an approved course provider and proof of passing the Laws, Rules & Business Practice examination;

(e) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.563, "applicant" has the same meaning as owner as defined in OAR 808-002-0734.

(f) Copies of the original and amended articles of incorporation for corporations, organizational filings for limited liability companies, and partnership agreements for partnerships;

(g) A completed, signed and notarized Verification form (provided by the board) for every licensed landscape construction professional who is supervising work for the landscape contracting business as required in OAR 808-003-0018; and

(h) Certificate of Insurance verifying workers' compensation insurance coverage for all employees, if the applicant qualifies as nonexempt.

(3) Application for a landscape construction professional license shall be on forms provided by the agency and shall be accompanied by:

- (a) A non-refundable application fee;
- (b) Verification of experience and/or transcripts or copies of completion certificates from courses of study;

(c) If applicable, name of employing licensed landscape contracting business or businesses;

(d) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.563, "applicant" means the person applying for the individual landscape construction professional license;

(e) Complete questions to Licensing and Litigation History and Criminal Background sections;

- (f) Social security number of the applicant;
- (g) Mailing and physical address of the applicant; and
- (h) Signature of applicant.

(4) Application for a probationary landscape construction professional license shall be on forms provided by the agency and shall be accompanied by:

- (a) A non-refundable application fee,
- (b) If applicable the name of the employing licensed landscape contracting business or businesses.

(c) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.563, "applicant" means the person applying for the individual probationary landscape construction professional license;

(d) Complete questions to Licensing and Litigation History and Criminal Background sections;

- (e) Social security number of the applicant;
- (f) Mailing and physical address of the applicant; and
- (g) Signature of applicant.

(5) If an applicant as defined in subsections (1), (3) and (4) of this rule has any unpaid damages as stated in subsections (1), (3) and (4) of this rule and there are no appeals or exceptions filed, the applicant must show current payments are being made. If payments are not being made, the Landscape Contractors Board may refuse to issue the license.

Stat. Auth.: ORS 183 & 671  
Stats. Implemented: ORS 671.560, 671.563 & 671.565

Hist.: LC 3, f. & ef. 2-7-77; LC 3-1980, f. & ef. 2-5-80; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0015; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-1999, f. & cert. ef. 11-17-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2005, f. & cert. ef. 10-5-05; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 9-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08; LCB 10-2008, f. & cert. ef. 11-6-08; LCB 10-2011, f. 7-26-11, cert. ef. 8-1-11; LCB 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 808-003-0090

### Employer Status

Landscape contracting businesses shall be licensed as either nonexempt (employer with employees) or exempt (no employees) as provided in ORS 671.525.

(1) The nonexempt class is composed of the following entities:

(a) Sole proprietorships with one or more employees;

(b) Partnerships or limited liability partnerships with one or more employees;

(c) Partnerships or limited liability partnerships with more than two partners if any of the partners are not family members as defined in OAR 808-002-0390;

(d) Joint ventures with one or more employees;

(e) Joint ventures with more than two joint venturers if any of the joint venturers are not family members as defined in OAR 808-002-0390;

(f) Limited partnerships with one or more employees;

(g) Limited partnerships with more than two general partners if any of the general partners are not family members as defined in OAR 808-002-0390;

(h) Corporations with one or more employees;

(i) Corporations with more than two corporate officers if any of the corporate officers are not family members;

(j) Trusts with one or more employees;

(k) Trusts with more than two trustees if any of the trustees are not family members as defined in OAR 808-002-0390;

(l) Limited liability companies with one or more employees; or

(m) Limited liability companies with more than two members if any of the members are not family members as defined in OAR 808-002-0390.

(2) The exempt class is composed of sole proprietors, partnerships, joint ventures, limited liability partnerships, limited partnerships, corporations, trusts, and limited liability companies that do not qualify as nonexempt.

(3) An exempt landscape contracting business may work with the assistance of individuals who are employees of a nonexempt landscape contracting business so long as the nonexempt landscape contracting business:

(a) Is in compliance with ORS Chapters 316, 656, and 657 and is providing the employee(s) with workers' compensation insurance; and

(b) Does the payroll and pays all its employees, including those employees who assist an exempt landscape contracting business.

(4) Non-exempt entities shall supply the following employer account numbers:

(a) Workers' Compensation Division 7-digit compliance number or workers' compensation insurance carrier name and policy or binder number;

(b) Oregon Employment Department and Oregon Department of Revenue combined business identification number; and

(c) Internal Revenue Service employer identification number or federal identification number.

(5) Exempt entities need supply no employer account numbers except as stated below.

(6) Corporations and limited liability companies qualifying as exempt as provided by ORS 656.027(10) shall supply Employment Division and Department of Revenue account numbers unless the corporation or limited liability company certifies that corporate officers or members receive no compensation (salary or profit) from the corporation or limited liability company. Exempt corporations shall supply IRS account numbers.

(7) Out-of-state businesses with no Oregon employees shall supply their home state account numbers, and workers' compensation account.

(8) An exempt landscape contracting business must notify the agency in writing within 30 days, register with the Board as "nonexempt" and submit documentation as required in OAR 808-003-0620 when that business hires employees or otherwise no longer qualifies for the exempt status.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.525, 671.560, 671.565 & 2011 OL Ch. 283

Hist.: LCB 2-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 5-2003, f. & cert. ef. 8-1-03; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 13-2011, f. 12-29-11, cert. ef. 1-1-12



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## 808-003-0620

### Workers' Compensation Insurance

(1) A nonexempt applicant for the landscape contracting business license or renewal shall submit a "Certificate of Insurance" (certificate) from an insurance company authorized to do business in Oregon, as required by ORS 671.565 and will continue to meet those insurance requirements for as long as the applicant is licensed. The certificate shall include the name of the insurance company, policy number, and coverage amount.

(2) The name of the entity as it appears on the certificate must be the same as the name on the landscape contracting business license application or license of record with the agency and the same entity name filed at the Oregon Corporation Division (if applicable).

(3) A landscape contracting business must continuously have in effect workers' compensation insurance during the licensing period to maintain an active license if the landscape contracting business has employees.

(4) A new certificate must be on file with the agency prior to the expiration date on the previous certificate. If the policy expires and a new certificate is not received on or before 5 pm on the day of policy expiration and the landscape contracting business has not changed the employer status designation to exempt, the agency may suspend the landscape contracting business license.

(5) Upon cancellation of the workers' compensation insurance required under ORS 671.565 the agency may immediately suspend the landscape contracting business license as provided for in 671.610(2)(c).

(6) If a landscape contracting business is licensed as a sole proprietorship, partnership, limited liability partnership, limited partnership, joint venture, corporation, limited liability company, business trust or any other entity and seeks to change the licensed entity to one of the other entity types and a new license is required, the application must be accompanied by a new certificate.

(7) A landscape contracting business that is licensed as exempt and has entered into a contract with a worker leasing company or temporary service provider for the supplying of workers shall provide documentation to the agency within 10 days of entering into the contract that the landscape contracting business has verified the maintenance of the workers' compensation insurance coverage for all employees supplied by the leasing company or temporary service provider for the use of the landscape contracting business. Such verification must also be provided during an investigation or site check or at any other time the agency requests it.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.565, 671.610 & 2011 OL Ch. 283

Hist.: LCB 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 808-005-0020

### Schedule of Civil Penalties

Sections 1-4, 25 & 26 may be adjusted per the terms of a settlement agreement for the first offense:

(1) Operating as a landscape contracting business in violation of ORS 671.530(1) or (3):

- (a) If the value of the work is \$500 or less; \$500; and
- (b) If the value of the work is more than \$500; \$1,000

(2) Operating as a landscape contracting business in violation of ORS 671.530(1) or (3), when a claim has been filed for damages arising out of that work, \$2,000.

(3) Operating as a landscape construction professional in violation of ORS 671.530(1), \$1,000.

(4) Advertising in violation of ORS 671.530(2), (4), or (5):

(a) \$500 for the first offense; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(5) Advertising for landscaping work outside the scope of the landscape contracting business license in violation of OAR 808-003-0040:

(a) \$500 for the first offense; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(6) Operating as a landscape contracting business in violation of ORS 671.530(1) or (3) when one or more previous violations have occurred after action taken on first offense, \$2,000.

(7) Operating as a landscaping contracting business without having at least one owner or employee who is a licensed landscape construction professional licensed within the phase of work performed, in violation of OAR 808-003-0040 and 808-003-0045:

(a) \$500 for the first offense; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(8) Performing landscaping work while not subject to a written contract or failing to comply with minimum contract standards, in violation of ORS 671.625(2) and OAR 808-002-0020:

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(9) Failure to include the license number in all written advertising, in violation of OAR 808-003-0010:

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(10) Performing work outside the scope of the landscape contracting business license in violation of OAR 808-003-0040:

(a) \$500 for the first offense; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(11) Installation of an irrigation backflow assembly or tapping into the potable water supply in violation of a written agreement with the Board as provided in OAR 808-003-0040, \$1,000 and suspension of the license until Backflow Prevention license is obtained.

(12) Failure to maintain the insurance or workers compensation insurance coverage required by ORS 671.565 or bond or other board accepted surety as required by 671.690 in effect continuously throughout the license period:

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(13) Failure to submit documentation of workers' compensation insurance coverage or failing to register with the agency as non-exempt upon hiring one or more employees:

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(14) Failure to conform to information provided on the application in violation of ORS 671.510 to 671.710:

(a) \$500 for the first offense and suspension of the license until the licensee provides the agency with proof of compliance with the statutes and rules; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of compliance with the statutes and rules.

(15) Failure to comply with any part of ORS Chapters 316, 656, 657, and 671, as authorized by 671.510 to 671.710 or rules promulgated by the agency:

(a) \$500 for the first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules.

(16) Conduct that is dishonest or fraudulent or that the board finds injurious to the welfare of the public as a landscape construction professional or landscape contracting business:

(a) \$500 for the first offense and suspension of the license; and

(b) \$ 1,000 for subsequent offenses occurring after action taken on first offense and suspension of the license. The agency may also revoke the license.

(17) Failure to verify workers' compensation coverage for temporary or leased workers as required in OAR 808-003-0620:

(a) \$200 for the first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules; and

(b) \$ 500 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules. For purposes of subsection 17(a) only, if the documentation of verification of workers' compensation coverage is received by the agency on or before the 21st day after the date of the contested case notice and the verification shows coverage of all employees from the employees' hire date, the contested case will be withdrawn without prejudice.

(18) Hiring employees while licensed as an exempt landscape contracting business:

(a) \$200 for the first offense if the licensee obtained workers' compensation coverage prior to the employee hire date;

# ADMINISTRATIVE RULES

(b) \$500 for the first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules if the licensee did not obtain workers' compensation coverage prior to the employee hire date;

(c) \$500 for subsequent offenses occurring after action taken on first offense if the licensee obtained workers' compensation coverage prior to the employee hire date; and

(d) \$ 1,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules if the licensee did not obtain workers' compensation coverage prior to the employee hire date.

(19) Violating an order to stop work as authorized by ORS 671.510 to 671.710, \$1,000 per day.

(20) Failure to obtain a permit to tap into a potable water supply prior to the installation of an irrigation backflow assembly or failure to comply with applicable plumbing code requirements as required by OAR 808-003-0126(3)(a):

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(21) Failure to obtain the appropriate building code permit(s):

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(22) When as set forth in ORS 671.610(5), the number of licensed landscape contracting businesses working together on the same task on the same job site, where one of the businesses is licensed exempt under 671.525(2)(b), exceeded two sole proprietors, one partnership, one corporation, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows:

(a) \$1,000 for the first offense;

(b) \$2,000 for the second offense;

(c) Six month suspension of the license for the third offense; and

(d) Three-year revocation of license for a fourth offense.

(23) Failure of a landscape contracting business to notify the board of a change in the landscaping business' phase of license as required by OAR 808-003-0125:

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(24) Failure by the landscape construction professional to comply with the supervisory responsibilities as required by OAR 808-003-0018:

(a) \$200 for the first offense;

(b) \$500 for the second offense occurring after action taken on first offense; and

(c) \$1,000 and six month suspension of the license for the third offense.

(25) Failure of the landscape construction professional to notify the Landscape Contractors Board of a change of address or employment in writing or on line at the LCB website as required by ORS 671.603 and OAR 808-003-0125:

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(26) Failure of a landscape contracting business to notify the board of a change in address in writing or on line at the LCB website as required by ORS 671.603:

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(27) Failure of a landscape contracting business to require the landscape construction professional to directly supervise unlicensed employees of the landscaping business performing landscaping work that is related to the landscape construction professional phase of license:

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(28) Failure of a landscape contracting business to obtain the correct amount of surety bond or irrevocable letter of credit, as required by ORS 671.690(1):

(a) \$500 for the first offense and immediate suspension per ORS 671.610(2) until the proper bond is received in the State Landscape Contractors Board office;

(b) \$1,000 for the second offense occurring after action taken on the first offense and immediate suspension per ORS 671.610(2) until the proper bond is received in the State Landscape Contractors Board office.

(29) Failure to notify the LCB of a new business name (including any new assumed business name) or, in the case of a sole proprietor, any personal surname under which the business is conducted, in violation of OAR 808-003-0020:

(a) \$200 for first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(30) Failure to respond to the continuing education audit as required under OAR 808-040-0060(3):

(a) For the first offense:

(A) \$200; and

(B) Suspension of the license until the CEH documentation is received by the agency. For purposes of subsection 26(a) only, if the CEH documentation as required by OAR 808-040-0060(3) is received by the agency on or before the 21st day after the date of the contested case notice, the contested case will be withdrawn without prejudice.

(b) For subsequent offenses occurring after action taken on the first offense:

(A) \$500; and

(B) Suspension of the license until the CEH documentation is received by the agency.

(31) Failure to submit complete documentation as required under OAR 808-040-0060(3), (4), (5) or (6):

(a) For the first offense:

(A) \$200; and

(B) Suspension of the license until the CEH documentation is received by the agency. For purposes of subsection 27(a) only, if the CEH documentation as required by OAR 808-040-0060(3), (4), (5) or (6) is received by the agency on or before the 21st day after the date of the contested case notice, the contested case will be withdrawn without prejudice.

(b) For subsequent offenses occurring after action taken on the first offense:

(A) \$500; and

(B) Suspension of the license until the CEH documentation is received by the agency.

(32) Failure to complete the continuing education hours by the deadline as required under OAR 808-040-0020(1):

(a) For the first offense, \$200; and

(b) For subsequent offenses occurring after action taken on the first offense, \$500.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.997

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 2-2005, f. & cert. ef. 4-5-05; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 7-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08; LCB 10-2008, f. & cert. ef. 11-6-08; LCB 1-2010, f. & cert. ef. 1-27-10; LCB 3-2010, f. & cert. ef. 6-1-10; LCB 7-2010, f. & cert. ef. 10-25-10; LCB 10-2011, f. 7-26-11, cert. ef. 8-1-11; LCB 13-2011, f. 12-29-11, cert. ef. 1-1-12

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**Rule Caption:** Amends qualifications for testing and licensing as a landscape construction professional.

**Adm. Order No.:** LCB 14-2011

**Filed with Sec. of State:** 12-29-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 808-003-0025

**Subject:** 808-003-0025 – Amends alternative experience for licensing as a landscape construction professional. Allows two years of related landscaping experience, six months of related landscape experience to substitute for cooperative work experience, a current membership as a Certified Professional member of APLD or any other landscaping related certified membership on an individual basis to be determined by the Board. It also eliminates the requirement to hold an active license under ORS 701 and only requires a current certification with the International Society of Arboriculture as a Certified Arborist.

**Rules Coordinator:** Kim Gladwill-Rowley—(503) 967-6291, ext. 223

# ADMINISTRATIVE RULES

## 808-003-0025

### Alternative Experience

An applicant will be deemed to have qualifying experience under ORS 671.570(2) if the applicant:

(1) Submits documentation to verify two years of related landscaping experience; or

(2) Successfully completes the Landscape Industry Certification program administered by the Oregon Landscape Contractors Association (OLCA) or another entity licensed to the Professional Landcare Network; or

(3) Obtains an Associate, Bachelors or Masters Degree in horticulture or other related fields from an accredited school or college, which includes the completion of a cooperative work experience requirement in landscaping. If no cooperative work experience, six months of related landscape experience may substitute; or

(4) Obtains a Certificate in horticulture or other related fields from an accredited school or college that requires a minimum of 72 credit hours, which includes the completion of a cooperative work experience requirement in landscaping. If no cooperative work experience, six months of related landscape experience may substitute; or

(5) Holds a current certification with the International Society of Arboriculture (ISA) as a Certified Arborist; or

(6) Holds a current membership as a Certified Professional Member of APLD; or

(7) Complete an Oregon Drinking Water Program approved Backflow Assembly Tester five (5) day course or holds a current Oregon Backflow Assembly Tester certification; or

(8) Any other landscaping related certified membership on an individual basis to be determined by the Board.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.570

Hist.: LC 1-1985, f. & ef. 7-1-85; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0016; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LCB 2-1998, f. & cert. ef. 4-30-98; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 2-2005, f. & cert. ef. 4-5-05; LCB 14-2011, f. 12-29-11, cert. ef. 1-1-12

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**Rule Caption:** Clarifies a probationary applicant may apply a subsequent time as a probationary applicant; passing scores from first application are expired.

**Adm. Order No.:** LCB 15-2011

**Filed with Sec. of State:** 12-29-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 808-003-0030, 808-003-0065

**Subject:** 808-003-0030 – Clarifies a probationary application may submit another application for a probation license after the previous application has expired or may submit an application for a regular license at any time prior to be issued a probationary license along with the required documentation to show compliance with the qualifications. Also clarifies a probationary application expires two years after the application is received or one year after first sitting for any section of the exam, whichever is first

808-003-0065 – Clarifies a passing scores for a probationary applicant will expire upon expiration of the application

**Rules Coordinator:** Kim Gladwill-Rowley — (503) 967-6291, ext. 223

## 808-003-0030

### Expiration of Application; Change of Application

Applicants who fail to complete the license process within the following time periods must submit a new application and fee and, if applicable, retake and pass the exam.

(1) A landscape contracting business license application will expire one year from the date the application was received by the agency.

(2) Except as provided in subsection (3), an individual landscape construction professional license application will expire two years after the last examination sitting or two years after the application was received by the agency, whichever is later. Exam results are subject to OAR 808-003-0065(3).

(3) An individual landscape construction professional application for a Probationary All Phase Plus Backflow license will expire two years after the application is received by the agency or, one year after the first sitting for any section of the exam, whichever is first. Exam results are subject to OAR 808-003-0065(4).

(4) An applicant for a Probationary All Phase Plus Backflow license may submit another application for a Probationary All Phase Plus Backflow license after the previous application has expired. Exam results are subject to OAR 808-003-0065(4).

(5) An applicant that applied for a Probationary All Phase Plus Backflow license may submit an application for a regular landscape construction professional license at any time prior to being issued a probationary license along with the required documentation pursuant to ORS 671.570 or OAR 808-003-0025. If a Probationary All Phase Plus Backflow license is issued the licensee must comply with 808-003-0045(5) to obtain removal from probationary status. Exam results are subject to 808-003-0065(3).

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.670

Hist.: LC 1-1980, f. & ef. 2-5-80; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0017; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 2-2008, f. & cert. ef. 6-2-08; LCB 15-2011, f. 12-29-11, cert. ef. 1-1-12

## 808-003-0065

### Scoring

(1) Each exam section shall be scored separately.

(2) Based on 100 percent, the passing score shall be 75 percent or higher for each section.

(3) Except as provided in subsection (4), a passing score shall be valid for one year from the date the exam section was taken. An applicant who fails to pass all the sections required for a particular license within one year of passing a section shall retake that section.

(4) A passing score for an applicant for a Probationary All Phase Plus Backflow license will expire upon expiration of the application.

Stat. Auth.: ORS 183.325 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.570

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0026; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 15-2011, f. 12-29-11, cert. ef. 1-1-12

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**Rule Caption:** Adds fee to convert license status at a time other than at renewal for \$50; increases fee to reinstate a suspended license to \$50.

**Adm. Order No.:** LCB 16-2011

**Filed with Sec. of State:** 12-29-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 8-1-2011

**Rules Amended:** 808-003-0130

**Subject:** Adds fee to convert license status at a time other than at renewal for \$50; increases fee to reinstate a suspended license to \$50.  
**Rules Coordinator:** Kim Gladwill-Rowley — (503) 967-6291, ext. 223

## 808-003-0130

### Fees

(1) Initial license or renewal of active license

(a) Landscape contracting business, \$260.

(b) Landscape construction professional, \$95.

(2) Renewal of inactive license

(a) Landscape contracting business, \$260.

(b) Landscape construction professional, \$95.

(3) Late penalty fee:

(a) Landscape contracting business, \$35.

(b) Landscape construction professional, \$35

(4) Landscape Construction Professional License Application fee: \$100.

(5) Landscape Contracting Business License Application fee: \$150.

(6) Probationary Landscape Construction Professional License Application: \$75

(7) Owner or Managing Employee Application fee: \$60.

(8) Request from license holder for a replacement license card: \$20

(9) Reinstatement of suspended license: \$50. The reinstatement date will be the date the agency updates the record.

(10) To convert a license from an inactive status to an active status or from an active status to an inactive status at a time other than at renewal: \$50. The status change date will be the date the agency updates the record.

(11) If a landscape construction professional license expires, the amount to be paid for reinstatement to active or inactive status equals the required fee for each year of lapse (up to two years) plus a late penalty fee

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for each year. The reinstatement date will be the date the agency updates the record.

(12) If a Landscape contracting business license expires, the amount to be paid for reinstatement to active or inactive status equals the required fee for each year of expiration (up to two years) plus a late penalty fee for each year. The reinstatement date will be the date the agency updates the record.

(13) Payments received after board deadlines, including, but not limited to payments for renewals, applications and civil penalties will be considered late and penalties shall be assessed.

(14) The board may waive the late fee if:

(a) The properly completed renewal form and correct fee are received by the agency prior to the expiration date and all other renewal requirements are met within one month after the expiration date; or

(b) The licensee's failure to meet the renewal date was caused entirely or in part by a board error or omission.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.595, 671.650 & 671.660

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1983(Temp), f. 10-14-83, ef. 10-15-83; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0035; LCB 3-1988(Temp), f. 4-11-88, cert. ef. 5-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LCB 1-1989(Temp), f. 5-16-89, cert. ef. 7-1-89; LCB 2-1989, f. & cert. ef. 7-24-89; LSCB 1-1995, f. & cert. ef. 2-2-95; LSCB 1-1997(Temp), f. & cert. ef. 6-10-97; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-2002, f. & cert. ef. 7-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 5-2004, f. & cert. ef. 10-4-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 7-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08; LCB 9-2008, f. 9-29-08, cert. ef. 10-1-08; LCB 10-2008, f. & cert. ef. 11-6-08; LCB 4-2009, f. 6-1-09 cert. ef. 7-1-09; LCB 9-2009(Temp), f. & cert. ef. 10-28-09 thru 4-25-10; Administrative correction 5-19-10; LCB 4-2010, f. & cert. ef. 6-2-10; LCB 5-2010(Temp), f. & cert. ef. 7-20-10 thru 1-16-11; LCB 6-2010, f. 8-12-10, cert. ef. 8-13-10; LCB 2-2011, f. & cert. ef. 1-27-11; LCB 16-2011, f. 12-29-11, cert. ef. 1-1-12

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**Rule Caption:** Clarifies new legislation regarding bond coverage of backflow assemblies and landscape irrigation control wiring and outdoor landscape lighting.

**Adm. Order No.:** LCB 17-2011

**Filed with Sec. of State:** 12-29-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 808-004-0320

**Subject:** 808-004-0320 – Clarifies a claim may be accepted for negligent or improper work for work performed or contracted to be performed on or after January 1, 2012 for backflow assembly testing services, the installation, repair or maintenance of backflow assemblies for irrigation system and ornamental water features and the installation of irrigation control wiring and outdoor landscape lighting.

**Rules Coordinator:** Kim Gladwill-Rowley—(503) 967-6291, ext. 223

## 808-004-0320

### Jurisdictional Requirements

(1) A claim must be of a type described under ORS 671.690(2) & (3), OAR 808-002-0220 and ORS 671.695.

(2) A claim may be accepted for negligent or improper work for the following activities performed or contracted to be performed on or after January 1, 2012:

(a) Backflow assembly testing services provided by employees of the landscape contracting business who are certified under ORS 448.279; and

(b) The installation, repair or maintenance by the landscape contracting business of backflow assemblies for irrigation systems and ornamental water features as described in ORS 447.060; and

(c) The installation by the landscape contracting business of landscape irrigation control wiring and outdoor landscape lighting as described in ORS 479.940.

(3) The agency will only process a claim that is filed within the following time limitations:

(a) State tax and contribution claims must be filed within one year of the due date of the tax or contribution.

(b) Labor, material and equipment claims must be filed within one year of the delivery date of the labor, material or equipment.

(c) Negligent or improper work claims must be filed within one year following the date the work was completed.

(d) Breach of contract claims must be filed within one year of the contract date or the last date of work on the project, whichever is later.

(4)(a) A claim will be processed only against a licensed landscape contracting business.

(b) For a State tax and contribution claim, the landscape contracting business against which the claim is filed will be considered licensed if the tax and contribution liability arose while the business was licensed.

(c) For a material claim, the landscape contracting business against which the claim is filed will be considered licensed if one or more invoices involve material delivered while the landscaping business was actively licensed. Damages will be awarded only for material delivered within the period of time that the landscape contracting business was actively licensed.

(d) For any other claim, the landscape contracting business against which the claim is filed will be considered licensed if the landscape contracting business was actively licensed during all or part of the work period.

(5) A labor, material and equipment claim, negligent or improper work claim or breach of contract claim will be accepted only when one or more of the following relationships exist between the claimant and the licensed landscape contracting business:

(a) A direct contractual relationship based on a contract entered into by the claimant and the landscape contracting business, or their agents; or

(b) An employment relationship or assigned relationship arising from a Bureau of Labor and Industries employee claim.

(6) A claim by a person furnishing material, or renting or supplying equipment to a landscape contracting business may not include a claim for non-payment for tools sold to a landscape contracting business, for equipment sold to the landscape contracting business that is not incorporated into the job site, for interest or service charges on an account or for materials purchased as stock items.

(7) Claims will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or rented for installation or use on property located within the boundaries of the State of Oregon.

(8)(a) Except as provided in subsection (b) of this section, the agency may refuse to process a claim or any portion of a claim that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 671.510 to 671.710 that is the same as an allegation contained in a claim previously filed by the same claimant against the same landscape contracting business.

(b) The agency may process a claim that would otherwise be dismissed under subsection (a) of this section if the previously filed claim was:

(A) Withdrawn prior to the on-site meeting.

(B) Closed or dismissed with an explicit provision allowing the subsequent filing of a claim containing the same allegations as the closed or dismissed claim.

(c) Nothing in this section extends the time limitation for filing a claim under ORS 671.710.

Stat. Auth.: ORS 183, 670.310 & 671.670

Stats. Implemented: ORS 671.690, 671.695, 671.703 & 2011 OL Ch. 104

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0020; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 17-2011, f. 12-29-11, cert. ef. 1-1-12

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**Rule Caption:** Reduces the number of continuing education hours required.

**Adm. Order No.:** LCB 18-2011

**Filed with Sec. of State:** 12-29-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 808-040-0020, 808-040-0080

**Subject:** Reduces the number of continuing education hours required.

**Rules Coordinator:** Kim Gladwill-Rowley—(503) 967-6291, ext. 223

## 808-040-0020

### Continuing Education Biennial and Reporting Requirement

(1) Biennial CEH requirement. To maintain licensing, a landscape construction professional must complete 16 hours of continued education hours (CEH) every two years unless such requirement is waived by the Board under ORS 671.676(4) and OAR 808-040-0070:

(a) The 16 CEH must be completed during the two-year period immediately preceding the renewal date of the landscape construction professional license.

# ADMINISTRATIVE RULES

(b) The 16 CEH must conform to OAR 808-040-0040 and include a minimum of 4 CEH in subjects related to landscape business practices and a minimum of 8 CEH in subjects related to the technical area of landscape construction. The remaining hours may be in either of the above subjects or in subjects including but not limited to workplace safety, environmental and sustainable landscape practices, and/or community service.

(c) All landscape construction professionals renewing on or before December 31, 2011 may complete and report CEH obtained since January 1, 2008.

(2) Reporting Requirement at Renewal. As a requirement of renewal of an active landscape construction professional license, licensees are required to certify that the licensee has fulfilled the CEH requirement.

(3) Licensees with Even Numbered Licenses must report the CEH requirement in even numbered years. All licensees holding even numbered licenses on or before January 1, 2009 shall complete and report ten (10) CEH with the conditions of (1)(b) of this rule being prorated for their first renewal in 2010 and then report the full 20 CEH with the renewal every second(2nd) year thereafter.

(4) Licensees with Odd Numbered Licenses must report the CEH requirement in odd numbered years. All licensees holding odd-numbered licenses shall complete and report the 20 CEH requirement beginning with the renewal period in 2011 and every second (2nd) year thereafter. The 20 CEH requirement shall be completed as per (1)(b) of this rule.

(5) New Licensees. CEH requirements for new licensees are as follows:

(a) New licensees who receive an even numbered license in an odd numbered year after January 1, 2009 must report 8 CEH with the conditions of (1) (b) of this rule being prorated for their first renewal period and then report the full 16 CEH with the renewal every second (2nd) year thereafter. An example of this is an individual who receives an even numbered license in 2009 must report 8 CEH in 2010 and then 16 CEH in 2012.

(b) New licensees who receive an even numbered license in an even numbered year after January 1, 2009 will report the 16 CEH requirement every second (2nd) year thereafter.

(c) New licensees who receive an odd numbered license in an even numbered year after January 1, 2009 must report 8 CEH with the conditions of (1) (b) of this rule being prorated for their first renewal period and then report the full 16 CEH with the renewal every second (2nd) year thereafter. An example of this is an individual who receives an odd numbered license in 2010 must report 8 CEH in 2011 and then 16 CEH in 2013.

(d) New licensees who receive an odd numbered license in an odd numbered year after January 1, 2009 will report the 16 CEH requirement every second (2nd) year thereafter

(e) CEH obtained by new licensees during the two-year period immediately preceding the renewal date of the landscape construction professional license.

Stat. Auth.: ORS 670.310 & 671.670  
Stats. Implemented: 2007 OL Ch. 550  
Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 2-2009(Temp), f. & cert. ef. 5-13-09 thru 11-9-09; LCB 10-2009, f. & cert. ef. 10-28-09; LCB 1-2010, f. & cert. ef. 1-27-10; LCB 18-2011, f. 12-29-11, cert. ef. 1-1-12

## 808-040-0080

### CEH Requirement for Reinstatement to Active Status

(1) Except as provided for in subsection (2) of this section any licensee that reinstates an inactive or expired landscape construction professional license to active status must:

(a) Comply with OAR 808-003-0255;

(b) Submit documentation as per the audit requirements of OAR 808-040-0060 for the 16 CEH obtained within the two years immediately preceding the renewal date of the landscape construction professional license; and

(c) Meet the CEH requirement for each subsequent renewal period.

(2) Any even numbered licensee that reinstates an inactive or expired landscape construction professional license to active status prior to December 31, 2011 must:

(a) Comply with OAR 808-003-0255

(b) Submit documentation as per the audit requirements of OAR 808-040-0060 for the 10 CEH obtained since January 1, 2008; and

(c) Meet the CEH requirement for each subsequent renewal period.

(3) Any odd numbered licensee that reinstates an inactive or expired landscape construction professional license to active status prior to December 31, 2011 must:

(a) Comply with OAR 808-003-0255;

(b) Submit documentation as per the audit requirements of OAR 808-040-0060 for the 20 CEH obtained since January 1, 2008; and

(c) Meet the CEH requirement for each subsequent renewal period.

(4) Any licensee that reinstates an expired landscape construction professional license to active status more than 14 days after the expiration of the license and the license was subject to audit prior to its expiration, the licensee must submit documentation as per the audit requirement of OAR 808-040-0060.

Stat. Auth.: ORS 670.310 & 671.670  
Stats. Implemented: 2007 OL Ch. 550  
Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 2-2009(Temp), f. & cert. ef. 5-13-09 thru 11-9-09; LCB 10-2009, f. & cert. ef. 10-28-09; LCB 18-2011, f. 12-29-11, cert. ef. 1-1-12

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## Oregon Business Development Department Chapter 123

**Rule Caption:** These Capital Access Program rules are amending definitions, reporting and loan eligibility requirements.

**Adm. Order No.:** OBDD 9-2011(Temp)

**Filed with Sec. of State:** 12-19-2011

**Certified to be Effective:** 12-19-11 thru 6-15-12

**Notice Publication Date:**

**Rules Amended:** 123-018-0010, 123-018-0065, 123-018-0140

**Subject:** On September 27, 2010 The Small Business Jobs Act (Congressional HB 5297) was signed into law. One component of the Small Business Jobs Act was the creation of the State Small Business Credit Initiative (SSBCI). SSBCI will support at least \$15 billion in small business lending by strengthening state small business programs that leverage private-sector lenders to extend additional credit. \$1.5 billion has been allocated to provide capitalization for existing state loan and loan guarantee programs. As a result of the bill, Oregon has been allocated more than \$16.5 million for the purpose of providing capitalization to state managed business finance programs (revolving loan programs, forgivable loan programs, loan guarantee programs, capital access programs and venture capital programs).

The primary deliverable associated with the SSBCI program will be to demonstrate a 10:1 public/private leverage ratio. As a result, by December 31, 2016, to comply with the terms and intent of the program will need to demonstrate that over \$165 million in private financing (debt and equity) result from the \$16.5 million investment in the Business Finance programs outlined in the application. As a result, the Capital Access Program was identified as a fund to receive capitalization.

In order to begin enrolling new loans using the SSBCI funds which will help Oregon begin to meet the \$165 million private leverage requirement associated with the SSBCI funds, these rules have been amended to reflect the program changes and restrictions associated with the federal funding.

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

## 123-018-0010

### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001 as used in this division of administrative rules, the following definitions apply, unless the context requires otherwise:

(1) "Agreement" means a contract between a Financial Institution and the Department authorizing the Financial Institution to participate in the Program as required under ORS 285B.113.

(2) "Borrower" means a Qualified Business, including but not limited to a corporation, partnership, limited liability company, joint venture, sole proprietorship, cooperative, or non-profit corporation, that has received a Qualified Loan from a Participating Financial Institution. The borrower, or any principal of the borrower, may not be an executive officer, director, or principal shareholder of the financial institution lender; a member of the immediate family of such executive officer, director or principal shareholder; or a related interest to any of the above. The terms "executive officer", "director", "principal shareholder", "immediate family", and "related interest" are described in 12 C.F.R. part 215.

(3) "Brownfield" means any real property where expansion or redevelopment is complicated by actual or perceived environmental contamination.

(4) "Department" means the State of Oregon Business Development Department under ORS Chapter 285A.

# ADMINISTRATIVE RULES

(5) "Distressed Area" means a geographic area so designated as described in division 024 of these administrative rules.

(6) "Enrolled Loan" means a Qualified Loan enrolled in the Program as described in OAR 123-018-0080, including but not limited to a term loan or line of credit.

(7) "Environmental action" on a brownfield(s) means activities undertaken to:

(a) Determine if a release has occurred, or may occur, if the release or potential release poses a significant threat to human health or the environment, or if additional remedial actions may be required at the site;

(b) Conduct a remedial investigation and a feasibility study;

(c) Plan for remedial action or removal; or

(d) Conduct a remedial action or removal action at a site.

(8) "Fund" means the Capital Access Fund in the State Treasury under ORS 285B.109.

(9) "Loss" means any principal amount due and not paid, accrued interest due and not paid, and actual and necessary, documented out-of-pocket collection expenses at the time the Participating Financial Institution determines, in a manner consistent with its standard lending and loan loss criteria and normal method for making such determinations, that an Enrolled Loan is uncollectible and is to be charged off as a loss. The amount of principal and interest included in the Loss shall not exceed the principal amount of the Enrolled Loan, plus accrued and unpaid interest on covered principal amount from the date the Qualified Loan is made.

(10) "Loss Reserve Account" means an account in the State Treasury or any Financial Institution that is established and maintained by the Department for the benefit of a Financial Institution participating in Program.

(11) "Participating Financial Institution" means a Financial Institution that has executed an Agreement with the Department to participate in the Program, has enrolled one or more qualified loans, and has adequate capacity, as determined by the Department, to underwrite and monitor business-purpose loans.

(12) "Primary Economic Effect" means the majority of economic benefit resulting from a business activity. A business's Primary Economic Effect is in a particular geographic location if either at least 51 percent of the business's total revenues are generated, or at least 51 percent of the business's total jobs are created or retained, in that location.

(13) "Principal" in regards to a Borrower is defined as:

(a) If a sole proprietorship, the proprietor;

(b) If a partnership, each managing partner and each partner who is a natural person and holds a twenty percent (20%) or more ownership interest in the partnership; and

(c) If a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of twenty percent (20%) or more of the ownership stock or stock equivalent of the entity.

(14) "Principal" in regards to a Lender is defined as:

(a) If a sole proprietorship, the proprietor;

(b) If a partnership, each partner; and

(c) If a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers or employees of the entity, and each direct or indirect holder of twenty percent (20%) or more of the ownership stock or stock equivalent of the entity.

(15) "Program" means the Capital Access Program authorized by ORS 285B.109 to 285B.119.

(16) "Qualified Business" means any person, conducting business for profit or not for profit, which is authorized to conduct business in the State of Oregon.

(17) "Qualified Loan" means a loan or portion of a loan made by a Participating Financial Institution to a Qualified Business for any business activity that has its Primary Economic Effect in Oregon. The term does not include a loan or portion of a loan used for any of the following purposes:

(a) The purchase of owner-occupied residential housing or for the construction, improvement, or purchase of residential housing that is owned or to be owned by the Borrower;

(b) The purchase of real property that is intended for resale or not used for the business operations of the Borrower;

(c) Refinance of the balance of an existing loan that is not an Enrolled Loan. Any portion of the loan used for a qualified purpose (i.e., that is in excess of the balance of an existing loan that is not an Enrolled Loan) may be eligible to be enrolled.

(d) The purchase of securities;

(e) Lobbying activities;

(f) Repayment of delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;

(g) Repayment of taxes held in trust or escrow;

(h) Reimbursement of funds owed to any owner, including any equity injection or injection of capital for the business' continuance;

(i) Purchase of any portion of the ownership interest of any owner of the business; or

(j) Refinance of any portion of a loan enrolled in another state or federal credit enhancement or credit insurance program. The term also does not include a loan where any Principal of the Borrower has been convicted of a sex offense against a minor as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911).

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.075, 285B.115(3) & 285B.117(4)

Stats. Implemented: ORS 285B.109 - 285B.119

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 1-1994(Temp), f. & cert. ef. 1-11-94; EDD 9-1994, f. 5-27-94, cert. ef. 6-1-94; EDD 10-1997(Temp), f. & cert. ef. 10-7-97; EDD 9-1998, f. & cert. ef. 5-22-98; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 22-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 13-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 9-2011(Temp), f. & cert. ef. 12-19-11 thru 6-15-12

## 123-018-0065

### Loan Eligibility

A Participating Financial Institution may determine that a Qualified Loan is eligible for the Department to enroll in the Program if the Participating Financial Institution determines the Qualified Loan meets the following conditions:

(1) The Qualified Loan is not for a business enterprise in which a person described in section (2) of this section has a shared ownership, investment or other significant pecuniary interest; and

(2) The Qualified Loan is provided to a Borrower, who is not an executive officer, director or principal shareholder of the Participating Financial Institution, or person with comparable official capacity with or significant ownership in the Participating Financial Institution, or a member of the immediate family of such a person.

(3) The Borrower may not be:

(a) A business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or

(b) A business that earn more than half of its annual net revenue from lending activities; or

(c) A business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or

(d) A business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted; or

(e) A business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115 & 285B.119

Hist.: EDD 8-2005, f. & cert. ef. 10-24-05; OBDD 9-2011(Temp), f. & cert. ef. 12-19-11 thru 6-15-12

## 123-018-0140

### Reporting

(1) When a Loss Reserve Account is domiciled with the Participating Financial Institution, the Participating Financial Institution shall provide the Department with a monthly statement providing details of the balance and the payments and receipts activity in the Loss Reserve Account for the prior month.

(2) On or before January 15, April 15, July 15, and October 15 of each year, a Participating Financial Institution must file a quarterly report with the Department providing a complete list of Enrolled Loans and indicating the outstanding balance of each of its Enrolled Loans.

(3) When a Participating Financial Institution computes the aggregate outstanding balance of all its Enrolled Loans, it may only consider the balance of the portion of a loan enrolled in the Program.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; OBDD 9-2011(Temp), f. & cert. ef. 12-19-11 thru 6-15-12

# ADMINISTRATIVE RULES

**Rule Caption:** The Special Public Works Fund rules are amended to lengthen the loan repayment period.

**Adm. Order No.:** OBDD 10-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 123-042-0026, 123-042-0045

**Subject:** The Special Public Works Fund rules are amended to conform to HB 2069 passed in the 2011 Legislative Session. The loan repayment period has been extended from 25 years to 30 years.

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

## 123-042-0026

### Loan and Grant Information

(1) The moneys in the fund shall be used primarily to provide loans to municipalities for projects. Grants may be given only when loans are not feasible due to the financial need of the municipality or special circumstances of a project. The level of loan or grant funding, if any, may be determined by the authority on a case-by case-basis. The authority shall determine awards in a manner that maximizes the use of available resources and maintains the desired credit standards of the fund according to the following criteria:

- (a) Amount requested;
- (b) Type;
- (c) Interest rate;

(d) Terms and conditions of an award. The authority may offer an alternate mix or lower amount of assistance than requested, and it may investigate and recommend other sources of funds for all or part of a proposed project.

(2) Grants:

(a) If the authority determines that a firm business commitment project meets the minimum criteria for a grant, the authority may make a further determination on the amount of the grant. The maximum grant amount is \$500,000 per project or 85% of allowable project costs, whichever is less. The amount of grant will be based primarily on the number of eligible commercial and industrial jobs proposed to be created or retained with a maximum of \$5,000 for each job created or retained. The maximum grant amount will be awarded only in special circumstances as described in the authority's adopted policy.

(b) If a grant is for the acquisition and improvement of real property, the maximum grant amount shall not exceed the fair market value of the real property after the improvements have been made or the value placed on the real property and improvements on the assessment rolls, whichever is less.

(c) The authority shall receive in accordance with OAR 123 division 70 a copy of the appropriate First Source Hiring Agreement or assurance from the municipality that one will be entered into before the grant is dispersed.

(d) Not less than 60 percent of the grants awarded from the Special Public Works Fund in any biennium shall be used to provide assistance to distressed or rural areas.

(e) The authority may not expend more than \$900,000 for grants or direct assistance, if any, for planning projects to municipalities in a biennium.

(f) A development project that qualifies as an eligible commercial jobs project or a firm business commitment project may be eligible to receive a grant. When making a determination to award a grant, the authority will apply prudent fiscal management of the fund in order to manage constrained funding resources. In addition to the criteria and process contained in its policies on grant and loan funding, the authority shall apply the following minimum criteria for grants:

(A) The authority's financial analysis determines that the municipality's borrowing capacity is insufficient to support the amount of the loan requested for the project;

(B) Jobs will be created or retained as a result of the grant being awarded; and

(C) The authority has received confirmation that the firm business commitment or the eligible commercial jobs project will not occur, or that the jobs will be lost, if the municipality does not receive a grant.

(3) Loans:

(a) Maximum loan amount for a project will be based on the authority's financial and credit analysis of the municipality's capacity to repay, the availability of moneys in the fund, and prudent fund management. Projects that the authority determines are not financially feasible, or loans that cannot be adequately secured, will not be funded.

(b) When the authority makes a loan to finance temporary project financing, all of the following apply:

(A) The municipality must receive an award from the authority before project construction begins

(B) The award will consist of loan only, and will not exceed the cost of the project;

(C) The repayment terms of the loan can include deferred repayment of principal and/or interest for the term of the loan.

(c) A development project may receive loan funding as follows:

(A) The initial or renegotiated term is limited to the usable life of the contracted project, or 30 years from the year of project completion, whichever is less.

(B) The interest rate on a loan will be based on market conditions for similar debt, and will be set at the time of the award.

(C) The interest rate on a state revenue bond loan will be equal to the coupon rates on the bonds. Until the state revenue bonds are sold, the municipality will pay interest on the outstanding principal balance of the loan at the rate established by the authority.

(d) The maximum loan amount per project is \$10,000,000.

(e) A loan amount requiring Board approval shall be established by the Board.

(f) The loan shall be a full faith and credit obligation, which is payable from any taxes that the municipality may levy within the limitations of Article XI, Sections 11 and 11b, of the Oregon Constitution and all legally available funds of the municipality. Additional pledges of revenue or other collateral may also be required and may include, but are not limited to:

(A) Specific revenues of the municipality may also be required to be pledged as security, including revenues of the project, special assessment revenues and other collateral.

(B) If repayment of a loan substantially depends on revenues the municipality will receive from a lessee or payments from a benefiting business, the authority will assess the financial capacity of the payor, the adequacy of the security, the financial instrument(s) requiring such payments to the municipality, and any liens, pledge(s), or assignments of collateral from the payor to the municipality. The authority may require an assignment of such revenue and collateral from the municipality.

(C) If repayment of the loan substantially depends on a pledge of tax increment revenues from an urban renewal agency to the borrowing municipality, the authority's financial analysis will extend to the financial feasibility of the projected revenues and the financial and legal adequacy of the proposed pledge of tax increment revenue.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; EDD 13-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 31-2008, f. 10-2-08, cert. ef. 10-3-08; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 10-2011, f. 12-30-11, cert. ef. 1-1-12

## 123-042-0045

### Planning Project Eligibility, Criteria and Funding

(1) A planning project, as defined in ORS 285B.410(9), may be eligible for a loan. The authority will make awards for loans based on availability of moneys in the fund and prudent fund management as well as its financial analysis of the municipality's ability to repay the loan;

(2) A planning project conducted for the purpose of developing industrial lands, including planning for industrial site certification, is eligible for a grant of up to \$60,000 per site, per biennium or 85% of the allowable planning project cost, whichever is less. This type of planning project must meet the following criteria:

(a) The land must be zoned "industrial"; and

(b) The land meets marketability standards as determined by the department using its adopted policy

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 10-2011, f. 12-30-11, cert. ef. 1-1-12

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**Rule Caption:** These rules are being amended to correct small errors made in a former filing.

**Adm. Order No.:** OBDD 11-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 123-475-0012, 123-475-0025, 123-475-0030

**Subject:** These rules are being amended due to small spelling errors and the addition of the word "compatible" in 123-475-0030.

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

# ADMINISTRATIVE RULES

## 123-475-0012

### Public Art Advisory Committee

The Oregon Arts Commission may establish a Public Art Advisory Committee consisting of two Oregon Arts Commissioners and up to seven arts professionals designated by the Oregon Arts Commission. The Oregon Arts Commission may use the Public Art Advisory Committee to make recommendations regarding general policies of the Program. The Public Art Advisory Committee will serve as a review panel for creation of a Roster of Prequalified Artists, may nominate and review artists for consideration by individual Art Selection Committees, and will serve as a review panel for Relocation or Deaccession requests. The Public Art Advisory Committee will not make selections for individual Program projects.

Stat. Auth.: ORS 359.025, 359.142

Stats. Implemented: ORS 276.073 – 276.090

Hist.: OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0012, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10; OBDD 11-2011, f. 12-30-11, cert. ef. 1-1-12

## 123-475-0025

### Selection Committee Procedure

(1) The Selection Committee shall meet to consider the particular needs of the Project including budget, suitable art forms, appropriate locations, and method of artist/artwork selection.

(2) The Selection Committee may use any of the following methods for selection of Works of Art for a Project:

(a) Open Competition: A prospectus will be prepared by the Oregon Arts Commission with the approval of the Selection Committee and will be made broadly available to artists. Artists will be asked to submit images or other materials to the Commission. The Selection Committee may commission new work and also may purchase available work.

(b) Two-stage competition. An open competition may occur in two stages whereby a limited number of finalists selected from the first stage of competition will be asked to submit more detailed proposals. Each of the finalists may enter into a contract with the Contracting Agency that provides for payment of a professional fee for preparation of a detailed proposal or consultation interview. The Oregon Arts Commission or Selection Committee may recommend the amount of the professional fee.

(c) Prequalified Artist Roster: The Selection Committee may interview or commission proposals from one or more artists on the Prequalified Artist Roster, or may make direction selection(s) from the Roster.

(d) Nominated Pool: The Selection Committee may designate an informal panel of arts professionals to nominate artists appropriate for consideration for the Project. The resulting pool will be reviewed by the Selection Committee.

(e) The Public Art Advisory Committee may designate an informal panel of arts professionals to nominate artists appropriate for consideration to the State of Oregon Art Collection. The resulting pool(s) may be reviewed by individual Selection Committees.

(f) Limited Competition: In cases when, in the judgment of the Oregon Arts Commission, it is not feasible to conduct an open competition for a specific Work of Art, the Oregon Arts Commission will initiate a Limited Competition by inviting several artists to submit materials to the Selection Committee. If detailed proposals or consultation interviews are requested, each artist will be paid a professional fee for preparation of the detailed proposal or consultation interview. The Oregon Arts Commission or Selection Committee may recommend the amount of the professional fee.

(g) Direct Selection: When budget constraints or construction schedules are such that the Selection Committee determines that an open competition cannot be held, Direct Selection of the artist(s) or completed work will be made by the Selection Committee.

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 190-020-0025, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10; OBDD 11-2011, f. 12-30-11, cert. ef. 1-1-12

## 123-475-0030

### Criteria for Selecting Works of Art

(1) Style and Nature: Works of Art of any aesthetic persuasion that are compatible in scale, material, form and content with their surroundings may be considered.

(2) Diversity of the Collection: The Oregon Arts Commission seeks to encourage and maintain a diverse collection for the state, including site-specific works developed with collaboration between an artist and design team, existing works of art created by an artist and purchased for permanent installation, and, when appropriate, documented time-based works or installations.

(3) Quality: The inherent quality of the work itself will be the highest priority for selection.

(4) Media: All forms of Works of Art may be considered. Works of Art may be either portable or permanently affixed or integral to the building or structure, or part of a temporary exhibition.

(5) Permanence: Due consideration will be given to structural and surface soundness and to permanence in terms of relative protection against theft, vandalism, weathering, or excessive maintenance or repair costs.

(6) Method of Acquisition: Either existing works or those commissioned for specific Projects may be acquired.

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 190-020-0030, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10; OBDD 11-2011, f. 12-30-11, cert. ef. 1-1-12

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## Oregon Criminal Justice Commission Chapter 213

**Rule Caption:** Amends Oregon sentencing guidelines in light of Oregon Laws 2011, Chapter 666 (House Bill 2940).

**Adm. Order No.:** CJC 2-2011(Temp)

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12 thru 4-27-12

**Notice Publication Date:**

**Rules Amended:** 213-003-0001, 213-017-0006

**Rules Suspended:** 213-003-0001(T), 213-017-0006(T)

**Subject:** HB 2940 (2011) becomes effective on January 1, 2012. Section 1 of HB 2940 makes the crime of strangulation under ORS 163.187 a Class C felony under certain circumstances. The Criminal Justice Commission (CJC) is required under ORS 137.667 to review all legislation creating new crimes or modifying existing crimes, and to adopt by rule necessary changes to the crime seriousness scale. The rule change is necessary to comply with that legislative directive. By statute CJC also may classify offenses as person felonies or person misdemeanors. ORS 137.667(1). CJC has reviewed the legislation creating the new felony, and has voted to classify that felony as a person felony. The temporary rule will put that classification and the change to the crime seriousness scale into effect by the January 1, 2012 effective date of the legislation that created the new felony offense. The rule amendments classify felony strangulation committed under ORS 163.187(4) as a person felony and as a Crime Category 6 on the crime seriousness scale. The rule changes also include numbering changes necessitated by adding to the list of numerically ordered crimes, and updated statutory citations.

**Rules Coordinator:** Craig Prins—(503) 378-4830

## 213-003-0001

### Definitions

As used in these rules:

(1) “Bench probation” means a probationary sentence, which directs the probationer to remain under the supervision and control of the sentencing judge.

(2) “Board” means the State Board of Parole and Post-Prison Supervision.

(3) “Correctional supervision status” means any form of incarcerative or non-incarcerative supervision which is served by an offender as part of a sentence for a criminal conviction.

(4) “Department” means the Department of Corrections.

(5) “Departure” means a sentence, except an optional probationary sentence, which is inconsistent with the presumptive sentence for an offender.

(6) “Dispositional departure” means a sentence which imposes probation when the presumptive sentence is prison or prison when the presumptive sentence is probation. An optional probationary sentence is not a dispositional departure.

(7) “Dispositional line” means the solid black line on the Sentencing Guidelines Grid (Appendix 1) which separates the grid blocks in which the presumptive sentence is a term of imprisonment and post-prison supervision from the grid blocks in which the presumptive sentence is probation which may include local custodial sanctions. [Appendix not included. See ED. NOTE.]



# ADMINISTRATIVE RULES

(8) "Durational departure" means a sentence which is inconsistent with the presumptive sentence as to term of incarceration, term of supervised probation or number of sanction units which may be imposed as a condition of probation.

(9) "Grid" means the Sentencing Guidelines Grid set forth as Appendix 1. [Appendix not included. See ED. NOTE.]

(10) "Grid block" means a box on the grid formed by the intersection of the crime seriousness ranking of a current crime of conviction and an offender's criminal history classification.

(11) "Juvenile adjudication" means a formal adjudication or finding by a court that the juvenile has committed an act, which, if committed by an adult, would be punishable as a felony.

(12) "Non-person felonies" are any felonies not defined as a person felony in section (14) of this rule.

(13) "Optional probationary sentence" means any probationary sentence imposed pursuant to OAR 213-005-0006.

(14) "Person felonies" are in numerical statutory order: ORS 162.165 Escape I; ORS 162.185 Supplying Contraband as defined in Crime Categories 6 and 7 (OAR 213-018-0070(1) and (2)); ORS 163.095 Aggravated Murder; ORS 163.115 Murder; ORS 163.115 Felony Murder; ORS 163.118 Manslaughter I; ORS 163.125 Manslaughter II; ORS 163.145 Negligent Homicide; ORS 163.160(3) Felony Domestic Assault; ORS 163.165 Assault III; ORS 163.175 Assault II; ORS 163.185 Assault I; ORS 163.187(4) Felony Strangulation; ORS 163.205 Criminal Mistreatment I; ORS 163.207 Female Genital Mutilation; ORS 163.208 Assaulting a Public Safety Officer; ORS 163.213 Use of Stun Gun, Tear Gas, Mace I; ORS 163.225 Kidnapping II; ORS 163.235 Kidnapping I; ORS 163.275 Coercion as defined in Crime Category 7 (OAR 213-018-0035(1)); ORS 163.355 Rape III; ORS 163.365 Rape II; ORS 163.375 Rape I; ORS 163.385 Sodomy III; ORS 163.395 Sodomy II; ORS 163.405 Sodomy I; ORS 163.408 Sexual Penetration II; ORS 163.411 Sexual Penetration I; ORS 163.425 Sexual Abuse II; ORS 163.427 Sexual Abuse I; ORS 163.465 Felony Public Indecency; ORS 163.479 Unlawful Contact with a Child; ORS 163.452 Custodial Sexual Misconduct in the First Degree; ORS 163.525 Incest; ORS 163.535 Abandon Child; ORS 163.537 Buying/Selling Custody of a Minor; ORS 163.547 Child Neglect I; ORS 163.670 Using Child In Display of Sexual Conduct; ORS 163.684 Encouraging Child Sex Abuse I; ORS 163.686 Encouraging Child Sex Abuse II; ORS 163.688, Possession of Material Depicting Sexually Explicit Conduct of Child I; ORS 163.689, Possession of Material Depicting Sexually Explicit Conduct of Child II; ORS 163.732 Stalking; ORS 163.750 Violation of Court's Stalking Order; ORS 164.075 Theft by Extortion as defined in Crime Category 7 (OAR 213-018-0075(1)); ORS 164.225 Burglary I as defined in Crime Categories 8 and 9 (OAR 213-018-0025(1) and (2)); ORS 164.325 Arson I; ORS 164.395 Robbery III; ORS 164.405 Robbery II; ORS 164.415 Robbery I; ORS 164.877(3) Tree Spiking (Injury); ORS 166.087 Abuse of Corpse I; ORS 166.165 Intimidation I; ORS 166.220 Unlawful Use of a Weapon; ORS 166.275 Inmate In Possession of Weapon; ORS 166.385(3), Felony Possession of a Hoax Destructive Device; ORS 166.643 Unlawful Possession of Soft Body Armor as defined in Crime Category 6 (OAR 213-018-0090(1)); ORS 167.012 Promoting Prostitution; ORS 167.017 Compelling Prostitution; ORS 167.320(4) Felony Animal Abuse I; ORS 167.322 Aggravated Animal Abuse I; ORS 468.951 Environmental Endangerment; ORS 475.908 Causing Another to Ingest a Controlled Substance as defined in Crime Categories 8 and 9 (OAR 213-019-0007 and 0008); ORS 475.910 Unlawful Administration of a Controlled Substance as defined in Crime Categories 5, 8, and 9 (OAR 213-019-0007, 0008, and 0011); ORS 609.990(3)(b) Maintaining Dangerous Dog; ORS 811.705 Hit and Run Vehicle (Injury); ORS 813.010(5), Felony Driving Under the Influence of Intoxicants (as provided in OAR 213-004-0009); 2011 Or Laws ch 598, Felony Driving Under the Influence of Intoxicants (as provided in OAR 213-004-0009); ORS 830.475(2) Hit and Run Boat; ORS 97.981 Purchase or Sale of a Body Part for Transplantation or Therapy, ORS 97.982 Alteration of a Document of Gift; Subjecting Another Person to Involuntary Servitude I ORS 163.264, and II ORS 163.422, Trafficking in Persons; ORS 166.149 Aggravated Vehicular Homicide; ORS 167.057 Luring a Minor; Online Sexual Corruption of a Child I ORS 163.433, and II 163.422; ORS 166.070 Aggravated Harassment; 163.196; Aggravated Driving While Suspended or Revoked ORS 475.840(6)(a); Manufacturing or Delivering a Schedule IV Controlled Substance Thereby Causing Death to a Person; and attempts or solicitations to commit any Class A or Class B person felonies as defined herein.

(15) "Person Class A misdemeanors" are in numerical statutory order: ORS 162.315 Resisting Arrest; ORS 163.160 Assault IV; ORS 163.187

Strangulation; ORS 163.190 Menacing; ORS 163.195 Recklessly Endanger Another; ORS 163.200 Criminal Mistreatment II; ORS 163.212 Use of Stun Gun, Tear Gas, Mace II; ORS 163.415 Sexual Abuse III; ORS 163.454 Custodial Sexual Misconduct in the Second Degree; ORS 163.465, Public Indecency; ORS 163.467 Private Indecency; ORS 163.476 Unlawfully Being in a Location Where Children Regularly Congregate; ORS 163.545 Child Neglect II; ORS 163.575 Endanger Welfare of Minor; ORS 163.687 Encouraging Child Sex Abuse III; ORS 163.700 Invasion of Personal Privacy; ORS 163.709 Unlawfully Directing a Laser Pointer; ORS 163.732(1) Stalking; ORS 163.750(1) Violating Court's Stalking Order; ORS 165.572 Interfering with Making a Police Report; ORS 166.065(4) Harassment/Offensive Sexual Contact; ORS 166.155 Intimidation II; ORS 166.385(2) Misdemeanor Possession of a Hoax Destructive Device; ORS 475.986(1)(d) Unlawful Administration of a Controlled Substance; ORS 609.990(3)(a) Maintaining Dangerous Dog; ORS 813.010, Driving Under the Influence of Intoxicants (as provided in OAR 213-004-0009); ORS 167.054 Furnishing Sexually Explicit Material to a Child; and attempts or solicitations to commit any Class C person felonies as defined in section (14) of this rule.

(16) "Presumptive sentence" means the sentence provided in a grid block for an offender classified in that grid block by the combined effect of the crime seriousness ranking of the current crime of conviction and the offender's criminal history or a sentence designated as a presumptive sentence by statute.

(17) "Primary offense" means the offense of conviction with the highest crime seriousness ranking. If more than one offense of conviction is classified in the same crime category, the sentencing judge shall designate which offense is the primary offense.

(18) "Supervisory agent" means the local community corrections agency responsible for supervising the offender.

(19) "Supervisory authority" means the state and local corrections agency or official designated in each county by that county's Board of County Commissioners or county court to operate corrections supervision services, custodial facilities or both.

(20) "Straight jail" means a sentence of jail imposed instead of a presumptive probationary sentence that is not followed by a term of post-prison supervision defined in OAR 213-005-0002.

[ED. NOTE: Appendices referenced are available from the agency.]  
Stat. Auth.: ORS 137.667, 475.986, 475.998 & 2003 OL Ch. 453  
Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 387, 510, 635, 828, 857, 884 & 2003 OL Ch. 453, 577 & 2007 OL Ch. 681, 811, 867, 869, 876 & 2009 OL Ch. 774, 783, 876, 898; 2011 OL Ch. 3 §1; 2011 OL Ch. 598; 2011 OL Ch 666  
Hist.: SSGB 2-1988, f. 12-30-88, cert. ef. 9-1-89; SSGB 1-1989, f. 5-25-89, cert. ef. 9-1-89; SSGB 2-1993, f. 10-28-93, cert. ef. 11-1-93; CJC 2-1995, f. & cert. ef. 11-2-95; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96, Renumbered from 253-003-0001; CJC 3-1997, f. 10-29-97, cert. ef. 11-1-97; CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; CJC 1-2009(Temp), f. 3-24-09, cert. ef. 1-1-10 thru 6-29-10; CJC 2-2009(Temp), f. 3-24-09, cert. ef. 1-1-10 thru 6-29-10; CJC 7-2009, f. 12-31-09, cert. ef. 1-1-10; CJC 1-2011(Temp), f. & cert. ef. 11-1-11 thru 4-27-12; CJC 2-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 4-27-12

## 213-017-0006 Crime Category 6

The following offenses are classified at crime category 6 on the Crime Seriousness Scale:

- (1) Chapter 59 – BLUE SKY LAWS & SECURITIES LAWS\* – (C).
- (2) MAJOR DRUG OFFENSES (See division 19.)
- (3) ORS 162.015 – BRIBERY – (B).
- (4) ORS 162.025 – BRIBE RECEIVING – (B).
- (5) ORS 162.065 – PERJURY – (C).
- (6) ORS 162.117 – PUBLIC INVESTMENT FRAUD – (B).
- (7) ORS 162.155 – ESCAPE II – (C).
- (8) ORS 162.185 – SUPPLYING CONTRABAND – (C).  
The contraband involves a dangerous weapon not a firearm CC 7; Otherwise CC 4 or 5.
- (9) ORS 162.265 – BRIBING A WITNESS – (C).
- (10) ORS 162.275 – BRIBE RECEIVING BY WITNESS – (C).
- (11) ORS 162.285 – TAMPERING W/ WITNESS – (C).
- (12) ORS 162.325 – HINDERING PROSECUTION – (C).
- (13) ORS 163.160(3) – FELONY DOMESTIC ASSAULT – (C).
- (14) ORS 163.165 – ASSAULT III – (C).  
If the offense cannot be ranked at CC 8.
- (15) ORS 163.187(4) – FELONY STRANGULATION – (C).
- (16) ORS 163.208 – ASSAULT OF A PUBLIC SAFETY OFFICER – (C).
- (17) ORS 163.213 – USE OF A STUN GUN, TEAR GAS, MACE I – (C).
- (18) ORS 163.257 – CUSTODIAL INTERFERENCE I – (C).

# ADMINISTRATIVE RULES

- (19) ORS 163.264 – SUBJECTING ANOTHER PERSON TO INVOLUNTARY SERVITUDE I – (B).  
If offender physically restrained or threatened to physically restrain a person; otherwise CC 9.
- (20) ORS 163.275 – COERCION – (C). (No threat of physical injury; otherwise CC 7.)
- (21) ORS 163.355 – RAPE III – (C).
- (22) ORS 163.385 – SODOMY III – (C).
- (23) ORS 163.432 – ONLINE SEXUAL CORRUPTION OF A CHILD II – (C).
- (24) ORS 163.465 – FELONY PUBLIC INDECENCY – (C).
- (25) ORS 163.525 – INCEST – (C).  
If one of the participants is under the age of 18; otherwise CC 1.
- (26) ORS 163.547 – CHILD NEGLECT IN THE FIRST DEGREE – (B).
- (27) ORS 163.688 – POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF A CHILD I – (B).
- (28) ORS 164.055 – THEFT I\* – (C).
- (29) ORS 164.057 – AGGRAVATED THEFT – (B).  
Economic loss was greater than \$50,000; otherwise CC 5.
- (30) ORS 164.065 – THEFT OF LOST/MISLAID PROPERTY \* – (C).
- (31) ORS 164.075 – THEFT BY EXTORTION\* – (B).
- (32) ORS 164.085 – THEFT BY DECEPTION\* – (C).
- (33) ORS 164.125 – THEFT OF SERVICES\* – (C).
- (34) ORS 164.135 – UNAUTHORIZED USE OF VEHICLE\* – (C).
- (35) ORS 164.138 – CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE\* – (C).
- (36) ORS 164.140(4) – POSSESSION OF RENTED PROPERTY\* – (C).
- (37) ORS 164.162 – MAIL THEFT OR RECEIPT OF STOLEN MAIL – (C).  
For sentences imposed prior to February 15, 2010, and for sentences imposed for crimes committed on or after January 1, 2012; otherwise a Class A misdemeanor.
- (38) ORS 164.215 – BURGLARY II\* – (C).
- (39) ORS 164.315 – ARSON II\* – (C).
- (40) ORS 164.365 – CRIMINAL MISCHIEF I\* – (C).
- (41) ORS 164.377 – COMPUTER FRAUD (LOTTERY)\* – (C).
- (42) ORS 164.377(3) – COMPUTER CRIME\* – (C).
- (43) ORS 164.868 – UNLAWFUL LABEL SOUND RECORDING\* – (C).
- (44) ORS 164.869 – UNLAWFUL RECORD LIVE PERFORMANCE\* – (C).
- (45) ORS 164.872 – UNLAWFUL LABEL VIDEOTAPE\* – (C).
- (46) ORS 164.877(1) – TREE-SPIKING – (C).
- (47) ORS 164.889 – INTERFERE W/ AGRICULTURAL RESEARCH\* – (C).
- (48) ORS 165.013 – FORGERY I\* – (C).
- (49) ORS 165.022 – CRIMINAL POSSESSION OF FORGED INSTRUMENT I\* – (C).
- (50) ORS 165.055(3)(A) – CREDIT CARD FRAUD\* – (C).
- (51) ORS 165.065 – NEGOTIATING BAD CHECKS\* – (C).
- (52) ORS 165.074 – UNLAWFUL FACTORING PAYMENT CARD\* v (C).
- (53) ORS 165.692 – FILING A FALSE CLAIM FOR HEALTH CARE PAYMENT – (C).
- (54) ORS 165.800 – IDENTITY THEFT\* – (C).
- (55) ORS 166.015 – RIOT – (C).
- (56) ORS 166.070 – AGGRAVATED HARRASSMENT – (C).
- (57) ORS 166.165 – INTIMIDATION I – (C).
- (58) ORS 166.220 – UNLAWFUL USE OF WEAPON – (C).
- (59) ORS 166.270 – EX-CON IN POSSESSION OF FIREARM – (C).
- (60) ORS 166.272 – UNLAWFUL POSSESSION OF FIREARM – (B).
- (61) ORS 166.370(1) – INTENT POSS. FIREARM OR DANG. WEAP. IN and (5)(a) – PUBLIC BUILDING; DISCHARGE FIREARM IN SCHOOL – (C).
- (62) ORS 166.382 – POSSESSION OF DESTRUCTIVE DEVICE – (C).
- (63) ORS 166.384 – UNLAWFUL MANUFACTURE OF DESTRUCTIVE DEVICE – (C).
- (64) ORS 166.410 – ILLEGAL MANUFACTURE, IMPORTATION OR TRANSFER OF FIREARMS – (B).
- (65) ORS 166.643 – UNLAWFUL POSSESS SOFT BODY ARMOR – (B).

- If offender committed or was attempting to commit a person felony or misdemeanor involving violence, otherwise CC 4.
- (66) ORS 167.057 – LURING A MINOR – (C).
- (67) ORS 167.339 – ASSAULT OF A LAW ENFORCEMENT ANIMAL – (C).
- (68) ORS 167.388 – INTERFERE LIVESTOCK PRODUCTION\* – (C).
- (69) ORS 647.145 – TRADEMARK COUNTERFEITING II\* – (C).
- (70) ORS 647.150 – TRADEMARK COUNTERFEITING I\* – (B).
- (71) ORS 811.182 – DRIVING WHILE SUSPENDED/REVOKED – (C).
- (72) ORS 811.705 – HIT & RUN VEHICLE (INJURY) – (C).
- (73) ORS 813.010(5) – FELONY DRIVING UNDER THE INFLUENCE – (C).
- (74) ORS 819.300 – POSSESSION OF STOLEN VEHICLE\* – (C).
- (75) ORS 819.310 – TRAFFICKING IN STOLEN VEHICLES – (C).  
If part of an organized operation or if value of property taken from one or more victims was greater than \$50,000; otherwise CC 5.
- (76) ORS 830.475 – HIT AND RUN BOAT – (C).
- \* Property offenses marked with an asterisk shall be ranked at Crime Category 6 if the value of the property stolen or destroyed was \$50,000 or more, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation.
- Stat. Auth.: ORS 137.667, 2003 OL Ch. 453, & 2009 OL Ch. 660  
Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 147, 635, 828 2003 2001 OL Ch. 383, 453, 543, 2005 OL Ch. 708, 2007 OL Ch. 684, 811, 869, 876, SB 1087 (2008), Ballot Measure 57 (2008), & 2009 OL Ch. 660 & HB 3508 (2009) & 2009 OL Ch. 783; 2011 OL Ch. 3 §1; 2011 OL Ch. 598; 2011 OL Ch. 666  
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; CJC 2-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-29-09; CJC 2-2009(Temp), f. 3-24-09, cert. ef. 1-1-10 thru 6-29-10; CJC 3-2009(Temp), f. & cert. ef. 6-17-09 thru 12-13-09; CJC 4-2009(Temp), f. & cert. ef. 9-16-09 thru 3-14-10; CJC 5-2009, f. 12-11-09, cert. ef. 12-13-09; CJC 7-2009, f. 12-31-09, cert. ef. 1-1-10; CJC 3-2010(Temp), f. & cert. ef. 6-30-10 thru 12-26-10; CJC 5-2010, f. 12-13-10, cert. ef. 12-26-10; CJC 1-2011(Temp), f. & cert. ef. 11-1-11 thru 4-27-12; CJC 2-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 4-27-12

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## Oregon Health Authority Chapter 943

**Rule Caption:** Abuse Reporting and Protective Services for Individuals in State Hospitals.

**Adm. Order No.:** OHA 30-2011

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 12-23-11

**Notice Publication Date:** 1-1-2011

**Rules Adopted:** 943-045-0400, 943-045-0410, 943-045-0420, 943-045-0430, 943-045-0440, 943-045-0450, 943-045-0460, 943-045-0470, 943-045-0480, 943-045-0490, 943-045-0500, 943-045-0510, 943-045-0520

**Rules Repealed:** 943-045-0400(T), 943-045-0410(T), 943-045-0420(T), 943-045-0430(T), 943-045-0440(T), 943-045-0450(T), 943-045-0460(T), 943-045-0470(T), 943-045-0480(T), 943-045-0490(T), 943-045-0500(T), 943-045-0510(T), 943-045-0520(T)

**Subject:** HB 2009 (2009) created the Oregon Health Authority (Authority) and transferred to the Authority the Department of Human Services' (Department) Divisions with respect to health and health care. Effective July 1, 2011 the Authority is adopting its own operational and programmatic rules as a part of the operational transfer from functions previously performed by the Department as result of HB 2009(2009).

With the creation of a new agency, the state hospitals serving individuals with mental illness moved to the Authority. These rules are needed to reflect the separation of the Department of Human Services and Oregon Health Authority.

**Rules Coordinator:** Evonne Alderete—(503) 932-9663

### 943-045-0400

#### Purpose

The purpose of these rules is to establish a policy prohibiting abuse and to define procedures for reporting, investigating, and resolving alleged incidents of abuse of individuals in state hospitals.

Stat. Auth.: ORS 179.040, 413.042

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768

Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 30-2011, f. 12-22-11, cert. ef. 12-23-11

# ADMINISTRATIVE RULES

## 943-045-0410

### Definitions

(1) "Abuse" means any act or absence of action by a staff or visitor inconsistent with prescribed treatment and care that violates the well-being or dignity of the individual.

(2) "Authority" means the Oregon Health Authority.

(3) "Derogatory" means an expression of a low opinion or a disparaging remark.

(4) "Director" means the Director of the Oregon Health Authority's Addictions and Mental Health Division or their designee.

(5) "Disrespectful" means lacking regard or concern; or to treat as unworthy or lacking value as a human being.

(6) "Division" means the Oregon Health Authority's Addictions and Mental Health Division.

(7) "Employee" means an individual employed by the state and subject to rules for employee conduct.

(8) "Inconclusive" means there is insufficient evidence to conclude the alleged abuse occurred or did not occur by a preponderance of the evidence.

(9) "Individual" means a person who is receiving services at a state hospital for people with mental illness.

(10) "Not Substantiated" means the preponderance of evidence establishes the alleged abuse did not occur.

(11) "Office of Investigations and Training (OIT)" means the Department of Human Services' Shared Services Division office responsible for the investigation of allegations of abuse made at state hospitals on behalf of the Authority.

(12) "Staff" means employees, contractors and their employees, and volunteers.

(13) "Substantiated" means that the preponderance of evidence establishes the abuse occurred.

(14) "Superintendent" refers to the chief executive officer of a state hospital who serves as the designee of the Director to receive allegations of abuse concerning individuals and his or her designee.

(15) "Visitor" means all other persons not included as staff who visit the facility for business purposes or to visit individuals or staff.

Stat. Auth.: ORS 179.040, 413.042

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768

Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 30-2011, f. 12-22-11, cert. ef. 12-23-11

## 943-045-0420

### General Policy

(1) The Authority believes every individual is deserving of safe, respectful and dignified treatment provided in a caring environment. To that end, all employees, volunteers, contractors and their employees, as well as visitors shall conduct themselves in such a manner that individuals are free from abuse.

(2) In these rules, the term "abuse" is given a broad definition because of the unique vulnerability of individuals served by the Authority. While some examples are listed later in these rules (including specific conduct listed in ORS 430.735(1)), it must be clearly understood that all possible situations cannot be anticipated and each case must be evaluated based on the particular facts available.

Stat. Auth.: ORS 179.040, 413.042

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768

Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 30-2011, f. 12-22-11, cert. ef. 12-23-11

## 943-045-0430

### Policy Regarding Abuse

(1) All Forms of Abuse Prohibited. Staff, visitors, volunteers, contractors and their employees must continually be aware of the potential for abuse in interactions with individuals.

(2) Listed below are examples of the type of conduct which constitutes abuse. This list of examples is by no means exhaustive and represents general categories of prohibited conduct. Conduct of a like or similar nature is also obviously prohibited. Examples include, but are not limited to:

(a) Physical Abuse: Examples include hitting, kicking, scratching, pinching, choking, spanking, pushing, slapping, twisting of head, arms, or legs, tripping, the use of physical force which is unnecessary or excessive or other physical contact with an individual inconsistent with prescribed treatment or care;

(b) Verbal Abuse: Verbal conduct may be abusive because of either the manner of communicating with or the content of the communication with individuals. Examples include yelling, ridicule, harassment, coercion, threats, intimidation, cursing, foul language or other forms of communica-

tion which are derogatory or disrespectful of the individual, or remarks intended to provoke a negative response by the individual;

(c) Abuse by Failure to Act: This includes neglecting the care of the individual resulting in death (including suicide), physical or psychological harm, or a significant risk of harm to the individual either by failing to provide authorized and prescribed treatment or by failing to intervene when an individual needs assistance such as denying food or drink or leaving the individual unattended when staff presence is mandated;

(d) Sexual Abuse: Examples include:

(A) Contact of a sexual nature between staff and individuals;

(B) Failure to discourage sexual advances toward staff by individuals; and

(C) Permitting the sexual exploitation of individuals or use of individual sexual activity for staff entertainment or other improper purpose.

(e) Condoning Abuse: Permitting abusive conduct toward an individual by any other staff, individual, or person; and

(f) Statutory Terms of Abuse: As defined in ORS 430.735: any death caused by other than accidental or natural means; any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury; willful infliction of physical pain or injury, sexual harassment or exploitation, including but not limited to any sexual contact between an employee of a facility or community program and an adult, and neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well being.

(3) At times, persons may be required to utilize self-defense. This includes control procedures that are designed to minimize physical injury to the individual or other persons. Employees must use the least restrictive procedures necessary under the circumstances for dealing with an individual's behaviors or defending against an individual's attack. Abuse does not include acts of self-defense or defense of an individual or other person in response to the use or imminent use of physical force provided that only the degree of force reasonably necessary for protection is used. When excessively severe methods of control are used or when any conduct designed as self-defense is carried beyond what is necessary under the circumstances to protect the individual or other persons from further violence or assault, then that conduct then becomes abuse.

Stat. Auth.: ORS 179.040, 413.042

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768

Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 30-2011, f. 12-22-11, cert. ef. 12-23-11

## 943-045-0440

### Reporting Requirements

(1) Oregon law requires mandatory reports and investigations of allegations of abuse of individuals with disabilities. Therefore, any person who has reasonable cause to believe that an incident of abuse has occurred to an individual residing at a state hospital must immediately report the incident according to the procedures set forth in the applicable state hospital policy on abuse reporting.

(2) Any person participating in good faith in reporting alleged abuse and who has reasonable grounds for reporting has immunity from any civil liability that otherwise might be imposed or incurred based on the reporting or the content of the report under ORS 430.753(1).

(3) The identity of the person reporting alleged abuse is confidential. The Authority or OIT may reveal the names of abuse reporters to law enforcement agencies, public agencies who certify or license facilities or persons practicing therein, public agencies providing services to the individuals, private agencies providing protective services for the individuals, and the protection and advocacy system for individuals designated by federal law. The identity of the person reporting alleged abuse may also be disclosed in certain legal proceedings including, but not limited to, Human Resources or other administrative proceedings and criminal prosecution.

Stat. Auth.: ORS 179.040, 413.042

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768

Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 30-2011, f. 12-22-11, cert. ef. 12-23-11

## 943-045-0450

### Preliminary Procedures

(1) Once a report of alleged abuse is made, the following steps shall be taken to ensure both a proper investigation and appropriate action are taken to ensure that individuals are free from any threat of abuse:

(a) No later than two hours after receipt of the allegation except for circumstances with good cause the Superintendent shall notify OIT of the report of alleged abuse. OIT shall determine whether the allegation, if true, would fit within the definition of abuse. This determination shall be made

# ADMINISTRATIVE RULES

in consultation with the Superintendent. The determination must be made by OIT within 24 hours of receipt of the report of abuse;

(b) If the allegation is determined not to fit the definition of abuse, the Superintendent may take other appropriate action, such as a referral to Human Resources for review as a performance issue, worksite training, or take other systemic measures to resolve problems identified;

(c) The Superintendent with OIT shall ensure that if the allegation meets the definition of child abuse under ORS 419B.005, or elder abuse under ORS 124.050 that the allegation has been reported to the appropriate agency.

(2) Immediately and no later than 24 hours after determining that the allegation falls within the definition of abuse under this policy or other applicable laws, the Superintendent shall:

(a) Provide appropriate protective services to the individual that may include arranging for immediate protection of the individual and the provision of appropriate services including medical, legal, or other services necessary to prevent further abuse;

(b) Determine with OIT if there is reason to believe that an investigation by an appropriate law enforcement agency is necessary, and if so, request that such agency determine whether there is reason to believe a crime has been committed;

(c) Make a report to any other appropriate agencies.

(d) Promptly notify the legal guardian (of an adjudicated incapacitated individual) of the alleged incident and give an explanation of the procedures that will be used to investigate and resolve the matter; as well as the hospital's responsibility and plan to provide appropriate protective services;

(e) Contact the Director if the individual has sustained serious injury.  
Stat. Auth.: ORS 179.040, 413.042  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768  
Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 30-2011, f. 12-22-11, cert. ef. 12-23-11

## 943-045-0460

### Investigation by the Office of Investigations and Training

(1) Investigation of allegations of abuse shall be thorough and unbiased. OIT shall conduct an investigation of the allegation.

(2) OIT shall conduct interviews with any party alleging an incident of abuse, the individual allegedly abused, and the person accused. OIT shall also include interviews with persons appearing to be involved in or having knowledge of the alleged abuse or surrounding circumstances.

(3) All records necessary for the investigation shall be available to OIT for inspection and copying. OIT shall collect information which has relevance to the alleged event. This may include, but is not limited to, individual or facility records, statements, diagrams, photographs, and videos.

(4) If the facts in the case are disputed and a law enforcement agency does not conduct a timely investigation or complete a criminal investigation, OIT shall determine the manner and methods of conducting the investigation.

(5) When a law enforcement agency is conducting a criminal investigation of the alleged abuse, OIT shall also perform its own investigation unless OIT is advised by the law enforcement agency that a concurrent OIT investigation would interfere with the criminal investigation.

Stat. Auth.: ORS 179.040, 413.042  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768  
Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 30-2011, f. 12-22-11, cert. ef. 12-23-11

## 943-045-0470

### Abuse Investigation Report

(1) OIT shall complete the investigation and submit a draft report to the Superintendent within 30 calendar days after initiating an investigation. The investigation must be completed within 30 calendar days unless the Director grants an extension. The Director may grant an extension for good cause shown when law enforcement is conducting an investigation, when a key party is unavailable, new evidence is discovered, 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 for some other mitigating reason. The Director shall determine the length of the extension.

(2) The Superintendent and OIT shall review the OIT or law enforcement investigation report. The Superintendent and OIT shall also review and discuss any other relevant reports or information.

(3) OIT shall determine whether the evidence substantiates the allegation of abuse. In some instances, OIT may determine that the evidence is inconclusive. The determination must be made within 15 calendar days

from completion of the draft investigation report, unless a key party is unavailable, additional evidence is discovered, or the Director grants an extension for some other mitigating reason. Any determination not made within the 15-day period must be made as soon as reasonably possible thereafter.

(4) Once this review is complete, OIT shall prepare a final report, which 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 evidence and conclusion concerning the allegation of abuse;

(e) A specific finding of substantiated, inconclusive, or not substantiated;

(f) A plan of action necessary to prevent further abuse of the individual;

(g) Any additional corrective action required by the hospital and deadlines for the completion of these actions;

(h) A list of any notices made to licensing or certifying agencies;

(i) The name and title of the person completing the report; and

(j) The date written.

(5) If the allegation of abuse is substantiated, the Superintendent shall direct that appropriate action be taken against the responsible person commensurate with the seriousness of the conduct and any aggravating or mitigating circumstances, including consideration of previous conduct of record. If Human Resources are involved, as necessary to comply with laws related to employee rights, additional investigation may be conducted.

(6) If the allegations are found to be inconclusive; the Superintendent may request a review by Human Resources to determine the need for any training or disciplinary action, as warranted by the facts and any follow-up investigative work.

(7) The Superintendent shall ensure that appropriate documentation exists as to the action taken as a result of an abuse investigation.

(8) The Superintendent shall ensure that a copy of the law enforcement investigation report is forwarded to OIT.

Stat. Auth.: ORS 179.040, 413.042  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768  
Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 30-2011, f. 12-22-11, cert. ef. 12-23-11

## 943-045-0480

### Disclosure of Investigation Report and Related Documents

(1) Investigation reports prepared by OIT are subject to the following:

(a) Portions of the abuse investigation report and investigatory documents are confidential and not available for public inspection. Pursuant to ORS 430.763, names of persons who make reports of abuse, witnesses, and the alleged abuse victim are confidential and shall not be available for public inspection. Investigatory documents, including portions of the abuse investigation report that contains "Individually identifiable health information", as that term is defined under ORS 192.519 and 45 CFR 160.103, are confidential under HIPAA privacy rules, 45 CFR Part 160 and 164, and ORS 192.520 and 179.505 to 509.

(b) Notwithstanding subsection (a) of this rule, the Authority and OIT shall make the confidential information, including any photographs, available, if appropriate, to any law enforcement agency, to any public agency that licenses or certifies facilities or licenses or certifies the persons practicing therein, and to any public agency providing protective services for the adult. The Authority and OIT shall also 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).

(c) Persons or entities receiving confidential information pursuant to this rule must maintain the confidentiality of the information and may not redisclose the confidential information to unauthorized persons or entities, as required by state or federal law.

(d) When the report is completed, a redacted version of the abuse investigation report not containing any confidential information, the disclosure of which would be prohibited by state or federal law shall be available for public inspection.

(2) The OIT report shall be disclosed by OIT or the Superintendent to:

(a) The Director of the Division and

(b) Any person designated by the Superintendent for purposes related to the proper administration of the state hospital such as assessing patterns

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of abuse or to respond to personnel actions and may be disclosed in the Superintendent's discretion;

- (c) The individual involved;
  - (d) The guardian of an adjudicated incapacitated person; and
  - (e) The person who allegedly abused the individual.
- (3) Copies of all reports shall be maintained by the Superintendent separate from employee personnel files. The chart of the individual allegedly abused must contain a reference to the report sufficient to enable authorized persons to retrieve and review the report.

Stat. Auth.: ORS 179.040, 413.042  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768  
Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 30-2011, f. 12-22-11, cert. ef. 12-23-11

## 943-045-0490

### Consequences of Abuse

(1) All persons shall be subject to appropriate action if found responsible for:

- (a) Abusing an individual;
- (b) Failing to report an alleged incident of abuse; or
- (c) Refusing to give information or giving untruthful information during an investigation of alleged abuse.

(2) Any discipline of an employee as a result of the above-described conduct must be in conformance with any applicable standards contained in state law or in a Collective Bargaining Agreement.

(3) Any employee dismissed for violating the abuse policy may not be rehired in any capacity, may not be permitted to visit or have any type of contact with individuals.

(4) Any volunteer found violating the abuse policy may be denied visitation or any other contact with individuals.

(5) The Authority may immediately terminate the contract of any contractor found violating the abuse policy. Any employee of the contractor found violating the abuse policy may be excluded from the grounds and may be subject to appropriate disciplinary action by the employer.

(6) Any visitor found in violation of the abuse policy may be excluded from the grounds and will be subject to other appropriate actions as determined by the Superintendent.

(7) Any employee, volunteer, contractor, contractor's employee, or visitor may be subject to criminal prosecution depending on the outcome of any allegation referred to law enforcement for investigation.

(8) Any staff found to have violated the abuse policy shall be reported to any appropriate professional licensing or certification boards or associations.

Stat. Auth.: ORS 179.040, 413.042  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768  
Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 30-2011, f. 12-22-11, cert. ef. 12-23-11

## 943-045-0500

### Notice of Abuse Policy

(1) Upon admission each individual, and guardian if any, and family must be informed orally and in writing of the rights, policies, abuse definitions and procedures concerning prohibition of abuse of individuals.

(2) A clear and simple statement of the title and number of this policy and how to seek advice about its content must be prominently displayed in areas frequented by individuals at the state hospital.

(3) All staff shall be provided a copy of this rule, either at the commencement of their employment, or duties, or, for current staff, within 90 days of the effective date of this rule and once a year thereafter. All staff must sign a form acknowledging receipt of this information on the date of receipt.

(4) A summary of this policy shall be posted in the state hospital in areas regularly frequented by visitors and in a manner designed to notify visitors of the policy. Copies of the complete policy shall be provided to visitors upon request.

Stat. Auth.: ORS 179.040, 413.042  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768  
Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 30-2011, f. 12-22-11, cert. ef. 12-23-11

## 943-045-0510

### Retaliation

(1) No state hospital staff or other person shall retaliate against any person who reports in good faith suspected abuse or against the individual with respect to any report.

(2) Any state hospital staff or other person who retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual dam-

ages and, in addition, may be subject to a penalty of up to \$1,000, notwithstanding any other remedy provided by law.

Stat. Auth.: ORS 179.040, 413.042  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768  
Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 30-2011, f. 12-22-11, cert. ef. 12-23-11

## 943-045-0520

### Quality Assurance Review

(1) The State Hospitals shall report on critical indicators, identified by the Authority; and on quality improvement activities undertaken to improve any identified issues.

(2) These reports must be provided to the Authority monthly.

(3) Representatives from the State Hospitals and OIT shall meet quarterly with the Authority's Director or designee. They shall regularly review quality indicators and any other Authority generated information regarding the abuse and neglect system in the State Hospitals.

(4) The Authority must make the information part of any quality improvement activities of the Authority.

Stat. Auth.: ORS 179.040, 413.042  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768  
Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 30-2011, f. 12-22-11, cert. ef. 12-23-11

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## Oregon Health Authority, Addictions and Mental Health Division: Mental Health Services Chapter 309

**Rule Caption:** Forensic Mental Health Evaluators and Evaluations.

**Adm. Order No.:** MHS 12-2011(Temp)

**Filed with Sec. of State:** 12-21-2011

**Certified to be Effective:** 1-1-12 thru 6-27-12

**Notice Publication Date:**

**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

**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 have been criminally responsible, as defined in statutes.

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

## 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 Oregon Revised Statutes (ORS) 161.309, 161.365 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

## 309-090-0005

### Definitions

(1) "Authority" means the Oregon Health Authority.

(2) "Board" means the Oregon Board of Medical Examiners.

(3) "Competence" is defined according to ORS 161.360

(4) "Conditional Certification" means a psychologist or psychiatrist is temporarily Court-designated as a certified evaluator as defined in OAR 309-090-0030(c).

(5) "Criminal Responsibility" is defined according to ORS 161.295

(6) "Division" means the Addictions and Mental Health (AMH) Division of the Authority.

(7) "Evaluator" means a psychiatrist or psychologist certified by the Authority to perform forensic evaluations.

(8) "Forensic Psychiatric or Psychological Evaluation" means the assessment of a defendant in which the certified forensic evaluator opines

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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.

(9) "Full Certification" means a psychiatrist or licensed psychologist in the state of Oregon satisfying the requirements of this chapter as defined in OAR 309-090-0030(a).

(10) "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.

(11) "Licensed Psychologist" means a psychologist licensed pursuant to ORS 675.110 through 675.065 by the Board of Psychologist Examiners.

(12) "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.

(13) "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.

(14) "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.

(15) "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.

(16) "Temporary Certification" means a psychiatrist or licensed psychologist in the state of Oregon satisfying the requirements as defined in OAR 309-090-030 (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 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

## 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 peer 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 peer 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 peer 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 on June 30, 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 24 months. If the applicant desires to perform criminal responsibility evaluations, at least one redacted sample shall be an evaluation of criminal responsibility, for the purposes of peer review prior to 6/1/2012. 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 July 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 for peer review. Applicants must attend at the next regularly scheduled training date. Applicants who successfully complete the training will be granted a full certification based on the requirements above.

(C) Temporary certification has a maximum duration of 6 months. An extension of an additional 6 months may be granted by the Authority upon a showing of good cause.

(c) Conditional Certification: A psychiatrist or licensed psychologist may be granted conditional certification by the court if not meeting the requirements of Full Certification or Temporary Certification, 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 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

## 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 receives a finding of confirmed client abuse or loses his or her professional license for any other reason;

(c) The Authority received two or more substantiated and serious written complaints regarding the quality of written reports; from the parties to

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the criminal proceedings or other certified evaluators during the prior two year period, regarding the evaluator's reports or conduct;

(d) If certification is denied or revoked the applicant may request reconsideration by the Director of the Authority; or

(e) The Authority shall provide the applicant with written notice of the applicant's right to appeal, pursuant to the provisions of ORS 183.

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

## 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 every two years, of the Oregon Forensic Evaluator training program approved by the Authority.

(c) Proof of participation and successful completion of a minimum of 6 hours (CEU's) continuing education in forensic related issues

(d) Review and approval by the Authority of a minimum 3 redacted forensic evaluations one of which shall be a criminal responsibly evaluation. If performing Juvenile evaluations one of these shall be a juvenile competency or criminal responsibility evaluation. These reports will be subject to peer review and must meet or exceed minimum quality standards identified by the Authority as listed in OAR 309-090-0060; and

(e) A non-refundable application fee of \$250.00.

(3) Failure to reapply shall constitute a forfeiture of certification which may be restored only upon written application accepted by the Authority.

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

## 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 309-090-0060(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 309-090-0060(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 the conduct 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 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

## 309-090-0030

### Forensic Evaluation Peer Review Panel

(1) The Forensic Evaluation Peer 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, nominated by the Oregon Psychiatric Association, and one of which must meet the following criteria:

(A) Be board eligible or certified by the American Board of Psychiatry and Neurology in the sub-specialty of Forensic Psychiatry or

(B) Has completed a fellowship in forensic psychiatry, accredited by the Accreditation Council for Graduate Medical Education (ACGME) and have experience in conducting competence to stand trial and criminal responsibility evaluations,

(b) Two Licensed Psychologists eligible for full certification, nominated by the Oregon Psychological Association, one of which must meet the following criteria;

(A) A diplomate in Forensic Psychology certified by the American Board of Professional Psychology, or

(B) Has 2000 documented supervised hours of pre or post-doctoral training in a forensic setting, which included the conduction of competence to stand trial and criminal responsibility evaluations,

(c) One defense attorney nominated by the Oregon Criminal Defense Association and

(d) One prosecuting attorney nominated by the Oregon District Attorney's Association.

(2) These individuals shall be experienced in the criminal justice system and have familiarity with the issues of competency and criminal responsibility.

(3) Members shall serve a one year term and members are eligible for reappointment. Vacancies occurring during a member's term shall be filled immediately for the remainder of the unexpired term. Members are eligible for reappointment.

(4) 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 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

## 309-090-0035

### Peer Review Process

(1) Three members of the Peer Review Panel will meet at least monthly to review all submitted redacted forensic evaluations received in the prior 30 days, unless there are no evaluations to review.

(2) Redacted forensic evaluations will be reviewed by two panel members with different professional backgrounds to determine whether the evaluator has met the requirements of form and content.

(3) If agreement is not reached a third panel member will review to provide the deciding opinion.

(4) Deciding members will issue a report with feedback to the forensic evaluator.

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

## 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 responsibly;

(b) Clinical testing related to assessing competency and criminal responsibility

(c) The required contents of a report;

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- (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.

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

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**Rule Caption:** Oregon State Hospital Review Panel.

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**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) goes into effect on January 1, 2012. The law creates 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). 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 and the processes applicable to the Review Panel.

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

## 309-092-0005

### Definitions

(1) "Administrative Hearing" means a meeting of the Review Panel where a quorum is present and a conditional release plan is reviewed or reviewed and modified.

(2) "Administrative Meeting" means any meeting of the Review Panel where a quorum is present for the purpose of considering matters relating to Review Panel policy and administration.

(3) "Authority" means the Oregon Health Authority.

(4) "Conditional Release" means a grant by the court or Review Panel 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 Review Panel.

(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 Disease or 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 Review Panel.

(15) "Review Panel" 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 OR 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 Review Panel 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

## 309-092-0010

### Membership and Terms

(1) The Review Panel shall consist of five members appointed by the Director of the Authority. The Review Panel 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 Review Panel may be filled by a psychologist.

(2) Members shall initially serve one year terms, but after January 2013 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.



# ADMINISTRATIVE RULES

(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

## 309-092-0015

### Chair; Powers and Duties

(1) In January of each year, the Review Panel 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

## 309-092-0020

### Responsibilities, Function and Purpose of Review Panel

(1) The Review Panel 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 Review Panel shall have as its primary concern the protection of society. In addition, the Review Panel'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 Review Panel's jurisdiction; and

(d) Observing the confidentiality of records as required by law.

(2) The Review Panel shall be supported by and the Review Panel 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

## 309-092-0025

### Jurisdiction of Individuals Under the Review Panel

The Review Panel 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 felony, or of a misdemeanor 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 Review Panel, 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 Review Panel and the PSRB do not consider time spent on unauthorized leave from the custody of the OHA Addictions and Mental Health Division as part of the jurisdictional time.

(4) The Review Panel has jurisdiction over all persons 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 sentence the person could have received if found guilty and shall be measured from the date of judgment.

(5) The Review Panel 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 JPSRB 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 Review Panel's jurisdiction shall receive credit for:

(a) Time spent in any correctional facility for the offense for which the individual was placed under the Review Panel'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 Review Panel'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

## 309-092-0030

### Scheduling Review Panel Hearings and Meetings

(1) The Review Panel shall meet at least twice every two months unless the chairperson determines that there is not sufficient business before the Review Panel to warrant a meeting at the scheduled time.

(2) The Review Panel shall hold administrative meetings as necessary to consider matters relating to Review Panel policy and administration.

(3) Public notice shall be given in accordance with the Public Meetings Law.

(4) The Review Panel 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

## 309-092-0035

### Quorum and Decisions

(1) The presence of at least three members of the Review Panel constitutes a quorum.

(2) Three concurring votes (affirmative or negative) are required to make a Review Panel 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 Review Panel.

(4) If the attorney for an individual or pro se individual objects to the remaining member's or members' review as set forth in section (2) of this rule, the Review Panel may reschedule the matter for a hearing before the entire Review Panel.

(5) If an objection for good cause is made to a specific member of the Review Panel 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 Review Panel being present during the panel's deliberations in a specific case, and if the Review Panel 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

## 309-092-0040

### Public Meetings Law

(1) All meetings of the Review Panel are open to the public in accordance with the Public Meetings Law.

(2) Deliberations of the Review Panel are not open to the public.

(3) For the purposes of this rule, the term "public" does not include staff of the Review Panel.

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

## 309-092-0045

### Records

(1) A record shall be kept of Review Panel action taken at an administrative meeting and any decision made at an administrative hearing of the Review Panel.

(2) All Review Panel hearings, except Review Panel deliberations, shall be recorded by manual or electronic means which can be transcribed. No other record of Review Panel hearings shall be made. All documents considered at hearings shall be included as exhibits and kept as part of the record.

(a) Audio tapes capable of being transcribed shall be kept by the Review Panel for a minimum period of two years from the hearing date.

(b) The Review Panel hearings shall be transcribed from the recording for appeal purposes. Once transcribed, the transcript may be substituted for the original record.

(c) Any material to which an objection is sustained shall be removed from the record; the objection and ruling of the Review Panel 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.

# ADMINISTRATIVE RULES

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

## 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

## 309-092-0055

### Hearing Notices

The Review Panel shall provide written notice of Review Panel 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 the victim submits a written request to the Review Panel 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

## 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 Review Panel 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

## 309-092-0065

### Time Frame of Hearings

Hearings shall be held within the following time frames:

- (1) The initial hearing under ORS 161.341(7)(a) shall occur within 90 days following the individual's placement under the Review Panel's jurisdiction and commitment to a state hospital.

- (2) The revocation hearing under ORS 161.341(5) shall occur within 20 days following an Order of Revocation for violation of the conditional release.

- (3) An individual's request for conditional release or discharge under ORS 161.341(4)(5)(6) shall be heard within 60 days of receipt of the request.

- (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.

- (5) A request for conditional release by the state hospital, under ORS 161.341(2) 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(7)(b) are mandatory for individuals committed to a state hospital when no other hearing has been held within two years.

- (8) Five-year hearings under ORS 161.351(3) are mandatory for individuals who are under the jurisdiction of the Review Panel and who have spent five years on conditional release. Such individuals shall be brought before the Review Panel for a hearing within 30 days of the expiration of the five year period.

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

## 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

## 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 Review Panel 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 patient's attorney or the patient, if not represented, at the hearing.

- (4) All material relevant and pertinent to the individual and issues before the Review Panel 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

## 309-092-0080

### Evidence Considered; Admissibility

The Review Panel 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 Review Panel under ORS 161.346(2);

- (6) Psychiatric and psychological reports under ORS 161.341(3) 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

## 309-092-0085

### Motion Practice

Any party bringing a motion before the Review Panel shall submit the motion and memorandum of law to the Review Panel 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

## 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.

# ADMINISTRATIVE RULES

(1) In determining whether the evidence is material, relevant or reliable, the Review Panel 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 Review Panel 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

## 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

## 309-092-0100

### Testimony Given on Oath

The Review Panel 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

## 309-092-0105

### Standards and Burdens of Proof

(1) The standard of proof on all issues at hearings of the Review Panel 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(7)(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(5), the state has the burden to show the individual's unfitness for conditional release and that jurisdiction of the Review Panel should continue.

(c) In an individual's request for conditional release or discharge under ORS 161.341(4), 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(2) or by the outpatient supervisor under ORS 161.336(7) (b), the state must prove the individual is not appropriate for conditional release or discharge.

(e) In a status review hearing under ORS 161.336(2) the state has the burden of proving that the current conditional release, modification of conditional release, or a proposed plan 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 Review Panel 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 Review Panel 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

## 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

## 309-092-0115

### Continuance of Hearing

Upon the request of any party or on its own motion, the Review Panel 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

## 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

## 309-092-0125

### Use of Restraints

(1) The Review Panel 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 Review Panel 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

## 309-092-0130

### Decisions of the Review Panel

(1) Within 15 days following the conclusion of a hearing, the Review Panel shall provide the individual, the attorney representing the individual, the district attorney representing the state, the committing court and, where applicable, the Authority and local mental health agency or supervisor written notice of the Review Panel's decision.

(2) The order of the Review Panel shall be signed by a member present at the hearing.

(3) The Review Panel may issue its decision orally on the record at the hearing.

(4) The formal order of the Review Panel shall contain the findings of facts, conclusions of law, reasons for the decision and notice of the right to appeal under ORS 161.385(8).

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

## 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

## 309-092-0140

### Patient Appearing Pro Se

When an individual waives the right to be represented by an attorney, the Review Panel 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

# ADMINISTRATIVE RULES

## 309-092-0145

### Issues Before the Review Panel

At any hearing before the Review Panel 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 Review Panel in writing prior to the hearing. If new issues are raised, the Review Panel 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

## 309-092-0150

### Primary Concern: Protection of Society

In determining whether an individual should be conditionally released or discharged, the Review Panel shall have as its primary concern the protection of society. The Review Panel 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

## 309-092-0155

### Initial Hearing

After being placed under the jurisdiction of the Review Panel and committed to a state hospital, the individual shall have an initial hearing before the Review Panel to determine whether the individual should be committed, conditionally released or discharged:

(1) At an initial hearing, the Review Panel 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 Review Panel 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 Review Panel shall order the individual committed to a state hospital designated by the Authority.

(3) If the Review Panel 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 Review Panel shall find the individual appropriate for conditional release and shall follow procedures set forth in 309-092-0190.

(4) If the Review Panel 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 Review Panel 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

## 309-092-0160

### Revocation Hearing

(1) Within 20 days following the return of a tier two individual to a state hospital the Review Panel 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 Review Panel may consider a request for discharge at a revocation hearing or make that finding after considering the evidence before the Review Panel.

(3) If the Review Panel 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 Review Panel finds the individual could be controlled in the community but no conditional release plan has been approved by the Review Panel, the Review Panel 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 Review Panel shall specify what conditions the plan should include.

(b) The Review Panel 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 Review Panel must order that those conditions be followed.

(5) If the Review Panel finds the individual can be controlled in the community and a verified conditional release plan is approved by the

Review Panel, the Review Panel 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 Review Panel 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

## 309-092-0165

### Patient Request for Conditional Release

In a hearing before the Review Panel on an individual request for conditional release, the Review Panel 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

## 309-092-0170

### Patient Request for Discharge

In a hearing before the Review Panel on an individual's request for discharge, the Review Panel 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 Review Panel 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 Review Panel finds the individual is not appropriate for discharge, the Review Panel 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

## 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 Review Panel 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 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

## 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 Review Panel 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

## 309-092-0185

### Mandatory Two-Year, Five-Year Hearings

(1) The Review Panel 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 Review Panel's jurisdiction for a period of time exceeding two years without a hearing before the Review Panel to determine whether the individual should be conditionally released or discharged;

(3) At mandatory two-year and five-year hearings, the Review Panel shall consider:

# ADMINISTRATIVE RULES

(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

## 309-092-0190

### Status Hearing

The Review Panel 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

## 309-092-0195

### Review Panel Order of Conditional Release

(1) In determining whether an order of conditional release is appropriate, the Review Panel shall have as its goals the protection of the public, the best interests of justice and the welfare of the individual. The Review Panel 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 Review Panel finds the individual may be controlled in the community and a verified conditional release plan is approved by the Review Panel, the Review Panel may order the individual placed on conditional release.

(3) If the Review Panel finds the individual could be controlled in the community but no conditional release plan has been approved by the Review Panel, the Review Panel 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 Review Panel.

(a) The Review Panel 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) If the PSRB submits a conditional release plan, the Review Panel shall adopt the PSRB's plan as the conditional release plan approved by the Review Panel.

(4) If a verified conditional release plan has not been approved and the conditions need further examination and approval of the Review Panel, the Review Panel 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

## 309-092-0200

### Elements of Conditional Release Order

(1) The Review Panel 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. If the PSRB submits a conditional release plan, the Review Panel shall adopt that plan.

(a) Housing must be available for the individual. The Review Panel 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 Review Panel-approved provider of the treatment must have had an opportunity to evaluate the patient and the proposed conditional release plan and to be heard before the Review Panel.

(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 Review Panel.

(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

## 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 Review Panel 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

## 309-092-0210

### Out-of-State Conditional Release Order

The Review Panel 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

## 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 Review Panel may reconsider the finding.

(2) If an issue is appropriately raised, the matter shall be remanded to the Review Panel 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 Review Panel;

(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 Review Panel decision is contrary to the rules or statutes governing the Review Panel.

(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 request reconsideration by the Director. Subject to the Director's discretion and determination of good cause, the Director may reconsider the Review Panel's findings by listening to the audio of the hearing and reviewing the exhibits from the hearing. The Director may overrule or sustain the Review Panel's findings. The Director may also remand the matter to the Review Panel 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

## 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 Review Panel 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

## 309-092-0225

### Enforcement of Review Panel Orders

The Review Panel may apply to the circuit court of the appropriate county for contempt proceedings under ORS 161.395(5) 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

## 309-092-0230

### Compliance

State or local community mental health programs shall comply with any order of the Review Panel.

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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

## 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

## 309-092-0240

### Leaves and Passes

(1) Any overnight or out-of-town leave of absence or pass request for Review Panel 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 Review Panel for final approval.

(3) Emergency pass requests may be made by telephone to the Risk Review Committee by the physician or social worker, and presented to the Legal Affairs Director if the Review Panel is unavailable.

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

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**Rule Caption:** Medicaid Payment for Rehabilitative Mental Health Services.

**Adm. Order No.:** MHS 14-2011(Temp)

**Filed with Sec. of State:** 12-29-2011

**Certified to be Effective:** 1-1-12 thru 6-28-12

**Notice Publication Date:**

**Rules Amended:** 309-016-0600, 309-016-0605, 309-016-0610, 309-016-0630, 309-016-0675, 309-016-0685, 309-016-0745, 309-016-0750

**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 temporary amendments implement Oregon Laws 2011, Senate Bill 238.

**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 309-016-0755 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

## 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) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(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.

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(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; 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

# ADMINISTRATIVE RULES

## 309-016-0610

### Clinical Documentation

Providers shall comply with clinical documentation as required in the Integrated Services and Supports Rule (OARs 309-032-1525(3) through 309-032-1535)

Stat. Auth.: ORS 409.010, 413.042, 430.640, 430.705 & 430.715

Stats. Implemented: ORS 414.025, 414.065 & 430.640

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

## 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 limited 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

## 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 dis-enrolled from a Prepaid Health Plan (PHP) or services provided after the Individual was dis-enrolled from a PHP may be authorized if:

(A) The Individual was eligible on the date of service;



# ADMINISTRATIVE RULES

(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

## 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 Deputy Director of the Division 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 of the Division, 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

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

## 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

## 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.

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(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

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**Rule Caption:** Integrated Services and Supports.

**Adm. Order No.:** MHS 15-2011(Temp)

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**Subject:** These rules prescribe minimum standards for the services and supports provided by addiction and mental health providers approved by the Addictions and Mental Health Division. These amendments implement SB 238 as it relates integrated services and supports.

**Rules Coordinator:** Nola Russell—(503) 945-7652

## 309-032-1500

### Purpose and Scope

(1) Purpose: These rules prescribe minimum standards for the services and supports provided by addictions and mental health providers approved by the Addictions and Mental Health Division of the Oregon Health Authority. These rules:

(a) Promote recovery, resiliency, wellness, independence and safety for individuals receiving addictions and mental health services and supports;

(b) Specify standards for services and supports that are person-directed, youth guided, family-driven, culturally competent, trauma-informed and wellness-informed; and

(c) Promote functional and rehabilitative outcomes for individuals that are developmentally appropriate.

(2) Scope: In addition to applicable requirements in OAR 410-120-0000 through 410-120-1980 and 407-120-0000 through 407-120-0400, these rules specify standards for addictions and mental health services and supports provided in:

(a) Outpatient Community Mental Health Services and Supports for Children and Adults;

(b) Intensive Community-based Treatment and Support Services (ICTS) for Children;

(c) Intensive Treatment Services (ITS) for Children;

(d) Outpatient and Residential Alcohol and Other Drug Treatment Services; and

(e) Outpatient and Residential Problem Gambling Treatment Services.

Stat. Auth.: ORS 161.390, 413.042, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10; MHS 15-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-032-1505

### Definitions

(1) "Abuse of an adult" means the circumstances defined in OAR 407-045-0260 for abuse of an adult with mental illness.

(2) "Abuse of a child" means the circumstances defined in ORS 419B.005.

(3) "Addictions and Mental Health Services and Supports" means all services and supports that are regulated by this rule, including, but not limited to, Outpatient Community Mental Health Services and Supports for Children and Adults, ICTS for Children, ITS for Children, Outpatient and Residential Alcohol and Other Drug Treatment Services and Outpatient and Residential Problem Gambling Treatment Services.

(4) "Adolescent" means an individual from 12 through 17 years of age, or those individuals who are determined to be developmentally appropriate for youth services.

(5) "Adult" means a person 18 years of age or older, or an emancipated minor. An individual with Medicaid eligibility, who is in need of services specific to children, adolescents, or young adults in transition, must be considered a child until age 21 for the purposes of these rules. Adults who are between the ages of 18 and 21, who are considered children for purposes of these rules, must have all rights afforded to adults as specified in these rules.

(6) "Alcohol and Other Drug Treatment and Recovery Services" means outpatient, intensive outpatient, and residential services and supports for individuals with substance use disorders.

(7) "Alcohol and Other Drug Treatment Staff" means a person certified or licensed by a health or allied provider agency to provide alcohol and other drug treatment services that include assessment, development of an Individual Service and Support Plan (ISSP), and individual, group and family counseling.

(a) For treatment staff holding certification in addiction counseling, qualifications for the certificate must have included at least:

(A) 750 hours of supervised experience in substance use counseling;

(B) 150 contact hours of education and training in substance use related subjects; and

(C) Successful completion of a written objective examination or portfolio review by the certifying body.

(b) For treatment staff holding a health or allied provider license, the license or registration must have been issued by one of the following state bodies and the person must possess documentation of at least 60 contact hours of academic or continuing professional education in alcohol and other drug treatment:

(A) Board of Medical Examiners;

(B) Board of Psychologist Examiners;

(C) Board of Licensed Social Workers;

(D) Board of Licensed Professional Counselors and Therapists; or

(E) Board of Nursing.

(8) "Assessment" means the process of obtaining all pertinent biopsychosocial information, as identified by the individual, family and collateral sources as relevant, to determine a diagnosis and to plan individualized services and supports.

(9) "ASAM PPC-2R" means the American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Substance-related Disorders, Second Edition Revised, April 2001, which is a clinical guide used in matching individuals to appropriate levels of care, and incorporated by reference in these rules.

(10) "Authority" means the Oregon Health Authority.

(11) "Behavior Support Plan" means the individualized proactive support strategies, consistent with OAR 309-032-1540(8), documented in the ISSP that are used by the provider and family when applicable, to support positive behavior.

(12) "Behavior Support Strategies" means proactive supports designed to replace challenging behavior with functional, positive behavior. The strategies address environmental, social, neurodevelopmental and physical factors that affect behavior.

(13) "Biopsychosocial Information" means the combination of physical, psychological, social, environmental and cultural factors that influence the individual's development and functioning.

(14) "Care Coordination" means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs. Care coordination includes facilitating communication between the family, natural supports, community resources, and involved providers and agencies; organizing, facilitating and participating in team meetings; and providing for continuity of care by creating linkages to and managing transitions between levels of care and transitions for transition-age young adults to adult services.

(15) "Case Management" means the services provided to assist individuals, who reside in a community setting, or are transitioning to a community setting, in gaining access to needed medical, social, educational, entitlement and other applicable services.

(16) "Chemical Restraint" means the administration of medication for the acute management of potentially harmful behavior. Chemical restraint is prohibited in the services regulated by these rules.

(17) "Child" 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, must be considered a child until age 21 for purposes of these rules.

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(18) “Child and Family Team” means those persons who are responsible for creating, implementing, reviewing, and revising the service coordination section of the ISSP in ICTS programs. At a minimum, the team must be comprised of the family, care coordinator, and child when appropriate. The team should also include any involved child-serving providers and agencies and any other natural, formal, and informal supports as identified by the family.

(19) “Children’s Emergency Safety Intervention Specialist (CESIS)” means a Qualified Mental Health Professional (QMHP) who is licensed to order, monitor, and evaluate the use of seclusion and restraint in accredited and certified facilities providing intensive mental health treatment services to individuals under 21 years of age.

(20) “Clinical Supervision” means oversight by a qualified Clinical Supervisor of addictions and mental health services and supports provided according to this rule, including ongoing evaluation and improvement of the effectiveness of those services and supports.

(21) “Clinical Supervisor” means a person qualified to oversee and evaluate addictions or mental health services and supports.

(a) For supervisors in alcohol and other drug treatment programs, holding a certification or license in addiction counseling, qualifications for the certificate or license must have included at least:

(A) 4000 hours of supervised experience in substance use counseling;

(B) 300 contact hours of education and training in substance use related subjects; and

(C) Successful completion of a written objective examination or portfolio review by the certifying body.

(b) For supervisors in alcohol and other drug treatment programs, holding a health or allied provider license, such license or registration must have been issued by one of the following state bodies and the supervisor must possess documentation of at least 120 contact hours of academic or continuing professional education in the treatment of alcohol and other drug-related disorders:

(A) Board of Medical Examiners;

(B) Board of Psychologist Examiners;

(C) Board of Licensed Social Workers;

(D) Board of Licensed Professional Counselors and Therapists; or

(E) Board of Nursing.

(22) “Co-occurring substance use and mental health disorders (COD)” means the existence of a diagnosis of both a substance use disorder and a mental health disorder.

(23) “Community Mental Health Program (CMHP)” means an entity that is responsible for planning and delivery of services for persons with substance use disorders or a mental health diagnosis, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(24) “Conditional Release” means placement by a court or the Psychiatric Security Review Board (PSRB), of a person who has been found eligible under ORS 161.327(2)(b) or 161.336, for supervision and treatment in a community setting.

(25) “Court” means the last convicting or ruling court unless specifically noted.

(26) “Criminal Records Check” means the Oregon Criminal Records Check and the processes and procedures required by OAR 407-007-0000 through 407-007-0370.

(27) “Crisis” means either an actual or perceived urgent or emergent situation that occurs when an individual’s stability or functioning is disrupted and there is an immediate need to resolve the situation to prevent a serious deterioration in the individual’s mental or physical health or to prevent referral to a significantly higher level of care.

(28) “Cultural Competence” means the process by which people and systems respond respectfully and effectively to people of all cultures, languages, classes, races, ethnic backgrounds, disabilities, religions, genders, sexual orientations and other diversity factors in a manner that recognizes, affirms, and values the worth of individuals, families and communities and protects and preserves the dignity of each.

(29) “Culturally Specific Program” means a program that is designed to meet the unique service needs of a specific culture and that provides services to a majority of individuals representing that culture.

(30) “Declaration for Mental Health Treatment” means a written statement of an individual’s preferences concerning his or her mental health treatment. The declaration is made when the individual is able to understand and legally make decisions related to such treatment. It is honored, as clinically appropriate, in the event the individual becomes unable to make such decisions.

(31) “Deputy Director” means the Deputy Director of the Addictions and Mental Health Division, or that person’s designee.

(32) “Developmentally Appropriate” means services and supports that match emotional, social and cognitive development rather than chronological age.

(33) “Diagnosis” means the principal mental health, substance use or problem gambling diagnosis listed in the Diagnostic and Statistical Manual of Mental Disorders (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.

(34) “Director” means the Director of the Addictions and Mental Health Division, or that person’s designee.

(35) “Division” means the Addictions and Mental Health Division.

(36) “DSM” means the Diagnostic and Statistical Manual of Mental Disorders-IV-R, published by the American Psychiatric Association.

(37) “DSM Five-axis Diagnosis” means the multi-axial diagnosis, consistent with the current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM), resulting from the assessment.

(38) “Driving Under the Influence of Intoxicants (DUI) Alcohol and Other Drug Rehabilitation Program” means a program of treatment and therapeutically oriented education services for an individual who is either:

(a) A violator of ORS 813.010 Driving Under the Influence of Intoxicants; or

(b) A defendant who is participating in a diversion agreement under ORS 813.200.

(39) “Emergency Safety Intervention” means the use of seclusion or personal restraint under OAR 309-032-1540(9) of these rules, as an immediate response to an unanticipated threat of violence or injury to an individual, or others.

(40) “Emergent” means the onset of symptoms requiring attention within 24 hours to prevent serious deterioration in mental or physical health or threat to safety.

(41) “Enhanced Care Services (ECS)” and “Enhanced Care Outreach Services (ECOS)” means mental health services and supports provided to individuals residing in licensed Seniors and People with Disabilities (SPD) facilities.

(42) “Entry” means the act or process of acceptance and enrollment into services regulated by this rule.

(43) “Evaluation Specialist” means a person who possesses valid certification issued by the Division to conduct DUI evaluations.

(44) “Family” means the biological or legal parents, siblings, other relatives, foster parents, legal guardians, spouse, domestic partner, caregivers and other primary relations to the individual whether by blood, adoption, legal or social relationships. Family also means any natural, formal or informal support persons identified as important by the individual.

(45) “Family Support” means the provision of supportive services to persons defined as family to the individual. It includes support to caregivers at community meetings, assistance to families in system navigation and managing multiple appointments, supportive home visits, peer support, parent mentoring and coaching, advocacy, and furthering efforts to develop natural and informal community supports.

(46) “Fully Capitated Health Plan (FCHP)” means a prepaid health plan under contract with the Division of Medical Assistance Programs to provide capitated physical or behavioral health services.

(47) “Gender Identity” means a person’s self-identification of gender, without regard to legal or biological identification, including, but not limited to persons identifying themselves as male, female, transgender and transsexual.

(48) “Gender Presentation” means the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns and social interactions.

(49) “Grievance” means a formal complaint submitted to a provider verbally, or in writing, by an individual, or the individual’s chosen representative, pertaining to the denial or delivery of services and supports.

(50) “Guardian” means a person appointed by a court of law to act as guardian of a minor or a legally incapacitated person.

(51) “HIPAA” means the federal Health Insurance Portability and Accountability Act of 1996 and the regulations published in Title 45, parts 160 and 164, of the Code of Federal Regulations (CFR).

(52) “Incident Report” means a written description of any incident involving an individual, occurring on the premises of a program, or involving program staff or an ISSP activity, including, but not limited to, injury, major illness, accident, act of physical aggression, medication error, suspected abuse or neglect, or any other unusual incident that presents a risk to health and safety.

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(53) "Individual" means any person being considered for or receiving services and supports regulated by these rules.

(54) "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 intended outcomes of service.

(55) "Individual Service Note" means the written record of services and supports provided, including documentation of progress toward intended outcomes, consistent with the timelines stated in the ISSP.

(56) "Individual Service Record" means the documentation, written or electronic, regarding an individual and resulting from entry, assessment, orientation, service and support planning, services and supports provided, and transfer.

(57) "Informed Consent for Services" means that the service options, risks and benefits have been explained to the individual and guardian, if applicable, in a manner that they comprehend, and the individual and guardian, if applicable, have consented to the services on, or prior to, the first date of service.

(58) "Intensive Outpatient Alcohol and Other Drug Treatment Services" means structured nonresidential evaluation, treatment, and continued care services for individuals with substance use disorders who need a greater number of therapeutic contacts per week than are provided by traditional outpatient services. Intensive outpatient services may include, but are not limited to, day treatment, correctional day treatment, evening treatment, and partial hospitalization.

(59) "Intensive Community-based Treatment and Support Services (ICTS)" means a specialized set of comprehensive in-home and community-based supports and mental health treatment services, including care coordination as defined in these rules, for children that are developed by the child and family team and delivered in the most integrated setting in the community.

(60) "Intensive Treatment Services (ITS)" means the range of services in the system of care comprised of Psychiatric Residential Treatment Facilities (PRTF) and Psychiatric Day Treatment Services (PDTS), or other services as determined by the Division, that provide active psychiatric treatment for children with severe emotional disorders and their families.

(61) "Interim Referral and Information Services" means services provided by an alcohol and other drug treatment provider to individuals on a waiting list, and whose services are funded by the Substance Abuse Prevention and Treatment (SAPT) Block Grant, to reduce the adverse health effects of alcohol and other drug use, promote the health of the individual and reduce the risk of disease transmission.

(62) "Interdisciplinary Team" means the group of people designated to advise in the planning and provision of services and supports to individuals receiving ITS services or ECS services and may include multiple disciplines or agencies. For Psychiatric Residential Treatment Facilities (PRTF), the composition of the interdisciplinary team must be consistent with the requirements of 42 CFR Part 441.156.

(63) "Intern" or "Student" means a person who provides a paid or unpaid program service to complete a credentialed or accredited educational program recognized by the state of Oregon.

(64) "Juvenile Psychiatric Security Review Board (JPSRB)" means the entity described in ORS 161.385.

(65) "Level of Care" means the range of available services provided from the most integrated setting to the most restrictive and most intensive in an inpatient setting.

(66) "Level of Service Intensity Determination" means the Division approved process by which children and young adults in transition are assessed for ITS and ICTS services.

(67) "Licensed Health Care Professional" means a practitioner of the healing arts, acting within the scope of his or her practice under State law, who is licensed by a recognized governing board in Oregon.

(68) "Licensed Medical Practitioner (LMP)" means a person who meets the following minimum qualifications as documented by the Local Mental Health Authority (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; and

(d) Whose training, experience and competence demonstrate the ability to conduct a mental health assessment and provide medication management.

(e) For ICTS and ITS providers, LMP means a board-certified or board-eligible child and adolescent psychiatrist licensed to practice in the State of Oregon.

(69) "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 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.

(70) "Mandatory Reporter" means any public or private official, as defined in ORS 419B.005(3), who comes in contact with or has reasonable cause to believe that an individual has suffered abuse, or that any person with whom the official comes in contact with, has abused the individual. 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 ORS 40.295.

(71) "Mechanical Restraint" means the use of any physical device to involuntarily restrain the movement of all or a portion of an individual's body as a means of controlling his or her physical activities in order to protect the individual or other persons from injury. Mechanical restraint is prohibited in the services regulated by these rules.

(72) "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.

(73) "Medical Director" means a physician licensed to practice medicine in the State of Oregon and who is designated by an alcohol and other drug treatment program to be responsible for the program's medical services, either as an employee or through a contract.

(74) "Medical Supervision" means an LMP's review and approval, at least annually, of the assessment and the medical appropriateness of services and supports identified in the ISSP for each individual receiving mental health services for one or more continuous years.

(75) "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.

(76) "Medication Administration Record" means the documentation of the administration of written or verbal orders for medication, laboratory and other medical procedures issued by a LMP employed by, or under contract with, the provider and acting within the scope of his or her license.

(77) "Mental Health Organization (MHO)" means an approved organization that manages most mental health services through a capitated payment mechanism under the Oregon Health Plan. MHOs can be fully capitated health plans, community mental health programs, private mental health organizations or combinations thereof.

(78) "Older Adult" means an individual who is 60 years of age or older.

(79) "Older Adult Services" means age-appropriate services designed for older adults and provided by professionals trained in geriatrics. The services are preventative and include primary prevention efforts including suicide prevention, early identification services, early intervention services and comprehensive local planning for older adult mental health services.

(80) "Oregon Health Authority" means the Oregon Health Authority of the State of Oregon.

(81) "Outpatient Alcohol and Other Drug Treatment Program" means a publicly or privately operated program that provides assessment, treatment, and rehabilitation on a regularly scheduled basis or in response to crisis for individuals with alcohol or other drug use disorders and their family members, or significant others, consistent with Level I or Level II of the ASAM PPC-2R.

(82) "Outpatient Community Mental Health Services and Supports" means all outpatient mental health services and supports provided to children, youth and adults.

(83) "Outpatient Problem Gambling Treatment Services" means all outpatient treatment services and supports provided to individuals with gambling related problems and their families.

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(84) "Outreach" means the delivery of addictions, problem gambling or mental health services, referral services and case management services in non-traditional settings, such as, but not limited to, the individual's residence, shelters, streets, jails, transitional housing sites, drop-in centers, single room occupancy hotels, child welfare settings, educational settings or medical settings. It also refers to attempts made to engage or re-engage an individual in services by such means as letters or telephone calls.

(85) "Peer" means any person supporting an individual, or a family member of an individual, who has similar life experience, either as a current or former recipient of addictions or mental health services, or as a family member of an individual who is a current or former recipient of addictions or mental health services.

(86) "Peer Delivered Services" means an array of agency or community-based services and supports provided by peers, and peer support specialists, to individuals or family members with similar lived experience, that are designed to support the needs of individuals and families as applicable.

(87) "Peer Support Specialist" means a person providing peer delivered services to an individual or family member with similar life experience, under the supervision of a qualified Clinical Supervisor. A Peer Support Specialist must complete a Division approved training program and be:

(a) A self-identified person currently or formerly receiving mental health services; or

(b) A self-identified person in recovery from a substance use disorder, who meets the abstinence requirements for recovering staff in alcohol and other drug treatment programs; or

(c) A family member of an individual who is a current or former recipient of addictions or mental health services.

(88) "Performance Improvement Plan" means a plan that describes the provider's quality assessment and performance improvement strategies and measurements.

(89) "Person-directed" means the individual, and others involved in supporting the treatment and recovery of the individual, are actively involved in assessment, planning and revising services and supports and intended outcomes. Individuals are empowered through this process to regain their health, safety and independence to the greatest extent possible and in a manner that is holistic and specific to the individual, including culturally, developmentally, age and gender appropriate.

(90) "Personal Restraint" means the application of physical force without the use of any device, for the purpose of restraining the free movement of an individual's body to protect the individual, or others, from immediate harm. Personal restraint does not include briefly holding without undue force an individual to calm or comfort him or her, or holding an individual's hand to safely escort him or her from one area to another. Personal restraint can be used only in approved ITS programs as an emergency safety intervention under OAR 309-032-1540(9).

(91) "Problem Gambling Treatment Staff" means persons providing problem gambling treatment services on a quarter-time or greater basis who hold a certification in a mental health or addictions discipline and have completed, within the past two years, at least 30 hours of problem gambling specific education. Problem Gambling Treatment Staff providing services on a half time or greater basis must hold advanced certification in addictions or be a QMHP and be able to document a minimum of 1000 hours of problem gambling treatment experience and have completed 60 hours of problem gambling specific education.

(92) "Program" means a particular type or level of service that is organizationally distinct.

(93) "Program Administrator" or "Program Director" means a person with appropriate professional qualifications and experience, who is designated to manage the operation of a program.

(94) "Program Staff" means an employee or person who, by contract with the program, provides a service and who has the applicable competencies, qualifications or certification, required in this rule to provide the service.

(95) "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.

(96) "Provisional Assessment" means an initial assessment that identifies a presenting problem, provisional diagnosis and sufficient information to support the provisional diagnosis.

(97) "Provisional ISSP" means an initial ISSP that includes short term objectives and medically appropriate services sufficient to address present-

ing issues as they relate to a provisional diagnosis, including any engagement strategies, crisis services and activities necessary to complete the assessment and the ISSP.

(98) "Psychiatric Day Treatment Services (PDTs)" means the comprehensive, interdisciplinary, non-residential, community-based program certified under this rule consisting of psychiatric treatment, family treatment and therapeutic activities integrated with an accredited education program.

(99) "Psychiatric Residential Treatment Facility (PRTF)" means facilities that are structured residential treatment environments with daily 24-hour supervision and active psychiatric treatment including 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.

(100) "Psychiatric Residential Treatment Services (PRTS)" 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.

(101) "Psychiatric Security Review Board (PSRB)" means the entity described in ORS 161.295 through 161.400.

(102) "Psychiatrist" means a physician licensed pursuant to ORS 677.010 to 677.228 and 677.410 to 677.450 by the Board of Medical Examiners for the State of Oregon and who has completed an approved residency training program in psychiatry.

(103) "Psychologist" means a psychologist licensed by the Oregon Board of Psychologist Examiners.

(104) "Qualified Mental Health Associate (QMHA)" means a person delivering services under the direct supervision of a QMHP and meeting the following minimum qualifications as authorized by the LMHA or designee:

(a) Bachelor's degree in a behavioral sciences field; or

(b) A combination of at least three years relevant work, education, training or experience.

(105) "Qualified Mental Health Professional (QMHP)" means a LMP or any other person meeting one or more of the following minimum qualifications as authorized by the LMHA or designee:

(a) Bachelor's degree in nursing and licensed by the State of Oregon;

(b) Bachelor's degree in occupational therapy and licensed by the State of Oregon;

(c) Graduate degree in psychology;

(d) Graduate degree in social work;

(e) Graduate degree in recreational, art, or music therapy; or

(f) Graduate degree in a behavioral science field.

(106) "Qualified Person" means a person who is a QMHP, or a QMHA, and is identified by the PSRB in its Conditional Release Order. This person is designated by the provider to deliver or arrange and monitor the provision of the reports and services required by the Conditional Release Order.

(107) "Quality Assessment and Performance Improvement" means the structured, internal monitoring and evaluation of services to improve processes, service delivery and service outcomes.

(108) "Recovery" means a process of healing and transformation for a person to achieve full human potential and personhood in leading a meaningful life in communities of his or her choice.

(109) "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.

(110) "Reportable Incident" means a serious incident involving an individual in an ITS program that must be reported in writing to the Division within 24 hours of the incident, including, but not limited to, serious injury or illness, act of physical aggression that results in injury, suspected abuse or neglect, involvement of law enforcement or emergency services, or any other serious incident that presents a risk to health and safety.

(111) "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 ASAM PCC-2R.

(112) "Residential Problem Gambling Treatment Program" means a publicly or privately operated program that is licensed in accordance with OAR 309-032-1540(11), that provides assessment, treatment, rehabilita-

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tion, and twenty-four hour observation and monitoring for individuals with gambling related problems.

(113) "Residential Transition Program" means an Alcohol and Other Drug residential program that provides a drug-free supportive living environment and provides clinical services consistent with Level III of the ASAM PPC-2R.

(114) "Resilience" means the universal capacity that a person uses to prevent, minimize, or overcome the effects of adversity. Resilience reflects a person's strengths as protective factors and assets for positive development.

(115) "Respite care" means planned and emergency supports designed to provide temporary relief from care giving to maintain a stable and safe living environment. Respite care can be provided in or out of the home. Respite care includes supervision and behavior support consistent with the strategies specified in the ISSP.

(116) "Screening" means the process to determine whether the individual needs further assessment to identify circumstances requiring referrals or additional services and supports.

(117) "Seclusion" means the involuntary confinement of an individual to an area or room from which the individual is physically prevented from leaving. Seclusion can be used only in approved ITS programs as an emergency safety intervention specified in OAR 309-032-1540(9).

(118) "Secure Children's Inpatient Programs (SCIP) and Secure Adolescent Inpatient Programs (SAIP)" means ITS programs that are designed to provide inpatient psychiatric stabilization and treatment services to children up to age 14 for SCIP services and individuals under the age of 21 for SAIP services, who require a secure intensive treatment setting.

(119) "Services" means those activities and treatments described in the ISSP that are intended to assist the individual's transition to recovery from a substance use disorder, problem gambling disorder or mental health condition, and to promote resiliency, and rehabilitative and functional individual and family outcomes.

(120) "Signature" means any written or electronic means of entering the name, date of authentication and credentials of the person providing a specific service or the person authorizing services and supports. Signature also means any written or electronic means of entering the name and date of authentication of the individual receiving services, the guardian of the individual receiving services, or any authorized representative of the individual receiving services.

(121) "Skills Training" means providing information and training to individuals and families designed to assist with the development of skills in areas including, but not limited to, anger management, stress reduction, conflict resolution, self-esteem, parent-child interactions, peer relations, drug and alcohol awareness, behavior support, symptom management, accessing community services and daily living.

(122) "Sub-Acute Psychiatric Care" means services that are provided by nationally accredited providers to children who need 24-hour intensive mental health services and supports, provided in a secure setting to assess, evaluate, stabilize or resolve the symptoms of an acute episode that occurred as the result of a diagnosed mental health condition.

(123) "Substance Abuse Prevention and Treatment Block Grant" or "SAPT Block Grant" means the federal block grants for prevention and treatment of substance abuse under Public Law 102-321 (31 U.S.C. 7301-7305) and the regulations published in Title 45 Part 96 of the Code of Federal Regulations.

(124) "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, etc, as defined in DSM criteria.

(125) "Successful DUII Completion" means that the DUII program has documented in its records that for the period of service deemed necessary by the program, the individual has:

- (a) Met the completion criteria approved by the Division; and
- (b) Met the terms of the fee agreement between the provider and the individual.

(126) "Supports" means activities, referrals and supportive relationships designed to enhance the services delivered to individuals and families for the purpose of facilitating progress toward intended outcomes.

(127) "Systems Integration" means the efforts by providers to work collaboratively with other service systems including, but not limited to, schools, corrections, child welfare and physical health providers, in order to

coordinate and enhance services and supports and reduce barriers to service delivery.

(128) "Time out" means the restriction of a child for a period of time to a designated area from which he or she is not physically prevented from leaving, for the purpose of providing him or her an opportunity to regain self-control. When time out is documented as a behavior support strategy in the ISSP, it must be tracked for effectiveness in increasing positive behavior.

(129) "Transfer" means the process of assisting an individual to transition from the current services to the next appropriate setting or level of care.

(130) "Trauma Informed Services" means services that are reflective of the consideration and evaluation of the role that trauma plays in the lives of people seeking mental health and addictions services, including recognition of the traumatic effect of misdiagnosis and coercive treatment. Services are responsive to the vulnerabilities of trauma survivors and are delivered in a way that avoids inadvertent re-traumatization and facilitates individual direction of services.

(131) "Treatment" means the planned, medically appropriate, individualized program of medical, psychological, and rehabilitative procedures, experiences and activities designed to remediate symptoms of a DSM diagnosis, that are included in the ISSP.

(132) "Urinalysis Test" means an initial test and, if positive, a confirmatory test:

(a) An initial test must include, at a minimum, a sensitive, rapid, and inexpensive immunoassay screen to eliminate "true negative" specimens from further consideration.

(b) A confirmatory test is a second analytical procedure used to identify the presence of a specific drug or metabolite in a urine specimen. The confirmatory test must be by a different analytical method from that of the initial test to ensure reliability and accuracy.

(c) All urinalysis tests must be performed by laboratories meeting the requirements of OAR 333-024-0305 to 333-024-0365.

(133) "Urgent" means the onset of symptoms requiring attention within 48 hours to prevent a serious deterioration in an individual's mental or physical health or threat to safety.

(134) "Variance" means an exception from a provision of these rules, granted in writing by the Division, upon written application from the provider. Duration of a variance is determined on a case-by-case basis.

(135) "Volunteer" means an individual who provides a program service or who takes part in a program service and who is not an employee of the program and is not paid for services. The services must be non-clinical unless the individual has the required credentials to provide a clinical service.

(136) "Wellness" means an approach to healthcare that emphasizes good physical and mental health, preventing illness, and prolonging life.

(137) "Young Adult in Transition" means an individual who is developmentally transitioning into independence, sometime between the ages of 14 and 25.

Stat. Auth.: ORS 161.390, 413.042, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10; MHS 15-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-032-1510

### Provider Policies

(1) Personnel Policies: All providers must develop and implement written personnel policies and procedures, compliant with these rules, including:

- (a) Personnel Qualifications and Credentialing,
- (b) Mandatory abuse reporting, compliant with ORS 430.735-430.768 and 407-045-0250 through 407-045-0360;
- (c) Criminal Records Checks, compliant with ORS 181.533 through 181.575 and 407-007-0000 through 407-007-0370; and
- (d) Fraud, waste and abuse in Federal Medicaid and Medicare programs compliant with OAR 410-120-1380 and 410-120-1510;

(2) Service Delivery Policies: All providers must develop and implement written policies and procedures, consistent with these rules, describing the provider's approach to services and supports and the procedures for the delivery of services and supports.

(a) Policies must be available to individuals and family members upon request; and

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(b) Service delivery policies and procedures must include, at a minimum:

- (A) Entry and orientation;
- (B) Fee agreements;
- (C) Assessment, service planning, coordination and documentation;
- (D) Person-directed services, including:
  - (i) Cultural competency;
  - (ii) Developmentally appropriate and age-appropriate service planning and delivery; and
  - (iii) Family involvement.
- (E) Transfer and Continuity of Care;
- (F) Trauma-informed Services, as defined in these rules;
- (G) Confidentiality and compliance with HIPAA, Federal Confidentiality Regulations (42 CFR, Part 2), and State confidentiality regulations as specified in ORS 179.505 and 192.518 through 192.530;
- (H) Compliance with Title 2 of the Americans with Disabilities Act of 1990 (ADA);
- (I) Grievances and Appeals;
- (J) Individual Rights;
- (K) Quality Assessment and Performance Improvement;
- (L) Crisis Prevention and Response, and Incident Reporting;
- (M) Services to Young Adults in Transition, when applicable; and
- (N) Urinalysis testing to ensure validity of urine specimens collected by staff authorized to collect urine samples, when applicable.

(3) Residential Program Policies: In addition to the personnel and service delivery policies required of all providers, residential program providers must develop and implement written policies and procedures for the following:

- (a) Medical Protocols and Medical Emergencies;
  - (b) Medication Administration, Storage and Disposal;
  - (c) Facility standards for Alcohol and Other Drug Residential Treatment Programs, including the standards under these rules;
  - (d) General Safety and Emergency Procedures; and
  - (e) Emergency Safety Interventions in ITS Programs.
- (f) Alcohol and Other Drug Residential Treatment programs must establish written policies that prohibit:
- (A) Physical or other forms of aversive action to discipline an individual;
  - (B) Seclusion, personal restraint, mechanical restraint and chemical restraint;
  - (C) Withholding shelter, regular meals, clothing or aids to physical functioning; and
  - (D) Discipline of one individual by another.
- (4) Behavior Support Policies: Applicable providers, as specified below, must develop behavior support policies including:
- (a) ITS and ICTS Services: policies consistent with 309-032-1540(8) of these rules.
  - (b) ECS Services: policies consistent with 309-032-1540(8) of these rules.

Stat. Auth.: ORS 161.390, 413.042, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10; MHS 15-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-032-1515

### Individual Rights

(1) In addition to all applicable statutory and constitutional rights, every individual receiving services has the right to:

- (a) Choose from available services and supports, those that are consistent with the ISSP and provided in the most integrated setting in the community and under conditions that are least restrictive to the individual's liberty, that are least intrusive to the individual and that provide for the greatest degree of independence;
- (b) Be treated with dignity and respect;
- (c) Participate in the development of a written ISSP, receive services consistent with that plan and participate in periodic review and reassessment of service and support needs, assist in the development of the plan, and to receive a copy of the written ISSP;
- (d) Have all services explained, including expected outcomes and possible risks;
- (e) Confidentiality, and the right to consent to disclosure in accordance with ORS 107.154, 179.505, 179.507, 192.515, 192.507, 42 CFR Part 2 and 45 CFR Part 205.50.

(f) Give informed consent in writing prior to the start of services, except in a medical emergency or as otherwise permitted by law. Minor children may give informed consent to services in the following circumstances:

- (A) Under age 18 and lawfully married;
  - (B) Age 16 or older and legally emancipated by the court; or
  - (C) Age 14 or older for outpatient services only. For purposes of informed consent, outpatient service does not include service provided in residential programs or in day or partial hospitalization programs;
  - (g) Inspect their Individual Service Record in accordance with ORS 179.505;
  - (h) Not participate in experimentation;
  - (i) Receive medication specific to the individual's diagnosed clinical needs;
  - (j) Receive prior notice of transfer, unless the circumstances necessitating transfer pose a threat to health and safety;
  - (k) Be free from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;
  - (l) Have religious freedom;
  - (m) Be free from seclusion and restraint, except as regulated in OAR 309-032-1540(9).
  - (n) Be informed at the start of services, and periodically thereafter, of the rights guaranteed by this rule;
  - (o) Be informed of the policies and procedures, service agreements and fees applicable to the services provided, and to have a custodial parent, guardian, or representative, assist with understanding any information presented;
  - (p) Have family involvement in service planning and delivery;
  - (q) Make a declaration for mental health treatment, when legally an adult;
  - (r) File grievances, including appealing decisions resulting from the grievance;
  - (s) Exercise all rights set forth in ORS 109.610 through 109.697 if the individual is a child, as defined by these rules;
  - (t) Exercise all rights set forth in ORS 426.385 if the individual is committed to the Authority; and
  - (u) Exercise all rights described in this rule without any form of reprisal or punishment.
- (2) In addition to the rights specified in (1) of this rule, every individual receiving residential services has the right to:
- (a) A safe, secure and sanitary living environment;
  - (b) A humane service environment that affords reasonable protection from harm, reasonable privacy and daily access to fresh air and the outdoors;
  - (c) Keep and use personal clothing and belongings, and to have an adequate amount of private, secure storage space. Reasonable restriction of the time and place of use, of certain classes of property may be implemented if necessary to prevent the individual or others from harm, provided that notice of this restriction is given to individuals and their families, if applicable, upon entry to the program, documented, and reviewed periodically;
  - (d) Express sexual orientation, gender identity and gender presentation;
  - (e) Have access to and participate in social, religious and community activities;
  - (f) Private and uncensored communications by mail, telephone and visitation, subject to the following restrictions:
    - (A) This right may be restricted only if the provider documents in the individual's record that there is a court order to the contrary, or that in the absence of this restriction, significant physical or clinical harm will result to the individual or others. The nature of the harm must be specified in reasonable detail, and any restriction of the right to communicate must be no broader than necessary to prevent this harm; and
    - (B) The individual and his or her guardian, if applicable, must be given specific written notice of each restriction of the individual's right to private and uncensored communication. The provider must ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible and allow for confidential communication, and that space is available for visits. Reasonable times for the use of telephones and visits may be established in writing by the provider;
    - (g) Communicate privately with public or private rights protection programs or rights advocates, clergy, and legal or medical professionals;
    - (h) Have access to and receive available and applicable educational services in the most integrated setting in the community;
    - (i) Participate regularly in indoor and outdoor recreation;

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- (j) Not be required to perform labor;
- (k) Have access to adequate food and shelter; and
- (l) A reasonable accommodation if, due to a disability, the housing and services are not sufficiently accessible.

(3) Notification of Rights: The provider must give to the individual and, if appropriate, the guardian, a document that describes the applicable individual's rights as follows:

(a) Information given to the individual must be in written form or, upon request, in an alternative format or language appropriate to the individual's need;

(b) The rights, and how to exercise them, must be explained to the individual, and if appropriate, to her or his guardian; and

(c) Individual rights must be posted in writing in a common area.

Stat. Auth.: ORS 161.390, 413.042, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10; MHS 15-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-032-1520

### Personnel

(1) Licensing and Credentialing: All program staff must meet applicable credentialing or licensing standards, including those outlined in these rules, for the following:

- (a) Alcohol and Other Drug Treatment Staff;
- (b) CESIS;
- (c) Clinical Supervisor;
- (d) LMP;
- (e) Medical Director;
- (f) Peer Support Specialist;
- (g) Problem Gambling Treatment Staff;
- (h) QMHA; and
- (i) QMHP.

(2) Specific Program Staff Competencies: At minimum, competencies for the following specified program staff must include:

(a) Program Administrators or Program Directors must demonstrate competence in leadership, program planning and budgeting, fiscal management, supervision of program staff, personnel management, program staff performance assessment, data collection, reporting, program evaluation, quality assurance, and developing and coordinating community resources;

(b) Clinical Supervisors in addictions and mental health programs must demonstrate competence in leadership, wellness, oversight and evaluation of services, staff development, individual service and support planning, case management and coordination, utilization of community resources, group, family and individual therapy or counseling, documentation and rationale for services to promote intended outcomes and implementation of all provider policies. In addition:

(A) Clinical Supervisors in alcohol and other drug treatment programs must be certified or licensed by a health or allied provider agency, as defined in these rules, to provide addiction treatment, and have one of the following qualifications:

- (i) Five years of paid full-time experience in the field of alcohol and other drug counseling; or
- (ii) A Bachelor's degree and four years of paid full-time experience in the social services field, with a minimum of two years of direct alcohol and other drug counseling experience; or
- (iii) A Master's degree and three years of paid full-time experience in the social services field with a minimum of two years of direct alcohol and other drug counseling experience;

(B) Clinical Supervisors in mental health programs must meet QMHP requirements and have completed two years of post-graduate clinical experience in a mental health treatment setting; and

(C) Clinical Supervisors in problem gambling treatment programs must meet the requirements for clinical supervisors in either mental health or alcohol and other drug treatment programs, and have completed 10 hours of gambling specific training within two years of designation as a problem gambling services supervisor.

(c) Alcohol and other drug treatment staff must:

(A) Be certified or licensed by a health or allied provider agency, as defined in these rules, to provide addiction treatment within two years of the first hire date and must make application for certification no later than six months following that date. The two years is not renewable if the person ends employment with a provider and becomes re-employed with another provider.

(B) Demonstrate competence in treatment of substance-use disorders including individual assessment and individual, group, family and other counseling techniques, program policies and procedures for service delivery and documentation, and identification, implementation and coordination of services identified to facilitate intended outcomes.

(d) Problem gambling treatment staff must demonstrate competence in treatment of problem gambling including individual assessment and individual, group, family and other counseling techniques, program policies and procedures for service delivery and documentation, and identification, implementation and coordination of services identified to facilitate intended outcomes.

(e) QMHAs must demonstrate the ability to communicate effectively, understand mental health assessment, treatment and service terminology and apply each of these concepts, implement skills development strategies, and identify, implement and coordinate the services and supports identified in an ISSP.

(f) QMHPs must demonstrate the ability to conduct an assessment, including identifying precipitating events, gathering histories of mental and physical health, alcohol and other drug use, past mental health services and criminal justice contacts, assessing family, cultural, social and work relationships, and conducting a mental status examination, complete a five-axis DSM diagnosis, write and supervise the implementation of a ISSP and provide individual, family or group therapy within the scope of their training.

(g) Peer support specialists must demonstrate knowledge of approaches to support others in recovery and resiliency, and demonstrate efforts at self-directed recovery.

(3) Recovering Staff: Program staff, contractors, volunteers and interns recovering from a substance-use disorder, providing treatment services or peer support services in alcohol and other drug treatment programs, must be able to document continuous abstinence under independent living conditions or recovery housing for the immediate past two years.

(4) Personnel Documentation: Providers must maintain personnel records for each program staff that contains all of the following documentation:

- (a) An employment application;
- (b) Where required, verification of a criminal records check consistent with OAR 407-007-0200 through 407-007-0370;
- (c) A current job description that includes applicable competencies;
- (d) Copies of relevant licensure or certification, diploma, or certified transcripts from an accredited college, indicating that the program staff meets applicable qualifications;
- (e) Periodic performance appraisals;
- (f) Staff orientation and development activities;
- (g) Program staff incident reports;
- (h) Disciplinary documentation;
- (i) Reference checks;
- (j) Emergency contact information; and
- (k) Information from subsection (6) of this rule, if applicable.

(5) For providers utilizing contractors, interns or volunteers, providers must maintain the following documentation, as applicable:

- (a) A contract, or written agreement, if applicable;
- (b) A signed confidentiality agreement;
- (c) Service-specific orientation documentation; and
- (d) For subject individuals, verification of a criminal records check consistent with OAR 407-007-0200 through 407-007-0370.

(6) Program Specific Personnel Documentation: In addition to general program staff documentation requirements, providers must maintain additional documentation as applicable.

(a) For all program staff and volunteers providing residential services to children or adults:

- (A) Results of a Tuberculosis screening as per OAR 333-071-0057.
- (7) Training: Providers must ensure that program staff receives training applicable to the specific population for whom services are planned, delivered, or supervised as follows:

(a) Orientation training: The program must document appropriate orientation training for each program staff, or person providing services, within 30 days of the hire date. At minimum, orientation training for all program staff must include, but not be limited to,

- (A) A review of individual crisis response procedures;
- (B) A review of emergency procedures;
- (C) A review of program policies and procedures;
- (D) A review of rights for individuals receiving services and supports;

and

- (E) Mandatory abuse reporting procedures;



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(F) For ICTS, ITS and Enhanced Care Services, positive behavior support training consistent with 309-032-1540(8).

(8) Supervision: Persons providing services to individuals in accordance with this rule must receive supervision by a qualified Clinical Supervisor, as defined in these rules, related to the development, implementation and outcome of services.

(a) Clinical supervision must be provided to assist program staff and volunteers to increase their skills, improve quality of services to individuals, and supervise program staff and volunteers' compliance with program policies and procedures, including:

(A) Documentation of supervision for each person supervised, of no less than two hours per month. The two hours must include one hour of face-to-face contact for each person supervised, or a proportional level of supervision for part-time program staff.

(B) Documentation of quarterly supervision for program staff holding a health or allied provider license.

(b) Medical supervision must be secured, when required, through a current written agreement, job description, or similar type of binding arrangement between a LMP and the provider, which describes the LMP's responsibility in reviewing and approving the assessment and services and supports identified in the ISSP for each individual receiving mental health services for one or more continuous years.

Stat. Auth.: ORS 161.390, 413.042, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10; MHS 15-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-032-1525

### Entry and Assessment

(1) Entry Process: The program must utilize a written entry procedure to ensure the following:

(a) Individuals must be considered for entry without regard to race, ethnicity, gender, gender identity, gender presentation, sexual orientation, religion, creed, national origin, age, except when program eligibility is restricted to children, adults or older adults, familial status, marital status, source of income, and disability.

(b) Individuals must receive services in the most timely manner feasible consistent with the presenting circumstances.

(c) For individuals receiving services funded by the SAPT Block Grant, entry of pregnant women to services must occur no later than 48 hours from the date of first contact, and no less than 14 days after the date of first contact for individuals using substances intravenously. If services are not available within the required timeframe, the provider must document the reason and provide interim referral and informational services as defined in these rules, within 48 hours.

(d) Written informed consent for services must be obtained from the individual or guardian, if applicable, prior to the start of services. If such consent is not obtained, the reason must be documented and further attempts to obtain informed consent must be made as appropriate.

(e) The provider must establish an Individual Service Record for each individual on the date of entry.

(f) The provider must report the entry of all individuals on the mandated state data system.

(g) In accordance with ORS 179.505 and HIPAA, an authorization for the release of information must be obtained for any confidential information concerning the individual being considered for, or receiving, services.

(h) Orientation: At the time of entry, the program must give to the individual and guardian if applicable, written program orientation information. The written information must be in the individual's primary language and must include:

(A) The program's philosophical approach to providing services and supports;

(B) A description of individual rights consistent with these rules;

(C) An overview of services available including any related fees when applicable; and

(D) Policies concerning grievances and confidentiality.

(2) Entry Priority:

(a) Entry of adults and older adults, in community-based mental health programs, whose services are not funded by Medicaid, must be prioritized in the following order:

(A) Individuals who, in accordance with the assessment of professionals in the field of mental health, are at immediate risk of hospitalization for the treatment of mental health conditions or are in need of continuing

services to avoid hospitalization or pose a hazard to the health and safety of themselves, including the potential for suicide;

(B) Individuals who, because of the nature of their diagnosis, their geographic location or their family income, are least capable of obtaining assistance from the private sector; and

(C) Individuals who, in accordance with the assessment of professionals in the field of mental health, are experiencing mental health conditions but will not require hospitalization in the foreseeable future.

(b) Entry of children in community-based mental health services, whose services are not funded by Medicaid, must be prioritized in the following order:

(A) Children who are at immediate risk of psychiatric hospitalization or removal from home due to emotional and mental health conditions;

(B) Children who have severe mental health conditions;

(C) Children who exhibit behavior which indicates high risk of developing conditions of a severe or persistent nature; and

(D) Any other child who is experiencing mental health conditions which significantly affect the child's ability to function in everyday life but not requiring hospitalization or removal from home in the near future.

(c) Entry of individuals whose services are funded by the SAPT Block Grant, must be prioritized in the following order:

(A) Women who are pregnant and using substances intravenously;

(B) Women who are pregnant;

(C) Individuals who are using substances intravenously; and

(D) Women with dependent children.

(3) Assessment:

(a) When an individual is admitted for services, an assessment must be completed prior to development of the ISSP, or provisional ISSP, if applicable.

(b) When an assessment cannot be completed at entry, a provisional assessment, as defined in these rules, must document the immediate medical appropriateness of services. If services are continued, an assessment must be completed within a timeframe that reflects the level and complexity of services and supports to be provided.

(c) The assessment must be completed by qualified program staff as follows:

(A) A QMHP in mental health programs. A QMHA may assist in the gathering and compiling of information to be included in the assessment.

(B) Supervisory or treatment staff in alcohol and other drug treatment programs, and

(C) Supervisory or treatment staff in problem gambling treatment programs.

(d) Each assessment must include:

(A) Sufficient biopsychosocial information and documentation to support the presence of a DSM diagnosis that is the medically appropriate reason for services.

(B) Screening for the presence of substance use, problem gambling, mental health conditions, and chronic medical conditions.

(C) Screening for the presence of symptoms related to psychological and physical trauma.

(D) Suicide potential must be assessed and individual service records must contain follow-up actions and referrals when an individual reports symptoms indicating risk of suicide.

(E) In addition, for children age zero to five, diagnosis must be informed by treatment guidelines included in the Health Services Commission prioritized list of paired conditions and treatments, and must include:

(i) Direct observation of child, parent, family and interaction;

(ii) Neurodevelopment considerations; and

(iii) Parental and family biopsychosocial functioning within the context of the home, community and culture.

(F) Subsections (3)(d)(A), (3)(d)(B), (3)(d)(C) and (3)(d)(D) of this rule, apply to alcohol and other drug assessments, which must be consistent with the dimensions described in the ASAM PPC-2R, and must document a diagnosis and level of care determination consistent with the DSM and ASAM PPC-2R.

(e) When the assessment process determines the presence of co-occurring substance use and mental health disorders, all providers must document referral for further assessment, planning and intervention from an appropriate professional, either with the same provider or with a collaborative community provider.

(f) Providers must document updates to the assessment consistent with the timelines specified in the ISSP, and when there are changes related to the biopsychosocial information in the assessment.

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(g) In addition to periodic assessment updates, any individual continuing to receive mental health services for one or more continuous years, must receive an annual assessment by a QMHP, that has documented approval by an LMP.

(h) The requirements in OAR 309-032-1525(3)(d)(A) and 309-032-1525(3)(g) are minimum requirements to meet Medicaid auditing standards and may result in financial findings when not met. The requirements in OAR 309-032-1525(3)(d)(B) through 309-032-1525(3)(f) are quality standards and may result in limitations, or revocation of, certification when not met. Failure to maintain certification may result in exclusion or limited participation in the Medicaid program.

Stat. Auth.: ORS 161.390, 413.042, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10; MHS 15-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-032-1530

### Individual Service and Support Planning and Coordination

(1) Individual Services and Supports: The provider must deliver or coordinate, for each individual, appropriate services and supports to collaboratively facilitate intended service outcomes as identified by the individual, and family, when applicable.

(a) Qualified program staff must facilitate a planning process, resulting in an ISSP that reflects the assessment and the level of care to be provided.

(b) A provisional ISSP, including applicable crisis services, must be completed prior to the start of services. For mental health services, a QMHP, who is also a licensed health care professional, must recommend the services and supports by signing the provisional ISSP.

(c) If services are continued, an ISSP must be completed within a timeframe that reflects:

(A) The type and level of services and supports to be provided;

(B) A complete assessment; and

(C) Engagement and agreement of the individual, and family if applicable, in the development of the ISSP.

(d) Individuals, and family members, as applicable, must collaboratively participate in the development of the ISSP.

(e) Providers must fully inform the individual and guardian when applicable, of the proposed services and supports, in developmentally and culturally appropriate language, obtain informed consent for all proposed services, and give the individual and guardian when applicable, a written copy of the ISSP.

(f) Providers must collaborate with community partners to coordinate or deliver services and supports identified in the ISSP.

(g) Providers must request authorization to exchange information with any applicable physical health care providers or Fully Capitated Health Plans, for the individual, to collaborate in promoting regular and adequate health care.

(h) When there are barriers to services due to culture, gender, language, illiteracy, or disability, the provider must take measures to address or overcome those barriers including:

(A) Providing supports including, but not limited to, the provision of interpreters to provide translation services, at no additional cost to the individual.

(2) Individual Service and Support Plan (ISSP):

(a) The ISSP must document the specific services and supports to be provided, arranged or coordinated to assist the individual and his or her family, if applicable, to achieve intended outcomes.

(b) At minimum, each ISSP must include:

(A) Measurable or observable intended outcomes;

(B) Specific services and supports to be provided;

(C) Applicable service and support delivery details including frequency and duration of each service; and

(D) Timelines for review of progress and ISSP updates must be consistent with the level of care provided and the needs of the individual. For ITS programs, the interdisciplinary team must conduct a review of progress and transfer criteria at least every 30 days from the date of entry and must document members present, progress and changes made. For Psychiatric Day Treatment Services, the review must be conducted every 30 days and the LMP must participate in the review at least every 90 days.

(c) For ICTS programs, the ISSP must include:

(A) Identification of strengths and needs;

(B) A service coordination section that summarizes service planning in all relevant life domains by the participating team members; and

(d) For ICTS and ITS programs, the ISSP must include:

(A) Proactive safety and crisis planning; and

(B) A behavior support plan, consistent with OAR 309-032-1540(8) of these rules.

(e) A QMHP, who is also a licensed health care professional, must recommend the services and supports by signing the ISSP for each individual receiving mental health services within five days of the development of the ISSP;

(f) A LMP must approve updates to the ISSP at least annually for each individual receiving mental health services for one or more continuous years.

(g) The requirements in OAR 309-032-1530(2)(a) through 309-032-1530(2)(e) are minimum requirements to meet both Medicaid auditing and quality standards and may result in financial findings or limitations or both, or revocation of certification when not met. Failure to maintain certification may result in exclusion or limited participation in the Medicaid program.

(3) Individual Service Notes:

(a) A written individual service note must be recorded each time a service is provided.

(b) Individual Service Notes must document the:

(A) Specific service provided;

(B) Duration of the service provided;

(C) Date on which the service was provided;

(D) Location of service; and

(E) Date of authentication and name, signature, and credentials, of the person who provided the service.

(c) Individual service notes must also include:

(A) Periodic reviews of progress toward intended outcomes, consistent with timelines documented in the ISSP;

(B) Any significant events or changes in the individual's life circumstances, including mental status, treatment response and recovery status; and

(C) Any decisions to transfer an individual from service.

(d) The requirements in OAR 309-032-1530(3)(a) and 309-032-1530(3)(b)(A) through 309-032-1530(3)(b)(E) are minimum requirements to meet Medicaid auditing standards and may result in financial findings when not met. The requirements in 309-032-1530(3)(c)(A) through 309-032-1530(3)(c)(C) are quality standards and may result in limitations, or revocation of, certification when not met. Failure to maintain certification may result in exclusion or limited participation in the Medicaid program.

Stat. Auth.: ORS 161.390, 413.042, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10; MHS 15-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-032-1535

### Individual Service Record

(1) Documentation Standards: Documentation must be appropriate in quality and quantity to meet professional standards applicable to the provider and any additional standards for documentation in the provider's policies and any pertinent contracts.

(2) General Requirements for Individual Service Record: All providers must develop and maintain an Individual Service Record for each individual upon entry. The record must, at a minimum, include:

(a) Identifying information, or documentation of attempts to obtain the information, including:

(A) The individual's name, address, telephone number, date of birth, gender, and for adults, marital status and military status;

(B) Name, address, and telephone number of the parent or legal guardian, primary care giver or emergency contact;

(C) Contact information for medical and dental providers;

(b) Informed Consent for Service, including medications, or documentation specifying why the provider could not obtain consent by the individual or guardian as applicable;

(c) Written refusal of any services and supports offered, including medications;

(d) A signed fee agreement, when applicable;

(e) Assessment or provisional assessment and updates to the assessment;

(f) An ISSP or provisional ISSP, including any applicable behavior support or crisis intervention planning;

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- (g) Individual service notes;
- (h) A Transfer Summary, when required;
- (i) Other plans as made available, such as, but not limited to recovery plans, wellness action plans, education plans, and advance directives for physical and mental health care; and

(j) Applicable signed consents for release of information.

(3) Medical Service Records: When medical services are provided, the following documents must be part of the Individual Service Record as applicable:

- (a) Medication Administration Records as per these rules;
- (b) Laboratory reports; and
- (c) LMP orders for medication, protocols or procedures.

(4) Documentation in Residential Programs: In addition to the requirements for Individual Service Records in subsection 309-032-1535(2), PRTS and Alcohol and Other Drug Residential Treatment providers must include the following documentation in the Individual Service Record:

(a) A personal belongings inventory created upon entry and updated whenever an item of significant value is added or removed, or on the date of transfer;

(b) Documentation indicating that the individual and guardian, as applicable, were provided with the required orientation information upon entry;

(c) Background information including strengths and interests, all available previous mental health or substance use assessments, previous living arrangements, service history, behavior support considerations, education service plans if applicable, and family and other support resources;

(d) Medical information including a brief history of any health conditions, documentation from a LMP or other qualified health care professional of the individual's current physical health, and a written record of any prescribed or recommended medications, services, dietary specifications, and aids to physical functioning;

(e) Copies of documents relating to guardianship or any other legal considerations, as applicable;

(f) A copy of the individual's most recent ISSP, if applicable, or in the case of an emergency or crisis-respite entry, a summary of current addictions or mental health services and any applicable behavior support plans;

(g) Documentation of the individual's ability to evacuate the home consistent with the program's evacuation plan developed in accordance with the Oregon Structural Specialty Code and Oregon Fire Code;

(h) Documentation of any safety risks; and

(i) Incident reports, when required, including:

(A) The date of the incident, the persons involved, the details of the incident, and the quality and performance actions taken to initiate investigation of the incident and correct any identified deficiencies; and

(B) Any child abuse reports made by the provider to law enforcement or to the DHS Children, Adults and Families Division, documenting the date of the incident, the persons involved and, if known, the outcome of the reports.

(5) Additional documentation in ITS Programs: In addition to OAR 309-032-1535(2), 309-032-1535(3) and 309-032-1535(4), ITS providers must include the following documentation in the Individual Service Record:

(a) Level of Service Intensity Determination;

(b) Names and contact information of the members of the interdisciplinary team;

(c) Documentation by the interdisciplinary team that the child's ISSP has been reviewed, the services provided are medically appropriate for the specific level of care, and changes in the plan recommended by the interdisciplinary team, as indicated by the child's service and support needs, have been implemented;

(d) Emergency safety intervention records, in a separate section or in a separate format, documenting each incident of personal restraint or seclusion, signed and dated by the qualified program staff directing the intervention and, if required, by the psychiatrist or clinical supervisor authorizing the intervention; and

(e) A copy of the written transition instructions provided to the child and family on the date of transfer.

(6) Additional documentation in ICTS Programs: In addition to OAR 309-032-1535(2), ICTS providers must include the following documentation in the Individual Service Record:

(a) Level of Service Intensity Determination; and

(b) Names and contact information of the members of the child and family team.

(7) PSRB and JPSRB Documentation: When the individual is under the jurisdiction of the PSRB or JPSRB, providers must include the following additional documentation in the Individual Service Record:

(a) Monthly reports to the PSRB or JPSRB;

(b) Interim reports, as applicable;

(c) The PSRB Initial Evaluation; and

(d) For PSRB and JPSRB services, a copy of the Conditional Order of Release.

Stat. Auth.: ORS 161.390, 413.042, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

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## 309-032-1540

### Program Specific Service Standards

In addition to individualized service and support planning and coordination, providers of each of the following program-specific service areas must ensure the following requirements listed for that service are met.

(1) Co-Occurring Mental Health and Substance Use Disorders (COD):

(a) Providers approved and designated to provide services and supports for individuals diagnosed with COD must:

(A) Provide concurrent service and support planning and delivery for substance use and mental health diagnosis, including integrated assessment, ISSP and individual service record

(2) Outpatient Mental Health Services to Children, Adults and Older Adults:

(a) Crisis services must be provided directly or through linkage to a local crisis services provider and must include the following:

(A) 24 hours, seven days per week telephone or face-to-face screening to determine an individual's need for immediate community mental health services; and

(B) 24 hour, seven days per week capability to conduct, by or under the supervision of a QMHP, a provisional assessment resulting in a provisional ISSP that includes the crisis services necessary to assist the individual and family to stabilize and transition to the appropriate level of care.

(b) Individual, family and group therapy provided by a QMHP;

(c) Psychiatric services including medication management as applicable, provided by a LMP who is either an employee of the provider or is a contracted provider; and

(d) Available case management services including the following:

(A) Assistance in applying for benefits to which the individual may be entitled. Program staff must assist individuals in gaining access to, and maintaining, resources such as Social Security benefits, general assistance, food stamps, vocational rehabilitation, and housing. When needed, program staff must arrange transportation or accompany individuals to help them apply for benefits;

(B) Assistance with completion of a declaration for mental health treatment with the individual's participation and informed consent;

(C) Referral and coordination to help individuals gain access to services and supports identified in the ISSP;

(D) When an individual receives residential services, program staff must collaborate with the residential program and family to coordinate services;

(E) When an individual resides in an Adult Foster Home, program staff must assist in the development of a Personal Care Plan. Program staff must also evaluate the appropriateness of services in relation to the individual's assessed need and review the Personal Care Plan every 180 days;

(F) When an individual is admitted to a hospital or non-hospital facility, program staff must make contact in person or by telephone with the individual within one working day of entry and P must be actively involved with transition planning from the hospital or non-hospital facility;

(G) If an individual is receiving treatment in a state funded long-term care psychiatric facility, program staff must, from the point of entry, be actively involved with transitioning the individual from long term care;

(H) When significant health and safety concerns are identified, program staff must assure that necessary services or actions occur to address the identified health and safety needs for the individual; and

(I) For children and youth, program staff must create linkages to and ongoing communication with other involved child-serving providers and agencies such as child welfare, education, primary care and juvenile justice, and make referrals for additional services and supports as indicated.

(e) Skills training as indicated;

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(f) Peer delivered supports, as indicated; and  
(g) Older adult services, including preventative mental health services, when applicable.

(3) Enhanced Care Services:

(a) Enhanced care services must be provided in DHS' SPD licensed facilities that have a multipurpose room, an area providing an environment with low stimulation, an accessible outdoor space with a covered area, a refrigerator, a microwave conveniently located for program activities, space for interdisciplinary meetings, space for mental health treatment and space for storage of records. A minimum of one private room is required in facilities opened after January 1, 1994.

(b) Services must include:

(A) 12 hours per week of mental health services available during evening and weekend shifts provided or arranged for by the contracted mental health provider;

(B) Weekly interdisciplinary team meetings to develop the ISSP, review the behavior support plan and to coordinate care planning with the SPD licensed provider staff and related professionals, including a QMHP, prescriber, SPD direct care staff, SPD case manager, SPD facility RN and SPD facility administrator; and

(C) A crisis service staffed by a QMHP or the local CMHP available to the provider and facility direct care staff 24-hours per day.

(c) ECOS services must be delivered according to the individual's needs and do not require the services listed under OAR 309-032-1540(3)(b)(A) and 309-032-1540(3)(b)(B) of this rule.

(d) Behavior support services must be consistent with OAR 309-032-1540(8) of these rules.

(4) Psychiatric Security Review Board and Juvenile Psychiatric Security Review Board: Services and supports must include all appropriate services determined necessary to assist the individual in maintaining community placement and which are consistent with Conditional Release Orders and the Agreement to Conditional Release.

(a) Providers of PSRB and JPSRB services acting through the designated Qualified Person, must submit reports to the PSRB or JPSRB as follows:

(A) Orders for Evaluation: For individuals under the jurisdiction of the PSRB or the JPSRB, providers must take the following action upon receipt of an Order for Evaluation:

(i) Within 15 days of receipt of the Order, schedule an interview with the individual for the purpose of initiating or conducting the evaluation;

(ii) Appoint a QMHP to conduct the evaluation and to provide an evaluation report to the PSRB or JPSRB;

(iii) Within 30 days of the evaluation interview, submit the evaluation report to the PSRB or JPSRB responding to the questions asked in the Order for Evaluation; and

(iv) If supervision by the provider is recommended, notify the PSRB or JPSRB of the name of the person designated to serve as the individual's Qualified Person, who must be primarily responsible for delivering or arranging for the delivery of services and the submission of reports under these rules.

(B) Monthly reports consistent with PSRB or JPSRB reporting requirements as specified in the Conditional Release Order that summarize the individual's adherence to Conditional Release requirements and general progress; and

(C) Interim reports, including immediate reports by phone, if necessary, to ensure the public or individual's safety including:

(i) At the time of any significant change in the individual's health, legal, employment or other status which may affect compliance with Conditional Release orders;

(ii) Upon noting major symptoms requiring psychiatric stabilization or hospitalization;

(iii) Upon noting any other major change in the individual's ISSP;

(iv) Upon learning of any violations of the Conditional Release Order; and

(v) At any other time when, in the opinion of the Qualified Person, such an interim report is needed to assist the individual.

(b) JPSRB providers must submit copies of all monthly reports and interim reports to both the JPSRB and the Division.

(5) Intensive Community-Based Treatment and Support Services (ICTS) for Children: ICTS services may be delivered at a clinic, facility, home, school, other provider or allied agency location or other setting as identified by the child and family team. In addition to services specified by the ISSP and the standards for outpatient mental health services, ICTS services must include:

(a) Care coordination provided by a QMHP or a QMHA supervised by a QMHP;

(b) A child and family team, as defined in these rules;

(c) Service coordination as specified in the ISSP, to be developed by the child and family team;

(d) Review of progress at child and family team meetings to occur at a frequency documented in the ISSP;

(e) Family support and respite care, as indicated;

(f) Proactive safety and crisis planning that utilizes professional and natural supports to provide 24 hours, seven days per week flexible response and is reflective of strategies to avert potential crisis without placement disruptions; and

(g) Behavior support planning, consistent with OAR 309-032-1540(8) of these rules.

(6) Intensive Treatment Services (ITS) for Children:

(a) ITS Providers must meet the following general requirements:

(A) Maintain the organizational capacity and interdisciplinary treatment capability to deliver clinically and developmentally appropriate services in the medically appropriate amount, intensity and duration for each child specific to the child's diagnosis, level of functioning and the acuity and severity of the child's psychiatric symptoms;

(B) Maintain 24 hour, seven days per week treatment responsibility for children in the program;

(C) Non-residential programs must maintain on-call capability at all times to respond directly or by referral to the treatment needs of children, including crises, 24 hours per day and seven days per week;

(D) Inform the Division and the legal guardian within twenty-four hours of reportable incidents;

(E) Maintain linkages with primary care physicians, CMHPs and MHOs and the child's parent or guardian to coordinate necessary continuing care resources for the child; and

(F) Maintain linkages with the applicable education service district or school district to coordinate and provide the necessary educational services for the children and integrate education services in all phases of assessment, service and support planning, active treatment and transition planning.

(b) General staffing requirements: ITS providers must have the clinical leadership and sufficient QMHP, QMHA and other program staff to meet the 24-hour, seven days per week treatment needs of children and must establish policies, procedures and contracts to assure:

(A) Availability of psychiatric services to meet the following requirements;

(i) Provide medical oversight of the clinical aspects of care in nationally accredited sub-acute and psychiatric residential treatment facilities and provide 24-hour, seven days per week psychiatric on-call coverage; or consult on clinical care and treatment in psychiatric day treatment; and

(ii) Assess each child's medication and treatment needs, prescribe medicine or otherwise assure that case management and consultation services are provided to obtain prescriptions, and prescribe therapeutic modalities to achieve the child's individual service and support plan goals.

(B) There must be at least one program staff who has completed First Aid and CPR training on duty at all times.

(c) ITS providers must ensure that the following services and supports are available and accessible through direct service, contract or by referral:

(A) Active psychiatric treatment and education services must be functionally integrated in a therapeutic environment designed to reflect and promote achievement of the intended outcomes of each child's ISSP;

(B) When treatment services interrupt the child's day to day educational environment, the program must provide or make arrangements for the continuity of the child's education;

(C) Family therapy must be provided by a QMHP. The family therapist to child ratio must be at least one family therapist for each 12 children;

(D) Psychiatric services;

(E) Individual, group and family therapies provided by a QMHP.

There must be no less than one family therapist available for each 12 children;

(F) Medication evaluation, management and monitoring;

(G) Pre-vocational or vocational rehabilitation;

(H) Therapies supporting speech, language and hearing rehabilitation;

(I) Individual and group psychosocial skills development;

(J) Activity and recreational therapies;

(K) Nutrition;

(L) Physical health care services or coordination;

(M) Recreational and social activities consistent with individual strengths and interests;

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(N) Educational services coordination and advocacy; and

(O) Behavior support services, consistent with OAR 309-032-1540(8) of these rules.

(7) Program Specific Requirements for ITS Providers: In addition to the general requirements for all ITS providers listed in OAR 309-032-1540(6), the following program-specific requirements must be met:

(a) Psychiatric Residential Treatment Facilities (PRTF):

(A) Children must either have or be screened for an Individual Education Plan, Personal Education Plan, or an Individual Family Service Plan;

(B) Psychiatric Residential Treatment Facilities must maintain one or more linkages with acute care hospitals or MHOs to coordinate necessary inpatient care;

(C) Psychiatric residential clinical care and treatment must be under the direction of a psychiatrist and delivered by an interdisciplinary team of board-certified or board-eligible child and adolescent psychiatrists, registered nurses, psychologists, other qualified mental health professionals, and other relevant program staff. A psychiatrist must be available to the unit 24-hours per day, seven days per week; and

(D) Psychiatric Residential Treatment Facilities must be staffed at a clinical staffing ratio of not less than one program staff for three children during the day and evening shifts. At least one program staff for every three program staff members during the day and evening shifts must be a QMHP or QMHA. For overnight program staff there must be a staffing ratio of at least one program staff for six children; at least one of the overnight program staff must be a QMHA. For units that by this ratio have only one overnight program staff, there must be additional program staff immediately available within the facility or on the premises. At least one QMHP must be on site or on call at all times. At least one program staff with designated clinical leadership responsibilities must be on site at all times.

(b) SCIP and SAIP: Programs providing SCIP and SAIP Services must meet the requirements for PRTFs listed in 7(a) of this subsection. They must also establish policies and practices to meet the following:

(A) The staffing model must allow for the child's frequent contact with the child psychiatrist a minimum of one hour per week;

(B) Psychiatric nursing staff must be provided in the program 24 hours per day;

(C) A psychologist, psychiatric social worker, rehabilitation therapist and psychologist with documented training in forensic evaluations must be available 24 hours per day as appropriate; and

(D) Program staff with specialized training in SCIP or SAIP must be available 24 hours per day;

(E) The program must provide all medically appropriate psychiatric services necessary to meet the child's psychiatric care needs;

(F) The program must provide secure psychiatric treatment services in a manner that ensures public safety to youth who are under the care and custody of the Oregon Youth Authority, court ordered for the purpose of psychiatric evaluation, or admitted by the authority of the JPSRB; and

(G) The program must not rely on external entities such as law enforcement or acute hospital care to assist in the management of the SCIP or SAIP setting.

(c) Sub-Acute Psychiatric Care: In addition to the services provided as indicated by the assessment and specified in the ISSP, Sub-Acute Psychiatric Care providers must:

(A) Provide psychiatric nursing staffing at least 16 hours per day;

(B) Provide nursing supervision and monitoring and psychiatric supervision at least one to three times per week; and

(C) Work actively with the child and family team and multi-disciplinary community partners, to plan for the long-term emotional, behavioral, physical and social needs of the child to be met in the most integrated setting in the community.

(d) Psychiatric Day Treatment Services (PDTs):

(A) PDTs must be provided to children who remain at home with a parent, guardian or foster parent by qualified mental health professionals and qualified mental health associates in consultation with a psychiatrist;

(B) An education program must be provided and children must either have or be screened for an Individual Education Plan, Personal Education Plan or Individual Family Service Plan; and

(C) Psychiatric Day Treatment programs must be staffed at a clinical staffing ratio of at least one QMHP or QMHA for three children.

(8) Behavior Support Services: Behavior support services must be proactive, recovery-oriented, individualized, and designed to facilitate positive alternatives to challenging behavior, as well as to assist the individual in developing adaptive and functional living skills. Behavior support serv-

ices are required in ITS, ICTS and ECS Services. Providers of these services must:

(a) Develop and implement individual behavior support strategies, based on a functional or other clinically appropriate assessment of challenging behavior;

(b) Document the behavior support strategies and measures for tracking progress as a behavior support plan in the ISSP;

(c) Establish a framework which assures individualized positive behavior support practices throughout the program and articulates a rationale consistent with the philosophies supported by the Division, including the Division's Trauma-informed Services Policy;

(d) Obtain informed consent from the parent or guardian, when applicable, in the use of behavior support strategies and communicate both verbally and in writing the information to the individual and guardian in the individual's primary language and in a developmentally appropriate manner;

(e) Establish outcome-based tracking methods to measure the effectiveness of behavior support strategies in:

(A) Reducing or eliminating the use of emergency safety interventions ; and

(B) Increasing positive behavior.

(f) Require all program staff to receive annual training in Collaborative Problem Solving, Positive Behavior Support or other Evidence-based Practice to promote positive behavior support; and

(g) Review and update behavior support policies, procedures, and practices annually.

(9) Emergency Safety Interventions in ITS Programs: Providers of ITS services must:

(a) Adopt policies and procedures for Emergency safety interventions as part of a Crisis Prevention and Intervention Policy. The policy must be consistent with the provider's trauma-informed services policies and procedures.

(b) Inform the individual and his or her parent or guardian of the provider's policy regarding the use of personal restraint and seclusion during an emergency safety situation by both furnishing a written copy of the policy and providing an explanation in the individual's primary language that is developmentally appropriate.

(c) Obtain a written acknowledgment from the parent or guardian that he or she has been informed of the provider's policies and procedures regarding the use of personal restraint and seclusion.

(d) Prohibit the use of mechanical restraint and chemical restraint as defined in these rules.

(e) Establish an Emergency Safety Interventions Committee or designate this function to an already established Quality Assessment and Performance Improvement Committee. Committee membership must minimally include a program staff with designated clinical leadership responsibilities, the person responsible for staff training in crisis intervention procedures and other clinical personnel not directly responsible for authorizing the use of emergency safety interventions. The committee must:

(A) Monitor the use of emergency safety interventions to assure that individuals are safeguarded and their rights are always protected;

(B) Meet at least monthly and must report in writing to the provider's Quality Assessment and Performance Improvement Committee at least quarterly regarding the committee's activities, findings and recommendations;

(C) Analyze emergency safety interventions to determine opportunities to prevent their use, increase the use of alternatives, improve the quality of care and safety of individuals receiving services and recommend whether follow up action is needed;

(D) Review and update emergency safety interventions policies and procedures annually;

(E) Conduct individual and aggregate review of all incidents of personal restraint and seclusion; and

(F) Report the aggregate number of personal restraints and incidents of seclusion to the Division within 30 days of the end of each calendar quarter.

(f) Providers must meet the following general conditions of personal restraint and seclusion:

(A) Personal restraint and seclusion must only be used in an emergency safety situation to prevent immediate injury to an individual who is in danger of physically harming him or herself or others in situations such as the occurrence of, or serious threat of violence, personal injury or attempted suicide;

(B) Any use of personal restraint or seclusion must respect the dignity and civil rights of the individual;

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(C) The use of personal restraint or seclusion must be directly related to the immediate risk related to the behavior of the individual and must not be used as punishment, discipline, or for the convenience of staff;

(D) Personal restraint or seclusion must only be used for the length of time necessary for the individual to resume self-control and prevent harm to the individual or others, even if the order for seclusion or personal restraint has not expired, and must under no circumstances, exceed 4 hours for individuals ages 18 to 21, 2 hours for individuals ages 9 to 17, or 1 hour for individuals under age 9;

(E) An order for personal restraint or seclusion must not be written as a standing order or on an as needed basis;

(F) Personal restraint and seclusion must not be used simultaneously;

(G) Providers must notify the individual's parent or guardian of any incident of seclusion or personal restraint as soon as possible;

(H) If incidents of personal restraint or seclusion used with an individual cumulatively exceed five interventions over a period of five days, or a single episode of one hour within 24 hours, the psychiatrist, or designee, must convene, by phone or in person, program staff with designated clinical leadership responsibilities to:

(i) Discuss the emergency safety situation that required the intervention, including the precipitating factors that led up to the intervention and any alternative strategies that might have prevented the use of the personal restraint or seclusion;

(ii) Discuss the procedures, if any, to be implemented to prevent any recurrence of the use of personal restraint or seclusion;

(iii) Discuss the outcome of the intervention including any injuries that may have resulted; and

(iv) Review the individual's ISSP, making the necessary revisions, and document the discussion and any resulting changes to the individual's ISSP in the Individual Service Record.

(g) Personal Restraint:

(A) Each personal restraint must require an immediate documented order by a physician, licensed practitioner, or, in accordance with OAR 309-034-0400 through 309-034-0490, a licensed CESIS;

(B) The order must include:

(i) Name of the person authorized to order the personal restraint;

(ii) Date and time the order was obtained; and

(iii) Length of time for which the intervention was authorized.

(C) Each personal restraint must be conducted by program staff that have completed and use a Division-approved crisis intervention training. If in the event of an emergency a non Division-approved crisis intervention technique is used, the provider's on-call administrator must immediately review the intervention and document the review in an incident report to be provided to the Division within 24 hours;

(D) At least one program staff trained in the use of emergency safety interventions must be physically present, continually assessing and monitoring the physical and psychological well-being of the individual and the safe use of the personal restraint throughout the duration of the personal restraint;

(E) Within one hour of the initiation of a personal restraint, a psychiatrist, licensed practitioner, or CESIS must conduct a face-to-face assessment of the physical and psychological well being of the individual;

(F) A designated program staff with clinical leadership responsibilities must review all personal restraint documentation prior to the end of the shift in which the intervention occurred; and

(G) Each incident of personal restraint must be documented in the individual service record. The documentation must specify:

(i) Behavior support strategies and less restrictive interventions attempted prior to the personal restraint;

(ii) Required authorization;

(iii) Events precipitating the personal restraint;

(iv) Length of time the personal restraint was used;

(v) Assessment of appropriateness of the personal restraint based on threat of harm to self or others;

(vi) Assessment of physical injury; and

(vii) Individuals response to the emergency safety intervention.

(h) Seclusion: Providers must be approved by the Division for the use of seclusion.

(A) Authorization for seclusion must be obtained by a psychiatrist, licensed practitioner or CESIS prior to, or immediately after the initiation of seclusion. Written orders for seclusion must be completed for each instance of seclusion and must include:

(i) Name of the person authorized to order seclusion;

(ii) Date and time the order was obtained; and

(iii) Length of time for which the intervention was authorized.

(B) Program staff trained in the use of emergency safety interventions must be physically present continually assessing and monitoring the physical and psychological well-being of the individual throughout the duration of the seclusion;

(C) Visual monitoring of the individual in seclusion must occur continuously and be documented at least every fifteen minutes or more often as clinically indicated;

(D) Within one hour of the initiation of seclusion a psychiatrist or CESIS must conduct a face-to-face assessment of the physical and psychological well being of the individual;

(E) The individual must have regular meals, bathing, and use of the bathroom during seclusion and the provision of these must be documented in the individual service record; and

(F) Each incident of seclusion must be documented in the individual service record. The documentation must specify:

(i) The behavior support strategies and less restrictive interventions attempted prior to the use of seclusion;

(ii) The required authorization for the use of seclusion;

(iii) The events precipitating the use of seclusion;

(iv) The length of time seclusion was used;

(v) An assessment of the appropriateness of seclusion based on threat of harm to self or others;

(vi) An assessment of physical injury to the individual, if any; and

(vii) The individual's response to the emergency safety intervention.

(i) Any room specifically designated for the use of seclusion or time out must be approved by the Division.

(j) If the use of seclusion occurs in a room with a locking door, the program must be authorized by the Division for this purpose and must meet the following requirements:

(A) A facility or program seeking authorization for the use of seclusion must submit a written application to the Division;

(B) Application must include a comprehensive plan for the need for and use of seclusion of children in the program and copies of the facility's policies and procedures for the utilization and monitoring of seclusion including a statistical analysis of the facility's actual use of seclusion, physical space, staff training, staff authorization, record keeping and quality assessment practices;

(C) The Division must review the application and, after a determination that the written application is complete and satisfies all applicable requirements, must provide for a review of the facility by authorized Division staff;

(D) The Division must have access to all records including individual service records, the physical plant of the facility, the employees of the facility, the professional credentials and training records for all program staff, and must have the opportunity to fully observe the treatment and seclusion practices employed by the facility;

(E) After the review, the Deputy Director of the Division or their designee must approve or disapprove the facility's application and upon approval must certify the facility based on the determination of the facility's compliance with all applicable requirements for the seclusion of children;

(F) If disapproved, the facility must be provided with specific recommendations and have the right of appeal to the Division; and

(G) Certification of a facility must be effective for a maximum of three years and may be renewed thereafter upon approval of a renewal application.

(k) Structural and physical requirements for seclusion: An ITS provider seeking this certification under these rules must have available at least one room that meets the following specifications and requirements:

(A) The room must be of adequate size to permit three adults to move freely and allows for one adult to lie down. Any newly constructed room must be no less than 64 square feet;

(B) The room must not be isolated from regular program staff of the facility, and must be equipped with adequate locking devices on all doors and windows;

(C) The door must open outward and contain a port of shatterproof glass or plastic through which the entire room may be viewed from outside;

(D) The room must contain no protruding, exposed, or sharp objects;

(E) The room must contain no furniture. A fireproof mattress or mat must be available for comfort;

(F) Any windows must be made of unbreakable or shatterproof glass or plastic. Non-shatterproof glass must be protected by adequate climb-proof screening;

(G) There must be no exposed pipes or electrical wiring in the room. Electrical outlets must be permanently capped or covered with a metal

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shield secured by tamper-proof screws. Ceiling and wall lights must be recessed and covered with safety glass or unbreakable plastic. Any cover, cap or shield must be secured by tamper-proof screws;

(H) The room must meet State Fire Marshal fire, safety, and health standards. If sprinklers are installed, they must be recessed and covered with fine mesh screening. If pop-down type, sprinklers must have break-away strength of under 80 pounds. In lieu of sprinklers, combined smoke and heat detector must be used with similar protective design or installation;

(I) The room must be ventilated, kept at a temperature no less than 64°F and no more than 85°F. Heating and cooling vents must be secure and out of reach;

(J) The room must be designed and equipped in a manner that would not allow a child to climb off the ground;

(K) Walls, floor and ceiling must be solidly and smoothly constructed, to be cleaned easily, and have no rough or jagged portions; and

(L) Adequate and safe bathrooms must be available.

(10) Outpatient Problem Gambling Treatment Services: These services include group, individual and family treatment consistent with the following requirements:

(a) The first offered service appointment must be five business days or less from the date of request for services;

(b) Service sessions must address the challenges of the individual as they relate, directly or indirectly, to the problem gambling behavior;

(c) Telephone counseling: Providers may provide telephone counseling when person-to-person contact would involve an unwise delay, as follows:

(A) Individual must be currently enrolled in the problem gambling treatment program;

(B) Phone counseling must be provided by a qualified provider within their scope of practice;

(C) Individual service notes must follow the same criteria as face-to-face counseling and identify the session was conducted by phone and the clinical rationale for the phone session;

(D) Telephone counseling must meet HIPAA and 42 CFR standards for privacy; and

(E) There must be an agreement of informed consent for phone counseling that is discussed with the individual and documented in the individual's service record.

(d) Family Counseling: Family counseling includes face-to-face or non face-to-face service sessions between a program staff member delivering the service and a family member whose life has been negatively impacted by gambling.

(A) Service sessions must address the problems of the family member as they relate directly or indirectly to the problem gambling behavior; and

(B) Services to the family must be offered even if the individual identified as a problem gambler is unwilling, or unavailable to accept services.

(e) 24-hour crisis response accomplished through agreement with other crisis services, on-call program staff or other arrangement acceptable to the Division.

(11) Residential Problem Gambling Treatment Services: Providers of this service must comply with OAR 309-032-1545 of these rules.

(a) When problem gambling treatment services are provided in a psychiatric health facility, providers must have Division approved written policies and procedures for operating this service, and must be licensed in accordance with OAR 309-035-0100 through OAR 309-035-0460.

(b) When problem gambling treatment services are provided in an alcohol and other drug residential treatment facility providers of this service must have Division approved written policies and procedures for operating this service and have a current license issued by the Division in accordance with OAR 415-012-0000 through 415-012-0090.

(c) Providers must coordinate services and make appropriate referrals to other formal and informal service systems to insure continuity of care, including, but not limited to, mental health, self-help support groups, financial consultants, legal advice, medical, crisis management, cultural issues, housing and vocational. All referral and follow-up actions must be documented in the individual service record.

(12) Alcohol and Other Drug Treatment and Recovery Services:

(a) Interim Referral and Information Services: Pregnant women or other individuals using substances intravenously, whose services are funded by the SAPT Block Grant, must receive interim referrals and information prior to entry, to reduce the adverse health effects of alcohol and other drug use, promote the health of the individual, and reduce the risk of transmission of disease. At a minimum, interim referral and informational services must include:

(A) Counseling and education about blood borne pathogens including Hepatitis, HIV, STDs and Tuberculosis (TB); the risks of needle and paraphernalia sharing and the likelihood of transmission to sexual partners and infants;

(B) Counseling and education about steps that can decrease the likelihood of Hepatitis, HIV, STD, and TB transmission;

(C) Referral for Hepatitis, HIV, STD and TB testing, vaccine or care services if necessary; and

(D) For pregnant women, counseling on the likelihood of blood borne pathogen transmission as well as the effects of alcohol, tobacco and other drug use on the fetus and referral for prenatal care.

(b) Culturally Specific Services: Programs approved and designated as culturally specific programs must meet the following criteria:

(A) Serve a majority of individuals representing the culturally specific population; and

(B) Governing Board: Develop and maintain a governing or advisory board that must:

(i) Have a majority representation of the culturally specific group being served;

(ii) Receive training concerning the significance of culturally relevant services and supports;

(iii) Include at least 20% representation of individuals, as defined in these rules, or family members of individuals; and

(iv) Meet at least quarterly.

(C) Maintain accessibility to culturally specific populations including:

(i) The physical location of the program must be within close proximity to the culturally specific populations;

(ii) Where available, public transportation must be within close proximity to the program; and

(iii) Hours of service, telephone contact, and other accessibility issues must be appropriate for the population; and

(D) The physical facility within which the culturally specific services are delivered must be psychologically comfortable for the group including:

(i) Materials displayed must be culturally relevant;

(ii) Mass media programming (radio, television, etc.) must be sensitive to cultural background; and

(iii) Other cultural differences must be considered and accommodated when possible, such as the need or desire to bring family members to the facility, play areas for small children and related accommodations.

(c) Adolescent Treatment Services: Programs approved to provide adolescent alcohol and other drug treatment services or those with adolescent-designated service funding must meet the following standards:

(A) Residential programs providing services to individuals defined as children for purposes of this rule must, in addition to the applicable requirements of this rule, be licensed by DHS' Children, Adults and Families Division in cooperation with the Division.

(B) Development of ISSPs and case management services must include participation of parents, other family members, schools, children's services agencies, and juvenile corrections, as appropriate;

(C) Services, or appropriate referrals, must include:

(i) Family service;

(ii) Recreation and leisure time consistent with the individual's interests;

(iii) Community and social skills training;

(iv) Academic education services or referral; and

(v) Smoking cessation service.

(D) Continuing care services must be of appropriate duration, consistent with ASAM PPC-2R criteria, and designed to maximize recovery opportunities. The services must include:

(i) Reintegration services and coordination with family and schools;

(ii) Youth dominated self-help groups where available;

(iii) Linkage to emancipation services when appropriate; and

(iv) Linkage to physical or sexual abuse counseling and support services when appropriate.

(E) There must be a sufficient number of qualified program staff to ensure a ratio of at least one treatment staff per eight adolescents at all times.

(F) Program staff coverage must be provided 24 hours per day, seven days per week.

(d) Women's Treatment Services: Programs approved and designated to provide alcohol and other drug treatment services primarily to women must meet the following standards:

(A) The Assessment must contain an evaluation that identifies and assesses needs specific to women's issues in service such as social isolation.

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tion, self-reliance, parenting issues, domestic violence, women's physical health, housing and financial considerations;

(B) The Individual Service and Support Plan must address all areas identified in (12)(d)(A) of this subsection as well as alcohol and other drug use and any other applicable service coordination details;

(C) The program must provide or coordinate services and supports that meet the special access needs of women such as childcare, mental health services, and transportation, as indicated;

(D) The program must provide, or coordinate, the following services and supports unless clinically contraindicated:

- (i) Gender-specific services and supports;
- (ii) Family services, including therapeutic services for children in the custody of women in treatment;
- (iii) Reintegration with family;
- (iv) Peer delivered supports;
- (v) Smoking cessation;
- (vi) Housing; and
- (vii) Transportation.

(E) Individual Service and Support Planning and treatment must include the participation of family and other agencies as appropriate, such as social service, child welfare, or corrections agencies;

(F) Referral Services: The program must coordinate services with the following, if indicated:

- (i) Agencies providing services to women who have experienced physical abuse, sexual abuse or other types of domestic violence; and
- (ii) Parenting training; and

(G) Continuing care treatment services must be consistent with the ASAM PPC-2R and must include referrals to female dominated support groups where available; and

(H) Programs that receive SAPT Block Grant funding must provide or coordinate the following services for pregnant women and women with dependent children, including women who are attempting to regain custody of their children:

- (i) Primary medical care for women, including referral for prenatal care and, while the women are receiving such services, child care;
- (ii) Primary pediatric care, including immunizations for their children;
- (iii) Gender specific substance abuse treatment and other therapeutic interventions for women which may include, but are not limited to:
  - (I) Relationship issues;
  - (II) Sexual and physical abuse;
  - (III) Parenting; and
  - (IV) Access to child care while the women are receiving these services; and

(iv) Therapeutic interventions for children in the custody of women in treatment which may include, but are not limited to:

- (I) Their developmental needs; and
- (II) Any issues concerning sexual and physical abuse, and neglect; and

(III) Sufficient case management and transportation to ensure that women and their children have access to services.

(e) Specialized Alcohol and Other Drug Community-based Programs for Individuals in the Criminal Justice System: These services and supports are for individuals who are under the supervision of a probation officer or on parole or post-prison supervision or participating in a drug treatment court program or otherwise under the direct supervision of the court.

(A) Services and supports must incorporate interventions and strategies that target criminogenic risk factors and include:

- (i) Cognitive behavioral interventions;
- (ii) Motivational interventions;
- (iii) Relapse prevention; and
- (iv) Healthy relationships education;

(B) Providers must demonstrate coordination of services with criminal justice partners through written protocols, program staff activities, and individual record documentation;

(C) Program Directors or clinical supervisors must have experience in community-based offender treatment programs and have specific training and experience applying effective, evidence-based clinical strategies and services for individuals receiving community-based alcohol and other drug treatment services to individuals in the criminal justice system;

(D) Within the first six months of hire, program staff must receive training on effective principles of evidenced-based practices for individuals with criminogenic risk factors; and

(E) Within six months of hire, program staff must have documented knowledge, skills, and abilities demonstrating treatment strategies for individuals with criminogenic risk factors.

(f) DUII Alcohol and Other Drug Rehabilitation Programs: In addition to the general standards for alcohol and other drug treatment programs, those programs approved to provide DUII rehabilitation services must meet the following standards:

(A) DUII rehabilitation programs must assess individuals referred for treatment by the evaluation specialist. Placement, continued stay and transfer of individuals must be based on the criteria described in the ASAM PPC-2R, subject to the following additional terms and conditions:

(i) Abstinence: Individuals must demonstrate continuous abstinence for a minimum of 90 days prior to completion as documented by urinalysis tests and other evidence;

(ii) Treatment Completion: Only DUII rehabilitation programs may certify treatment completion;

(iii) Residential Treatment: Using the ASAM PPC-2R, the DUII program's assessment may indicate that the individual requires treatment in a residential program. It is the responsibility of the DUII program to:

(I) Monitor the case carefully while the individual is in residential treatment;

(II) Provide or monitor outpatient and follow-up services when the individual is transferred from the residential program; and

(III) Verify completion of residential treatment and follow-up outpatient treatment.

(iv) Urinalysis Testing: A minimum of one urinalysis sample per month must be collected during the period of service deemed necessary by an individual's DUII rehabilitation program:

(I) Using the process defined in these rules, the samples must be tested for at least five controlled drugs;

(II) At least one of the samples is to be collected and tested in the first two weeks of the program and at least one is to be collected and tested in the last two weeks of the program;

(III) If the first sample is positive, two or more samples must be collected and tested, including one sample within the last two weeks before completion; and

(IV) Programs may use methods of testing for the presence of alcohol and other drugs in the individual's body other than urinalysis tests if they have obtained the prior review and approval of such methods by the Division.

(v) Reporting: The program must report:

(I) To the Division on forms prescribed by the Division;

(II) To the evaluation specialist within 30 days from the date of the referral by the specialist. Subsequent reports must be provided within 30 days of completion or within 10 days of the time that the individual enters noncompliant status; and

(III) To the appropriate evaluation specialist, case manager, court, or other agency as required when requested concerning individual cooperation, attendance, treatment progress, utilized modalities, and fee payment.

(vi) Certifying Completion: The program must send a numbered Certificate of Completion to the Department of Motor Vehicles to verify the completion of convicted individuals. Payment for treatment may be considered in determining completion. A certificate of completion must not be issued until the individual has satisfied the abstinence requirements of 309-032-1540(f)(A)(i).

(vii) Records: The DUII rehabilitation program must maintain in the permanent Individual Service Record, urinalysis results and all information necessary to determine whether the program is being, or has been, successfully completed.

(viii) Separation of Evaluation and Rehabilitation Functions: Without the approval of the Director, no agency or person may provide DUII rehabilitation to an individual who has also been referred by a Judge to the same agency or person for a DUII evaluation. Failure to comply with this rule will be considered a violation of ORS chapter 813. If the Director finds such a violation, the Director may deny, suspend, revoke, or refuse to renew a letter of approval.

(13) Medical Protocols in Alcohol and Other Drug Treatment Programs: Medical protocols must be approved by a medical director under contract with a program or written reciprocal agreement with a medical practitioner under managed care. The protocols must:

(a) Require, but not be limited to a medical history, as described in the Assessment;

(b) Designate those medical symptoms that, when found, require further investigation, physical examinations, service, or laboratory testing;



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(c) Require that individuals admitted to the program who are currently injecting or intravenously using a drug, or have injected or intravenously used a drug within the past 30 days, or who are at risk of withdrawal from a drug, or who may be pregnant, must be referred for a physical examination and appropriate lab testing within 30 days of entry to the program. This requirement may be waived by the medical director if these services have been received within the past 90 days and documentation is provided;

(d) Require pregnant women be referred for prenatal care within two weeks of entry to the program;

(e) Require that the program provide HIV and AIDS, TB, sexually transmitted disease, Hepatitis and other infectious disease information and risk assessment, including any needed referral, within 30 days of entry; and

(f) Specify the steps for follow up and coordination with physical health care providers in the event the individual is found to have an infectious disease or other major medical problem.

(14) Administration of Medications: The following guidelines must be followed in policies on administration of medications in all programs:

(a) Medications prescribed for one individual must not be administered to or self-administered by another individual or program staff;

(b) When an individual self-administers medication in a residential program, self-administration must be approved in writing by a physician and closely monitored by the residential program staff;

(c) No unused, outdated, or recalled drugs must be kept in a program. On a monthly basis any unused, outdated, or recalled drugs must be disposed of in a manner that assures they cannot be retrieved;

(d) Disposal of prescription drugs in a residential program: A written record of all disposals of drugs must be maintained in the program and must include:

- (A) A description of the drug, including the amount;
- (B) The individual for whom the medication was prescribed;
- (C) The reason for disposal; and
- (D) The method of disposal.

(e) Storage of Prescription Drugs in residential programs: All prescription drugs stored in the residential program must be kept in a locked stationary container. Medications requiring refrigeration must be stored in a refrigerator using a locked container; and

(f) Written documentation of medications prescribed for the individual by a LMP must be maintained in the Individual Service Record. Documentation for each medication prescribed must include the following:

- (A) A copy or detailed written description of the signed prescription order;
- (B) The name of the medication prescribed;
- (C) The prescribed dosage and method of administration;
- (D) The date medications were prescribed, reviewed, or renewed;
- (E) The date, the signature and credentials of program staff administering or prescribing medications; and
- (F) Medication records which contain:
  - (i) Observed side effects including laboratory findings; and
  - (ii) Medication allergies and adverse reaction.

(15) Building Requirements for Alcohol and Other Drug Programs: Each alcohol and other drug treatment program must provide facilities that:

(a) Comply with all applicable state and local building, electrical, plumbing, fire, safety, and zoning codes;

(b) Maintain up-to-date documentation verifying that they meet applicable local business license, zoning and building codes and federal, state and local fire and safety regulations. It is the responsibility of the program to check with local government to make sure all applicable local codes have been met;

(c) Provide space for services including but not limited to intake, assessment, counseling and telephone conversations that assures the privacy and confidentiality of individuals and is furnished in an adequate and comfortable fashion including plumbing, sanitation, heating, and cooling;

(d) Provide rest rooms for individuals, visitors, and staff that are accessible to persons with disabilities pursuant to Title II of the Americans with Disabilities Act if the program receives any public funds or Title III of the Act if no public funds are received;

(e) Adopt and implement emergency policies and procedures, including an evacuation plan and emergency plan in case of fire, explosion, accident, death or other emergency. The policies and procedures and emergency plans must be current and posted in a conspicuous area; and

(f) Tobacco Use: Outpatient programs must not allow tobacco use in program facilities and on program grounds. Effective July 1, 2012, residential programs must not allow tobacco use in program facilities and on program grounds.

Stat. Auth.: ORS 161.390, 413.042, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270  
Hist.: MHS 4-2010, f. & cert. ef. 3-4-10; MHS 15-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-032-1545

### Facility Standards for Alcohol and Other Drug Residential Treatment Programs

(1) Building Requirements: In addition to the building requirements for outpatient Alcohol and Other Drug treatment programs, residential programs must meet the following standards:

(a) Prior to construction of a new building or major alteration of or addition to an existing building:

(A) One set of plans and specifications must be submitted to the State Fire Marshal for approval;

(B) Plans must be in accordance with the State of Oregon Structural Specialty Code and Fire and Life Safety Regulations;

(C) Plans for construction containing 4,000 square feet or more must be prepared and bear the stamp of an Oregon licensed architect or engineer; and

(D) The water supply, sewage, and garbage disposal system must be approved by the agency having jurisdiction.

(2) Interiors: All rooms used by individuals must have floors, walls, and ceilings that meet the interior finish requirements of the State of Oregon Structural Specialty Code and Fire and Life Safety Regulations:

(a) A separate dining room or area must be provided for exclusive use of individuals, program staff, and invited guests, and must:

(A) Seat at least one-half of the individuals at a time with a minimum of 15 square feet per occupant; and

(B) Be provided with adequate ventilation.

(b) A separate living room or lounge area must be provided for the exclusive use of individuals, program staff, and invited guests and must:

(A) Provide a minimum of 15 square feet per occupant; and

(B) Be provided with adequate ventilation.

(c) Bedrooms must be provided for all individuals and must:

(A) Be separate from the dining, living, multi-purpose, laundry, kitchen, and storage areas;

(B) Be an outside room with a window that can be opened, and is at least the minimum required by the State Fire Marshal;

(C) Have a ceiling height of at least seven feet, six inches;

(D) Provide a minimum of 60 square feet per individual, with at least three feet between beds;

(E) Provide permanently wired light fixtures located and maintained to give light to all parts of the room; and

(F) Provide a curtain or window shade at each window to assure privacy.

(d) Bathrooms must be provided and conveniently located in each building containing a bedroom and must:

(A) Provide a minimum of one toilet and one hand-washing sink for each eight individuals, and one bathtub or shower for each ten individuals;

(B) Provide one hand-washing sink convenient to every room containing a toilet;

(C) Provide permanently wired light fixtures located and maintained to give adequate light to all parts of the room;

(D) Provide arrangements for personal privacy for individuals;

(E) Provide a privacy screen at each window;

(F) Provide a mirror; and

(G) Be provided with adequate ventilation.

(e) A supply of hot and cold water installed and maintained in compliance with rules of, the Authority, Health Services, Office of Public Health Systems, must be distributed to taps conveniently located throughout the residential program;

(f) All plumbing must comply with applicable codes;

(g) Laundry facilities, when provided, must be separate from:

(A) Resident living areas, including bedrooms;

(B) Kitchen and dining areas; and

(C) Areas used for the storage of unrefrigerated perishable foods.

(h) Storage areas must be provided appropriate to the size of the residential program. Separate storage areas must be provided for:

(A) Food, kitchen supplies, and utensils;

(B) Clean linens;

(C) Soiled linens and clothing;

(D) Cleaning compounds and equipment; and

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(E) Poisons, chemicals, insecticides, and other toxic materials, which must be properly labeled, stored in the original container, and kept in a locked storage area.

(i) Furniture must be provided for each individual and must include:

(A) A bed with a frame and a clean mattress and pillow;

(B) A private dresser or similar storage area for personal belongings which is readily accessible to the individual; and

(C) Access to a closet or similar storage area for clothing and

(j) Linens must be provided for each individual and must include:

(A) Sheets and pillowcases;

(B) Blankets, appropriate in number and type for the season and the individual's comfort; and

(C) Towel and washcloth.

(3) Food Service and Storage: The residential program must meet the requirements of the State of Oregon Sanitary Code for Eating and Drinking Establishments relating to the preparation, storage, and serving of food. At minimum:

(a) Menus must be prepared in advance to provide a sufficient variety of foods served in adequate amounts for each resident at each meal;

(b) Records of menus as served must be filed and maintained in the residential program records for at least 30 days;

(c) All modified or special diets must be ordered by a physician;

(d) At least three meals must be provided daily;

(e) Supplies of staple foods for a minimum of one week and of perishable foods for a minimum of a two-day period must be maintained on the premises;

(f) Food must be stored and served at proper temperature;

(g) All utensils, including dishes, glassware, and silverware used in the serving or preparation of drink or food for individuals must be effectively washed, rinsed, sanitized, and stored after each individual use to prevent contamination in accordance with Health Division standards; and

(h) Raw milk and home-canned vegetables, meats, and fish must not be served or stored in a residential program.

(4) Safety: The residential program must meet the following safety requirements:

(a) At no time must the number of individuals served exceed the approved capacity;

(b) A written emergency plan must be developed and posted next to the telephone used by program staff and must include:

(A) Instructions for the program staff or designated resident in the event of fire, explosion, accident, death, or other emergency and the telephone numbers of the local fire department, law enforcement agencies, hospital emergency rooms, and the residential program's designated physician and on-call back-up program staff;

(B) The telephone number of the administrator or clinical supervisor and other persons to be contacted in case of emergency; and

(C) Instructions for the evacuation of individuals and program staff in the event of fire, explosion, or other emergency.

(c) The residential program must provide fire safety equipment appropriate to the number of individuals served, and meeting the requirements of the State of Oregon Structural Specialty Code and Fire and Life Safety Regulations:

(A) Fire detection and protection equipment must be inspected as required by the State Fire Marshal;

(B) All flammable and combustible materials must be properly labeled and stored in the original container in accordance with the rules of the State Fire Marshal; and

(C) The residential program must conduct unannounced fire evacuation drills at least monthly. At least once every three months the monthly drill must occur between 10 p.m. and 6 a.m. Written documentation of the dates and times of the drills, time elapsed to evacuate, and program staff conducting the drills must be maintained.

(d) At least one program staff who is trained in First Aid and CPR must be onsite at all times; and

(e) In Residential Transition programs, at least one individual, designated by the administrator as being capable of managing emergencies and other situations that require immediate attention, must be onsite at all times when there is no onsite program staff coverage.

(5) Sanitation: The residential program must meet the following sanitation requirements:

(a) All floors, walls, ceilings, window, furniture, and equipment must be kept in good repair, clean, neat, orderly, and free from odors;

(b) Each bathtub, shower, hand-washing sink, and toilet must be kept clean and free from odors;

(c) The water supply in the residential program must meet the requirements of the rules of the Health Division governing domestic water supplies;

(d) Soiled linens and clothing must be stored in an area separate from kitchens, dining areas, clean linens and clothing and unrefrigerated food;

(e) All measures necessary to prevent the entry into the program of mosquitoes and other insects must be taken;

(f) All measures necessary to control rodents must be taken;

(g) The grounds of the program must be kept orderly and free of litter, unused articles, and refuse;

(h) Garbage and refuse receptacles must be clean, durable, water-tight, insect- and rodent proof and kept covered with a tight-fitting lid;

(i) All garbage solid waste must be disposed of at least weekly and in compliance with the rules of the Department of Environmental Quality; and

(j) Sewage and liquid waste must be collected, treated and disposed of in compliance with the rules of the Department of Environmental Quality.

Stat. Auth.: ORS 161.390, 413.042, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10; MHS 15-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

### 309-032-1550

#### Service Conclusion, Transfer, and Continuity of Care

(1) Planned Transfer: Providers must meet the following requirements for planned transfer:

(a) Decisions to transfer individuals must be documented in a transfer summary. The documentation must include the reason for transfer;

(b) For alcohol and other drug treatment services, planned transfer must be consistent with ASAM criteria established in the assessment;

(c) For ITS programs, planned transfer must be consistent with the transfer criteria established by the interdisciplinary team and documented in the ISSP. In addition:

(A) Providers must not conclude services 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 must 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; and

(d) For DUII Alcohol and Other Drug Rehabilitation Programs, the balance, if any, of fees charged not paid by the individual.

(2) Transfer Process and Continuity of Care: Prior to transfer, providers must:

(a) When applicable, coordinate and provide appropriate referrals for medical care and medication management. The transferring provider must assist the individual to identify the medical provider who will provide continuing care and to arrange an initial appointment with that provider;

(b) Coordinate recovery and ongoing support services for individuals and their families including identifying resources and facilitating linkage to other service systems necessary to sustain recovery, including peer delivered services.;

(c) Complete a Transfer Summary;

(d) When services are concluded due to the absence of the individual, the provider must document outreach efforts made to re-engage the individual, or document the reason why such efforts were not made;

(e) If the individual is under the jurisdiction of the PSRB or JPSRB, the provider must notify the PSRB or JPSRB immediately and provide a copy of the Transfer Summary within 30 days;

(f) The provider must report all instances of Transfer on the mandated state data system; and

(g) Transfer in ITS programs: At a minimum, the provider's interdisciplinary team must:

(A) Integrate transfer planning into ongoing treatment planning and documentation from the time of entry, and specify the transfer criteria that must indicate resolution of the symptoms and behaviors that justified the entry;

(B) Review and, if needed, modify the transfer criteria in the ISSP every 30 days;

(C) Notify the child's parent or guardian, and the provider to which the child must be transitioned of the anticipated transfer dates at the time of entry, and when the ISSP is changed;

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(D) Include the parent, guardian and provider to which the child must be transitioned in transfer planning and reflect their needs and desires to the extent clinically indicated;

(E) Finalize the transition plan prior to transfer and identify in the plan the continuum of services and the type and frequency of follow-up contacts recommended by the provider to assist in the child's successful transition to the next appropriate level of care;

(F) Assure that appropriate medical care and medication management must be provided to individuals who leave through a planned transfer. The last service provider's interdisciplinary team must identify the medical personnel who will provide continuing care and must arrange an initial appointment with that provider;

(G) Coordinate appropriate education services with applicable school district personnel; and

(H) Give written transition instructions to the child's parent or guardian and the next provider if applicable, on the date of transfer.

(3) Transfer Summary:

(a) A Transfer Summary must include:

(A) The date and reason for the transfer;

(B) A summary statement that describes the effectiveness of services in assisting the individual and his or her family to achieve intended outcomes identified in the ISSP;

(C) Where appropriate, a plan for personal wellness and resilience, including relapse prevention; and

(D) Identification of resources to assist the individual and family, if applicable, in accessing recovery and resiliency services and supports.

(b) If the transfer is to services with another provider, all documentation contained in the Individual Service Record requested by the receiving provider must be furnished, compliant with applicable confidentiality policies and procedures, within 14 days of receipt of a written request for the documentation.

(c) A complete transfer summary must be sent to the receiving provider within 30 days of the transfer.

Stat. Auth.: ORS 161.390, 413.042, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10; MHS 15-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-032-1555

### Quality Assessment and Performance Improvement

(1) Quality Assessment and Performance Improvement Process: Providers must develop and implement a structured and ongoing process to assess, monitor, and improve the quality and effectiveness of services provided to individuals and their families.

(2) Quality Improvement Committee: The Quality Improvement Committee must oversee and advise the Quality Assessment and Performance Improvement process:

(a) The Quality Improvement Committee must include representatives of individuals served and their families; and

(b) The Quality Improvement Committee must meet at least quarterly to:

(A) Identify indicators of quality including:

(i) Access to services;

(ii) Outcomes of services;

(iii) Systems integration and coordination of services; and

(iv) Utilization of services.

(B) Review incident reports, emergency safety intervention documentation, grievances and other documentation as applicable;

(C) Identify measurable and time-specific performance objectives and strategies to meet the objectives and measure progress;

(D) Recommend policy and operational changes necessary to achieve performance objectives; and

(E) Reassess and, if necessary, revise objectives and methods to measure performance on an ongoing basis to ensure sustainability of improvements.

(3) Performance Improvement Plan: The quality assessment and performance improvement process must be documented in a Performance Improvement Plan including:

(a) Performance objectives aimed at improving services; and

(b) Strategies designed to meet the performance objectives and measure progress.

Stat. Auth.: ORS 161.390, 413.042, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10; MHS 15-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-032-1560

### Grievances and Appeals

(1) Any individual receiving services, or the parent or guardian of the individual receiving services, may file a grievance with the provider, the individual's managed care plan or the Division.

(2) For individuals whose services are funded by Medicaid, grievance and appeal procedures outlined in OAR 410-141-0260 through 410-141-0266, must be followed.

(3) For individuals whose services are not funded by Medicaid, providers must:

(a) Notify each individual, or guardian, of the grievance procedures by reviewing a written copy of the policy upon entry;

(b) Assist individuals and parents or guardians, as applicable, to understand and complete the grievance process; and notify them of the results and basis for the decision;

(c) Encourage and facilitate resolution of the grievance at the lowest possible level;

(d) Complete an investigation of any grievance within 30 calendar days;

(e) Implement a procedure for accepting, processing and responding to grievances including specific timelines for each;

(f) Designate a program staff person to receive and process the grievance;

(g) Document any action taken on a substantiated grievance within a timely manner; and

(h) Document receipt, investigation and action taken in response to the grievance.

(4) Grievance Process Notice. The provider must have a Grievance Process Notice, which must be posted in a conspicuous place stating the telephone number of:

(a) The Division;

(b) The CMHP;

(c) Disability Rights Oregon; and

(d) The applicable managed care organization.

(5) Expedited Grievances: In circumstances where the matter of the grievance is likely to cause harm to the individual before the grievance procedures outlined in these rules are completed, the individual, or guardian of the individual, may request an expedited review. The program administrator must review and respond in writing to the grievance within 48 hours of receipt of the grievance. The written response must include information about the appeal process.

(6) Retaliation: A grievant, witness or staff member of a provider must not be subject to retaliation by a provider for making a report or being interviewed about a grievance or being a witness. Retaliation may include, but is not limited to, dismissal or harassment, reduction in services, wages or benefits, or basing service or a performance review on the action.

(7) Immunity: The grievant is immune from any civil or criminal liability with respect to the making or content of a grievance made in good faith.

(8) Appeals: Individuals and their legal guardians, as applicable, must have the right to appeal entry, transfer and grievance decisions as follows:

(a) If the individual or guardian, if applicable, is not satisfied with the decision, the individual or guardian may file an appeal in writing within ten working days of the date of the program administrator's response to the grievance or notification of denial for services as applicable. The appeal must be submitted to the CMHP Director in the county where the provider is located or to the Division as applicable;

(b) If requested, program staff must be available to assist the individual;

(c) The CMHP Director or Division, must provide a written response within ten working days of the receipt of the appeal; and

(d) If the individual or guardian, if applicable, is not satisfied with the appeal decision, he or she may file a second appeal in writing within ten working days of the date of the written response to the Director.

Stat. Auth.: ORS 161.390, 413.042, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10; MHS 15-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

# ADMINISTRATIVE RULES

## 309-032-1565

### Variations

(1) Criteria for a Variance: Variations may be granted to a LMHA, CMHP or provider holding a certificate directly with the Division, by the Division:

(a) If there is a lack of resources to implement the standards required in these rules; or

(b) If implementation of the proposed alternative services, methods, concepts or procedures would result in improved outcomes for the individual.

(2) Application for a Variance:

(a) CMHPs and other providers may submit their variance request directly to the Division;

(b) Providers who hold Certificates of Approval jointly with CMHP's and the Division must submit their variance requests to the CMHP. The CMHP must then submit the variance request, along with the CMHP's written recommendation;

(c) The LMHA, CMHP or provider requesting a variance must submit a written application to the Deputy Director; and

(d) Variance requests must contain the following:

(A) The section of the rule from which the variance is sought;

(B) The reason for the proposed variance;

(C) The alternative practice, service, method, concept or procedure proposed;

(D) When the variance directly affects services provided, a description of the individual's opinion and participation in requesting the variance;

(E) A proposal for the duration of the variance; and

(F) A plan and timetable for compliance with the section of the rule for which the variance applies.

(3) Division Review and Notification: The Deputy Director of the Division must approve or deny the request for a variance and must notify the LMHA, CMHP or provider in writing of the decision to approve or deny the requested variance, within 30 days of receipt of the variance. The written notification must include the specific alternative practice, service, method, concept or procedure that is approved and the duration of the approval.

(4) Appeal Application: Appeal of the denial of a variance request must be made in writing to the Director of the Division, whose decision will be final and must be provided in writing within 30 days of receipt of the appeal.

(5) Written Approval: The LMHA, CMHP or provider may implement a variance only after written approval from the Division.

(6) Duration of Variance: It is the responsibility of the LMHA, CMHP or the provider to submit a request to extend a variance in writing prior to a variance expiring. Extension must be approved in writing by the Division.

(7) Granting a variance for one request does not set a precedent that must be followed by the Division when evaluating subsequent requests for variance.

Stat. Auth.: ORS 161.390, 413.042, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10; MHS 15-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

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**Rule Caption:** State Hospital Admissions and Discharges.

**Adm. Order No.:** MHS 16-2011(Temp)

**Filed with Sec. of State:** 12-29-2011

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**Rules Suspended:** 309-031-0200, 309-031-0205, 309-031-0210, 309-031-0215, 309-031-0220, 309-031-0250, 309-031-0255

**Subject:** These rules establish and define the criteria which support the proper management and utilization of services provided by the Oregon state hospital system, by limiting admissions to those most severely symptomatic individuals whose treatment and recovery needs cannot be met in a community treatment setting.

**Rules Coordinator:** Nola Russell—(503) 945-7652

## 309-031-0200

### Purpose and Statutory Authority

(1) Purpose, Summary, and Scope. These rules prescribe criteria and procedures for admission and discharge of mentally ill persons at state or other inpatient psychiatric hospitals for which the Division provides Medicaid reimbursement. The purpose of these rules is to define the appropriate use of these psychiatric hospitals and to encourage use of community services.

(2) The criteria limit hospital admissions to state or other inpatient psychiatric hospitals to adults with severe mental disorders who need hospital care or treatment. Minors are prohibited admission to adult wards. The procedures provide that persons be admitted or discharged after consultation with the responsible community mental health program.

(3) The criteria limit hospital admissions to child and adolescent treatment programs in state or other inpatient psychiatric hospitals to those children and adolescents most in need. The procedures provide that admissions for children and adolescents be coordinated through the local community coordinating committee in the child's or adolescent's county of residence.

(4) The scope of these rules is limited to persons civilly committed or voluntarily admitted. When a hospital is overcrowded, voluntary admissions may be curtailed.

(5) Statutory Authority. These rules are authorized by ORS 161.390, 179.040, and 413.042 and carry out the provisions of ORS 179.321, 179.325, 179.360, 426.005 through 426.395, and 430.620 through 430.670.

Stat. Auth.: ORS 161, 390, 179.040 & 413.042

Stats. Implemented: ORS 161, 426.005 - 426.680, 427.175 & 427.180

Hist.: MHD 24-1982, f. 10-13-82, ef. 11-15-82; MHD 7-1987, f. & ef. 12-30-87; Suspended by MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-031-0205

### Definitions

As used in these rules:

(1) "Admission" means accepting a person for treatment of a mental illness by a state or other inpatient psychiatric hospital on a voluntary basis (ORS 426.217 or 426.220) or civil commitment (ORS 426.005 through 426.395).

(2) "Commitment" means the involuntary admission of a person to a state or other inpatient psychiatric hospital under warrant of detention (ORS 426.080), civil commitment (ORS 426.130), two-physician hold (ORS 426.175), emergency commitment (ORS 426.180 to 426.395), or peace-officer hold (ORS 426.228).

(3) "Community Coordinating Committee" means a committee composed of representatives from the local community mental health program, Children's Services Division, Juvenile Court, local education district, and a representative of Oregon State Hospital's Child and Adolescent Treatment Program. The committee carries out the intake function to assure the need for hospitalization.

(4) "Community Mental Health Program" means the organization of all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems, operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(5) "Community Outreach Team" means a component of Oregon State Hospital's Child and Adolescent Treatment Program responsible for coordinating all community screenings, crisis and regular admissions, and discharge and follow-up activities.

(6) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(7) "DSM-III-R" means **Diagnostic and Statistical Manual of Mental Disorders, Third Edition, American Psychiatric Association, 1987.**

(8) "Hospital-Community Linkage Agreement" means the written agreement between community mental health programs and a state psychiatric hospital concerning the policies and procedures to be followed when a patient is admitted and discharged. (See ORS 430.630 and OAR 309-014-0035).

(9) "Other Inpatient Psychiatric Hospital" means those parts of a licensed psychiatric hospital receiving Medicaid reimbursement for eligible patients through the Division.

(10) "Parent" means a custodial parent, the adult next of kin, or the legal guardian of a minor. (See ORS 426.220.)

(11) "Patient" means a child, adolescent or adult admitted to a state or other inpatient psychiatric hospital.

# ADMINISTRATIVE RULES

(12) "Program Bed Capacity" means the greatest number of patients at a state psychiatric hospital that can be managed in a safe, therapeutic environment.

(13) "Program Office" means the Office of Programs for Mental or Emotional Disturbances of the Division.

(14) "Psychiatric Emergency" means an imminent threat to life or of serious bodily injury to self or others resulting from severe mental disorder.

(15) "Psychotic" means a gross impairment of reality testing, as defined in the **DSM-III-R Glossary**. Persons with a psychotic disorder may "hear voices;" talk incoherently or illogically, strongly hold irrational beliefs, fail to react to the external environment, or experience unwarranted feelings of deep depression, extreme elation or intense anxiety. Their thinking is so disordered that they have substantially lost touch with reality.

(16) "Resident" means the resident of a county in which the person maintains a current mailing address or, if the person does not maintain a current mailing address within the state, the county in which the person is found, or the county in which a court committed mentally ill person has been conditionally released. ORS 430.630.

(17) "Responsible Community Mental Health Program" means the community mental health program (CMHP) that serves the county where the person is a resident.

(18) "Severe Mental Disorder" means psychotic disorder or other mental disorder of comparable severity. Any severe mental disorder may exist in stages and forms manageable in the community, and may be either active or in remission.

(19) "State Psychiatric Hospital" means Dammasch State Hospital, Eastern Oregon Psychiatric Center, or General Psychiatric Services, Geropsychiatric Treatment Program and the Child and Adolescent Treatment Program at Oregon State Hospital.

(20) "Superintendent" means the chief executive officer of the state or other inpatient psychiatric hospital, or that officer's designee. If the superintendent is not a physician licensed by the State Board of Medical Examiners, the chief medical officer shall assume the duties prescribed in these rules. ORS 179.360(1)(f) and 426.020.

Stat. Auth.: ORS 161, 390, 179.040 & 413.042

Stats. Implemented: ORS 161, 426.005 – 426.680, 427.175 & 427.180

Hist.: MHD 24-1982, f. 10-13-82, ef. 11-15-82; MHD 7-1987, f. & ef. 12-30-87; Suspended by MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-031-0210

### Criteria for Admission to and Discharge From State or Other Adult Inpatient Psychiatric Hospitals

#### (1) Admission Criteria:

(a) Mental disorder. All admissions, voluntary and civilly committed, shall be limited to adults whose mental disorder is severe; and

(b) Need specialized care and/or treatment available in a state or other inpatient psychiatric hospital and not otherwise available to the patient in a community program. A patient needs hospital care and/or treatment if failure to receive it would result in serious harm.

#### (2) Discharge Criteria:

(a) Mental disorder. The superintendent or designee shall discharge any patient (whether voluntarily admitted or civilly committed) whose mental disorder:

(A) Is no longer present, in remission; or

(B) Can receive appropriate care and/or treatment which is available to the patient in a community program.

(b) However, a patient whose disorder is in remission should not be released if continued hospital care or treatment is needed to help the patient remain in remission for a reasonable time after release;

(c) Medical Judgment. The findings of severe mental disorder required by sections (1) and (2) of this rule, shall be according to reasonable medical judgment.

Stat. Auth.: ORS 161, 390, 179.040 & 413.042

Stats. Implemented: ORS 161, 426.005 – 426.680, 427.175 & 427.180

Hist.: MHD 24-1982, f. 10-13-82, ef. 11-15-82; MHD 7-1987, f. & ef. 12-30-87; Suspended by MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-031-0215

### Criteria for Admission to and Discharge From State or Other Adult Inpatient Psychiatric Hospitals

(1) Screening. The responsible community mental health program (CMHP) shall, if possible, screen and refer persons whose admission to a state or other inpatient psychiatric hospital is sought. The purpose of this screening is to determine the availability of appropriate care or treatment in the community. For state hospitals, hospital-community linkage agreements shall specify the procedures for screening. The CMHP shall communicate the results of screening by telephone.

(2) Scheduling. In order to provide a comprehensive evaluation in a state hospital, admission should occur between 8:30 a.m. and 4 p.m., Mondays through Fridays except holidays. The responsible CMHP should telephone the hospital to make appointments for these evaluations and should be available for telephone consultation.

(3) Temporary Admissions. In exceptional situations, persons who meet the admission criteria and who need immediate hospitalization may be temporarily admitted to a state hospital at any time. Exceptional situations include but are not restricted to persons:

(a) For whom screening or scheduling by the responsible CMHP is not feasible;

(b) Who pose a psychiatric emergency;

(c) Who present themselves at the hospital having travelled long distances;

(d) Who have been committed by warrant of detention, two-physician hold, emergency commitment, or peace-officer hold;

(e) For whom team evaluation cannot be scheduled; or

(f) Whom a private physician has referred;

(g) The superintendent or designee shall notify the responsible CMHP of temporary admissions. This notice shall be given either immediately, if the CMHP is open or has a 24-hour crisis response, or at the beginning of the next CMHP workday. The hospital team shall re-evaluate each temporary admission after consultation with the CMHP, during scheduled hours. This consultation shall determine whether appropriate care or treatment is available in the community. No temporary admission shall extend beyond the next scheduled admission day.

(4) Authority. The superintendent or designee has the final authority on the decision to admit and discharge voluntary patients and to discharge civilly committed patients. The Administrator of the Division has authority to assign civilly committed patients to the appropriate facility, unless the Administrator has delegated this authority to a county. ORS 426.060(2) through 426.060(4).

(5) Records. The superintendent or designee shall document in the patient's clinical record:

(a) Those aspects of the history and/or examination used in arriving at the conclusions that a patient is severely mentally disordered and needs hospital care or treatment, or that the patient poses a psychiatric emergency;

(b) Sufficient medical orders to provide for the initial care, safety, and treatment of the patient;

(c) The procedures by which the patient was admitted or discharged;

(d) The reasons for discharge; and

(e) The recommendations of the CMHP, the hospital's action in response, and the hospital's reasons if these recommendations have not been followed.

(6) Notice. When a patient is admitted or discharged, the superintendent or designee shall promptly notify the responsible CMHP. For civilly committed patients, the court shall also be notified. If the patient has had no responsible CMHP or if the responsible CMHP is unknown, the superintendent or designee shall determine the patient's county of residence, in order to determine which CMHP is responsible for the patient. See the definitions of "resident" and "responsible CMHP;" OAR 309-031-0025. The superintendent or designee shall inform the patient of the CMHP responsible for him or her.

(7) Referral. If admission is denied, the superintendent or designee shall promptly notify the responsible CMHP and, for civilly committed patients the court, and for patients referred by private physicians, the physician. The superintendent or designee shall refer the person to appropriate community care including crisis respite services, and should assist the person in obtaining alternative care.

(8) Periodic Review. Patients who remain in a state or other inpatient psychiatric hospital after 15 days shall be reviewed by staff of the responsible CMHP. The purpose of this review is to determine the availability of appropriate resources for care or treatment in the community. For state psychiatric hospitals, hospital-community linkage agreements shall specify the procedure for review. The CMHP shall, directly or by telephone, notify the hospital staff of the recommendations resulting from this review. The recommendation shall be either:

(a) That appropriate resources do not exist in the community, and that the CMHP recommends continued hospitalization. A new review shall be conducted within 60 days. Hospital-community linkage agreements may specify more frequent review; or

(b) That appropriate resources do exist in the community. The CMHP, with the cooperation of the hospital staff, shall develop a discharge plan for the patient.

# ADMINISTRATIVE RULES

(9) Utilization Review. Each state psychiatric hospital shall systematically review admissions and discharges at that hospital. A plan for this utilization review shall be established by the superintendent or designee, submitted to the Program Office within 30 days of adoption of this rule, and approved by the Program Office. This review will monitor the number and appropriateness of temporary and regular admissions, the length of stay, discharges, and the quality of care and treatment provided.

Stat. Auth.: ORS 161.390, 179.040 & 413.042  
Stats. Implemented: ORS 179.321, 179.325, 179.360, 426.005 – 426.395 & 430.620 – 430.670  
Hist.: MHD 24-1982, f. 10-13-82, ef. 11-15-82; MHD 7-1987, f. & ef. 12-30-87; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; Administrative correction, 6-23-08; Suspended by MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-031-0220

### Additional Procedures for Voluntary Admission to and Discharge From State or Other Adult Inpatient Psychiatric Hospitals

In addition to the criteria of OAR 309-031-0210 and the procedures of OAR 309-031-0215, the following procedures shall apply to voluntary admission and discharge:

(1) Voluntary Admission Procedure. Persons who apply for voluntary admission may be admitted to a state or other inpatient psychiatric hospital only when the superintendent or designee has:

(a) Informed the person regarding the procedures for voluntary admission and discharge, including the 72-hour hold after withdrawal of consent under section (3) of this rule; and

(b) Witnessed the signature on a form approved by the Division.

(2) Discharge at the Patient's Request. Patients voluntarily admitted and not involuntarily committed to the Division and assigned to a state or other psychiatric hospital shall be discharged within 72 hours of receipt of written notice of a desire to be discharged, pursuant to ORS 426.220, as follows:

(a) All patients shall be released within 72 hours of receipt of written notice from the patient;

(b) Written notice under this section may be submitted to the superintendent or designee, the patient's attending physician, or the hospital staff that provides immediate care and supervision. If a patient gives oral notice, the staff shall assist the patient in giving written notice;

(c) If the medical staff believes that discharge would be detrimental to the health and safety of the patient or others, but the patient does not meet the criteria for involuntary commitment, the patient shall be discharged against medical advice. The patient shall be informed of this medical opinion;

(d) If the medical staff believes that the patient meets the criteria for involuntary commitment, the staff shall so inform the patient. The staff may initiate an involuntary commitment proceeding;

(e) An adult seeking voluntary admission to a state psychiatric hospital may be required, as a condition of admission, to waive his or her right to terminate the voluntary admission for a period not to exceed 30 days. The admitting medical staff may require this waiver if they believe that the person's mental disorder could not otherwise be successfully treated.

(3) Transfer to Another Medical Facility. If a patient voluntarily admitted develops a surgical or medical condition that requires transfer to another medical facility, that patient may be discharged from the state or other inpatient psychiatric hospital at the time of transfer.

Stat. Auth.: ORS 161.390, 179.040 & 413.042  
Stats. Implemented: ORS 179.321, 179.325, 179.360, 426.005 – 426.395 & 430.620 – 430.670  
Hist.: MHD 50(Temp), f. & ef. 12-21-77; MHD 6-1978, f. & ef. 3-20-78; MHD 24-1982, f. 10-13-82, ef. 11-15-82, Renumbered from 309-031-0020; MHD 7-1987, f. & ef. 12-30-87; Suspended by MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-031-0250

### Program Bed Capacity

(1) In order to prevent unsafe or untherapeutic conditions due to overcrowding, the Division, in consultation with the superintendent or designee, shall establish the Program Bed Capacity for each state psychiatric hospital. The Program Bed Capacity shall depend on such factors as budgeted staffing levels, licensed bed capacity, and ward geography.

(2) Whenever the Program Bed Capacity is exceeded, the Superintendent or designee shall take immediate steps to reduce the hospital population. These steps may include denying voluntary admissions. Whatever the hospital population, a person who poses a psychiatric emergency shall have high priority for admission or retention.

Stat. Auth.: ORS 161.390, 179.040 & 413.042  
Stats. Implemented: ORS 179.321, 179.325, 179.360, 426.005 – 426.395 & 430.620 – 430.670  
Hist.: MHD 7-1987, f. & ef. 12-30-87; Suspended by MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-031-0255

### Variances

A variance from these rules may be granted to a Superintendent of a state or other inpatient psychiatric hospital. A variance may be requested on a case-by-case basis, or may exempt a state or other psychiatric hospital from a general rule or rules and substitute an alternative practice.

(1) A superintendent of a state or other psychiatric hospital requesting a variance shall submit, in writing, to the Division:

- (a) The section of the rule from which the variance is sought;
- (b) The reason for the proposed variance;
- (c) The alternative practice proposed;
- (d) The duration that the alternative practice will remain in effect.

(2) The Assistant Administrator of the Division shall approve or deny the request for variance in writing.

(3) The Assistant Administrator of the Division shall notify the Superintendent of the decision. Notice shall be given, in writing, within 30 days of receipt of the request by the Division.

(4) Appeal of the denial of a variance request shall be to the Administrator of the Division, whose decision shall be final.

Stat. Auth.: ORS 161.390, 179.040 & 413.042  
Stats. Implemented: ORS 179.321, 179.325, 179.360, 426.005 – 426.395 & 430.620 – 430.670  
Hist.: MHD 7-1987, f. & ef. 12-30-87; Suspended by MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-091-0000

### Purpose and Scope

(1) These rules establish and define the criteria which support the proper management and utilization of services provided by the Oregon state hospital system, by limiting admissions to those most severely symptomatic individuals whose treatment and recovery needs cannot be met in a community treatment setting.

(2) These rules apply to all individuals admitted into any state hospital setting, and address differences which occur due to each individual's legal status.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 179.321, 426.010, 426.020, 426.072  
Hist.: MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-091-0005

### Definitions

(1) "AMH" means the Addictions and Mental Health Division of the Oregon Health Authority.

(2) "Authority" means the Oregon Health Authority.

(3) "Chief Medical Officer" (CMO) means the physician designated by the superintendent of each state institution who is responsible for the administration of medical treatment, or his or her designee.

(4) "Civil Commitment" means the individual has been committed to the Authority for emergency psychiatric care and treatment pursuant to ORS 426.070, 426.228 to 426.235 or 426.237.

(5) "Clinical Reviewer" means the Division employee designated to the role of determining eligibility for state hospital admissions.

(6) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(7) "DSM" means the most recent edition of the Diagnostic and Statistical Manual of Psychiatric Disorders, published by the American Psychiatric Association.

(8) "Forensic" means related to the law, and references individuals committed to treatment and supervision by the courts pursuant to Oregon Revised Statutes (ORS) 161.290 – 161.400.

(9) "Legal Guardian" in this rule means an individual appointed by a court of law to act as guardian of an adult having been determined to be legally incapacitated.

(10) "Licensed Residential Facility or Licensed Residential Home" means those residences defined in OAR 309, Chapter 035.

(11) "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 CMHP;

(b) The tribal council of a federally recognized tribe of Native Americans that elects to enter into an agreement to provide mental health services or

(c) A regional LMHA comprised of two or more boards of county commissioners.

(12) "Primary Diagnosis" means the diagnosis which identified the condition considered the most severe for which the individual receives treatment.

# ADMINISTRATIVE RULES

(13) “Psychiatric Security Review Board” (PSRB) means board appointed by the Governor and authorized in ORS 161.385.

(14) “Responsible Party” means the LMHA, community mental health program, the Medicaid managed care organization, when applicable the individual’s legal guardian, and other parties identified by AMH.

(15) “Severe Mental Illness” (SMI) means an individual’s symptoms meet the criteria in OAR 309-091-0010.

(16) “State Hospital” means any campus of the Oregon State Hospital (OSH) system, and the Blue Mountain Recovery Center (BMRC).

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 179.321, 426.010, 426.020, 426.072

Hist.: MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-091-0010

### Civily Committed and Guardian Authorized Admission Criteria

Each non-forensic individual admitted to a state hospital must meet the following criteria:

(1) The individual must be age 18 or older;

(2) The individual must be named in a current civil commitment order, or the individual’s legal guardian must have signed consent for admission;

(3) There must be recent documentation by a qualified professional that the individual is experiencing an Axis I diagnosis of a mental disorder with severe psychotic symptoms, such as schizophrenia, delusional disorder, affective disorder, mood disorder or other disorders which manifest psychotic symptoms as defined in the most recent version of the DSM; and

(4) The current symptoms must be of such severity that the resulting symptoms require extended placement in a 24-hour medically supervised psychiatric hospital. Severity is established by a determination of:

(a) The degree of dangerousness to self;

(b) The degree of dangerousness to others; and

(c) The degree of the individual’s inability to meet his or her basic health and safety needs.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 179.321, 426.010, 426.020, 426.072

Hist.: MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-091-0015

### Determining Need for State Hospital Care

(1) State hospital level of care is determined appropriate when the individual’s condition or symptoms have not improved in an acute care setting despite having received comprehensive psychiatric and medical assessment, treatment and/or community services typical for a psychiatric illness or psychiatric emergency.

(2) Prior to referral for admission to a state hospital, the individual should have received:

(a) A comprehensive medical assessment to identify conditions that may be causing, contributing to, or exacerbating the mental illness;

(b) Services from an appropriate medical professional for the treatment and stabilization of any medical or surgical conditions that may be contributing to or exacerbating the mental illness and

(c) Treatment in an acute setting within the parameters of the most recent version of the American Psychiatric Association Practice Guidelines for the Treatment of Psychiatric Disorders.

(d) In addition there must be evidence of additional treatment and services having been attempted, including:

(A) Use of evidence-based or promising psychosocial interventions which were delivered in relevant culturally-competent, strength-based, person-centered and trauma-informed manners and which adequately treated the assessed and/or expressed needs of the individual. When requested by the individual, treatments should include members of the individual’s family, support network and/or peers;

(B) Documentation of ongoing review and discussion of options for discharge to non-hospital levels of care; and

(C) Documentation of services and supports attempted by the responsible party to divert admission and establish treatment and recovery in a non-hospital setting.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 179.321, 426.010, 426.020, 426.072

Hist.: MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-091-0020

### Neuropsychiatric and Geropsychiatric Admissions

Admissions due primarily to symptoms resulting from a traumatic or acquired brain injury, dementia or other cognitive disorders, or an organic brain syndrome due to a medical condition may occur on a case-by-case basis when, as determined by the designated clinical reviewer, the individ-

ual’s condition or symptoms would likely improve if treated in a state hospital, and at least one of the following:

(1) Denial of admission will result in a serious health or safety issue for the individual; or

(2) Denial of admission will cause a specifically described community safety issue; or

(3) Denial of admission will result in the significant worsening of the individual’s condition.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 179.321, 426.010, 426.020, 426.072

Hist.: MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-091-0025

### Exclusion Criteria and Exceptions

(1) State hospitals are intended to provide recovery-oriented intervention for individuals experiencing symptoms related to a severe, persistent and disabling mental illness.

(2) Admissions must not be based upon a primary diagnosis of the following related conditions:

(a) An acute or existing medical or surgical condition which requires primary placement in a medical setting and which cannot be safely or adequately treated within a state hospital facility;

(b) Delirium;

(c) Pervasive Developmental Disorder;

(d) Intellectual Developmental Disorder;

(e) Substance Use or Substance Abuse Disorder or

(f) Personality Disorder.

(3) Administrative transfers from the Oregon Department of Correction of individuals for the purpose of treatment may occur in accordance with OAR 291-047-0021. Individuals civilly committed upon discharge from the Oregon Department of Correction must meet the admission criteria and the process defined in this rule.

(4) Administrative transfers from the Oregon Youth Authority of individuals over the age of 18 for the purpose of stabilization and evaluation not exceeding 30 days may occur in accordance with OAR 416-425-020.

(a) Individuals transferred for the purpose of stabilization and evaluation for a period of time exceeding 30 days may occur in accordance with OAR 416-425-020.

(b) Individuals over the age of 18 who are civilly committed upon discharge from the Oregon Youth Authority must meet the admission criteria and the process defined in this rule.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 179.321, 426.010, 426.020, 426.072

Hist.: MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-091-0030

### Discharge Planning

(1) The state hospital will notify the responsible parties of each admission, unit or campus transfer, and each hospital treatment team determination related to assessing discharge readiness.

(2) The responsible party must arrange housing, treatment and other services assessed as needed to support the continuity of care necessary to maintain the individual’s stability in the community.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 179.321, 426.010, 426.020, 426.072

Hist.: MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-091-0035

### Discharge Criteria and Procedures for Civil Commit or Guardian

(1) The state hospital will periodically assess the individual’s continued need for state hospital level of care based upon the admission criteria established in these rules.

(2) The state hospital retains the authority to solely determine when someone no longer needs state hospital level of care based on standardized criteria adopted by the hospital. Whenever possible, the decision should be made in collaboration with the responsible party and legal guardian, when applicable.

(3) An individual determined ready for discharge may later be determined not ready for discharge and removed from the discharge ready list.

(4) Individuals with an active discharge and community placement plan who no longer meet the state hospital criteria as defined in these rules shall not remain in an Oregon state hospital.

(5) Prior to an individual no longer needing state hospital level of care, the hospital will collaborate with the responsible party and with the patient’s legal guardian if assigned by the courts, to identify appropriate services and supports for the patient.

# ADMINISTRATIVE RULES

(6) When an individual no longer needs state hospital level of care, and an appropriate community transition plan and additional necessary supports are in place, the patient will be discharged.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 179.321, 426.010, 426.020, 426.072  
Hist.: MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-091-0040

### Forensic Admission Criteria and Procedures

Forensic admissions will occur as prescribed ORS 161.327, 161.328, 161.365, 161.370.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 179.321, 426.010, 426.020, 426.072  
Hist.: MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-091-0045

### Discharge Criteria and Procedures

(1) Individuals admitted by court order after a finding of guilty except for insanity of a felony will be discharged when approved by the PSRB and in accordance with the state hospital policies and procedures.

(2) Individuals whose jurisdiction under the PSRB has ended as identified by the state hospital Legal Department shall be allowed to discharge on midnight of the final day of PSRB jurisdiction unless the hospital determines the need for civil commitment or some other legal hold.

(3) The responsible party will assess individuals ending jurisdiction and when determined appropriate, arrange housing, treatment and other services assessed as needed to support the continuity of care necessary to maintain the individual's stability in the community.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 179.321, 426.010, 426.020, 426.072  
Hist.: MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

## 309-091-0050

### Other Forensic Discharges and Roles of Responsible Parties

(1) Individuals committed to the state hospital pursuant to ORS 161.328 and 161.370 will be discharged upon determination by the superintendent that the individual no longer presents a substantial danger to others.

(2) The responsible party must provide assistance to individuals determined through assessment as needing treatment, services or supports upon discharge.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 179.321, 426.010, 426.020, 426.072  
Hist.: MHS 16-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-29-12

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## Oregon Health Authority, Division of Medical Assistance Programs Chapter 410

**Rule Caption:** January 2012 Health Services Commission Prioritized List changes and other rule clarifications

**Adm. Order No.:** DMAP 41-2011

**Filed with Sec. of State:** 12-21-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 410-123-1060, 410-123-1220, 410-123-1260, 410-123-1490

**Subject:** The Dental Services Program administrative rules govern Division payment for services to certain clients. The Division amended rules to:

- Correspond with the biennial review of the Health Services Commission's Prioritized List of Services for January 1, 2012, which reprioritizes some dental procedures above the funding line that had not previously been covered and moves other procedures below the funding line, to medical line, or to the excluded (never-covered) list;

- Clarify requests for prior authorizations for outpatient hospital or ambulatory surgical center services for clients assigned to a Physician Care Organization (PCO);

- Change the title of the Limited Permit Dental Hygienist to Expanded Practice Dental Hygienist in accordance with legislation passed in the 2011 Legislative Session;

- Reference the updated "Covered and Non-Covered Services document" and other minor clarifications.

- Clarify current policies and procedures to ensure these rules are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance and

help facilitate provider compliance with eligibility, service coverage and limitations, and billing requirements.

- Revise text to improve readability and take care of "housekeeping" corrections if needed.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-123-1060

### Definition of Terms

(1) Anesthesia – The following depicts the Division of Medical Assistance Programs' (Division) usage of certain anesthesia terms, however for further details refer also to the Oregon Board of Dentistry administrative rules (OAR chapter 818, division 026):

(a) Conscious Sedation:

(A) Deep Sedation – A drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance maintaining a patient airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained;

(B) Minimal sedation – A minimally depressed level of consciousness, produced by non-intravenous pharmacological methods, that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. When the intent is minimal sedation for adults, the appropriate initial dosing of a single non-intravenous pharmacological method is no more than the maximum recommended dose (MRD) of a drug that can be prescribed for unmonitored home use. Nitrous oxide/oxygen may be used in combination with a single non-intravenous pharmacological method in minimal sedation;

(C) Moderate sedation – A drug-induced depression of consciousness during which the patient responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patient airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained;

(b) General Anesthesia – A drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patient airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired;

(c) Local anesthesia – The elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug;

(d) Nitrous Oxide Sedation – An induced controlled state of minimal sedation, produced solely by the inhalation of a combination of nitrous oxide and oxygen, in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command;

(2) Citizen/Alien-Waived Emergency Medical (CAWEM) – Refer to OAR 410-120-0000 for definition of clients who are eligible for limited emergency services under the CAWEM benefit package. The definition of emergency services does not apply to CAWEM clients. OAR 410-120-1210 provides a complete description of limited emergency coverage pertaining to the CAWEM benefit package.

(3) Covered Services – Services on the Health Services Commission's (HSC) Prioritized List of Health Services (List) that have been funded by the Legislature and identified in specific program rules. Services are limited as directed by General Rules – Excluded Services and Limitations (OAR 410-120-1200), the Division's Dental Services Program rules (chapter 410, division 123) and the HSC List. Services that are not considered emergency dental services as defined by OAR 410-123-1060(12) are considered routine services.

(4) Dental Hygienist – A person licensed to practice dental hygiene pursuant to State law.

(5) Dental Hygienist with Expanded Practice Dental Hygiene Permit (EPDH) – A person licensed to practice dental hygiene with an EPDH permit issued by the Board of Dentistry and within the scope of an EPDH permit pursuant to State law.

(6) Dental Practitioner – A person licensed pursuant to State law to engage in the provision of dental services within the scope of the practitioner's license and/or certification.

(7) Dental Services – Services provided within the scope of practice as defined under State law by or under the supervision of a dentist or dental hygienist, or denture services provided within the scope of practice as defined under State law by a denturist.



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(8) Dental Services Documentation – Must meet the requirements of the Oregon Dental Practice Act statutes; administrative rules for client records and requirements of OAR 410-120-1360, “Requirements for Financial, Clinical and Other Records;” and any other documentation requirements as outlined in the Dental rules.

(9) Dentally Appropriate – In accordance with OAR 410-141-0000, services that are required for prevention, diagnosis or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community, evidence-based medicine and professional standards of care as effective;

(c) Not solely for the convenience of a OHP member or a provider of the service; and

(d) The most cost effective of the alternative levels of dental services that can be safely provided to a Division member.

(10) Dentist – A person licensed to practice dentistry pursuant to State law.

(11) Denturist – A person licensed to practice denture technology pursuant to State law.

(12) Direct Pulp Cap – The procedure in which the exposed pulp is covered with a dressing or cement that protects the pulp and promotes healing and repair.

(13) Emergency Services:

(a) Refer to OAR 410-120-0000 for the complete definition of emergency services. (This definition of emergency services does not apply to CAWEM clients. OAR 410-120-1210 provides a complete description of limited emergency coverage pertaining to the CAWEM benefit package);

(b) Covered services for an emergency dental condition manifesting itself by acute symptoms of sufficient severity requiring immediate treatment. This includes services to treat the following conditions:

(A) Acute infection;

(B) Acute abscesses;

(C) Severe tooth pain;

(D) Unusual swelling of the face or gums; or

(E) A tooth that has been avulsed (knocked out);

(c) The treatment of an emergency dental condition is limited only to covered services. The Division recognizes that some non-covered services may meet the criteria of treatment for the emergency condition however this rule does not extend to those non-covered services. Routine dental treatment or treatment of incipient decay does not constitute emergency care;

(d) The OHP Standard Benefit Package includes a limited emergency dental benefit. Refer to OAR 410-123-1670.

(14) Hospital Dentistry – Dental services normally done in a dental office setting, but due to specific client need (as detailed in OAR 410-123-1490) are provided in an ambulatory surgical center, inpatient, or outpatient hospital setting under general anesthesia (or IV conscious sedation, if appropriate).

(15) Medical Practitioner – A person licensed pursuant to State law to engage in the provision of medical services within the scope of the practitioner’s license and/or certification.

(16) Procedure Codes – The procedure codes in the Dental Services rulebook (OAR chapter 410, division 123) refer to Current Dental Terminology (CDT), unless otherwise noted. Codes listed in this rulebook and other documents incorporated in rule by reference are subject to change by the American Dental Association (ADA) without notification.

(17) Standard of Care – What reasonable and prudent practitioners would do in the same or similar circumstances.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12

## 410-123-1220

### Coverage According to the Prioritized List of Health Services

This rule incorporates by reference the “Covered and Non-Covered Dental Services” document, dated January 1, 2012, and located on the Division of Medical Assistance Programs (Division) Web site at: [www.dhs.state.or.us/policy/healthplan/guides/dental/main.html](http://www.dhs.state.or.us/policy/healthplan/guides/dental/main.html).

(a) The “Covered and Non-Covered Dental Services” document lists coverage of Current Dental Terminology (CDT) procedure codes according to the Oregon Health Services Commission (HSC) Prioritized List of

Health Services (HSC Prioritized List) and the client’s specific Oregon Health Plan benefit package;

(b) This document is subject to change if there are funding changes to the HSC Prioritized List.

(2) Changes to services funded on the HSC Prioritized List are effective on the date of the HSC Prioritized List change:

(a) The Division administrative rules (chapter 410, division 123) will not reflect the most current HSC Prioritized List changes until they have gone through the Division rule filing process;

(b) For the most current HSC Prioritized List, refer to the HSC Web site at [www.oregon.gov/OHPPR/HSC/current\\_prior.shtml](http://www.oregon.gov/OHPPR/HSC/current_prior.shtml);

(c) In the event of an alleged variation between a Division-listed code and a national code, the Division shall apply the national code in effect on the date of request or date of service.

(3) Refer to OAR 410-123-1260 for information about limitations on procedures funded according to the HSC Prioritized List. Examples of limitations include frequency and client’s age.

(4) The HSC Prioritized List does not include or fund the following general categories of dental services and the Division does not cover them for any client. Several of these services are considered elective or “cosmetic” in nature (i.e., done for the sake of appearance):

(a) Desensitization;

(b) Implant and implant services;

(c) Mastique or veneer procedure;

(d) Orthodontia (except when it is treatment for cleft palate);

(e) Overhang removal;

(f) Procedures, appliances or restorations solely for aesthetic/ cosmetic purposes;

(g) Temporomandibular joint dysfunction treatment; and

(h) Tooth bleaching.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 21-1994(Temp), f. 4-29-94, cert. ef. 5-1-94; HR 32-1994, f. & cert. ef. 11-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; HR 9-1996, f. 5-31-96, cert. ef. 6-1-96; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 17-2011, f. & cert. ef. 7-12-11; DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12

## 410-123-1260

### OHP Plus Dental Benefits

(1) GENERAL:

(a) Early and Periodic Screening, Diagnosis and Treatment (EPSDT):

(A) Refer to Code of Federal Regulations (42 CFR 441, Subpart B) and OAR chapter 410, division 120 for definitions of the EPSDT program, eligible clients, and related services. EPSDT dental services includes, but are not limited to:

(i) Dental screening services for eligible EPSDT individuals; and

(ii) Dental diagnosis and treatment which is indicated by screening, at as early an age as necessary, needed for relief of pain and infections, restoration of teeth and maintenance of dental health;

(B) Providers must provide EPSDT services for eligible Division of Medical Assistance Programs (Division) clients according to the following documents:

(i) The Dental Services Program administrative rules (OAR chapter 410, division 123), for dentally appropriate services funded on the Oregon Health Services Commission Prioritized List of Health Services (HSC Prioritized List); and

(ii) The “Oregon Health Plan (OHP) – Recommended Dental Periodicity Schedule,” dated January 1, 2010, incorporated by reference and posted on the Division Web site in the Dental Services Supplemental Information document at [www.dhs.state.or.us/policy/healthplan/guides/dental/main.html](http://www.dhs.state.or.us/policy/healthplan/guides/dental/main.html);

(b) Restorative, periodontal and prosthetic treatments:

(A) Such treatments must be consistent with the prevailing standard of care, documentation must be included in the client’s charts to support the treatment, and may be limited as follows:

(i) When prognosis is unfavorable;

(ii) When treatment is impractical;

(iii) A lesser-cost procedure would achieve the same ultimate result;

or

(iv) The treatment has specific limitations outlined in this rule;

(B) Prosthetic treatment (including porcelain fused to metal crowns) are limited until rampant progression of caries is arrested and a period of

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adequate oral hygiene and periodontal stability is demonstrated; periodontal health needs to be stable and supportive of a prosthetic.

### (2) DIAGNOSTIC SERVICES:

#### (a) Exams:

(A) For children (under 19 years of age):

(i) The Division shall reimburse exams (billed as D0120, D0145, D0150, or D0180) a maximum of twice every 12 months with the following limitations:

(I) D0150: once every 12 months when performed by the same practitioner;

(II) D0150: twice every 12 months only when performed by different practitioners;

(III) D0180: once every 12 months;

(ii) The Division shall reimburse D0160 only once every 12 months when performed by the same practitioner;

(B) For adults (19 years of age and older) – The Division shall reimburse exams (billed as D0120, D0150, D0160, or D0180) by the same practitioner once every 12 months;

(C) For each emergent episode, use D0140 for the initial exam. Use D0170 for related dental follow-up exams;

(D) The Division only covers oral exams by medical practitioners when the medical practitioner is an oral surgeon;

(E) As the American Dental Association's Current Dental Terminology (CDT) codebook specifies the evaluation, diagnosis and treatment planning components of the exam are the responsibility of the dentist, the Division does not reimburse dental exams when furnished by a dental hygienist (with or without an expanded practice permit);

#### (b) Radiographs:

(A) The Division shall reimburse for routine radiographs once every 12 months;

(B) The Division shall reimburse bitewing radiographs for routine screening once every 12 months;

(C) The Division shall reimburse a maximum of six radiographs for any one emergency;

(D) For clients under age six, radiographs may be billed separately every 12 months as follows:

(i) D0220 – once;

(ii) D0230 – a maximum of five times;

(iii) D0270 – a maximum of twice, or D0272 once;

(E) The Division shall reimburse for panoramic (D0330) or intra-oral complete series (D0210) once every five years, but both cannot be done within the five-year period;

(F) Clients must be a minimum of six years old for billing intra-oral complete series (D0210). The minimum standards for reimbursement of intra-oral complete series are:

(i) For clients age six through 11- a minimum of 10 periapicals and two bitewings for a total of 12 films;

(ii) For clients ages 12 and older - a minimum of 10 periapicals and four bitewings for a total of 14 films;

(G) If fees for multiple single radiographs exceed the allowable reimbursement for a full mouth complete series (D0210), the Division shall reimburse for the complete series;

(H) Additional films may be covered if dentally or medically appropriate, e.g., fractures (Refer to OAR 410-123-1060 and 410-120-0000);

(I) If the Division determines the number of radiographs to be excessive, payment for some or all radiographs of the same tooth or area may be denied;

(J) The exception to these limitations is if the client is new to the office or clinic and the office or clinic was unsuccessful in obtaining radiographs from the previous dental office or clinic. Supporting documentation outlining the provider's attempts to receive previous records must be included in the client's records;

(K) Digital radiographs, if printed, should be on photo paper to assure sufficient quality of images.

### (3) PREVENTIVE SERVICES:

#### (a) Prophylaxis:

(A) For children (under 19 years of age) – Limited to twice per 12 months;

(B) For adults (19 years of age and older) – Limited to once per 12 months;

(C) Additional prophylaxis benefit provisions may be available for persons with high risk oral conditions due to disease process, pregnancy, medications or other medical treatments or conditions, severe periodontal disease, rampant caries and/or for persons with disabilities who cannot perform adequate daily oral health care;

(D) Are coded using the appropriate Current Dental Terminology (CDT) coding:

(i) D1110 (Prophylaxis – Adult) – Use for clients 14 years of age and older; and

(ii) D1120 (Prophylaxis – Child) – Use for clients under 14 years of age;

#### (b) Topical fluoride treatment:

(A) For adults (19 years of age and older) – Limited to once every 12 months;

(B) For children (under 19 years of age) – Limited to twice every 12 months;

(C) For children under 7 years of age who have limited access to a dental practitioner, topical fluoride varnish may be applied by a medical practitioner during a medical visit:

(i) Bill the Division directly regardless of whether the client is fee-for-service (FFS) or enrolled in a Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO);

(ii) Bill using a professional claim format with the appropriate CDT code (D1206 – Topical Fluoride Varnish);

(iii) An oral screening by a medical practitioner is not a separate billable service and is included in the office visit;

(D) Additional topical fluoride treatments may be available, up to a total of 4 treatments per client within a 12-month period, when high-risk conditions or oral health factors are clearly documented in chart notes for the following clients who:

(i) Have high-risk oral conditions due to disease process, medications, other medical treatments or conditions, or rampant caries;

(ii) Are pregnant;

(iii) Have physical disabilities and cannot perform adequate, daily oral health care;

(iv) Have a developmental disability or other severe cognitive impairment that cannot perform adequate, daily oral health care; or

(v) Are under seven year old with high-risk oral health factors, such as poor oral hygiene, deep pits and fissures (grooves) in teeth, severely crowded teeth, poor diet, etc;

#### (c) Sealants (D1351):

(A) Are covered only for children under 16 years of age;

(B) The Division limits coverage to:

(i) Permanent molars; and

(ii) Only one sealant treatment per molar every five years, except for visible evidence of clinical failure;

#### (d) Tobacco cessation:

(A) For services provided during a dental visit, bill as a dental service using CDT code D1320 when the following brief counseling is provided:

(i) Ask patients about their tobacco-use status at each visit and record information in the chart;

(ii) Advise patients on their oral health conditions related to tobacco use and give direct advice to quit using tobacco and a strong personalized message to seek help; and

(iii) Refer patients who are ready to quit, utilizing internal and external resources to complete the remaining three A's (assess, assist, arrange) of the standard intervention protocol for tobacco;

(B) The Division allows a maximum of 10 services within a three-month period;

(C) For tobacco cessation services provided during a medical visit follow criteria outlined in OAR 410-130-0190;

#### (e) Space management:

(A) The Division shall cover fixed and removable space maintainers (D1510, D1515, D1520, and D1525) only for clients under 19 years of age;

(B) The Division may not reimburse for replacement of lost or damaged removable space maintainers.

#### (4) RESTORATIVE SERVICES:

##### (a) Restorations – amalgam and composite:

(A) The Division shall cover resin-based composite restorations only for anterior teeth;

(B) Resin-based composite crowns on anterior teeth (D2390) are only covered for clients under 21 years of age or who are pregnant;

(C) The Division may not reimburse resin-based composite restorations for posterior teeth (D2391-D2394);

(D) The Division limits payment of covered restorations to the maximum restoration fee of four surfaces per tooth. Refer to the American Dental Association (ADA) CDT codebook for definitions of restorative procedures;

(E) Providers must combine and bill multiple surface restorations as one line per tooth using the appropriate code. Providers may not bill multi-

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ple surface restorations performed on a single tooth on the same day on separate lines. For example, if tooth #30 has a buccal amalgam and a mesial-occlusal-distal (MOD) amalgam, then bill MOD, B, using code D2161 (four or more surfaces);

(F) The Division may not reimburse for an amalgam or composite restoration and a crown on the same tooth;

(G) The Division reimburses for a surface once in each treatment episode regardless of the number or combination of restorations;

(H) The restoration fee includes payment for occlusal adjustment and polishing of the restoration;

(b) Crowns and related services:

(A) General payment policies:

(i) The fee for the crown includes payment for preparation of the gingival tissue;

(ii) The Division shall cover crowns only when:

(I) There is significant loss of clinical crown and no other restoration will restore function; and

(II) The crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(iii) The Division shall cover core buildup (D2950) only when necessary to retain a cast restoration due to extensive loss of tooth structure from caries or a fracture and only when done in conjunction with a crown. Less than 50% of the tooth structure must be remaining for coverage of the core buildup. The Division shall not cover core buildup if the crown is not covered under the client's OHP benefit package;

(iv) Reimbursement of retention pins (D2951) is per tooth, not per pin;

(B) The Division shall not cover the following services:

(i) Endodontic therapy alone (with or without a post);

(ii) Aesthetics (cosmetics);

(iii) Crowns in cases of advanced periodontal disease or when a poor crown/root ratio exists for any reason;

(C) The Division shall cover acrylic heat or light cured crowns (D2970 temporary crown, fractured tooth) – allowed only for anterior permanent teeth;

(D) The Division shall cover the following only for clients under 21 years of age or who are pregnant:

(i) Provisional crowns (D2799) – allowed as an interim restoration of at least six months during restorative treatment to allow adequate healing or completion of other procedures. This is not to be used as a temporary crown for a routine prosthetic restoration;

(ii) Prefabricated plastic crowns (D2932) – allowed only for anterior teeth, permanent or primary;

(iii) Stainless steel crowns (D2930/D2931) – allowed only for anterior primary teeth and posterior permanent or primary teeth;

(iv) Prefabricated stainless steel crowns with resin window (D2933) – allowed only for anterior teeth, permanent or primary;

(v) Prefabricated post and core in addition to crowns (D2954/D2957);

(vi) Permanent crowns (resin-based composite - D2710 and D2712, and porcelain fused to metal (PFM) - D2751 and D2752) as follows:

(I) Limited to teeth numbers 6-11, 22 and 27 only, if dentally appropriate;

(II) Limited to four (4) in a seven-year period. This limitation includes any replacement crowns allowed according to (E)(i) of this rule;

(III) Only for clients at least 16 years of age; and

(IV) Rampant caries are arrested and the client demonstrates a period of oral hygiene before prosthetics are proposed;

(vii) PFM crowns (D2751 and D2752) must also meet the following additional criteria:

(I) The dental practitioner has attempted all other dentally appropriate restoration options, and documented failure of those options;

(II) Written documentation in the client's chart indicates that PFM is the only restoration option that will restore function;

(III) The dental practitioner submits radiographs to the Division for review; history, diagnosis, and treatment plan may be requested. See OAR 410-123-1100 (Services Reviewed by the Division of Medical Assistance Programs);

(IV) The client has documented stable periodontal status with pocket depths within 1 – 3 millimeters. If PFM crowns are placed with pocket depths of 4 millimeter and over, documentation must be maintained in the client's chart of the dentist's findings supporting stability and why the increased pocket depths will not adversely affect expected long term prognosis;

(V) The crown has a favorable long-term prognosis; and

(VI) If tooth to be crowned is clasp/abutment tooth in partial denture, both prognosis for crown itself and tooth's contribution to partial denture must have favorable expected long-term prognosis;

(E) Crown replacement:

(i) Permanent crown replacement limited to once every seven years;

(ii) All other crown replacement limited to once every five years; and

(iii) The Division may make exceptions to crown replacement limitations due to acute trauma, based on the following factors:

(I) Extent of crown damage;

(II) Extent of damage to other teeth or crowns;

(III) Extent of impaired mastication;

(IV) Tooth is restorable without other surgical procedures; and

(V) If loss of tooth would result in coverage of removable prosthetic;

(F) Crown repair, by report (D2980) is limited to only anterior teeth.

(5) ENDODONTIC SERVICES:

(a) Pulp capping:

(A) The Division includes direct and indirect pulp caps in the restoration fee; no additional payment shall be made for clients with the OHP Plus benefit package;

(B) The Division covers direct pulp caps as a separate service for clients with the OHP Standard benefit package because restorations are not a covered benefit under this benefit package;

(b) Endodontic therapy:

(A) Pulpal therapy on primary teeth (D3230 and D3240) is covered only for clients under 21 years of age;

(B) For permanent teeth:

(i) Anterior and bicuspid endodontic therapy (D3310 and D3320) is covered for all OHP Plus clients; and

(ii) Molar endodontic therapy (D3330):

(I) For clients through age 20, is covered only for first and second molars; and

(II) For clients age 21 and older who are pregnant, is covered only for first molars;

(C) The Division covers endodontics only if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(c) Endodontic retreatment and apicoectomy/periradicular surgery:

(A) The Division does not cover retreatment of a previous root canal or apicoectomy/periradicular surgery for bicuspid or molars;

(B) The Division limits either a retreatment or an apicoectomy (but not both procedures for the same tooth) to symptomatic anterior teeth when:

(i) Crown-to-root ratio is 50:50 or better;

(ii) The tooth is restorable without other surgical procedures; or

(iii) If loss of tooth would result in the need for removable prosthodontics;

(C) Retrograde filling (D3430) is covered only when done in conjunction with a covered apicoectomy of an anterior tooth;

(d) The Division does not allow separate reimbursement for open-and-drain as a palliative procedure when the root canal is completed on the same date of service, or if the same practitioner or dental practitioner in the same group practice completed the procedure;

(e) The Division covers endodontics if the tooth is restorable within the OHP benefit coverage package;

(f) Apexification/recalcification and pulpal regeneration procedures:

(A) The Division limits payment for apexification to a maximum of five treatments on permanent teeth only;

(B) Apexification/recalcification and pulpal regeneration procedures are covered only for clients under 21 years of age or who are pregnant.

(6) PERIODONTIC SERVICES:

(a) Surgical periodontal services:

(A) Gingivectomy/Gingivoplasty (D4210 and D4211) – limited to coverage for severe gingival hyperplasia where enlargement of gum tissue occurs that prevents access to oral hygiene procedures, e.g., Dilantin hyperplasia; and

(B) Includes six months routine postoperative care;

(b) Non-surgical periodontal services:

(A) Periodontal scaling and root planing (D4341 and D4342):

(i) For clients through age 20, allowed once every two years;

(ii) For clients age 21 and over, allowed once every three years;

(iii) A maximum of two quadrants on one date of service is payable, except in extraordinary circumstances;

(iv) Quadrants are not limited to physical area, but are further defined by the number of teeth with pockets 5 mm or greater:

(I) D4341 is allowed for quadrants with at least four or more teeth with pockets 5 mm or greater;

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(II) D4342 is allowed for quadrants with at least two teeth with pocket depths of 5 mm or greater;

(v) Prior authorization for more frequent scaling and root planing may be requested when:

(I) Medically/dentally necessary due to periodontal disease as defined above is found during pregnancy; and

(II) Client's medical record is submitted that supports the need for increased scaling and root planing;

(B) Full mouth debridement (D4355):

(i) For clients through age 20, allowed once every 2 years;

(ii) For clients age 21 and older, allowed once every three years;

(c) Periodontal maintenance (D4910):

(A) For clients through age 20, allowed once every six months;

(B) For clients age 21 and older:

(i) Limited to following periodontal therapy (surgical or non-surgical)

that is documented to have occurred within the past three years;

(ii) Allowed once every twelve months;

(iii) Prior authorization for more frequent periodontal maintenance may be requested when:

(I) Medically/dentally necessary, such as due to presence of periodontal disease during pregnancy; and

(II) Client's medical record is submitted that supports the need for increase periodontal maintenance (chart notes, pocket depths and radiographs);

(d) Records must clearly document the clinical indications for all periodontal procedures, including current pocket depth charting and/or radiographs;

(e) The Division may not reimburse for procedures identified by the following codes if performed on the same date of service:

(A) D1110 (Prophylaxis – adult);

(B) D1120 (Prophylaxis – child);

(C) D4210 (Gingivectomy or gingivoplasty – four or more contiguous teeth or banded teeth spaces per quadrant);

(D) D4211 (Gingivectomy or gingivoplasty – one to three contiguous teeth or banded teeth spaces per quadrant);

(E) D4341 (Periodontal scaling and root planning – four or more teeth per quadrant);

(F) D4342 (Periodontal scaling and root planning – one to three teeth per quadrant);

(G) D4355 (Full mouth debridement to enable comprehensive evaluation and diagnosis); and

(H) D4910 (Periodontal maintenance).

(7) REMOVABLE PROSTHODONTIC SERVICES:

(a) Clients age 16 years and older are eligible for removable resin base partial dentures (D5211-D5212) and full dentures (complete or immediate, D5110-D5140);

(b) The Division limits full dentures for non-pregnant clients age 21 and older to only those clients who are recently edentulous:

(A) For the purposes of this rule:

(i) "Edentulous" means all teeth removed from the jaw for which the denture is being provided; and

(ii) "Recently edentulous" means the most recent extractions from that jaw occurred within six months of the delivery of the final denture (or, for fabricated prosthetics, the final impression) for that jaw;

(B) See OAR 410-123-1000 for detail regarding billing fabricated prosthetics;

(c) The fee for the partial and full dentures includes payment for adjustments during the six-month period following delivery to clients;

(d) Resin partial dentures (D5211-D5212):

(A) The Division may not approve resin partial dentures if stainless steel crowns are used as abutments;

(B) For clients through age 20, the client must have one or more anterior teeth missing or four or more missing posterior teeth per arch with resulting space equivalent to that loss demonstrating inability to masticate. Third molars are not a consideration when counting missing teeth;

(C) For clients age 21 and older, the client must have one or more missing anterior teeth or six or more missing posterior teeth per arch with documentation by the provider of resulting space causing serious impairment to mastication. Third molars are not a consideration when counting missing teeth;

(D) The dental practitioner must note the teeth to be replaced and teeth to be clasped when requesting prior authorization (PA);

(e) Replacement of removable partial or full dentures, when it cannot be made clinically serviceable by a less costly procedure (e.g., reline, rebase, repair, tooth replacement), is limited to the following:

(A) For clients at least 16 years and under 21 years of age - the Division shall replace full or partial dentures once every ten years, only if dentally appropriate. This does not imply that replacement of dentures or partials must be done once every ten years, but only when dentally appropriate;

(B) For clients 21 years of age and older - the Division may not cover replacement of full dentures, but shall cover replacement of partial dentures once every 10 years only if dentally appropriate;

(C) The ten year limitations apply to the client regardless of the client's OHP or Dental Care Organization (DCO) enrollment status at the time client's last denture or partial was received. For example: a client receives a partial on February 1, 2002, and becomes a FFS OHP client in 2005. The client is not eligible for a replacement partial until February 1, 2012. The client gets a replacement partial on February 3, 2012 while FFS and a year later enrolls in a DCO. The client would not be eligible for another partial until February 3, 2022, regardless of DCO or FFS enrollment;

(D) Replacement of partial dentures with full dentures is payable ten years after the partial denture placement. Exceptions to this limitation may be made in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene may not warrant replacement;

(f) The Division limits reimbursement of adjustments and repairs of dentures that are needed beyond six months after delivery of the denture as follows for clients 21 years of age and older:

(A) A maximum of 4 times per year for:

(i) Adjusting complete and partial dentures, per arch (D5410-D5422);

(ii) Replacing missing or broken teeth on a complete denture – each tooth (D5520);

(iii) Replacing broken tooth on a partial denture – each tooth (D5640);

(iv) Adding tooth to existing partial denture (D5650);

(B) A maximum of 2 times per year for:

(i) Repairing broken complete denture base (D5510);

(ii) Repairing partial resin denture base (D5610);

(iii) Repairing partial cast framework (D5620);

(iv) Repairing or replacing broken clasp (D5630);

(v) Adding clasp to existing partial denture (D5660);

(g) Replacement of all teeth and acrylic on cast metal framework (D5670-D5671):

(A) Is covered for clients age 16 and older a maximum of once every 10 years, per arch;

(B) Ten years or more must have passed since the original partial denture was delivered;

(C) Is considered replacement of the partial so a new partial denture may not be reimburseable for another 10 years; and

(D) Requires prior authorization as it is considered a replacement partial denture;

(h) Denture rebase procedures:

(A) The Division shall cover rebases only if a reline may not adequately solve the problem;

(B) For clients through age 20, the Division limits payment for rebase to once every three years;

(C) For clients age 21 and older:

(i) There must be documentation of a current reline which has been done and failed; and

(ii) The Division limits payment for rebase to once every five years;

(D) The Division may make exceptions to this limitation in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene may not warrant rebasing;

(i) Denture reline procedures:

(A) For clients through age 20, the Division limits payment for reline of complete or partial dentures to once every three years;

(B) For clients age 21 and older, the Division limits payment for reline of complete or partial dentures to once every five years;

(C) The Division may make exceptions to this limitation under the same conditions warranting replacement;

(D) Laboratory relines:

## ADMINISTRATIVE RULES

(i) Are not payable prior to six months after placement of an immediate denture; and

(ii) For clients through age 20, are limited to once every three years;

(iii) For clients age 21 and older, are limited to once every five years;

(j) Interim partial dentures (D5820-D5821, also referred to as “flip-pers”):

(A) Are allowed if the client has one or more anterior teeth missing; and

(B) The Division shall reimburse for replacement of interim partial dentures once every 5 years, but only when dentally appropriate;

(k) Tissue conditioning:

(A) Is allowed once per denture unit in conjunction with immediate dentures; and

(B) Is allowed once prior to new prosthetic placement.

(8) MAXILLOFACIAL PROSTHETIC SERVICES:

(a) Fluoride gel carrier (D5986) is limited to those patients whose severity of oral disease causes the increased cleaning and fluoride treatments allowed in rule to be insufficient. The dental practitioner must document failure of those options prior to use of the fluoride gel carrier;

(b) All other maxillofacial prosthetics (D5900-D5999) are medical services. Refer to the “Covered and Non-Covered Dental Services” document and OAR 410-123-1220:

(A) Bill for medical maxillofacial prosthetics using the professional (CMS-1500, DMAP 505 or 837P) claim format;

(B) For clients receiving services through an FCHP or PCO, bill medical maxillofacial prosthetics to the FCHP or PCO;

(C) For clients receiving medical services through FFS, bill the Division.

(9) Fixed Prosthodontics:

(a) The Division limits coverage of post and core (D6970, D6972 and D6977) only to clients under 21 years of age or who are pregnant;

(b) The Division shall cover core buildup for retainer (D6973) only when necessary to retain a cast restoration due to extensive loss of tooth structure and only when done in conjunction with a crown. Less than 50% of the tooth structure must be remaining for coverage of the core buildup. The Division shall not cover core buildup if the crown is not covered under the client’s OHP benefit package.

(10) ORAL SURGERY SERVICES:

(a) Bill the following procedures in an accepted dental claim format using CDT codes:

(A) Procedures that are directly related to the teeth and supporting structures that are not due to a medical, including such procedures performed in an ambulatory surgical center (ASC) or an inpatient or outpatient hospital setting;

(B) Services performed in a dental office setting (including an oral surgeon’s office):

(i) Such services include, but are not limited to, all dental procedures, local anesthesia, surgical postoperative care, radiographs and follow-up visits;

(ii) Refer to OAR 410-123-1160 for any PA requirements for specific procedures;

(b) Bill the following procedures using the professional claim format and the appropriate American Medical Association (AMA) CPT procedure and ICD-9 diagnosis codes:

(A) Procedures that are a result of a medical condition (i.e., fractures, cancer);

(B) Services requiring hospital dentistry that are the result of a medical condition/diagnosis (i.e., fracture, cancer);

(c) Refer to the “Covered and Non-Covered Dental Services” document to see a list of CDT procedure codes on the HSC Prioritized List that may also have CPT medical codes. See OAR 410-123-1220. The procedures listed as “medical” on the table may be covered as medical procedures, and the table may not be all-inclusive of every dental code that has a corresponding medical code;

(d) For clients enrolled in a DCO, the DCO is responsible for payment of those services in the dental plan package;

(e) Oral surgical services performed in an ASC or an inpatient or outpatient hospital setting:

(A) Require PA;

(B) For clients enrolled in a FCHP, the facility charge and anesthesia services are the responsibility of the FCHP. For clients enrolled in a PCO, the outpatient facility charge (including ASCs) and anesthesia are the responsibility of the PCO. Refer to the current Medical Surgical Services administrative rules in OAR chapter 410 – division 130 for more information;

(C) If a client is enrolled in a FCHP or a PCO, it is the responsibility of the provider to contact the FCHP or the PCO for any required authorization before the service is rendered;

(f) All codes listed as “by report” require an operative report;

(g) The Division covers payment for tooth re-implantation only in cases of traumatic avulsion where there are good indications of success;

(h) Biopsies collected are reimbursed as a dental service. Laboratory services of biopsies are reimbursed as a medical service;

(i) The Division does not cover surgical excisions of soft tissue lesions (D7410 – D7415);

(j) Extractions – Includes local anesthesia and routine postoperative care, including treatment of a dry socket if done by the provider of the extraction. Dry socket is not considered a separate service;

(k) Surgical extractions:

(A) Include local anesthesia and routine post-operative care;

(B) The Division limits payment for surgical removal of impacted teeth or removal of residual tooth roots to treatment for only those teeth that have acute infection or abscess, severe tooth pain, and/or unusual swelling of the face or gums;

(C) The Division does not cover alveoplasty in conjunction with extractions (D7310 and D7311) separately from the extraction;

(D) The Division covers alveoplasty not in conjunction with extractions (D7320-D7321) only for clients under 21 years of age or who are pregnant;

(l) Frenulectomy/frenulotomy (D7960) and frenuloplasty (D7963):

(A) The Division covers either frenulectomy or frenuloplasty once per lifetime per arch only for clients under age 21;

(B) The Division covers maxillary labial frenulectomy only for clients age 12 through 20;

(C) The Division shall cover frenulectomy/frenuloplasty in the following situations:

(i) When the client has ankyloglossia;

(ii) When the condition is deemed to cause gingival recession; or

(iii) When the condition is deemed to cause movement of the gingival margin when the frenum is placed under tension;

(m) The Division covers excision of pericoronal gingival (D7971) only for clients under age 21 or who are pregnant.

(11) ORTHODONTIA SERVICES:

(a) The Division limits orthodontia services and extractions to eligible clients:

(A) With the ICD-9-CM diagnosis of:

(i) Cleft palate; or

(ii) Cleft palate with cleft lip; and

(B) Whose orthodontia treatment began prior to 21 years of age; or

(C) Whose surgical corrections of cleft palate or cleft lip were not completed prior to age 21;

(b) PA is required for orthodontia exams and records. A referral letter from a physician or dentist indicating diagnosis of cleft palate/cleft lip must be included in the client’s record and a copy sent with the PA request;

(c) Documentation in the client’s record must include diagnosis, length and type of treatment;

(d) Payment for appliance therapy includes the appliance and all follow-up visits;

(e) Orthodontists evaluate orthodontia treatment for cleft palate/cleft lip as two phases. Stage one is generally the use of an activator (palatal expander) and stage two is generally the placement of fixed appliances (banding). The Division shall reimburse each phase individually (separately);

(f) The Division shall pay for orthodontia in one lump sum at the beginning of each phase of treatment. Payment for each phase is for all orthodontia-related services. If the client transfers to another orthodontist during treatment, or treatment is terminated for any reason, the orthodontist must refund to the Division any unused amount of payment, after applying the following formula: Total payment minus \$300.00 (for banding) multiplied by the percentage of treatment remaining;

(g) The Division shall use the length of the treatment plan from the original request for authorization to determine the number of treatment months remaining;

(h) As long as the orthodontist continues treatment, the Division may not require a refund even though the client may become ineligible for medical assistance sometime during the treatment period;

(i) Code:

(A) D8660 – PA required (reimbursement for required orthodontia records is included);

(B) Codes D8010-D8690 – PA required.

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## (12) ADJUNCTIVE GENERAL AND OTHER SERVICES:

(a) Fixed partial denture sectioning (D9120) is covered only when extracting a tooth connected to a fixed prosthesis and a portion of the fixed prosthesis is to remain intact and serviceable, preventing the need for more costly treatment;

(b) Anesthesia:

(A) Only use general anesthesia or IV sedation for those clients with concurrent needs: age, physical, medical or mental status, or degree of difficulty of the procedure (D9220, D9221, D9241 and D9242);

(B) The Division reimburses providers for general anesthesia or IV sedation as follows:

(i) D9220 or D9241: For the first 30 minutes;

(ii) D9221 or D9242: For each additional 15-minute period, up to three hours on the same day of service. Each 15-minute period represents a quantity of one. Enter this number in the quantity column;

(C) The Division reimburses administration of Nitrous Oxide (D9230) per date of service, not by time;

(D) Oral pre-medication anesthesia for conscious sedation (D9248):

(i) Limited to clients under 13 years of age;

(ii) Limited to four times per year;

(iii) Includes payment for monitoring and Nitrous Oxide; and

(iv) Requires use of multiple agents to receive payment;

(E) Upon request, providers must submit a copy of their permit to administer anesthesia, analgesia and/or sedation to the Division;

(F) For the purpose of Title XIX and Title XXI, the Division limits payment for code D9630 to those oral medications used during a procedure and is not intended for "take home" medication;

(c) The Division limits reimbursement of house/extended care facility call (D9410) only for urgent or emergent dental visits that occur outside of a dental office. This code is not reimbursable for provision of preventive services or for services provided outside of the office for the provider or facilities' convenience;

(d) Oral devices/appliances (E0485, E0486):

(A) These may be placed or fabricated by a dentist or oral surgeon, but are considered a medical service;

(B) Bill the Division or the FCHP/PCO for these codes using the professional claim format.

Stat. Auth.: ORS 413.042, 414.065 & 414.707

Stats. Implemented: ORS 414.065 & 414.707

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 17-2011, f. & cert. ef. 7-12-11; DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12

## 410-123-1490

### Hospital Dentistry

(1) The purpose of hospital dentistry is to provide safe, efficient dental care when providing routine (non-emergency) dental services for Division of Medical Assistance Programs (Division) clients who present special challenges that require the use of general anesthesia or IV conscious sedation services in an Ambulatory Surgical Center (ASC), inpatient or outpatient hospital setting. Refer to OAR 410-123-1060 for definitions.

(2) Division reimbursement for hospital dentistry is limited to covered services and may be prorated if non-covered dental services are performed during the same hospital visit:

(a) See OAR 410-123-1060 for a definition of Division hospital dentistry services;

(b) Refer to OAR 410-123-1220 and the "Covered and Non-Covered Dental Services" document.

(3) Hospital dentistry is intended for the following Division clients:

(a) Children (18 or younger) who:

(A) Through age 3 – Have extensive dental needs;

(B) 4 years of age or older – Have unsuccessfully attempted treatment in the office setting with some type of sedation or nitrous oxide;

(C) Have acute situational anxiety, fearfulness, extreme uncooperative behavior, uncommunicative such as a client with developmental or mental disability, a client that is pre-verbal or extreme age where dental needs are deemed sufficiently important that dental care cannot be deferred;

(D) Need the use of general anesthesia (or IV conscious sedation) to protect the developing psyche;

(E) Have sustained extensive orofacial or dental trauma;

(F) Have physical, mental or medically compromising conditions; or  
(G) Have a developmental disability or other severe cognitive impairment and one or more of the following characteristics that prevent routine dental care in an office setting:

(i) Acute situational anxiety and extreme uncooperative behavior;

(ii) A physically compromising condition;

(b) Adults (19 or older) who:

(A) Have a developmental disability or other severe cognitive impairment, and one or more of the following characteristics that prevent routine dental care in an office setting:

(i) Acute situational anxiety and extreme uncooperative behavior;

(ii) A physically compromising condition;

(B) Have sustained extensive orofacial or dental trauma; or

(C) Are medically fragile, have complex medical needs, contractures or other significant medical conditions potentially making the dental office setting unsafe for the client.

(4) Hospital dentistry is not intended for:

(a) Client convenience. Refer to OAR 410-120-1200;

(b) A healthy, cooperative client with minimal dental needs; or

(c) Medical contraindication to general anesthesia or IV conscious sedation.

(5) Required documentation: The following information must be included in the client's dental record:

(a) Informed consent: client, parental or guardian written consent must be obtained prior to the use of general anesthesia or IV conscious sedation;

(b) Justification for the use of general anesthesia or IV conscious sedation. The decision to use general anesthesia or IV conscious sedation must take into consideration:

(A) Alternative behavior management modalities;

(B) Client's dental needs;

(C) Quality of dental care;

(D) Quantity of dental care;

(E) Client's emotional development;

(F) Client's physical considerations;

(c) If treatment in an office setting is not possible, documentation in the client's dental record must explain why, in the estimation of the dentist, the client will not be responsive to office treatment;

(d) The Division or the FCHP may require additional documentation when reviewing requests for prior authorization (PA) of hospital dentistry services. See OAR 410-123-1160 and section (6) of this rule for additional information;

(e) If the dentist did not proceed with a previous hospital dentistry plan approved by the Division for the same client, the Division will also require clinical documentation explaining why the dentist did not complete the previous treatment plan.

(6) Hospital dentistry always requires prior authorization (PA) for the medical services provided by the facility:

(a) If a client is enrolled in a Fully Capitated Health Plan (FCHP) and a Dental Care Organization (DCO):

(A) The dentist is responsible for:

(i) Contacting the FCHP for PA requirements and arrangements; and  
(ii) Submitting documentation to both the FCHP and DCO;

(B) The FCHP and DCO should review the documentation and discuss any concerns they have, contacting the dentist as needed. This allows for mutual plan involvement and monitoring;

(C) The total response time should not exceed 14 calendar days from the date of submission of all required documentation for routine dental care and should follow urgent/emergent dental care timelines;

(D) The FCHP is responsible for payment of all facility and anesthesia services. The DCO is responsible for payment of all dental professional services;

(b) If a client is enrolled in a Physician Care Organization (PCO) and a Dental Care Organization (DCO):

(A) The PCO is responsible for payment of all facility and anesthesia services provided in an outpatient hospital setting or an ASC. DMAP is responsible for payment of all facility and anesthesia services provided in an inpatient hospital setting. The DCO is responsible for payment of all dental professional services;

(B) The dentist is responsible for:

(i) Contacting the PCO, if services are to be provided in an outpatient setting or an ASC, for PA requirements and arrangements; or

(ii) Contacting DMAP, if services are to be provided in an inpatient setting; and

# ADMINISTRATIVE RULES

(iii) Submitting documentation to both the PCO (or DMAP) and the DCO;

(B) The PCO or DMAP and the DCO should review the documentation and discuss any concerns they have, contacting the dentist as needed. This allows for mutual plan involvement and monitoring;

(C) The total response time should not exceed 14 calendar days from the date of submission of all required documentation for routine dental care and should follow urgent/emergent dental care timelines;

(b) If a client is fee-for-service (FFS) for medical services and enrolled in a DCO:

(A) The dentist is responsible for faxing documentation and a completed American Dental Association (ADA) form to the Division. Refer to the Dental Services Supplemental Information;

(B) If the client is assigned to a Primary Care Manager (PCM) through FFS medical, the client must have a referral from the PCM prior to any hospital service being approved by the Division;

(C) The Division is responsible for payment of facility and anesthesia services. The DCO is responsible for payment of all dental professional services;

(D) The Division will issue a decision on PA requests within 30 days of receipt of the request;

(c) If a client is enrolled in an FCHP and is FFS dental:

(A) The dentist is responsible for contacting the FCHP to obtain the PA and arrange for the hospital dentistry;

(B) The dentist is responsible for submitting required documentation to the FCHP;

(C) The FCHP is responsible for all facility and anesthesia services. The Division is responsible for payment of all dental professional services;

(d) If a client is FFS for both medical and dental:

(A) The dentist is responsible for faxing documentation and a completed ADA form to the Division. Refer to the Dental Services Supplemental Information;

(B) The Division is responsible for payment of all facility, anesthesia services and dental professional charges.

Stat. Auth.: ORS 411.459, 413.042, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02;

OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08;

DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09;

DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12

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**Rule Caption:** Adoption for rebate agreements and amendment for other DMEPOS rules due to budget reductions.

**Adm. Order No.:** DMAP 42-2011

**Filed with Sec. of State:** 12-21-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 410-122-0188

**Rules Amended:** 410-122-0186, 410-122-0520, 410-122-0630

**Rules Repealed:** 410-122-0186(T), 410-122-0630(T)

**Subject:** The Medical-Surgical Services Program administrative rules govern Division payments for services to clients. The Division revised as follows:

Adopted: • 410-122-0188 that allows the Division to execute rebate agreements for preferred durable medical equipment

Amended: • 410-122-0630: Having temporarily amended this rule governing incontinence supplies to curtail waste and impose limits as a cost saving to meet budget mandates, the Division permanently amends the rule without further revisions;

• 410-122-0186: Having temporarily amended this rule governing payment methodology to allow the Division to implement new payment methodology to support budget mandates, the Division permanently amends this rule without further revisions; and

• 410-122-0520: to clarify billing procedures.

Repealed: 410-410-122-0186(T) and 410-122-0630(T).

• Other text may be revised to improve readability and to take care of necessary “housekeeping” corrections.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-122-0186

### Payment Methodology

(1) The Division of Medical Assistance Programs (Division) utilizes a payment methodology for covered durable medical equipment, prosthet-

ics, orthotics and supplies (DMEPOS) which is generally based on the 2010 Medicare fee schedule.

(a) The Division fee schedule amount is 80.0% 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). For items in this ostomy category that are not covered by Medicare, but covered by the Division, the fee schedule amount shall remain unchanged from the latest published rates for 2010; and

(B) Prosthetic and Orthotic fee schedule amounts (L-codes) are 83% of 2010 Medicare Fee Schedule. For items in this prosthetic and orthotic category that are not covered by Medicare, but covered by the Division, the fee schedule amount shall be calculated by reducing the Division’s latest published rates for the year 2010 by 2.3%; and

(C) Complex Rehabilitation/Wheelchair fee schedule amounts are 90.5% of 2010 Medicare Fee Schedule (See Table 122-0186-2 for list of codes subject to this pricing). For items in this complex rehab/wheelchair category that are not covered by Medicare, but covered by the Division, the fee schedule amount will be calculated by reducing the Division’s latest published rates for the year 2010 by 4.6%;

(b) For items outside of the above defined categories that are not covered by Medicare, but covered by the Division, the fee schedule amount shall be calculated by reducing the Division’s latest published rates for the year 2010 by 7.6%.

(2) Payment is calculated using the Division fee schedule amount, using the above methodology in (1) (a) & (b), or the actual charge submitted, whichever is lowest.

(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) Reimbursement for durable medical equipment, miscellaneous (E1399) and other wheelchair accessories (K0108) is capped as follows:

(a) E1399 — \$5772.00;

(b) K0108 — \$11,913.41.

(5) The Division shall reimburse for codes E1399 and K0108, and any code that requires manual pricing, using the lowest amount verifiable with the following documentation submitted by the DME provider to the Division, plus 20%:

(a) Manufacturer’s invoice showing actual acquisition cost; or

(b) Manufacturer’s bill to provider showing actual acquisition cost; or

(c) Manufacturer’s quote to the provider, only if it is verifiable with manufacturer and provider documentation. The quote must be the actual acquisition cost to the provider and reflect all discounts offered by the manufacturer. All quotes are subject to audit.

(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 (5) (a-c) that will be used to bill; and,

(b) Name of the manufacturer, description of the item, including product name/model name and number, 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

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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 actual acquisition cost plus 20 percent. The provider is required to retain documentation of the quote, invoice or bill to allow the Division to verify through audit procedures.

(10) Table 122-1086-1: Ostomy Codes priced at 95.4% of 2010 Medicare Fee Schedule, Table 122-0186-2: Complex Rehabilitation/Wheelchair Codes priced at 90.5% of 2010 Medicare Fee Schedule.

[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

## 410-122-0188

### DMEPOS Rebate Agreements

(1) The Division of Medical Assistance Programs (Division) has a, Centers for Medicare and Medicaid Services (CMS) approved DMEPOS Rebate Agreement.

(2) The Division negotiates DMEPOS Rebate Agreements for specific products through the Sovereign States Drug Consortium (SSDC) multi-state pool and DMEPOS manufacturers. Negotiations are confidential, and shall not be disclosed, except in connection with an agreement/contract or as may be required by law. Confidentiality is required of any third party involved in administration of the agreement/contract.

(3) Manufacturers may submit rebate offers for consideration to include their product(s) on the Preferred DME List (PDMEL), after gaining access to the SSDC secure web-based offer entry system.

(4) Manufacturers must abide by requirements of the SSDC.

(5) The PDMEL shall consist of DMEPOS that the Food and Drug Administration (FDA) has determined to be safe and effective

(6) Upon acceptance of the offer:

(a) The SSDC will notify manufacturers of the status of their offer(s);

(b) Supplemental Agreements will be executed after signed by all parties, approved by CMS if required, and products may be added to the PDMEL;

(c) The Division may contract for the functions of tracking utilization, invoicing, and dispute resolution for rebate products.

(7) The division will develop a PDMEL, however specific items may be categorized together to create specific lists such as, but not limited to the Preferred Diabetic Supply List (PDSL).

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 42-2011, f. 12-21-11, cert. ef. 1-1-12

## 410-122-0520

### Glucose Monitors and Diabetic Supplies

(1) Indications and limitations of coverage and medical appropriateness:

(a) The Division of Medical Assistance Programs (Division) may cover home blood glucose monitors and related diabetic supplies for clients with diabetes who can self-monitor blood glucose (SMBG) or be monitored with assistance.

(b) Coverage of home blood glucose monitors is limited to clients meeting all of the following conditions:

(A) The client has diabetes which is being treated by a practitioner; and

(B) The glucose monitor and related accessories and supplies have been ordered by a practitioner who is treating the client's diabetes; and

(C) The client or caregiver has successfully completed training or is scheduled to begin training in the use of the monitor, test strips, and lancing devices; and

(D) The client or caregiver is capable of using the test results to assure the client's appropriate glycemic control; and

(E) The device is designed for home use;

(c) Home blood glucose monitors with special features (E2100 or E2101) may be covered for clients who meet the basic coverage criteria (1)(b)(A)-(E) of this rule; and:

(A) The treating practitioner certifies that the client has a severe visual impairment (i.e., best corrected visual acuity of 20/200 or worse) requiring use of this special monitoring system; or

(B) For code E2101, the treating practitioner certifies that the client has an impairment of manual dexterity severe enough to require the use of this special monitoring system.

(d) If a glucose monitor is covered, lancets, blood glucose test reagent strips, glucose control solutions, insulin syringes, and spring powered devices for lancets may also be covered. Coverage limitations for these supplies are as follows:

(A) A4258 – only one spring powered device every six months;

(B) A4253 and A4259 – The provider of the test strips and lancets must maintain, in their records, the order from the treating practitioner. Before dispensing more test strips and lancets, the client must have nearly exhausted their supply. The amount of test strips and lancets covered are based on the needs of the client according to the following limitations:

(i) Up to 100 test strips and 100 lancets every three months for clients who are not currently being treated with insulin injections;

(ii) Up to 100 test strips and 100 lancets every month for clients who are currently being treated with insulin injections;

(iii) For clients under age 19 with Type I diabetes, up to 100 test strips and 100 lancets every month;

(iv) For clients with gestational diabetes:

(I) Insulin-treated: Up to 100 test strips and 100 lancets per month no longer than 60 days beyond the duration of the pregnancy;

(II) Non-insulin treated: Up to 100 test strips and 100 lancets per month no longer than 60 days beyond the duration of the pregnancy;

(v) Upon refills of quantities that exceed the utilization guidelines, the treating practitioner must have:

(I) Documented in the client's medical record the specific reason for the additional supplies for that particular client; and

(II) Seen the client and have evaluated their diabetes control within six months prior to ordering quantities that exceed the utilization guidelines; and

(III) Documented in the client's medical record, a specific narrative statement that adequately specifies the frequency at which the client is actually testing or a copy of the client's log; or there must be documentation in the provider's records, (e.g., a copy of the client's log) that the client is actually testing at a frequency that corroborates the quantity of supplies that have been dispensed. If the client is regularly using quantities of supplies that exceed the utilization guidelines, new documentation must be present at least every six months;

(C) Home blood glucose monitors are subject to a limit of one monitor per two calendar years.

(e) Diabetic supply providers must not dispense a quantity of supplies exceeding a client's expected utilization. Providers should stay attuned to atypical utilization patterns on behalf of their clients and verify with the ordering practitioner that the atypical utilization is, in fact, warranted. Regardless of utilization, a provider must not dispense more than a three month quantity of glucose testing supplies (i.e. up to 300 test strips, 300 lancets, and 500 insulin syringes) at a time. A PA must be obtained prior to dispensing amounts in excess of these utilization limits;

(f) Providers may contact the treating practitioner to renew an order; however, the request for renewal may only be made with the client's continued monthly use of testing supplies and only with the client's or caregiver's request to the provider for order renewal;

(g) An order refill does not have to be approved by the ordering practitioner; however, a client or their caregiver must specifically request refills of glucose monitor supplies before they are dispensed. The provider must not automatically dispense a quantity of supplies on a predetermined regular basis, even if the client has "authorized" this in advance;

(h) Purchase fee for a glucose monitor includes normal, low and high-calibrator solution/chips (A4256), a battery (A4233, A4234, A4235 or A4236) and a spring-powered lancet device (A4258);

(i) The following services are not covered:

(A) Peroxide (A4244), betadine or phisoHex (A4246, A4247); (B) Alternate site blood glucose monitors;

(C) Blood glucose monitors and related supplies prescribed on an "as needed" basis;

(D) Blood glucose test or reagent strips that use a visual reading and are not used in a glucose monitor;

(E) Continuous glucose monitoring devices;

(F) Disposable gloves;

(G) Home blood glucose disposable monitors;

(H) Jet injectors;

(I) Insulin delivery devices and related supplies;

(J) Reflectance colorimeter devices used for measuring blood glucose levels in clinical settings;



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(K) Urine test or reagent strips or tablets.

(2) Guidelines:

(a) Insulin-treated means that the client is receiving insulin injections to treat their diabetes. Insulin does not exist in an oral form and therefore clients taking oral medication to treat their diabetes are not insulin-treated;

(b) A severe visual impairment is defined as a best corrected visual acuity of 20/200 or worse in both eyes;

(c) An order renewal is the act of obtaining an order for an additional period of time beyond that previously ordered by the treating practitioner;

(d) An order refill is the act of replenishing quantities of previously ordered items during the time period in which the current order is valid;

(e) A4256 describes control solutions containing high, normal, and low concentrations of glucose that can be applied to test strips to check the integrity of the test strips. This code does not describe the strip or chip which is included in a vial of test strips and which calibrates the glucose monitor to that particular vial of test strips;

(f) For glucose test strips (A4253), 1 unit of service = 50 strips. For lancets (A4259), 1 unit of service = 100 lancets;

(3) Documentation requirements:

(a) For codes requiring prior authorization (PA), submit documentation which supports coverage criteria as specified in this rule are met;

(b) The order for home blood glucose monitors and/or diabetic testing supplies must include all of the following:

(A) All item(s) to be dispensed;

(B) The specific frequency of testing;

(C) The treating practitioner's signature;

(D) The date of the treating practitioner's signature;

(E) A start date of the order - only required if the start date is different than the signature date;

(c) A new order must be obtained when there is a change in the testing frequency;

(d) For E2100 or E2101 in a client with impaired visual acuity, submit documentation which includes a narrative statement from the practitioner that indicates the client's specific numerical visual acuity (e.g., 20/400) and that this result represents "best corrected" vision;

(e) For E2101 — clients with impaired manual dexterity, submit documentation which includes a narrative statement from the practitioner that indicates an explanation of the client's medical condition necessitating the monitor with special features; (f) When requesting quantities of supplies which exceed utilization guidelines as specified in (1)(d)(B)(i)-(iv) (e.g., more than 100 blood glucose test strips per month for insulin-dependent diabetes mellitus), submit documentation supporting the medical appropriateness for the higher utilization as specified in (1)(d)(B)(v)(I)-(III) to the appropriate authorization authority for PA;

(g) Documentation which supports condition of coverage requirements for codes billed in this rule must be kept on file by the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) provider and made available to the Division on request;

(h) The appropriate diagnosis code describing the condition that necessitates glucose testing must be included on each claim for the monitor, accessories and supplies; (i) Diabetic supply providers are not prohibited from creating data collection forms in order to gather medically appropriate information; however, the Division will not rely solely on those forms to prove the medical appropriateness of services provided;

(j) A client's medical records must support the justification for supplies dispensed and billed to the Division.

(4) Billing and Payment Guidelines:

(a) Diabetic supplies must be billed using a National Drug Code (NDC). DMEPOS provider types must submit claims to the Division via the Web Portal or Point of Sale Systems via professional claim format. Pharmacy provider types must submit claims to the Division via the Web Portal or Point of Sale Systems via pharmacy claim format. Claims submitted on these systems without NDC's will not be processed. This NDC requirement applies to:

(A) Home glucose monitors; and

(B) Blood glucose test reagent strips;

(C) Lancets;

(D) Insulin syringes;

(E) Spring powered lancet devices;

(F) Calibrating solutions and chips.

(b) For specialized glucose monitors and the respective testing supplies, such as those with special features for the visually impaired and those with manual dexterity problems, provider must obtain PA. After PA the provider can submit a professional claim to the Division.

(c) For orders received from prescribing clinician for blood glucose test reagent strips that exceed utilization guidelines outlined in Section (1)(d)(B)(i-iv) will require PA from the Division. Diabetic supply providers may initially dispense up to utilization limits (i.e. 300 test strips, 300 lancets, and 500 insulin syringes) prior to obtaining PA for orders that exceed utilization guidelines. After PA is issued the remaining amount may be dispensed for a three month time period.

(5) Procedure Codes: Table 122-0520— Diabetic Supplies.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 12-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 42-2011, f. 12-21-11, cert. ef. 1-1-12

## 410-122-0630

### Incontinent Supplies

(1) The Division of Medical Assistance Programs (Division) may cover incontinent supplies for urinary or fecal incontinence as follows:

(a) Category I Incontinent Supplies — For up to 200 units (any code or product combination in this category) per month, unless documentation supports the medical appropriateness for a higher quantity. For quantities over this limit a prior authorization shall be required;

(b) Category II Underpads:

(A) Disposable underpads (T4541 and T4542): For up to 100 units (any combination of T4541 and T4542) per month, unless documentation supports the medical appropriateness for a higher quantity, up to a maximum of 150 units per month;

(B) Reusable/washable underpads: (T4537 and T4540) For up to eight units (any combination of T4537 and T4540) in a 12 month period;

(C) Category II Underpads may be separately payable with Category I Incontinent Supplies with prior authorization and documentation submitted as described in section (4)(a)(D) of this rule;

(D) T4541 and T4542 are not separately payable with T4537 and T4540 for the same dates of service or anticipated coverage period. For example, if a provider bills and is paid for eight reusable/washable underpads on a given date of service, a client would not be eligible for disposable underpads for the subsequent 12 months;

(c) Category III Washable Protective Underwear:

(A) For up to 12 units in a 12 month period;

(B) Category III Washable Protective Underwear are not separately payable with Category I Incontinent Supplies for the same dates of service or anticipated coverage period. For example, if a provider bills and is paid for 12 units of T4536 on a given date of service, a client would not be eligible for Category I Incontinent Supplies for the subsequent 12 months;

(d) The following services require PA:

(A) A4335 (Incontinence supply; miscellaneous); and

(B) A4543 (Disposable incontinence product, brief/diaper, bariatric, each);

(C) Quantity of supplies greater than the amounts listed in this rule as the maximum monthly utilization (e.g., more than 200 units per month of Category I Incontinent Supplies, or 100 gloves per month).

(2) Incontinent supplies are not covered:

(a) For nocturnal enuresis; or

(b) For children under the age of three.

(3) A provider may only submit A4335 when there is no definitive Healthcare Common Procedure Coding System (HCPCS) code that meets the product description.

(4) Documentation requirements:

(a) The client's medical records must support the medical appropriateness for the services provided or being requested by the medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider, including, but not limited to:

(A) For all categories, the medical reason and condition causing the incontinence; and

(B) When a client is using urological or ostomy supplies at the same time as incontinent products specified in this rule, information that clearly corroborates the overall quantity of supplies needed to meet bladder and bowel management is medically appropriate;

(C) For all clients not residing in their home subsequent PA requests for incontinence product(s), the provider must submit a log with the PA

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request. This log must be the most recent log for the client documenting the number and frequency of incontinent product changes;

(D) PA requests for multiple incontinence product types for the same client (i.e. doubling up) must be accompanied by adequate explanation from the client's ordering practitioner to explain why a single, more appropriate, incontinence product can not be used;

(E) When requesting PA for T4543 (Bariatric Brief/Diaper) submit product information showing that the item is size XXL or larger. The request shall also include client weight and measurements that support the use of the bariatric incontinence product. (e.g. client weight, waist and hip size) These items are manually priced following payment methodology outlined in OAR 410-122-0186.

(b) For services requiring PA, submit documentation as specified in (4)(a)(A), (B) and (C);

(c) The DMEPOS provider is required to keep supporting documentation on file and make available to the Division on request.

(5) Quantity specification:

(a) For PA and reimbursement purposes, a unit count for Category I – III codes is considered as a single or individual piece of an item and not as a multiple quantity;

(b) If an item quantity is listed as number of boxes, cases or cartons, the total number of individual pieces of that item contained within that respective measurement (box, case or carton) must be specified in the unit column on the PA request. See table 122-0630-2;

(c) For gloves (Category IV Miscellaneous), 100 gloves equal one unit.

(6) Table 122-0630-1, Incontinent Supplies

(7) Table 122-0630-2, Incontinent Supplies – Counting Units and Pieces

[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 64-2001, f. 12-28-01, cert. ef. 1-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 76-2003, f. & cert. ef. 10-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; DMAP 37-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 13-2010, f. 6-10-10, cert. ef. 7-1-10; 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

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**Rule Caption:** Budget/Add and delete codes not covered and require prior authorization; clarify language and budget reductions.

**Adm. Order No.:** DMAP 43-2011

**Filed with Sec. of State:** 12-21-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 410-130-0000, 410-130-0200, 410-130-0220, 410-130-0255, 410-130-0368, 410-130-0595

**Rules Repealed:** 410-130-0595(T)

**Subject:** The Medical-Surgical Services Program administrative rules govern Division payments for services to clients. The Division amended as follows:

- 410-130-0000: add birthing centers as covered provider types;
- 410-130-0200: add codes for ventricular assist devices, gastric bypass, MRI and CT scans and Synagis to the list of codes requiring prior authorization (PA);
- 410-130-0220: add and delete codes to reflect the current Excluded List;
- 410-130-0255: change text to reflect PA requirement for Synagis; recommendations for who may receive flu vaccines; to not use 90460 and 90461 for VFC administration; that providers may bill the Division directly for VFC administration if a client has private insurance;
- 410-130-0368: change requirements to bill anesthesia time in minutes (not units of 15 minutes of time) and add qualifier MJ to claims; and
- 140-130-0595: permanently amend the temporary rule and add that providers can bill six additional Maternity Case Management (MCM) Home Visits if client has received MCM services for three months or more. The Division repeals 410-130-0595 (T)
- Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-130-0000

### Foreword

(1) The Division of Medical Assistance Programs (Division) Medical-Surgical Services rules are designed to assist medical-surgical providers to deliver medical services and prepare health claims for clients with Medical Assistance Program coverage. Providers must follow the Division rules in effect on the date of service.

(2) The Division enrolls only the following types of providers as performing providers under the Medical-Surgical program:

- Doctors of medicine, osteopathy and naturopathy;
- Podiatrists;
- Acupuncturists;
- Licensed Physician assistants;
- Nurse practitioners;
- Laboratories;
- Family planning clinics;
- Social workers (for specified services only);
- Licensed Direct entry midwives;
- Portable x-ray providers;
- Ambulatory surgical centers;
- Chiropractors;
- Licensed Dieticians (for specified service only);
- Registered Nurse First Assistants;
- Certified Nurse Anesthetists;
- Clinical Pharmacists;
- Birthing Centers.

(3) For clients enrolled in a managed care plan, contact the client's plan for coverage and billing information.

(4) The Medical-Surgical Services rules contain information on policy, special programs, prior authorization, and criteria for some procedures. All DMAP rules are intended to be used in conjunction with the General Rules for Oregon Medical Assistance Programs (OAR 410 division 120) and the Oregon Health Plan (OHP) Administrative Rules (OAR 410 division 141).

(5) The Health Services Commission's Prioritized List of Health Services is found on their website at: <http://www.oregon.gov/OHPPR/HSC/>

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: PWC 868, f. 12-30-77, ef. 2-1-78; AFS 36-1981, f. 6-29-81, ef. 7-1-81; AFS 27-1982, f. 4-22-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS Branch offices; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89, Renumbered from 461-014-0001; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0500; HR 6-1994, f. & cert. ef. 2-1-94; HR 23-1997, f. & cert. ef. 10-1-97; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 43-2011, f. 12-21-11, cert. ef. 1-1-12

## 410-130-0200

### Prior Authorization

(1) For fee-for-service clients prior authorization (PA) is required for all procedure codes listed in Table 130-0200-1 regardless of the setting they are performed in. For details on where to obtain PA: download a copy of the Medical-Surgical Services Supplemental Information booklet at:

<http://www.dhs.state.or.us/policy/healthplan/guides/medsurg/medsurgsupp1109.pdf>

(2) For clients enrolled in a prepaid health plan (PHP), providers must obtain PA from the client's PHP.

(3) PA is not required:

(a) For clients with both Medicare and Medical Assistance Program coverage and the service is covered by Medicare. However, PA is still required for bariatric surgeries and evaluations and most transplants, even if they are covered by Medicare;

(b) For kidney and cornea transplants, unless they are performed out-of-state;

(c) For emergent or urgent procedures or services;

(d) For hospital admissions, unless the procedure requires PA.

(4) A second opinion may be requested by the Division of Medical Assistance Programs or the contractor before PA is given for a surgery.

(5) Treating and performing practitioners are responsible for obtaining PA.

(6) Refer to Table 130-0200-1 for all services/procedures requiring PA.

(7) **Table 130-0200-1**

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

# ADMINISTRATIVE RULES

Hist.: AFS 868, f. 12-30-77, ef. 2-1-78; AFS 65-1980, f. 9-23-80, ef. 10-1-80; AFS 27-1982, f. 4-22-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 23-1986, f. 3-19-86, ef. 5-1-86; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89, Renumbered from 461-014-0045; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0630; HR 25-1990(Temp), f. 8-31-90, cert. ef. 9-1-90; HR 44-1990, f. & cert. ef. 11-30-90; HR 17-1991(Temp), f. 4-12-91, cert. ef. 5-1-91; HR 24-1991, f. & cert. ef. 6-18-91; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 50-2005, f. 9-30-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 27-2007(Temp), f. & cert. ef. 12-20-07 thru 5-15-08; DMAP 12-2008, f. 4-29-08, cert. ef. 5-1-08; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 18-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 15-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 34-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 43-2011, f. 12-21-11, cert. ef. 1-1-12

## 410-130-0220

### Not Covered/Bundled Services

(1) Refer to the Oregon Health Plan administrative rules (chapter 410, division 141) and General Rules (chapter 410, division 120) for coverage of services. Refer to Table 130-0220-1 in this rule for additional information regarding not covered services or for services that the Division of Medical Assistance Programs (Division) considers to be bundled in other services.

(2) The following are examples of not covered services. This is not an all-inclusive list:

(a) Psychotherapy services (covered only through local mental health clinics and Mental Health Organizations);

(b) Routine postoperative visits (included in the payment for the surgery) during 90 days following major surgery (global period) or 10 days following minor surgery.

(c) Services that are normally provided in the practitioner's office but at the client's request are provided in a location other than the practitioner's office.

(d) Telephone calls for purposes other than tobacco cessation, maternity case management and telemedicine.

(3) For specific information, see General Rules OAR 410-120-1200, Medical Assistance Benefits: Excluded Services and Limitations.

#### (4) Table 130-0220-1

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0640; HR 14-1991(Temp), f. & cert. ef. 3-7-91; HR 21-1991, f. 4-16-91, cert. ef. 5-1-91; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 16-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 30-1998, f. & cert. ef. 9-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 37-1999, f. & cert. ef. 10-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 45-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 18-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 15-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 43-2011, f. 12-21-11, cert. ef. 1-1-12

## 410-130-0255

### Immunizations and Immune Globulins

(1) Use standard billing procedures for vaccines that are not part of the Vaccines for Children (VFC) Program.

(2) The Division of Medical Assistance Programs (Division) covers Synagis (palivizumab-rsv-igm) only for high-risk infants and children as defined by the American Academy of Pediatric Guidelines.

(a) Prior authorization is required for Synagis. See Table 130-0200-1 Prior Authorization;

(b) Bill 90378 for Synagis.

(3) Providers are encouraged to administer combination vaccines when medically appropriate and cost effective.

(4) VFC Program:

(a) Under this federal program, vaccine serums are free for clients' ages 0 through 18. The Division will not reimburse the cost of privately purchased vaccines that are provided through the VFC Program. The Division also will not reimburse for the administration of privately purchased vaccines;

(b) Only providers enrolled in the VFC Program can receive free vaccine serums. To enroll as a VFC provider, contact the Public Health Immunization Program. For contact information, see the Medical-Surgical Supplemental Information found at <http://www.dhs.state.or.us/policy/healthplan/guides/medsurg/med-surgsuppl1109.pdf>

(c) The Division will reimburse providers for the administration of any vaccine provided by the VFC Program. Whenever a new vaccine becomes available through the VFC Program, administration of that vaccine is also covered by the Division;

(d) Refer to Table 130-0255-1 for immunization codes provided through the VFC Program;

(e) Providers shall follow the current Advisory Committee on Immunization Practices (ACIP) guidelines for immunization schedules. Exceptions include:

(A) On a case-by-case basis, provider may use clinical judgment in accordance with accepted medical practice to provide immunizations on a modified schedule;

(B) On a case-by-case basis, provider may modify immunization schedule in compliance with the laws of the State of Oregon, including laws relating to exemptions for immunizations due to religious beliefs or other requests.

(f) Use the following procedures when billing for the administration of a VFC vaccine:

(A) When the sole purpose of the visit is to administer a VFC vaccine, the provider should bill the appropriate vaccine procedure code with modifier -26 or -SL for each injection. Do not bill Current Procedural Terminology (CPT) code 90460-90474 or 99211;

(B) When the vaccine is administered as part of an Evaluation and Management service (e.g., well-child visit) the provider should bill the appropriate immunization code with modifier -26, or -SL for each injection in addition to the Evaluation and Management code.

(g) For clients with private insurance, bill the Division or the client's managed care plan directly for the administration of VFC vaccines. Medicaid is not considered the "payer of last resort" for administration of VFC vaccines.

#### (5) Table 130-0255-1

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 4-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 2-2002, f. 2-15-02, cert. ef. 4-1-02; OMAP 51-2002, f. & cert. ef. 10-1-02; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; Renumbered from 410-130-0800, OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 45-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 18-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 15-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 34-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 43-2011, f. 12-21-11, cert. ef. 1-1-12

## 410-130-0368

### Anesthesia Services

(1) Anesthesia is not covered for procedures that are below the funding line on the Health Services Commission's Prioritized List of Health Services (see OAR 410-141-0520).

(2) Effective January 1, 2012 all anesthesia claims submitted must be billed in minutes only. This includes;

(a) Claims for services provided prior to 1/1/12 that are submitted for the first time in 2012;

(b) Resubmitted unpaid claims for services provided prior to 1/1/12; and

(c) Adjustments made to claims for services performed prior to 1/1/12. Units must be converted by the provider from units to minutes.

(3) Qualifier MJ (indicating minutes) must be added to all claims;

(a) Claims with qualifier UN (indicating units) will be denied; and

(b) Claims without a qualifier will be denied.

(4) Reimbursement is based on the base units assigned to each anesthesia code listed in the current American Society of Anesthesiology Relative Value Guide plus one unit per each 15 minutes of anesthesia time, except for anesthesia for neuraxial labor analgesia/anesthesia/anesthesia (code 01967). See (5) below for reimbursement of neuraxial labor analgesia/anesthesia.

(a) The Division of Medical Assistance Programs (Division) will automatically calculate payment by adding the base units of the billed anesthesia code plus a unit per each 15 minutes of anesthesia time;

(b) Reimbursement will be made at a fraction of a unit for the last 14 minutes of anesthesia time;

(c) Do not add base units in addition to minutes.

(5) Anesthesia for neuraxial labor analgesia/anesthesia (code 01967) will be paid at a flat rate regardless of the units billed.

(6) Reimbursement for qualifying circumstances codes 99100-99140 and modifiers P1-P6 is bundled in the payment for codes 00100-01999. Do

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not add charges for 99100-99140 and modifiers P1-P6 in charges for 00100-01999.

(7) A valid consent form is required for all hysterectomies and sterilizations.

(8) If prior authorization (PA) was not obtained for a procedure that requires PA, then the anesthesia services may not be paid. Refer to OAR 410-130-0200 PA Table 130-0200-1.

(9) Anesthesia services are not payable to the provider performing the surgical procedure except for moderate (conscious) sedation.

(10) Moderate (conscious) sedation must be billed with codes 99143-99150.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07;

DMAP 43-2011, f. 12-21-11, cert. ef. 1-1-12

## 410-130-0595

### Maternity Case Management

(1) The primary purpose of the Maternity Case Management (MCM) program is to optimize pregnancy outcomes, including reducing the incidence of low birth weight babies. MCM services are tailored to the individual client needs. These services are provided face-to-face throughout the client's pregnancy, unless specifically indicated in this rule.

(2) This program:

(a) Is available to all pregnant clients receiving Medical Assistance Program coverage;

(b) Expands perinatal services to include management of health, economic, social and nutritional factors through the end of pregnancy and a two-month postpartum period;

(c) Must be initiated during the pregnancy and before delivery;

(d) Is an additional set of services over and above medical management of pregnant clients;

(e) Allows billing of intensive nutritional counseling services.

(3) Any time there is a significant change in the health, economic, social, or nutritional factors of the client, the prenatal care provider must be notified.

(4) Only one provider at a time may provide MCM services to the client. The provider must coordinate care to ensure that duplicate claims for MCM services are not submitted to the Division.

(5) Definitions:

(a) Case Management – An ongoing process to assist and support an individual pregnant client in accessing necessary health, social, economic, nutritional, and other services to meet the goals defined in the Client Service Plan (CSP)(defined below);

(b) Case Management Visit – A face-to-face encounter between a Maternity Case Manager and the client that must include two or more specific training and education topics, address the CSP and provide an ongoing relationship development between the client and the visiting provider.

(c) Client Service Plan (CSP) – A written systematic, client coordinated plan of care which lists goals and actions required to meet the needs of the client as identified in the Initial Assessment (defined below) and includes a client discharge plan/summary;

(d) High Risk Case Management – Intensive level of services provided to a client identified and documented by the Maternity Case Manager or prenatal care provider as being high risk;

(e) High Risk Client – A client who has a current (within the last year) documented alcohol, tobacco or other drug (ATOD) abuse history, or who is 17 or under, or has other conditions identified by the case manager any time during the course of service delivery;

(f) Home/Environmental Assessment – A visit to the client's primary place of residence to assess the health and safety of the client's living conditions;

(g) Initial Assessment – Documented, systematic collection of data with planned interventions as outlined in a CSP to determine current status and identify needs and strengths in physical, psychosocial, behavioral, developmental, educational, mobility, environmental, nutritional, and emotional areas;

(h) Nutritional Counseling – Intensive nutritional counseling for clients who have at least one of the conditions listed under Nutritional Counseling (12)(a)(A-I) in this rule;

(i) Prenatal/Perinatal care provider – The physician, licensed physician assistant, nurse practitioner, certified nurse midwife, or licensed direct entry midwife providing prenatal or perinatal (including labor and delivery) and/or postnatal services to the client;

(j) Case Management Visit Outside the Home – An encounter outside the client's home between a Maternity Case Manager and the client where identical services of a Case Management Home Visit (G9012) are provided.

(6) Maternity case manager qualifications:

(a) Maternity case managers must be currently licensed as a:

(A) Physician;

(B) Physician assistant;

(C) Nurse practitioner;

(D) Certified nurse midwife;

(E) Direct entry midwife;

(F) Social worker; or

(G) Registered nurse;

(b) The maternity case manager must be a Division enrolled provider or deliver services under an appropriate Division enrolled provider. See provider qualifications in the Division's General Rule 410-120-1260.

(c) All of the above must have a minimum of two years of related and relevant work experience;

(d) Other paraprofessionals may provide specific services with the exclusion of the Initial Assessment (G9001) while working under the supervision of one of the practitioners listed above in this section;

(e) The maternity case manager must sign off on all services delivered by a paraprofessional;

(f) Specific services not within the recognized scope of practice of the provider of MCM services must be referred to an appropriate discipline.

(7) Nutritional counselor qualifications – nutritional counselors must be:

(a) A licensed dietician (LD) licensed by the Oregon Board of Examiners of Licensed Dietitians; and

(b) A registered dietician (RD) credentialed by the Commission on Dietetic Registration of the American Dietetic Association (ADA).

(8) Documentation requirements:

(a) Documentation is required for all MCM services in accordance with Division General Rule 410-120-1360; and

(b) A correctly completed Division form 2470, 2471, 2472 and 2473 or their equivalents meet minimum documentation requirements for MCM services.

(9) G9001 – Initial Assessment must be performed by a licensed maternity case manager as defined under (6)(a)(A-G) in this rule:

(a) Services include:

(A) Client assessment as outlined in the "Definitions" section of this rule;

(B) Development of a CSP that addresses identified needs;

(C) Making and assisting with referrals as needed to:

(i) A prenatal care provider;

(ii) A dental health provider;

(D) Forwarding the Initial Assessment and the CSP to the prenatal care provider;

(E) Communicating pertinent information to the prenatal care provider and others participating in the client's medical and social care;

(b) Data sources relied upon may include:

(A) Initial Assessment;

(B) Client interviews;

(C) Available records;

(D) Contacts with collateral providers;

(E) Other professionals; and

(F) Other parties on behalf of the client;

(c) The client's record must reflect the date and to whom the Initial Assessment was sent;

(d) The Initial Assessment (G9001) is billable once per pregnancy per provider and must be performed before providing any other MCM services. Only a Home/Environmental Assessment (G9006) and a Case Management Home Visit (G9012) or Case Management Visit Outside the Home (G9011) may be performed and billed on the same day as an Initial Assessment.

(10) G9002 – Case Management includes:

(a) Face-to-face client contacts;

(b) Implementation and monitoring of a CSP:

(A) The client's records must include a CSP and written updates to the plan;

(B) The CSP includes determining the client's strengths and needs, setting specific goals and utilizing appropriate resources in a cooperative effort between the client and the maternity case manager;

(c) Care coordination as follows:

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(A) Contact with Department of Human Services (Department) case worker, if assigned;

(B) Maintain contact with prenatal care provider to ensure service delivery, share information, and assist with coordination;

(C) Contact with other community resources/agencies to address needs;

(d) Linkage to client services indicated in the CSP:

(A) Make linkages, provide information and assist the client in self-referral;

(B) Provide linkage to labor and delivery services;

(C) Provide linkage to family planning services as needed;

(e) Ongoing nutritional evaluation with basic counseling and referrals to nutritional counseling, as indicated;

(f) Utilization and documentation of the "5 A's" brief intervention protocol for addressing tobacco use (US Public Health Service Clinical Practice Guideline for Treating Tobacco Use and Dependence, 2008). Routinely:

(A) Ask all clients about smoking status;

(B) Advise all smoking clients to quit;

(C) Assess for readiness to try to quit;

(D) Assist all those wanting to quit by referring them to the Quitline and/or other appropriate tobacco cessation counseling and provide motivational information for those not ready to quit;

(E) Arrange follow-up for interventions;

(g) Provide training and education on all mandatory topics - Refer to Table 130-0595-2 in this rule;

(h) Provide client advocacy as necessary to facilitate access to benefits or services;

(i) Assist client in achieving the goals in the CSP;

(j) G9002 is billable when three months or more of services were provided. Services must be initiated during the prenatal period and carried through the date of delivery;

(k) G9002 is billable once per pregnancy.

(11) G9005 – High Risk Case Management:

(a) Enhanced level of services that are more intensive and are provided in addition to G9002;

(b) A client can be identified as high risk at any time when case management services are provided, therefore G9005 can be billed after 3 months of case management services.

(c) G9005 is billable only once per pregnancy per provider.

(d) G9002 can not be billed in addition to G9005.

(12) S9470 – Nutritional counseling:

(a) Is available for clients who have at least one of the following conditions:

(A) Chronic disease such as diabetes or renal disease;

(B) Hematocrit (Hct) less than 34 or hemoglobin (Hb) less than 11 during the first trimester, or Hct less than 32 or Hb less than 10 during the second or third trimester;

(C) Pre-gravida weight under 100 pounds or over 200 pounds;

(D) Pregnancy weight gain outside the appropriate Women, Infants and Children (WIC) guidelines;

(E) Eating disorder;

(F) Gestational diabetes;

(G) Hyperemesis;

(H) Pregnancy induced hypertension (pre-eclampsia); or

(I) Other identified conditions;

(b) Documentation must include all of the following:

(A) Nutritional assessment;

(B) Nutritional care plan;

(C) Regular client follow-up;

(c) Can be billed in addition to other MCM services;

(d) S9470 is billable only once per pregnancy.

(13) G9006 – Home/Environmental Assessment:

(a) Includes an assessment of the health and safety of the client's living conditions with training and education of all topics as indicated in Table 130-0595-1 in this rule;

(b) G9006 may be billed only once per pregnancy, except an additional Home/Environmental Assessments may be billed with documentation of problems which necessitate follow-up assessments or when a client moves. Documentation must be submitted with the claim to support the additional Home/Environment Assessment.

(14) G9011 – Case Management Visit Outside the Home:

(a) A face-to-face encounter between a maternity case manager and the client in a place other than the home which meets all requirements of a

Case Management Home Visit (G9012) or a telephone encounter when a face-to-face Case Management Visit is not possible or practical;

(b) G9011 is billable in lieu of a Case Management Home Visit and counted towards the total number of Case Management Home Visits (see G9012 for limitations).

(15) G9012 – Case Management Home Visit:

(a) Each Case Management Home Visit must be performed in the client's home and must include:

(A) An evaluation and/or revision of objectives and activities addressed in the CSP; and

(B) At least two training and education topics listed in Table 130-0595-2 in this rule;

(b) Four Case Management Home Visits (G9012) may be billed per pregnancy. Case Management Visits Outside the Home (G9011) are included in this limitation;

(c) Six additional Case Management Home Visits may be billed if the client is identified as high risk and services were provided for three months or longer;

(d) These additional six visits may only be billed with or after High Risk Case Management (G9005) has been billed. Case Management Visits Outside the Home (G9011) are included in this limitation.

(16) Table 130-0595-1

(17) Table 130-0595-2

[ED. NOTE: Tables & Forms referenced are available from the agency.]

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 57-1987, f. 10-29-87, ef. 11-1-87; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89, Renumbered from 461-014-0200 & 461-014-0201; AFS 54-1989(Temp), f. 9-28-89, cert. ef. 10-1-89; AFS 71-1989, f. & cert. ef. 12-1-89; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0580; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 43-1991, f. & cert. ef. 10-1-91; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 34-1998, f. & cert. ef. 10-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 51-2002, f. & cert. ef. 10-1-02; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; Renumbered from 410-130-0100, OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 18-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 8-2010(Temp), f. 4-13-10, cert. ef. 4-15-10 thru 10-1-10; DMAP 24-2010, f. & cert. ef. 9-1-10; DMAP 22-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-25-12; DMAP 43-2011, f. 12-21-11, cert. ef. 1-1-12

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**Rule Caption:** Legislatively-approved budget with provider rate changes, PDL updates, PA updates, and dispensing limitations.

**Adm. Order No.:** DMAP 44-2011

**Filed with Sec. of State:** 12-21-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 410-121-0000, 410-121-0030, 410-121-0032, 410-121-0040, 410-121-0061, 410-121-0146, 410-121-0147, 410-121-0160, 410-121-0185, 410-121-0190

**Rules Repealed:** 410-121-0160(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:

410-121-0000: Pursuant to the passage of House Bill 2100 that removes the statutory requirement of public consideration of pricing for the Preferred Drug List (PDL) selection, the Division removed the definition for Average Net Price (ANP).

410-121-0030: Pursuant to the passage of House Bill 2100, the Division removed all ANP language from the rule and updated semi-annual Preferred Drug List (PDL).

410-121-0032: Pursuant to the passage of House Bill 2100, the Division removed all language in this rule that refers to ANP.

410-121-0040: DMAP added prior authorization criteria for third line diabetic agents to ensure safe and appropriate use. Contingent upon the Pharmacy & Therapeutics Committee's PA recommendations, the Division will require a PA for new Food and Drug Administration approved drugs belonging to classes that have not been reviewed for PDL selection, for up to six months after their release for our fee-for-service clients. Excluded from this rule change are anti-retrovirals, oral oncology medications, and family planning drugs.

410-121-0061: Added language directing providers to Medical-Surgical Services Program rules for physician administered drug rules.

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410-121-0146: 15 day supply limits – New prescriptions for selected high cost drugs or those with adverse side effect profiles are limited to a 15-day supply for a first prescription fill.

Maintenance fill program – Changes to dispensing limitations to allow a fill for a 100-day supply or 100 units on selected medications.

Bypass 34-day supply edit – Changes to dispensing limitations to bypass the 34-day supply edit when the package size cannot be divided and includes more than a 34-day supply.

410-121-0147: Clarifies language specific to items not covered by the Pharmaceutical Services program and where to find rules about Medicare Part D covered drugs.

410-121-0160: Permanently amended the temporary rule for agency budget reductions related to dispensing fee rate changes.

410-121-0185 & 410-121-0190: Updated billing instructions to include the Provider Web Portal.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-121-0000

### Foreword and Definition of Terms

(1) The Division of Medical Assistance Program's (Division) Oregon Administrative Rules (OAR) are designed to assist providers in preparing claims for services provided to the Division's fee-for-service clients. Providers must use Pharmaceutical OARs in conjunction with the General Rules OARs (chapter 410, division 120) for Oregon Medical Assistance Programs.

(2) Pharmaceutical services delivered through managed care plans contracted with the Division, under the Oregon Health Plan (OHP), are subject to the policies and procedures established in the OHP administrative rules (chapter 410, division 141) and by the specific managed health care plans.

(3) Definition of Terms:

(a) Actively Practicing: The active practice of medicine as described in ORS chapter 689, or the active practice of pharmacy as described in ORS chapter 677.

(b) Actual Acquisition Cost (AAC): The cost or basis for reimbursement of supplies. The AAC will be established by the Division or its contractor by rolling surveys of enrolled pharmacies to verify the actual invoice amount paid by the pharmacy or corporate entity to wholesalers, manufacturers, or distribution centers for the product and as such will serve as the basis for reimbursement;

(c) Authority: The Oregon Health Authority, see Oregon Health Authority definition in General Rules (chapter 410, division 120);

(d) Average Actual Acquisition Cost (AAAC): The AAAC will be the average of AAC invoice amounts for individual drug products based on the Generic Sequence Number (GSN);

(e) Average Manufacturer's Price (AMP): The average price that manufacturers sell medication to wholesalers and retail pharmacies, as further clarified in 42 CFR 447;

(f) Bulk Dispensing: Multiple doses of medication packaged in one container labeled as required by pertinent Federal and State laws and rules;

(g) Centers for Medicare and Medicaid Services (CMS) Basic Rebate: The quarterly payment by the manufacturer of a drug pursuant to the Manufacturer's CMS Medicaid Drug Rebate Agreement made in accordance with Section 1927(c)(3) of the Social Security act 42 U.S.C. 1396r-8(c)(1) and 42 U.S.C. 1396r-8 (c)(3). See 410-121-0157;

(h) CMS Consumer Price Index (CPI) Rebate: The quarterly payment by the manufacturer pursuant to the Manufacturer's CMS Medicaid Drug Rebate Agreement made in accordance with Section 1927(c)(2) of the Social Security act (42 U.S.C. 1396r-8(c)(2));

(i) Compendia: Those resources widely accepted by the medical profession in the efficacious use of drugs, including the following sources:

- (A) The American Hospital Formulary Service drug information;
- (B) The United States Pharmacopeia drug information;
- (C) The American Medical Association drug evaluations;
- (D) Peer-reviewed medical literature;

(E) Drug therapy information provided by manufacturers of drug products consistent with the federal Food and Drug Administration requirements;

(j) Community Based Care Living Facility: For the purposes of the Division's Pharmacy Program, a home, facility, or supervised living environment licensed or certified by the state of Oregon that provides 24 hour care, supervision, and assistance with medication administration. These include, but are not limited to:

- (A) Supportive Living Facilities;

(B) 24-Hour Residential Services;

(C) Adult Foster Care;

(D) Semi-Independent Living Programs;

(E) Assisted Living and Residential Care Facilities;

(F) Group Homes and other residential services for people with developmental disabilities or needing mental health treatment; and

(G) Inpatient hospice;

(k) Compounded Prescription:

(A) A prescription that is prepared at the time of dispensing and involves the weighting of at least one solid ingredient that must be a reimbursable item or a legend drug in a therapeutic amount;

(B) Compounded prescription is further defined to include the Oregon Board of Pharmacy definition of compounding (see OAR 855-006-0005);

(l) Dispensing: Issuance of a prescribed quantity of an individual drug entity by a licensed pharmacist;

(m) Director: The Director of the Authority;

(n) Drug Order/Prescription:

(A) A medical practitioner's written or verbal instructions for a patient's medications; or

(B) A medical practitioner's written order on a medical chart for a client in a nursing facility;

(o) Durable Medical Equipment and supplies (DME): Equipment and supplies as defined in OAR 410-122-0010, Durable Medical Equipment, Prosthetics, Orthotics, and Supplies;

(p) Estimated Acquisition Cost (EAC): The estimated cost that the pharmacy can obtain the product listed in OAR 410-121-0155;

(q) Intermediate Care Facility: A facility providing regular health-related care and services to individuals at a level above room and board, but less than hospital or skilled nursing levels as defined in ORS 442.015;

(r) Legend Drug: A drug limited by § 503(b)(1) of the Federal Food, Drug, and Cosmetic Act to being dispensed by or upon a medical practitioner's prescription because the drug is:

(A) Habit-forming;

(B) Toxic or having potential for harm; or

(C) Limited in its use to use under a practitioner's supervision by the new drug application for the drug;

(i) The product label of a legend drug is required to contain the statement: "CAUTION: FEDERAL LAW PROHIBITS DISPENSING WITHOUT A PRESCRIPTION.";

(ii) A legend drug includes prescription drugs subject to the requirement of § 503(b)(1) of the federal Food, Drug, and Cosmetic Act which shall be exempt from § 502(F)(1) if certain specified conditions are met;

(s) Long Term Care Facility: Includes skilled nursing facilities and intermediate care facilities with the exclusions found in ORS 443.400 to 443.455;

(t) Maintenance Medication: Drugs that have a common indication for treatment of a chronic disease and the therapeutic duration is expected to exceed one year. This is determined by a First DataBank drug code maintenance indicator of "Y" or "1";

(u) Mental Health Drug: A type of legend drug defined by the Oregon Health Authority (Authority) by rule that includes, but is not limited to those drugs classified by First DataBank in the following Standard Therapeutic Classes:

(A) Therapeutic Class 7 ataractics-tranquilizers; and Therapeutic Class 11 psychostimulants-antidepressants;

(B) Depakote, Lamictal and their generic equivalents and other drugs that the Division specifically carved out from capitation from Fully Capitated Health Plans (FCHPs) in accordance with OAR 410-141-0070;

(v) Narrow Therapeutic Index (NTI) Drug: A drug that has a narrow range in blood concentrations between efficacy and toxicity and requires therapeutic drug concentration or pharmacodynamic monitoring;

(w) Net Price: The amount a drug costs the Division and is calculated using the following formula: "Estimated Acquisition Cost minus CMS Basic Rebate minus CMS CPI Rebate minus State Supplemental Rebate";

(x) Non-Preferred Products: Any medication in a class that has been evaluated and that is not listed on the Practitioner-Managed Prescription Drug Plan Preferred Drug List in OAR 410-121-0030 and may be subject to co-pays;

(y) Nursing Facility: An establishment that is licensed and certified by the Department's Seniors and People with Disabilities Division (SPD) as a Nursing Facility;

(z) Pharmacist: An individual who is licensed as a pharmacist under ORS chapter 689;

(aa) Physical Health Drug: All other drugs not included in section (r) of this rule;

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(bb) Point-of-Sale (POS): A computerized, claims submission process for retail pharmacies that provides on-line, real-time claims adjudication;

(cc) Preferred Drug List (PDL): A PDL consists of prescription drugs in selected classes that the Authority, in consultation with the Pharmacy & Therapeutics Committee (P & T), has determined represent the most effective drug(s) available at the best possible price. (See details for the Division's PMPDP PDL in OAR 410-121-0030):

(A) Enforceable Physical Health Preferred Drug List: The list of drug products used to treat physical health diagnosis that the Division has identified which shall be exempt from client co-pays and may be subject to prior authorization (PA). Drugs prescribed that do not appear on the PDL (non-preferred products) shall be subject to both co-pays and PA as determined to be appropriate by the Division;

(B) Voluntary Mental Health Preferred Drug List: The list of drug products used to treat mental health diagnosis. These drugs are exempt from client co-pay. Any drug prescribed for the treatment of mental health diagnosis shall be exempt from PA requirements by the Division;

(dd) Preferred Products: Products in classes that have been evaluated and placed on the Practitioner Managed Prescription Drug Plan (PMPDP) PDL in OAR 410-121-0030 and are not subject to co-pays;

(ee) Prescriber: Any person authorized by law to prescribe drugs;

(ff) Prescription Splitting: Any one or a combination of the following actions:

(A) Reducing the quantity of a drug prescribed by a licensed practitioner for prescriptions not greater than 34 days (see OAR 410-121-0146);

(B) Billing the agency for more than one dispensing fee when the prescription calls for one dispensing fee for the quantity billed;

(C) Separating the ingredients of a prescribed drug and billing the agency for separate individual ingredients, with the exception of compounded medications (see OAR 410-121-0146); or

(D) Using multiple 30-day cards to dispense a prescription when a lesser number of cards will suffice;

(gg) Prior Authorization Program (PA): The Prior Authorization Program is a system of determining, through a series of therapeutic and clinical protocols, which drugs require authorizations prior to dispensing:

(A) OAR 410-121-0040 lists the drugs or categories of drugs requiring PA;

(B) The practitioner, or practitioner's licensed medical personnel listed in OAR 410-121-0060, may request a PA;

(hh) State Supplemental Rebates: The Division and CMS approved discounts paid by manufacturers per unit of drug. These rebates are authorized by the Social Security Act section 42 USC 1396r-8(a)(1) and are in addition to federal rebates mandated by the Omnibus Budget Reconciliation Act (OBRA 90) and the federal rebate program;

(ii) Unit Dose: A sealed, single unit container of medication, so designed that the contents are administered to the patient as a single dose, direct from the container, and dispensed following the rules for unit dose dispensing system established by the Oregon Board of Pharmacy;

(jj) Urgent Medical Condition: A medical condition that arises suddenly, is not life-threatening, and requires prompt treatment to avoid the development of more serious medical problems;

(kk) Usual and Customary Price: A pharmacy's charge to the general public that reflects all advertised savings, discounts, special promotions, or other programs including membership based discounts, initiated to reduce prices for product costs available to the general public, a special population, or an inclusive category of customers;

(ll) Wholesale Acquisition Cost (WAC): The price paid by a wholesaler for drugs purchased from the wholesaler's supplier, typically the manufacturer of the drug. WAC is the price of a covered product by the National Drug Code (NDC) as published by First DataBank, MediSpan or Red Book;

(mm) 340B Pharmacy: A federally designated community health center or other federally qualified covered entity that is listed on the Health Resources and Services Administration (HRSA) website.

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

Stat. Auth.: ORS 409.025, 409.040, 409.110, 413.042, 414.065 & 414.325

Stats. Implemented: ORS 414.065

Hist.: HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 1-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09; 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 23-2011, f. 8-24-11, cert. ef. 9-1-11; 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

## 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 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 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;

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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

## 410-121-0032

### Supplemental Rebate Agreements

(1) The Division of Medical Assistance Programs (Division) has a, Centers for Medicare and Medicaid Services (CMS) approved Supplemental Rebate Agreement. This template and instructions are available on the Oregon Health Authority's (Authority) web site at: <http://www.oregon.gov/DHS/healthplan/supp-rebate/main.shtml>

(2) The Division negotiates Supplemental Rebate Agreements for specific drug products through the Sovereign States Drug Consortium (SSDC) multi-state pool and pharmaceutical manufacturers. Negotiations are confidential, and shall not be disclosed, except in connection with an agreement/contract or as may be required by law. Confidentiality is required of any third party involved in administration of the agreement/contract.

(3) Manufacturers may submit supplemental rebate offers for consideration to include their drug(s) on the Practitioner's-Managed Prescription Drug Plan (PMPDP) Preferred Drug List (PDL), OAR 410-121-0030 after gaining access to the SSDC secure web-based offer entry system.

(4) Manufacturers must abide by requirements of the SSDC.

(5) The Practitioner-Managed Prescription Drug List (PMPDP) also called the Preferred Drug List (PDL) consist of drugs after the Food and Drug Administration (FDA) has determined to be safe and effective and reimbursable as determined by the Centers for Medicaid and Medicare Services (CMS), and evaluated using an evidence-based review process by the Pharmacy & Therapeutics Committee (P&T). If pharmaceutical manufacturers enter into supplemental rebate agreements with the SSDC, the Authority may include that drug on the PDL.

(6) Acceptance of the offer:

(a) The Division may accept an offer through the SSDC;

(b) The SSDC will notify manufacturers of the status of their offer(s).

(c) Supplemental Agreements will be executed after signed by all parties, approved by CMS if required, and added to the PMPDP Preferred Drug List by the Administrative rule process.

(d) The Division may contract for the functions of tracking utilization, invoicing, and dispute resolution for supplemental rebate products.

Stat. Auth.: ORS 409.025, 409.040, 409.110, 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 97-2004, f. 12-30-04, cert. ef. 1-1-05; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 14-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12

## 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 Jan. 1, 2011, incor-

porated 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) PA is required for all new drugs added to the National Drug Data File (NDDF):

(a) The new drug will be prioritized to be presented to the P & T Committee after the drug's NDDF add date. The P & T Committee will make additional drug specific recommendations to the Authority regarding PA criteria, if any, that should be adopted for the new drug:

(i) If the new drug is in a class where current PA criteria apply, all PA criteria associated with that class shall be required at the time the new drug is added to the NDDF;

(ii) 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;

(b) PA for the new drug under section (5) of this rule remains in effect until such time as the Authority makes a determination regarding the applicability of PA criteria for the new drug or six months elapse from the drug's NDDF add date without a decision regarding PA criteria for that drug, whichever occurs first;

(c) Oral oncology medications, anti-retrovirals, and family planning drugs are excluded from the PA requirements in section (5) of this rule.

(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 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 Plan under ORS 414.334.

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;



# ADMINISTRATIVE RULES

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

## 410-121-0061

### Durable Medical Equipment, Medical Supplies, and Medical Surgical Services (Physician Administered Drugs)

Follow the guidelines in the Durable Medical Equipment and Medical Supplies (OAR 410 Division 122), Home Enteral/Parenteral Nutrition and IV Services (OAR chapter 410, division 148), and Medical Surgical Services (OAR chapter 410, division 130) administrative rules and supplemental information for billing and prior authorization of these medical supplies and services. This information is available on the Oregon Health Authority's web site.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: HR 26-1991, f. & cert. ef. 7-1-91; HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12

## 410-121-0146

### Dispensing Limitations

(1) The Division of Medical Assistance Programs (Division) will reimburse the pharmacy for dispensed medication the lesser of:

- (a) The quantity indicated by the prescriber on the prescription; or
- (b) The quantity indicated by the Division dispensing limitations as outlined in this rule.

(2) The pharmacy may only dispense less than the prescribed quantity when the prescribed quantity exceeds the Division's dispensing limitations.

(3) Unless otherwise specified in this rule, the Division will not reimburse claims for medications exceeding a 34-days supply.

(4) Exceptions to the 34-day supply do not apply to claims for the following Standard Therapeutic Classes of medications. Claims exceeding a 34-day supply for these medications will not be reimbursed under any circumstances:

- (a) Ataractics, Tranquilizers – 07;
- (b) Muscle Relaxants – 08;
- (c) CNS Stimulants – 10;
- (d) Psychostimulants, Antidepressants – 11;
- (e) Amphetamine Preps – 12;
- (f) Narcotic Analgesics – 40;
- (g) Sedative Barbiturate – 46;
- (h) Sedative Non-Barbiturate – 47.

(5) The Division will allow reimbursement for more than a 34-day supply if the medication's original package size cannot be divided.

(6) Except for medications listed in (4), claims for up to a 100-day supply of the following types of medications may be reimbursed to the Division's mail order pharmacy contractor, Indian Health mail order pharmacy providers, and 340B providers:

- (a) A preferred PDL generic; and
- (b) A generic drug not on the PDL, costing \$10 per month or less.

(7) Any pharmacy provider will be reimbursed for up to a 100-day supply of family planning drugs.

(8) Maintenance Medications – Any pharmacy provider will be reimbursed for up to a 100-day supply of select classes of medications if the client has received the same dose for two months or more. See Table 121-0146-1 Maintenance Medications. Maintenance medications shall be determined by the Division based on the following criteria:

(a) Have low probability for dosage or therapy changes due to side effects; and

(b) Are used most commonly to treat a chronic disease state and not considered curative or promoting recovery; and

(c) Are administered continuously rather than intermittently.

(9) Selected medications identified by the Division will be limited to a 15-day supply for initial fills. These medications have been identified as having high side effect profiles, high discontinuation rates, or needing frequent dose adjustments.

(10) After stabilization of a diabetic, the pharmacy should provide a minimum of a one-month supply of insulin per dispensing.

(11) For vaccines available in multiple dose packaging, the Division will allow a dispensing fee for each multiple dose. When vaccines are administered at the pharmacy, refer to Oregon Administrative Rule (OAR) 410-121-0185.

(12) Splitting prescriptions:

(a) For compounded prescriptions, bill components of the prescription separately. Third party payments for compounded prescriptions must be split and applied equally to each component;

(b) The Division will consider any other form of prescription splitting as a billing offense and take appropriate action as described in the General Rules (OAR 410 division 120).

(13) Table 121-0146-1 Maintenance Medications.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: PWC 818(Temp), f. 10-22-76, ef. 11-1-76; PWC 831, f. 2-18-77, ef. 3-1-77; PWC 869, f. 12-30-77, ef. 1-1-78; AFS 70-1981, f. 9-30-81, ef. 10-1-81; AFS 44-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 99-1982, f. 10-25-82, ef. 11-1-82; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 26-1984, f. & ef. 6-19-84; AFS 53-1985, f. 9-20-85, ef. 10-1-85; AFS 52-1986, f. & ef. 7-2-86; AFS 15-1987, f. 3-31-87, ef. 4-1-87; AFS 4-1989, f. 1-31-89, cert. ef. 2-1-89; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89, Renumbered from 461-016-0090; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0210; HR 16-1992, f. & cert. ef. 7-1-92; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1996(Temp), f. & cert. ef. 8-1-96; HR 27-1996, f. 12-11-96, cert. ef. 12-15-96; HR 20-1997, f. & cert. ef. 9-12-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 61-2001(Temp), f. 12-13-01, cert. ef. 12-15-01 thru 3-15-02; OMAP 1-2002, cert. ef. 2-15-02; OMAP 74-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 7-2004, f. 2-13-04 cert. ef. 3-15-04; OMAP 19-2004(Temp), f. & cert. ef. 3-15-04 thru 4-14-04; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 6-2010(Temp), f. & cert. ef. 4-1-10 thru 6-30-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12

## 410-121-0147

### Exclusions and Limitations

(1) The following items are not covered for payment by the Division of Medical Assistance Programs (Division) Pharmaceutical Services Program:

(a) Drug products for diagnoses below the funded line on the Health Services Commission Prioritized List or an excluded service under Oregon Health Plan (OHP) coverage;

(b) Home pregnancy kits;

(c) Fluoride for individuals over 18 years of age;

(d) Expired drug products;

(e) Drug products from non-rebatable manufacturers, with the exception of selected oral nutritional, vitamins, and vaccines;

(f) Active Pharmaceutical Ingredients (APIs) and Excipients as described by Centers for Medicare and Medicaid (CMS);

(g) Drug products that are not assigned a National Drug Code (NDC) number;

(h) Drug products that are not approved by the Food and Drug Administration (FDA);

(i) Drug products dispensed for Citizen/Alien-Waived Emergency Medical client benefit type;

(j) Drug Efficacy Study Implementation (DESI) drugs (see OAR 410-121-0420);

(k) Medicare Part D covered drugs or classes of drugs for fully dual eligible clients (see OAR 410-121-0149, 410-120-1200, & 410-120-1210).

(2) Effective on or after April 1, 2008, Section 1903(i) of the Social Security Act requires that written (nonelectronic) prescriptions for covered outpatient drugs for Medicaid clients be executed on a tamper-resistant pad in order to be eligible for federal matching funds. To meet this requirement, the Division shall only reimburse for covered Medicaid outpatient drugs only when the written (nonelectronic) prescription is executed on a tamper-resistant pad, or the prescription is electronically submitted to the pharmacy.

(3) Drugs requiring a skilled medical professional for safe administration will be billed by the medical professional's office; unless otherwise specified by the Division.

Stat. Auth.: ORS 409.010 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 34-1993(Temp), f. & cert. ef. 12-1-93; HR 11-1994, f. 2-25-94, cert. ef. 2-27-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 22-1997, f. & cert. ef. 10-1-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 9-2008, f. 3-31-08, cert. ef. 4-1-08; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 14-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12

## 410-121-0160

### Dispensing Fees

(1) Effective August 1, 2011 professional dispensing fees allowable for services shall be reimbursed as follows:

(a) All enrolled chain affiliated pharmacies shall be reimbursed at a rate of \$9.68 per claim;

(b) Independently owned pharmacies in communities that are the only enrolled pharmacy within a fifteen (15) mile radius from another pharmacy shall be reimbursed at a dispensing fee of \$14.01 per claim;

(c) All other enrolled independently owned pharmacies excluding those in 410-121-0160(b) shall be reimbursed based on an individual pharmacy's annual claims volume as follows:

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36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 14-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12

- (A) Less than 30,000 claims a year = \$14.01;
- (B) Between 30,000 and 49,999 claims per year = \$10.14;
- (C) 50,000 or more claims per year = \$9.68.

(2) All Division enrolled independent pharmacies shall be required to complete an annual survey that collects claim volumes from enrolled pharmacies and other information from the previous 12 month period to determine the appropriate dispensing fee reimbursement:

(a) Claims volume shall be stated by total OHP covered prescriptions and claims from all payer types;

(b) Survey activities shall be conducted by either the Division or its contractor and must be completed and returned by pharmacies within 14 days of receipt;

(c) Completed surveys must be signed with a letter of attestation by the store owner or majority owner;;

(d) Pharmacies that fail to respond to the survey or do not include the letter of attestation shall default to the lowest dispensing tier;

(e) Once a tier is established for a calendar year, the pharmacy's dispensing fee shall remain in that tier until the next annual claims volume survey is conducted;

(f) Newly enrolled independent pharmacies shall be defaulted to the lowest dispensing tier until the next claims volume survey is conducted.

(3) All chain affiliated pharmacies shall be exempt from completing the annual claims volume survey.

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

Stat. Auth.: ORS 184.750, 184.770, 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 51-1983(Temp), f. 9-30-83, ef. 10-1-83; AFS 56-1983, f. 11-17-83, ef. 12-1-83; AFS 41-1984(Temp), f. 9-24-84, ef. 10-1-84; AFS 1-1985, f. & ef. 1-3-85; AFS 54-1985(Temp), f. 9-23-85, ef. 10-1-85; AFS 66-1985, f. 11-5-85, ef. 12-1-85; AFS 13-1986(Temp), f. 2-5-86, ef. 3-1-86; AFS 36-1986, f. 4-15-86, ef. 6-1-86; AFS 52-1986, f. & ef. 7-2-86; AFS 12-1987, f. 3-3-87, ef. 4-1-87; AFS 28-1987(Temp), f. & ef. 7-14-87; AFS 50-1987, f. 10-20-87, ef. 11-1-87; AFS 41-1988(Temp), f. 6-13-88, cert. ef. 7-1-88; AFS 64-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89, Renumbered from 461-016-0101; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 20-1990, f. & cert. ef. 7-9-90, Renumbered from 461-016-0260; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 21-1993(Temp), f. & cert. ef. 9-1-93; HR 12-1994, f. 2-25-94, cert. ef. 2-27-94; OMAP 5-1998(Temp), f. & cert. ef. 2-11-98 thru 7-15-98; OMAP 22-1998, f. & cert. ef. 7-15-98; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 50-2001(Temp), f. 9-28-01, cert. ef. 10-1-01 thru 3-1-02; OMAP 60-2001, f. & cert. ef. 12-11-01; OMAP 32-2003(Temp), f. & cert. ef. 4-15-03 thru 9-15-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 7-2004, f. 2-13-04 cert. ef. 3-15-04; OMAP 19-2004(Temp), f. & cert. ef. 3-15-04 thru 4-14-04; OMAP 21-2004, f. 3-15-04, cert. ef. 4-15-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 14-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 22-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-25-12; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12

## 410-121-0185

### Pharmacy Based Immunization Delivery

(1) When administering immunizations for adults (ages 19+) the pharmacy can bill either:

(a) Through Point-of-Sale (POS) using the appropriate National Drug Code (NDC) for the serum and the administration fee shall automatically be applied equivalent to Current Procedural Terminology (CPT) codes 90470-90474 ; or

(b) Bill on a CMS-1500 or a DMAP 505 claim form using the appropriate immunization CPT code for the serum; or

(c) Bill through the Provider Web Portal.

(2) If using a CMS-1500, you must also include:

(a) An ICD-9 diagnosis in field 21, and;

(b) The diagnosis code must be shown to the highest degree of specificity, and;

(c) Use the appropriate CPT code for the serum, code ranges 90476-90749; and

(d) Use the appropriate CPT code for the administration, code ranges 90470-90474.

(3) Pursuant to ORS 689.205 and the Board of Pharmacy administrative rules 855-019-0270 through 855-019-0290; pharmacists may prescribe and administer vaccines to children who are from the age of 11 through 18 years of age only if the pharmacy is enrolled in the Vaccines for Children (VFC) Program. The Division will not reimburse providers the cost of privately purchased vaccination.

(4) If the pharmacy is enrolled in the VFC Program, then only the administration fee shall be reimbursed by the Division and must be billed on a CMS-1500, DMAP 505 claim form, or the Provider Web Portal. For detailed information on billing for the VFC Program, refer to Medical Surgical Services OAR 410-130-0255.

Stat. Auth.: ORS 409.025, 409.040, 409.110, 413.042, & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 7-2002, f. & cert. ef. 4-1-02; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 9-2005, f. 3-9-05, cert. ef. 4-1-05; DMAP

## 410-121-0190

### Clozapine Therapy

(1) Clozapine is covered only for the treatment of clients who have failed therapy with at least two anti-psychotic medications. Clozapine supervision is the management and record keeping of clozapine dispensings as required by the manufacturer of clozapine.

(2) Clozapine supervision:

(a) Pharmacists are to bill for Clozapine supervision by using code 90862, adding TC modifier;

(b) Providers billing for clozapine supervision must document all of the following:

(A) Exact date and results of White Blood Counts (WBCs), upon initiation of therapy and at recommended intervals per the drug labeling;

(B) Notations of current dosage and change in dosage;

(C) Evidence of an evaluation at intervals recommended per the drug labeling requirements approved by the FDA;

(D) Dates provider sent required information to manufacturer;

(E) Only one provider, either pharmacist or physician, may bill per week per client;

(F) Limited to five units per 30 days per client;

(G) An ICD-9 diagnosis must be specified to the 5th digit when billing on a CMS-1500, DMAP 505, or Provider Web Portal.

(3) Drug products – The information required on the 5.1 Universal Claim Form must be included in the billing. The actual drug product may be billed electronically or submitted on the 5.1 Universal Claim Form.

(4) Venipuncture – If the pharmacy performs venipuncture, bill for that procedure on a CMS-1500, 837P, or Provider Web Portal. Use Procedure Code 36415.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 17-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 45-2002, f. & cert. ef. 10-1-02; OMAP 20-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 9-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 61-2005, f. 11-29-05, cert. ef. 12-1-05; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12

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**Rule Caption:** 10/11 Technical Changes for 1/11–12/31/12 Health Services Commission's Prioritized List of Health Services.

**Adm. Order No.:** DMAP 45-2011

**Filed with Sec. of State:** 12-21-2011

**Certified to be Effective:** 12-23-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 410-141-0520

**Rules Repealed:** 410-141-0520(T)

**Subject:** The Oregon Health Plan (OHP or Managed Care) program administrative rules govern Division payments for services to clients. The Division permanently amended the temporary rule (OAR 410-141-0520) to reference the Oregon Health Services Commission's Prioritized List of Health Services' January 1, 2011–December 31, 2012, Prioritized List of Health Services effective October 1, 2011, including interim modifications and technical changes made for 2009 national code set.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-141-0520

### Prioritized List of Health Services

(1) The Prioritized List of Health Services (Prioritized List) is the Oregon Health Services Commission's (HSC) listing of physical health services with "expanded definitions" of preventive services and the HSC's practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The HSC maintains the most current list on the HSC website: [www.oregon.gov/DHS/healthplan/priorlist/main](http://www.oregon.gov/DHS/healthplan/priorlist/main), or, for a hardcopy contact the Office for Oregon Health Policy and Research. This rule incorporates to reference the CMS approved biennial January 1, 2011–December 31, 2012 Prioritized List, including interim modifications and technical revisions made for the 2009 national code set effective October 1, 2011 that includes expanded definitions, practice guidelines and condition treatment pairs funded through line 502.

(2) Certain mental health services are only covered for payment when provided by a Mental Health Organization (MHO), Community Mental

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Health Program (CMHP) or authorized Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO). These codes are identified on their own Mental Health (MH) section of the appropriate lines on the Prioritized List of Health Services.

(3) Chemical dependency (CD) services are covered for eligible OHP clients when provided by an FCHP, PCO, or by a provider who has a letter of approval from the Office of Addictions and Mental Health and approval to bill Medicaid for CD services.

Stat. Auth.: ORS 192.527, 192.528, 413.042 & 414.065  
Stats. Implemented: ORS 192.527, 192.528, 414.065 & 414.727  
Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-0; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 6-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 14-2007(Temp), f. & cert. ef. 10-1-07 thru 3-28-08; DMAP 28-2007(Temp), f. & cert. ef. 12-20-07 thru 3-28-08; DMAP 8-2008, f. & cert. ef. 3-27-08; DMAP 10-2008(Temp), f. & cert. ef. 4-1-08 thru 9-15-08; DMAP 23-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 31-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DMAP 40-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 4-2009(Temp), f. & cert. ef. 1-30-09 thru 6-25-09; DMAP 6-2009(Temp), f. 3-26-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 8-2009(Temp), f. & cert. ef. 4-17-09 thru 9-25-09; DMAP 26-2009, f. 8-3-09, cert. ef. 8-5-09; DMAP 30-2009(Temp), f. 9-15-09, cert. ef. 10-1-09 thru 3-29-10; DMAP 36-2009(Temp), f. 12-10-09 ef. 1-1-10 thru 3-29-10; DMAP 1-2010(Temp), f. & cert. ef. 1-15-10 thru 3-29-10; DMAP 3-2010, f. 3-5-10, cert. ef. 3-17-10; DMAP 5-2010(Temp), f. 3-26-10, cert. ef. 4-1-10 thru 9-1-10; DMAP 10-2010, f. & cert. ef. 4-26-10; DMAP 27-2010(Temp), f. 9-24-10, cert. ef. 10-1-10 thru 3-25-11; DMAP 43-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 4-2011, f. 3-23-11, cert. ef. 4-1-11; DMAP 24-2011(Temp), f. 9-15-11, cert. ef. 10-1-11 thru 3-26-12; DMAP 45-2011, f. 12-21-11, cert. ef. 12-23-11

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**Rule Caption:** OHP Plus adult dental benefit limitation changes as part of 2011-2013 budget and January 2012 Health Services Commission Prioritized List changes and other rule clarifications.

**Adm. Order No.:** DMAP 46-2011

**Filed with Sec. of State:** 12-23-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 410-123-1000, 410-123-1060, 410-123-1220, 410-123-1260, 410-123-1490

**Subject:** The Dental Services Program administrative rules govern Division payment for services to certain clients. The Division revised OARs 410-123-1000, 410-123-1060, 410-123-1220, 410-123-1260, and 410-123-1490 to reflect the following:

- Correspond with the biennial review of the former Health Services Commission's (now Health Evidence Review Commission) Prioritized List of Services for January 1, 2012, which reprioritizes some dental procedures above the funding line that had not previously been covered and moves other procedures below the funding line, to medical line, or to the excluded (never-covered) list;

- Limits on some dental services for adult clients (age 21 and older) due to reduced payments to managed Dental Care Organizations (DCOs) to comply with budget limitations required by the 2011 Legislative Assembly in SB 5529. This will help assure access to services through sufficient provider networks will be maintained following this approximate 11% reduction in capitation rates.

- Resin partial dentures (D5211-D5212) for posterior teeth – New criteria for coverage (six or more missing teeth, not including third molars, with documentation by the provider of resulting space causing serious impairment to mastication).

- Rebases and relines – Coverage limited to once every five years. There must be documentation of a failed reline for coverage of a rebase.

- Scaling and root planing (D4341, D4342) and full mouth debridement (D4355) - Coverage limited to once every three years.

- Periodontal maintenance (D4910) – Coverage limited to once every 12 months, and only when following periodontal therapy within the past three years.

- More frequent periodontic services that are medically/dentally necessary due to pregnancy will require prior authorization.

- Full dentures – Coverage now subject to the same criteria as non-pregnant adults (recent edentulousness and no replacement of full dentures).

- Adjustments and repairs of dentures – Coverage now subject to the same maximum annual limits as non-pregnant adults:

- Adjustments and repairs covered a maximum of 4 times per year for codes D5410-D5422, D5520, D5640 and D5650;

- Repairs of dentures – Covered a maximum of 2 times per year for codes D5510, D5610, D5620, D5630, and D5660.

- Molar endodontic therapy (D3330) – Coverage limited to first molars (second molars no longer covered).

- Clarify requests for prior authorizations for outpatient hospital or ambulatory surgical center services for clients assigned to a Physician Care Organization (PCO);

- Change the title of the Limited Permit Dental Hygienist to Expanded Practice Dental Hygienist in accordance with legislation passed in the 2011 Legislative Session;

- Reference the updated “Covered and Non-Covered Services document” and other minor clarifications.

- Clarify current policies and procedures to ensure these rules are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance and help facilitate provider compliance with eligibility, service coverage and limitations, and billing requirements.

- Revise text to improve readability and take care of “housekeeping” corrections if needed.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-123-1000

### Eligibility, Providing Services and Billing

#### (1) Eligibility:

(a) Providers are responsible to verify client eligibility and must do so before providing any service or billing the Division of Medical Assistance Programs (Division) or any Oregon Health Plan (OHP) Prepaid Health Plan (PHP);

(b) The Division may not pay for services provided to an ineligible client even if services were authorized. Refer to General Rules OAR 410-120-1140 (Verification of Eligibility) for details.

(2) Co-payments for OHP clients may be required for certain services. See General Rules OAR 410-120-1230 for specific information on co-pays.

#### (3) Billing:

(a) Providers must follow the Division rules in effect on the date of service. All Division rules are intended to be used in conjunction with the Division's General Rules Program (chapter 410, division 120), the OHP Administrative Rules (chapter 410, division 141), Pharmaceutical Services Rules (chapter 410, division 121) and other relevant Division OARs applicable to the service provided, where the service is delivered, and the qualifications of the person providing the service including the requirement for a signed provider enrollment agreement;

(b) Third Party Resources: A third party resource (TPR) is an alternate insurance resource, other than the Division, available to pay for medical/dental services and items on behalf of OHP clients. Any alternate insurance resource must be billed before the Division or any OHP PHP can be billed. Indian Health Services or Tribal facilities are not considered to be a TPR pursuant to the Division's General Rules Program rule (OAR 410-120-1280);

#### (c) Fabricated Prosthetics:

(A) If a dentist or dentist provides an eligible client with fabricated prosthetics that require the use of a dental laboratory, the date of the final impressions must have occurred:

(i) Prior to the client's loss of eligibility; and

(ii) For dentures for adults age 21 and older, no later than six months from the date of the last extraction from the jaw for which the denture is being provided;

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(B) The dentist/denturist should use the date of final impression as the date of service only when criteria in (A) is met and the fabrication extends beyond:

- (i) The client's OHP eligibility; or
- (ii) Six months after the extractions (for dentures for adults);

(C) The date of delivery must be within 45 days of the date of the final impression and the date of delivery must also be indicated on the claim. These are the only exceptions to the Division's General Rules Program rule (OAR 410-120-1280). All other services must be billed using the date the service was provided;

(d) Refer to OAR 410-123-1160 for information regarding dental services requiring prior authorization (PA). Refer to OAR 410-123-1100 for information regarding dental services that require providers to submit reports for review ("by report" - BR) prior to reimbursement;

(e) The client's records must include documentation to support the appropriateness of the service and level of care rendered;

(f) The Division shall only reimburse for dental services that are dentally appropriate as defined in OAR 410-123-1060;

(g) Refer to OAR chapter 410, division 147 for information about reimbursement for dental services provided through a Federally Qualified Health Center (FQHC) or Rural Health Center (RHC);

(4) Treatment Plans: Being consistent with established dental office protocol and the standard of care within the community, scheduling of appointments is at the discretion of the dentist. The agreed upon treatment plan established by the dentist and patient shall establish appointment sequencing. Eligibility for medical assistance programs does not entitle a client to any services or consideration not provided to all clients.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 45-2011, f. 12-21-11, cert. ef. 12-23-11; DMAP 46-2011, f. 12-23-11, cert. ef. 1-1-12

## 410-123-1060

### Definition of Terms

(1) Anesthesia – The following depicts the Division of Medical Assistance Programs' (Division) usage of certain anesthesia terms, however for further details refer also to the Oregon Board of Dentistry administrative rules (OAR chapter 818, division 026):

(a) Conscious Sedation:

(A) Deep Sedation – A drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance maintaining a patient airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained;

(B) Minimal sedation – A minimally depressed level of consciousness, produced by non-intravenous pharmacological methods, that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. When the intent is minimal sedation for adults, the appropriate initial dosing of a single non-intravenous pharmacological method is no more than the maximum recommended dose (MRD) of a drug that can be prescribed for unmonitored home use. Nitrous oxide/oxygen may be used in combination with a single non-intravenous pharmacological method in minimal sedation;

(C) Moderate sedation – A drug-induced depression of consciousness during which the patient responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patient airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained;

(b) General Anesthesia – A drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patient airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired;

(c) Local anesthesia – The elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug;

(d) Nitrous Oxide Sedation – An induced controlled state of minimal sedation, produced solely by the inhalation of a combination of nitrous oxide and oxygen, in which the patient retains the ability to independently

and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command;

(2) Citizen/Alien-Waived Emergency Medical (CAWEM) – Refer to OAR 410-120-0000 for definition of clients who are eligible for limited emergency services under the CAWEM benefit package. The definition of emergency services does not apply to CAWEM clients. OAR 410-120-1210 provides a complete description of limited emergency coverage pertaining to the CAWEM benefit package.

(3) Covered Services – Services on the Health Services Commission's (HSC) Prioritized List of Health Services (List) that have been funded by the Legislature and identified in specific program rules. Services are limited as directed by General Rules – Excluded Services and Limitations (OAR 410-120-1200), the Division's Dental Services Program rules (chapter 410, division 123) and the HSC List. Services that are not considered emergency dental services as defined by OAR 410-123-1060(12) are considered routine services.

(4) Dental Hygienist – A person licensed to practice dental hygiene pursuant to State law.

(5) Dental Hygienist with Expanded Practice Dental Hygiene Permit (EPDH) – A person licensed to practice dental hygiene with an EPDH permit issued by the Board of Dentistry and within the scope of an EPDH permit pursuant to State law.

(6) Dental Practitioner – A person licensed pursuant to State law to engage in the provision of dental services within the scope of the practitioner's license and/or certification.

(7) Dental Services – Services provided within the scope of practice as defined under State law by or under the supervision of a dentist or dental hygienist, or denture services provided within the scope of practice as defined under State law by a denturist.

(8) Dental Services Documentation – Must meet the requirements of the Oregon Dental Practice Act statutes; administrative rules for client records and requirements of OAR 410-120-1360, "Requirements for Financial, Clinical and Other Records;" and any other documentation requirements as outlined in the Dental rules.

(9) Dentally Appropriate – In accordance with OAR 410-141-0000, services that are required for prevention, diagnosis or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community, evidence-based medicine and professional standards of care as effective;

(c) Not solely for the convenience of a OHP member or a provider of the service; and

(d) The most cost effective of the alternative levels of dental services that can be safely provided to a Division member.

(10) Dentist – A person licensed to practice dentistry pursuant to State law.

(11) Denturist – A person licensed to practice denture technology pursuant to State law.

(12) Direct Pulp Cap – The procedure in which the exposed pulp is covered with a dressing or cement that protects the pulp and promotes healing and repair.

(13) Emergency Services:

(a) Refer to OAR 410-120-0000 for the complete definition of emergency services. (This definition of emergency services does not apply to CAWEM clients. OAR 410-120-1210 provides a complete description of limited emergency coverage pertaining to the CAWEM benefit package);

(b) Covered services for an emergency dental condition manifesting itself by acute symptoms of sufficient severity requiring immediate treatment. This includes services to treat the following conditions:

(A) Acute infection;

(B) Acute abscesses;

(C) Severe tooth pain;

(D) Unusual swelling of the face or gums; or

(E) A tooth that has been avulsed (knocked out);

(c) The treatment of an emergency dental condition is limited only to covered services. The Division recognizes that some non-covered services may meet the criteria of treatment for the emergency condition however this rule does not extend to those non-covered services. Routine dental treatment or treatment of incipient decay does not constitute emergency care;

(d) The OHP Standard Benefit Package includes a limited emergency dental benefit. Refer to OAR 410-123-1670.

(14) Hospital Dentistry – Dental services normally done in a dental office setting, but due to specific client need (as detailed in OAR 410-123-

# ADMINISTRATIVE RULES

1490) are provided in an ambulatory surgical center, inpatient, or outpatient hospital setting under general anesthesia (or IV conscious sedation, if appropriate).

(15) Medical Practitioner – A person licensed pursuant to State law to engage in the provision of medical services within the scope of the practitioner's license and/or certification.

(16) Procedure Codes – The procedure codes in the Dental Services rulebook (OAR chapter 410, division 123) refer to Current Dental Terminology (CDT), unless otherwise noted. Codes listed in this rulebook and other documents incorporated in rule by reference are subject to change by the American Dental Association (ADA) without notification.

(17) Standard of Care – What reasonable and prudent practitioners would do in the same or similar circumstances.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 46-2011, f. 12-23-11, cert. ef. 1-1-12

## 410-123-1220

### Coverage According to the Prioritized List of Health Services

This rule incorporates by reference the "Covered and Non-Covered Dental Services" document, dated January 1, 2012, and located on the Division of Medical Assistance Programs (Division) Web site at: [www.dhs.state.or.us/policy/healthplan/guides/dental/main.html](http://www.dhs.state.or.us/policy/healthplan/guides/dental/main.html).

(a) The "Covered and Non-Covered Dental Services" document lists coverage of Current Dental Terminology (CDT) procedure codes according to the Oregon Health Services Commission (HSC) Prioritized List of Health Services (HSC Prioritized List) and the client's specific Oregon Health Plan benefit package;

(b) This document is subject to change if there are funding changes to the HSC Prioritized List.

(2) Changes to services funded on the HSC Prioritized List are effective on the date of the HSC Prioritized List change:

(a) The Division administrative rules (chapter 410, division 123) will not reflect the most current HSC Prioritized List changes until they have gone through the Division rule filing process;

(b) For the most current HSC Prioritized List, refer to the HSC Web site at [www.oregon.gov/OHPPR/HSC/current\\_prior.shtml](http://www.oregon.gov/OHPPR/HSC/current_prior.shtml);

(c) In the event of an alleged variation between a Division-listed code and a national code, the Division shall apply the national code in effect on the date of request or date of service.

(3) Refer to OAR 410-123-1260 for information about limitations on procedures funded according to the HSC Prioritized List. Examples of limitations include frequency and client's age.

(4) The HSC Prioritized List does not include or fund the following general categories of dental services and the Division does not cover them for any client. Several of these services are considered elective or "cosmetic" in nature (i.e., done for the sake of appearance):

- (a) Desensitization;
- (b) Implant and implant services;
- (c) Mastique or veneer procedure;
- (d) Orthodontia (except when it is treatment for cleft palate);
- (e) Overhang removal;
- (f) Procedures, appliances or restorations solely for aesthetic/ cosmetic purposes;

(g) Temporomandibular joint dysfunction treatment; and

(h) Tooth bleaching.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 21-1994(Temp), f. 4-29-94, cert. ef. 5-1-94; HR 32-1994, f. & cert. ef. 11-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; HR 9-1996, f. 5-31-96, cert. ef. 6-1-96; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 17-2011, f. & cert. ef. 7-12-11; DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 46-2011, f. 12-23-11, cert. ef. 1-1-12

## 410-123-1260

### OHP Plus Dental Benefits

(1) GENERAL:

(a) Early and Periodic Screening, Diagnosis and Treatment (EPSDT):

(A) Refer to Code of Federal Regulations (42 CFR 441, Subpart B) and OAR chapter 410, division 120 for definitions of the EPSDT program, eligible clients, and related services. EPSDT dental services includes, but are not limited to:

(i) Dental screening services for eligible EPSDT individuals; and

(ii) Dental diagnosis and treatment which is indicated by screening, at as early an age as necessary, needed for relief of pain and infections, restoration of teeth and maintenance of dental health;

(B) Providers must provide EPSDT services for eligible Division of Medical Assistance Programs (Division) clients according to the following documents:

(i) The Dental Services Program administrative rules (OAR chapter 410, division 123), for dentally appropriate services funded on the Oregon Health Services Commission Prioritized List of Health Services (HSC Prioritized List); and

(ii) The "Oregon Health Plan (OHP) – Recommended Dental Periodicity Schedule," dated January 1, 2010, incorporated by reference and posted on the Division Web site in the Dental Services Supplemental Information document at [www.dhs.state.or.us/policy/healthplan/guides/dental/main.html](http://www.dhs.state.or.us/policy/healthplan/guides/dental/main.html);

(b) Restorative, periodontal and prosthetic treatments:

(A) Such treatments must be consistent with the prevailing standard of care, documentation must be included in the client's charts to support the treatment, and may be limited as follows:

(i) When prognosis is unfavorable;

(ii) When treatment is impractical;

(iii) A lesser-cost procedure would achieve the same ultimate result;

or

(iv) The treatment has specific limitations outlined in this rule;

(B) Prosthetic treatment (including porcelain fused to metal crowns) are limited until rampant progression of caries is arrested and a period of adequate oral hygiene and periodontal stability is demonstrated; periodontal health needs to be stable and supportive of a prosthetic.

(2) DIAGNOSTIC SERVICES:

(a) Exams:

(A) For children (under 19 years of age):

(i) The Division shall reimburse exams (billed as D0120, D0145, D0150, or D0180) a maximum of twice every 12 months with the following limitations:

(I) D0150: once every 12 months when performed by the same practitioner;

(II) D0150: twice every 12 months only when performed by different practitioners;

(III) D0180: once every 12 months;

(ii) The Division shall reimburse D0160 only once every 12 months when performed by the same practitioner;

(B) For adults (19 years of age and older) – The Division shall reimburse exams (billed as D0120, D0150, D0160, or D0180) by the same practitioner once every 12 months;

(C) For each emergent episode, use D0140 for the initial exam. Use D0170 for related dental follow-up exams;

(D) The Division only covers oral exams by medical practitioners when the medical practitioner is an oral surgeon;

(E) As the American Dental Association's Current Dental Terminology (CDT) codebook specifies the evaluation, diagnosis and treatment planning components of the exam are the responsibility of the dentist, the Division does not reimburse dental exams when furnished by a dental hygienist (with or without an expanded practice permit);

(b) Radiographs:

(A) The Division shall reimburse for routine radiographs once every 12 months;

(B) The Division shall reimburse bitewing radiographs for routine screening once every 12 months;

(C) The Division shall reimburse a maximum of six radiographs for any one emergency;

(D) For clients under age six, radiographs may be billed separately every 12 months as follows:

(i) D0220 – once;

(ii) D0230 – a maximum of five times;

(iii) D0270 – a maximum of twice, or D0272 once;

(E) The Division shall reimburse for panoramic (D0330) or intra-oral complete series (D0210) once every five years, but both cannot be done within the five-year period;

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(F) Clients must be a minimum of six years old for billing intra-oral complete series (D0210). The minimum standards for reimbursement of intra-oral complete series are:

(i) For clients age six through 11; – a minimum of 10 periapicals and two bitewings for a total of 12 films;

(ii) For clients ages 12 and older – a minimum of 10 periapicals and four bitewings for a total of 14 films;

(G) If fees for multiple single radiographs exceed the allowable reimbursement for a full mouth complete series (D0210), the Division shall reimburse for the complete series;

(H) Additional films may be covered if dentally or medically appropriate, e.g., fractures (Refer to OAR 410-123-1060 and 410-120-0000);

(I) If the Division determines the number of radiographs to be excessive, payment for some or all radiographs of the same tooth or area may be denied;

(J) The exception to these limitations is if the client is new to the office or clinic and the office or clinic was unsuccessful in obtaining radiographs from the previous dental office or clinic. Supporting documentation outlining the provider's attempts to receive previous records must be included in the client's records;

(K) Digital radiographs, if printed, should be on photo paper to assure sufficient quality of images.

## (3) PREVENTIVE SERVICES:

(a) Prophylaxis:

(A) For children (under 19 years of age) – Limited to twice per 12 months;

(B) For adults (19 years of age and older) – Limited to once per 12 months;

(C) Additional prophylaxis benefit provisions may be available for persons with high risk oral conditions due to disease process, pregnancy, medications or other medical treatments or conditions, severe periodontal disease, rampant caries and/or for persons with disabilities who cannot perform adequate daily oral health care;

(D) Are coded using the appropriate Current Dental Terminology (CDT) coding:

(i) D1110 (Prophylaxis – Adult) – Use for clients 14 years of age and older; and

(ii) D1120 (Prophylaxis – Child) – Use for clients under 14 years of age;

(b) Topical fluoride treatment:

(A) For adults (19 years of age and older) – Limited to once every 12 months;

(B) For children (under 19 years of age) – Limited to twice every 12 months;

(C) For children under 7 years of age who have limited access to a dental practitioner, topical fluoride varnish may be applied by a medical practitioner during a medical visit:

(i) Bill the Division directly regardless of whether the client is fee-for-service (FFS) or enrolled in a Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO);

(ii) Bill using a professional claim format with the appropriate CDT code (D1206 – Topical Fluoride Varnish);

(iii) An oral screening by a medical practitioner is not a separate billable service and is included in the office visit;

(D) Additional topical fluoride treatments may be available, up to a total of 4 treatments per client within a 12-month period, when high-risk conditions or oral health factors are clearly documented in chart notes for the following clients who:

(i) Have high-risk oral conditions due to disease process, medications, other medical treatments or conditions, or rampant caries;

(ii) Are pregnant;

(iii) Have physical disabilities and cannot perform adequate, daily oral health care;

(iv) Have a developmental disability or other severe cognitive impairment that cannot perform adequate, daily oral health care; or

(v) Are under seven year old with high-risk oral health factors, such as poor oral hygiene, deep pits and fissures (grooves) in teeth, severely crowded teeth, poor diet, etc;

(c) Sealants (D1351):

(A) Are covered only for children under 16 years of age;

(B) The Division limits coverage to:

(i) Permanent molars; and

(ii) Only one sealant treatment per molar every five years, except for visible evidence of clinical failure;

(d) Tobacco cessation:

(A) For services provided during a dental visit, bill as a dental service using CDT code D1320 when the following brief counseling is provided:

(i) Ask patients about their tobacco-use status at each visit and record information in the chart;

(ii) Advise patients on their oral health conditions related to tobacco use and give direct advice to quit using tobacco and a strong personalized message to seek help; and

(iii) Refer patients who are ready to quit, utilizing internal and external resources to complete the remaining three A's (assess, assist, arrange) of the standard intervention protocol for tobacco;

(B) The Division allows a maximum of 10 services within a three-month period;

(C) For tobacco cessation services provided during a medical visit follow criteria outlined in OAR 410-130-0190;

(e) Space management:

(A) The Division shall cover fixed and removable space maintainers (D1510, D1515, D1520, and D1525) only for clients under 19 years of age;

(B) The Division may not reimburse for replacement of lost or damaged removable space maintainers.

(4) RESTORATIVE SERVICES:

(a) Restorations – amalgam and composite:

(A) The Division shall cover resin-based composite restorations only for anterior teeth;

(B) Resin-based composite crowns on anterior teeth (D2390) are only covered for clients under 21 years of age or who are pregnant;

(C) The Division may not reimburse resin-based composite restorations for posterior teeth (D2391-D2394);

(D) The Division limits payment of covered restorations to the maximum restoration fee of four surfaces per tooth. Refer to the American Dental Association (ADA) CDT codebook for definitions of restorative procedures;

(E) Providers must combine and bill multiple surface restorations as one line per tooth using the appropriate code. Providers may not bill multiple surface restorations performed on a single tooth on the same day on separate lines. For example, if tooth #30 has a buccal amalgam and a mesial-occlusal-distal (MOD) amalgam, then bill MOD, B, using code D2161 (four or more surfaces);

(F) The Division may not reimburse for an amalgam or composite restoration and a crown on the same tooth;

(G) The Division reimburses for a surface once in each treatment episode regardless of the number or combination of restorations;

(H) The restoration fee includes payment for occlusal adjustment and polishing of the restoration;

(b) Crowns and related services:

(A) General payment policies:

(i) The fee for the crown includes payment for preparation of the gingival tissue;

(ii) The Division shall cover crowns only when:

(I) There is significant loss of clinical crown and no other restoration will restore function; and

(II) The crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(iii) The Division shall cover core buildup (D2950) only when necessary to retain a cast restoration due to extensive loss of tooth structure from caries or a fracture and only when done in conjunction with a crown. Less than 50% of the tooth structure must be remaining for coverage of the core buildup. The Division shall not cover core buildup if the crown is not covered under the client's OHP benefit package;

(iv) Reimbursement of retention pins (D2951) is per tooth, not per pin;

(B) The Division shall not cover the following services:

(i) Endodontic therapy alone (with or without a post);

(ii) Aesthetics (cosmetics);

(iii) Crowns in cases of advanced periodontal disease or when a poor crown/root ratio exists for any reason;

(C) The Division shall cover acrylic heat or light cured crowns (D2970 temporary crown, fractured tooth) – allowed only for anterior permanent teeth;

(D) The Division shall cover the following only for clients under 21 years of age or who are pregnant:

(i) Provisional crowns (D2799) – allowed as an interim restoration of at least six months during restorative treatment to allow adequate healing or completion of other procedures. This is not to be used as a temporary crown for a routine prosthetic restoration;

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(ii) Prefabricated plastic crowns (D2932) – allowed only for anterior teeth, permanent or primary;

(iii) Stainless steel crowns (D2930/D2931) -- allowed only for anterior primary teeth and posterior permanent or primary teeth;

(iv) Prefabricated stainless steel crowns with resin window (D2933) – allowed only for anterior teeth, permanent or primary;

(v) Prefabricated post and core in addition to crowns (D2954/D2957);

(vi) Permanent crowns (resin-based composite - D2710 and D2712, and porcelain fused to metal (PFM) - D2751 and D2752) as follows:

(I) Limited to teeth numbers 6-11, 22 and 27 only, if dentally appropriate;

(II) Limited to four (4) in a seven-year period. This limitation includes any replacement crowns allowed according to (E)(i) of this rule;

(III) Only for clients at least 16 years of age; and

(IV) Rampant caries are arrested and the client demonstrates a period of oral hygiene before prosthetics are proposed;

(vii) PFM crowns (D2751 and D2752) must also meet the following additional criteria:

(I) The dental practitioner has attempted all other dentally appropriate restoration options, and documented failure of those options;

(II) Written documentation in the client's chart indicates that PFM is the only restoration option that will restore function;

(III) The dental practitioner submits radiographs to the Division for review; history, diagnosis, and treatment plan may be requested. See OAR 410-123-1100 (Services Reviewed by the Division of Medical Assistance Programs);

(IV) The client has documented stable periodontal status with pocket depths within 1 – 3 millimeters. If PFM crowns are placed with pocket depths of 4 millimeter and over, documentation must be maintained in the client's chart of the dentist's findings supporting stability and why the increased pocket depths will not adversely affect expected long term prognosis;

(V) The crown has a favorable long-term prognosis; and

(VI) If tooth to be crowned is clasp/abutment tooth in partial denture, both prognosis for crown itself and tooth's contribution to partial denture must have favorable expected long-term prognosis;

(E) Crown replacement:

(i) Permanent crown replacement limited to once every seven years;

(ii) All other crown replacement limited to once every five years; and

(iii) The Division may make exceptions to crown replacement limitations due to acute trauma, based on the following factors:

(I) Extent of crown damage;

(II) Extent of damage to other teeth or crowns;

(III) Extent of impaired mastication;

(IV) Tooth is restorable without other surgical procedures; and

(V) If loss of tooth would result in coverage of removable prosthetic;

(F) Crown repair, by report (D2980) is limited to only anterior teeth.

(5) ENDODONTIC SERVICES:

(a) Pulp capping:

(A) The Division includes direct and indirect pulp caps in the restoration fee; no additional payment shall be made for clients with the OHP Plus benefit package;

(B) The Division covers direct pulp caps as a separate service for clients with the OHP Standard benefit package because restorations are not a covered benefit under this benefit package;

(b) Endodontic therapy:

(A) Pulpal therapy on primary teeth (D3230 and D3240) is covered only for clients under 21 years of age;

(B) For permanent teeth:

(i) Anterior and bicuspid endodontic therapy (D3310 and D3320) is covered for all OHP Plus clients; and

(ii) Molar endodontic therapy (D3330):

(I) For clients through age 20, is covered only for first and second molars; and

(II) For clients age 21 and older who are pregnant, is covered only for first molars;

(C) The Division covers endodontics only if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(c) Endodontic retreatment and apicoectomy/periradicular surgery:

(A) The Division does not cover retreatment of a previous root canal or apicoectomy/periradicular surgery for bicuspid or molars;

(B) The Division limits either a retreatment or an apicoectomy (but not both procedures for the same tooth) to symptomatic anterior teeth when:

(i) Crown-to-root ratio is 50:50 or better;

(ii) The tooth is restorable without other surgical procedures; or

(iii) If loss of tooth would result in the need for removable prosthodontics;

(C) Retrograde filling (D3430) is covered only when done in conjunction with a covered apicoectomy of an anterior tooth;

(d) The Division does not allow separate reimbursement for open-and-drain as a palliative procedure when the root canal is completed on the same date of service, or if the same practitioner or dental practitioner in the same group practice completed the procedure;

(e) The Division covers endodontics if the tooth is restorable within the OHP benefit coverage package;

(f) Apexification/recalcification and pulpal regeneration procedures:

(A) The Division limits payment for apexification to a maximum of five treatments on permanent teeth only;

(B) Apexification/recalcification and pulpal regeneration procedures are covered only for clients under 21 years of age or who are pregnant.

(6) PERIODONTIC SERVICES:

(a) Surgical periodontal services:

(A) Gingivectomy/Gingivoplasty (D4210 and D4211) – limited to coverage for severe gingival hyperplasia where enlargement of gum tissue occurs that prevents access to oral hygiene procedures, e.g., Dilantin hyperplasia; and

(B) Includes six months routine postoperative care;

(b) Non-surgical periodontal services:

(A) Periodontal scaling and root planing (D4341 and D4342):

(i) For clients through age 20, allowed once every two years;

(ii) For clients age 21 and over, allowed once every three years;

(iii) A maximum of two quadrants on one date of service is payable, except in extraordinary circumstances;

(iv) Quadrants are not limited to physical area, but are further defined by the number of teeth with pockets 5 mm or greater:

(I) D4341 is allowed for quadrants with at least four or more teeth with pockets 5 mm or greater;

(II) D4342 is allowed for quadrants with at least two teeth with pocket depths of 5 mm or greater;

(v) Prior authorization for more frequent scaling and root planing may be requested when:

(I) Medically/dentally necessary due to periodontal disease as defined above is found during pregnancy; and

(II) Client's medical record is submitted that supports the need for increased scaling and root planing;

(B) Full mouth debridement (D4355):

(i) For clients through age 20, allowed only once every 2 years;

(ii) For clients age 21 and older, allowed once every three years;

(c) Periodontal maintenance (D4910):

(A) For clients through age 20, allowed once every six months;

(B) For clients age 21 and older:

(i) Limited to following periodontal therapy (surgical or non-surgical) that is documented to have occurred within the past three years;

(ii) Allowed once every twelve months;

(iii) Prior authorization for more frequent periodontal maintenance may be requested when:

(I) Medically/dentally necessary, such as due to presence of periodontal disease during pregnancy; and

(ii) Client's medical record is submitted that supports the need for increase periodontal maintenance (chart notes, pocket depths and radiographs);

(d) Records must clearly document the clinical indications for all periodontal procedures, including current pocket depth charting and/or radiographs;

(e) The Division may not reimburse for procedures identified by the following codes if performed on the same date of service:

(A) D1110 (Prophylaxis – adult);

(B) D1120 (Prophylaxis – child);

(C) D4210 (Gingivectomy or gingivoplasty – four or more contiguous teeth or bounded teeth spaces per quadrant);

(D) D4211 (Gingivectomy or gingivoplasty – one to three contiguous teeth or bounded teeth spaces per quadrant);

(E) D4341 (Periodontal scaling and root planning – four or more teeth per quadrant);

(F) D4342 (Periodontal scaling and root planning – one to three teeth per quadrant);

(G) D4355 (Full mouth debridement to enable comprehensive evaluation and diagnosis); and

(H) D4910 (Periodontal maintenance).

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## (7) REMOVABLE PROSTHODONTIC SERVICES:

(a) Clients age 16 years and older are eligible for removable resin base partial dentures (D5211-D5212) and full dentures (complete or immediate, D5110-D5140);

(b) The Division limits full dentures for non-pregnant clients age 21 and older to only those clients who are recently edentulous:

(A) For the purposes of this rule:

(i) "Edentulous" means all teeth removed from the jaw for which the denture is being provided; and

(ii) "Recently edentulous" means the most recent extractions from that jaw occurred within six months of the delivery of the final denture (or, for fabricated prosthetics, the final impression) for that jaw;

(B) See OAR 410-123-1000 for detail regarding billing fabricated prosthetics;

(c) The fee for the partial and full dentures includes payment for adjustments during the six-month period following delivery to clients;

(d) Resin partial dentures (D5211-D5212):

(A) The Division may not approve resin partial dentures if stainless steel crowns are used as abutments;

(B) For clients through age 20, the client must have one or more anterior teeth missing or four or more missing posterior teeth per arch with resulting space equivalent to that loss demonstrating inability to masticate. Third molars are not a consideration when counting missing teeth;

(C) For clients age 21 and older, the client must have one or more missing anterior teeth or six or more missing posterior teeth per arch with documentation by the provider of resulting space causing serious impairment to mastication. Third molars are not a consideration when counting missing teeth;

(D) The dental practitioner must note the teeth to be replaced and teeth to be clasped when requesting prior authorization (PA);

(e) Replacement of removable partial or full dentures, when it cannot be made clinically serviceable by a less costly procedure (e.g., reline, rebase, repair, tooth replacement), is limited to the following:

(A) For clients at least 16 years and under 21 years of age - the Division shall replace full or partial dentures once every ten years, only if dentally appropriate. This does not imply that replacement of dentures or partials must be done once every ten years, but only when dentally appropriate;

(B) For clients 21 years of age and older - the Division may not cover replacement of full dentures, but shall cover replacement of partial dentures once every 10 years only if dentally appropriate;

(C) The ten year limitations apply to the client regardless of the client's OHP or Dental Care Organization (DCO) enrollment status at the time client's last denture or partial was received. For example: a client receives a partial on February 1, 2002, and becomes a FFS OHP client in 2005. The client is not eligible for a replacement partial until February 1, 2012. The client gets a replacement partial on February 3, 2012 while FFS and a year later enrolls in a DCO. The client would not be eligible for another partial until February 3, 2022, regardless of DCO or FFS enrollment;

(D) Replacement of partial dentures with full dentures is payable ten years after the partial denture placement. Exceptions to this limitation may be made in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene may not warrant replacement;

(f) The Division limits reimbursement of adjustments and repairs of dentures that are needed beyond six months after delivery of the denture as follows for clients 21 years of age and older:

(A) A maximum of 4 times per year for:

(i) Adjusting complete and partial dentures, per arch (D5410-D5422);

(ii) Replacing missing or broken teeth on a complete denture - each tooth (D5520);

(iii) Replacing broken tooth on a partial denture - each tooth (D5640);

(iv) Adding tooth to existing partial denture (D5650);

(B) A maximum of 2 times per year for:

(i) Repairing broken complete denture base (D5510);

(ii) Repairing partial resin denture base (D5610);

(iii) Repairing partial cast framework (D5620);

(iv) Repairing or replacing broken clasp (D5630);

(v) Adding clasp to existing partial denture (D5660);

(g) Replacement of all teeth and acrylic on cast metal framework (D5670-D5671):

(A) Is covered for clients age 16 and older a maximum of once every 10 years, per arch;

(B) Ten years or more must have passed since the original partial denture was delivered;

(C) Is considered replacement of the partial so a new partial denture may not be reimburseable for another 10 years; and

(D) Requires prior authorization as it is considered a replacement partial denture;

(h) Denture rebase procedures:

(A) The Division shall cover rebases only if a reline may not adequately solve the problem;

(B) For clients through age 20, the Division limits payment for rebase to once every three years;

(C) For clients age 21 and older:

(i) There must be documentation of a current reline which has been done and failed; and

(ii) The Division limits payment for rebase to once every five years;

(D) The Division may make exceptions to this limitation in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene may not warrant rebasing:

(i) Denture reline procedures:

(A) For clients through age 20, the Division limits payment for reline of complete or partial dentures to once every three years;

(B) For clients age 21 and older, the Division limits payment for reline of complete or partial dentures to once every five years;

(C) The Division may make exceptions to this limitation under the same conditions warranting replacement;

(D) Laboratory relines:

(i) Are not payable prior to six months after placement of an immediate denture; and

(ii) For clients through age 20, are limited to once every three years;

(iii) For clients age 21 and older, are limited to once every five years;

(j) Interim partial dentures (D5820-D5821, also referred to as "flip-pers"):

(A) Are allowed if the client has one or more anterior teeth missing; and

(B) The Division shall reimburse for replacement of interim partial dentures once every 5 years, but only when dentally appropriate;

(k) Tissue conditioning:

(A) Is allowed once per denture unit in conjunction with immediate dentures; and

(B) Is allowed once prior to new prosthetic placement.

## (8) MAXILLOFACIAL PROSTHETIC SERVICES:

(a) Fluoride gel carrier (D5986) is limited to those patients whose severity of oral disease causes the increased cleaning and fluoride treatments allowed in rule to be insufficient. The dental practitioner must document failure of those options prior to use of the fluoride gel carrier;

(b) All other maxillofacial prosthetics (D5900-D5999) are medical services. Refer to the "Covered and Non-Covered Dental Services" document and OAR 410-123-1220:

(A) Bill for medical maxillofacial prosthetics using the professional (CMS-1500, DMAP 505 or 837P) claim format:

(B) For clients receiving services through an FCHP or PCO, bill medical maxillofacial prosthetics to the FCHP or PCO;

(C) For clients receiving medical services through FFS, bill the Division.

(9) Fixed Prosthodontics:

(a) The Division limits coverage of post and core (D6970, D6972 and D6977) only to clients under 21 years of age or who are pregnant;

(b) The Division shall cover core buildup for retainer (D6973) only when necessary to retain a cast restoration due to extensive loss of tooth structure and only when done in conjunction with a crown. Less than 50% of the tooth structure must be remaining for coverage of the core buildup. The Division shall not cover core buildup if the crown is not covered under the client's OHP benefit package.

(10) ORAL SURGERY SERVICES:

(a) Bill the following procedures in an accepted dental claim format using CDT codes:

(A) Procedures that are directly related to the teeth and supporting structures that are not due to a medical, including such procedures per-



# ADMINISTRATIVE RULES

formed in an ambulatory surgical center (ASC) or an inpatient or outpatient hospital setting;

(B) Services performed in a dental office setting (including an oral surgeon's office);

(i) Such services include, but are not limited to, all dental procedures, local anesthesia, surgical postoperative care, radiographs and follow-up visits;

(ii) Refer to OAR 410-123-1160 for any PA requirements for specific procedures;

(b) Bill the following procedures using the professional claim format and the appropriate American Medical Association (AMA) CPT procedure and ICD-9 diagnosis codes:

(A) Procedures that are a result of a medical condition (i.e., fractures, cancer);

(B) Services requiring hospital dentistry that are the result of a medical condition/diagnosis (i.e., fracture, cancer);

(c) Refer to the "Covered and Non-Covered Dental Services" document to see a list of CDT procedure codes on the HSC Prioritized List that may also have CPT medical codes. See OAR 410-123-1220. The procedures listed as "medical" on the table may be covered as medical procedures, and the table may not be all-inclusive of every dental code that has a corresponding medical code;

(d) For clients enrolled in a DCO, the DCO is responsible for payment of those services in the dental plan package;

(e) Oral surgical services performed in an ASC or an inpatient or outpatient hospital setting;

(A) Require PA;

(B) For clients enrolled in a FCHP, the facility charge and anesthesia services are the responsibility of the FCHP. For clients enrolled in a PCO, the outpatient facility charge (including ASCs) and anesthesia are the responsibility of the PCO. Refer to the current Medical Surgical Services administrative rules in OAR chapter 410 – division 130 for more information;

(C) If a client is enrolled in a FCHP or a PCO, it is the responsibility of the provider to contact the FCHP or the PCO for any required authorization before the service is rendered;

(f) All codes listed as "by report" require an operative report;

(g) The Division covers payment for tooth re-implantation only in cases of traumatic avulsion where there are good indications of success;

(h) Biopsies collected are reimbursed as a dental service. Laboratory services of biopsies are reimbursed as a medical service;

(i) The Division does not cover surgical excisions of soft tissue lesions (D7410 – D7415);

(j) Extractions – Includes local anesthesia and routine postoperative care, including treatment of a dry socket if done by the provider of the extraction. Dry socket is not considered a separate service;

(k) Surgical extractions:

(A) Include local anesthesia and routine post-operative care;

(B) The Division limits payment for surgical removal of impacted teeth or removal of residual tooth roots to treatment for only those teeth that have acute infection or abscess, severe tooth pain, and/or unusual swelling of the face or gums;

(C) The Division does not cover alveoplasty in conjunction with extractions (D7310 and D7311) separately from the extraction;

(D) The Division covers alveoplasty not in conjunction with extractions (D7320-D7321) only for clients under 21 years of age or who are pregnant;

(l) Frenulectomy/frenulotomy (D7960) and frenuloplasty (D7963);

(A) The Division covers either frenulectomy or frenuloplasty once per lifetime per arch only for clients under age 21;

(B) The Division covers maxillary labial frenulectomy only for clients age 12 through 20;

(C) The Division shall cover frenulectomy/frenuloplasty in the following situations:

(i) When the client has ankyloglossia;

(ii) When the condition is deemed to cause gingival recession; or

(iii) When the condition is deemed to cause movement of the gingival margin when the frenum is placed under tension;

(m) The Division covers excision of pericoronal gingival (D7971) only for clients under age 21 or who are pregnant.

(11) ORTHODONTIA SERVICES:

(a) The Division limits orthodontia services and extractions to eligible clients:

(A) With the ICD-9-CM diagnosis of:

(i) Cleft palate; or

(ii) Cleft palate with cleft lip; and

(B) Whose orthodontia treatment began prior to 21 years of age; or

(C) Whose surgical corrections of cleft palate or cleft lip were not completed prior to age 21;

(b) PA is required for orthodontia exams and records. A referral letter from a physician or dentist indicating diagnosis of cleft palate/cleft lip must be included in the client's record and a copy sent with the PA request;

(c) Documentation in the client's record must include diagnosis, length and type of treatment;

(d) Payment for appliance therapy includes the appliance and all follow-up visits;

(e) Orthodontists evaluate orthodontia treatment for cleft palate/cleft lip as two phases. Stage one is generally the use of an activator (palatal expander) and stage two is generally the placement of fixed appliances (banding). The Division shall reimburse each phase individually (separately);

(f) The Division shall pay for orthodontia in one lump sum at the beginning of each phase of treatment. Payment for each phase is for all orthodontia-related services. If the client transfers to another orthodontist during treatment, or treatment is terminated for any reason, the orthodontist must refund to the Division any unused amount of payment, after applying the following formula: Total payment minus \$300.00 (for banding) multiplied by the percentage of treatment remaining;

(g) The Division shall use the length of the treatment plan from the original request for authorization to determine the number of treatment months remaining;

(h) As long as the orthodontist continues treatment, the Division may not require a refund even though the client may become ineligible for medical assistance sometime during the treatment period;

(i) Code:

(A) D8660 – PA required (reimbursement for required orthodontia records is included);

(B) Codes D8010-D8690 – PA required.

(12) ADJUNCTIVE GENERAL AND OTHER SERVICES:

(a) Fixed partial denture sectioning (D9120) is covered only when extracting a tooth connected to a fixed prosthesis and a portion of the fixed prosthesis is to remain intact and serviceable, preventing the need for more costly treatment;

(b) Anesthesia:

(A) Only use general anesthesia or IV sedation for those clients with concurrent needs: age, physical, medical or mental status, or degree of difficulty of the procedure (D9220, D9221, D9241 and D9242);

(B) The Division reimburses providers for general anesthesia or IV sedation as follows:

(i) D9220 or D9241: For the first 30 minutes;

(ii) D9221 or D9242: For each additional 15-minute period, up to three hours on the same day of service. Each 15-minute period represents a quantity of one. Enter this number in the quantity column;

(C) The Division reimburses administration of Nitrous Oxide (D9230) per date of service, not by time;

(D) Oral pre-medication anesthesia for conscious sedation (D9248):

(i) Limited to clients under 13 years of age;

(ii) Limited to four times per year;

(iii) Includes payment for monitoring and Nitrous Oxide; and

(iv) Requires use of multiple agents to receive payment;

(E) Upon request, providers must submit a copy of their permit to administer anesthesia, analgesia and/or sedation to the Division;

(F) For the purpose of Title XIX and Title XXI, the Division limits payment for code D9630 to those oral medications used during a procedure and is not intended for "take home" medication;

(c) The Division limits reimbursement of house/extended care facility call (D9410) only for urgent or emergent dental visits that occur outside of a dental office. This code is not reimbursable for provision of preventive services or for services provided outside of the office for the provider or facilities' convenience;

(d) Oral devices/appliances (E0485, E0486):

(A) These may be placed or fabricated by a dentist or oral surgeon, but are considered a medical service;

(B) Bill the Division or the FCHP/PCO for these codes using the professional claim format.

Stat. Auth.: ORS 413.042, 414.065 & 414.707

Stats. Implemented: ORS 414.065 & 414.707

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; OMAP 55-2004, f. 9-10-04,

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cert. ef. 10-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 17-2011, f. & cert. ef. 7-12-11; DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 46-2011, f. 12-23-11, cert. ef. 1-1-12

## 410-123-1490

### Hospital Dentistry

(1) The purpose of hospital dentistry is to provide safe, efficient dental care when providing routine (non-emergency) dental services for Division of Medical Assistance Programs (Division) clients who present special challenges that require the use of general anesthesia or IV conscious sedation services in an Ambulatory Surgical Center (ASC), inpatient or outpatient hospital setting. Refer to OAR 410-123-1060 for definitions.

(2) Division reimbursement for hospital dentistry is limited to covered services and may be prorated if non-covered dental services are performed during the same hospital visit:

(a) See OAR 410-123-1060 for a definition of Division hospital dentistry services;

(b) Refer to OAR 410-123-1220 and the "Covered and Non-Covered Dental Services" document.

(3) Hospital dentistry is intended for the following Division clients:

(a) Children (18 or younger) who:

(A) Through age 3 – Have extensive dental needs;

(B) 4 years of age or older – Have unsuccessfully attempted treatment in the office setting with some type of sedation or nitrous oxide;

(C) Have acute situational anxiety, fearfulness, extreme uncooperative behavior, uncommunicative such as a client with developmental or mental disability, a client that is pre-verbal or extreme age where dental needs are deemed sufficiently important that dental care cannot be deferred;

(D) Need the use of general anesthesia (or IV conscious sedation) to protect the developing psyche;

(E) Have sustained extensive orofacial or dental trauma;

(F) Have physical, mental or medically compromising conditions; or

(G) Have a developmental disability or other severe cognitive impairment and one or more of the following characteristics that prevent routine dental care in an office setting:

(i) Acute situational anxiety and extreme uncooperative behavior;

(ii) A physically compromising condition;

(b) Adults (19 or older) who:

(A) Have a developmental disability or other severe cognitive impairment, and one or more of the following characteristics that prevent routine dental care in an office setting:

(i) Acute situational anxiety and extreme uncooperative behavior;

(ii) A physically compromising condition;

(B) Have sustained extensive orofacial or dental trauma; or

(C) Are medically fragile, have complex medical needs, contractures or other significant medical conditions potentially making the dental office setting unsafe for the client.

(4) Hospital dentistry is not intended for:

(a) Client convenience. Refer to OAR 410-120-1200;

(b) A healthy, cooperative client with minimal dental needs; or

(c) Medical contraindication to general anesthesia or IV conscious sedation.

(5) Required documentation: The following information must be included in the client's dental record:

(a) Informed consent: client, parental or guardian written consent must be obtained prior to the use of general anesthesia or IV conscious sedation;

(b) Justification for the use of general anesthesia or IV conscious sedation. The decision to use general anesthesia or IV conscious sedation must take into consideration:

(A) Alternative behavior management modalities;

(B) Client's dental needs;

(C) Quality of dental care;

(D) Quantity of dental care;

(E) Client's emotional development;

(F) Client's physical considerations;

(c) If treatment in an office setting is not possible, documentation in the client's dental record must explain why, in the estimation of the dentist, the client will not be responsive to office treatment;

(d) The Division or the FCHP may require additional documentation when reviewing requests for prior authorization (PA) of hospital dentistry services. See OAR 410-123-1160 and section (6) of this rule for additional information;

(e) If the dentist did not proceed with a previous hospital dentistry plan approved by the Division for the same client, the Division will also require clinical documentation explaining why the dentist did not complete the previous treatment plan.

(6) Hospital dentistry always requires prior authorization (PA) for the medical services provided by the facility:

(a) If a client is enrolled in a Fully Capitated Health Plan (FCHP) and a Dental Care Organization (DCO):

(A) The dentist is responsible for:

(i) Contacting the FCHP for PA requirements and arrangements; and

(ii) Submitting documentation to both the FCHP and DCO;

(B) The FCHP and DCO should review the documentation and discuss any concerns they have, contacting the dentist as needed. This allows for mutual plan involvement and monitoring;

(C) The total response time should not exceed 14 calendar days from the date of submission of all required documentation for routine dental care and should follow urgent/emergent dental care timelines;

(D) The FCHP is responsible for payment of all facility and anesthesia services. The DCO is responsible for payment of all dental professional services;

(b) If a client is enrolled in a Physician Care Organization (PCO) and a Dental Care Organization (DCO):

(A) The PCO is responsible for payment of all facility and anesthesia services provided in an outpatient hospital setting or an ASC. DMAP is responsible for payment of all facility and anesthesia services provided in an inpatient hospital setting. The DCO is responsible for payment of all dental professional services;

(B) The dentist is responsible for:

(i) Contacting the PCO, if services are to be provided in an outpatient setting or an ASC, for PA requirements and arrangements; or

(ii) Contacting DMAP, if services are to be provided in an inpatient setting; and

(iii) Submitting documentation to both the PCO (or DMAP) and the DCO;

(B) The PCO or DMAP and the DCO should review the documentation and discuss any concerns they have, contacting the dentist as needed. This allows for mutual plan involvement and monitoring;

(C) The total response time should not exceed 14 calendar days from the date of submission of all required documentation for routine dental care and should follow urgent/emergent dental care timelines;

(b) If a client is fee-for-service (FFS) for medical services and enrolled in a DCO:

(A) The dentist is responsible for faxing documentation and a completed American Dental Association (ADA) form to the Division. Refer to the Dental Services Supplemental Information;

(B) If the client is assigned to a Primary Care Manager (PCM) through FFS medical, the client must have a referral from the PCM prior to any hospital service being approved by the Division;

(C) The Division is responsible for payment of facility and anesthesia services. The DCO is responsible for payment of all dental professional services;

(D) The Division will issue a decision on PA requests within 30 days of receipt of the request;

(c) If a client is enrolled in an FCHP and is FFS dental:

(A) The dentist is responsible for contacting the FCHP to obtain the PA and arrange for the hospital dentistry;

(B) The dentist is responsible for submitting required documentation to the FCHP;

(C) The FCHP is responsible for all facility and anesthesia services. The Division is responsible for payment of all dental professional services;

(d) If a client is FFS for both medical and dental:

(A) The dentist is responsible for faxing documentation and a completed ADA form to the Division. Refer to the Dental Services Supplemental Information;

(B) The Division is responsible for payment of all facility, anesthesia services and dental professional charges.

Stat. Auth.: ORS 411.459, 413.042, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 46-2011, f. 12-23-11, cert. ef. 1-1-12

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**Rule Caption:** Prioritized List of Health Services - Commission name and funding line changes.

# ADMINISTRATIVE RULES

**Adm. Order No.:** DMAP 47-2011(Temp)

**Filed with Sec. of State:** 12-23-2011

**Certified to be Effective:** 1-1-12 thru 6-25-12

**Notice Publication Date:**

**Rules Amended:** 410-141-0520

**Subject:** The OHP Program administrative rules govern the Division of Medical Assistance Programs' payments for services provided to clients. Effective Jan. 1, 2012, the Division temporarily amended 410-141-0520 to reference the January 1, 2012 changes to the Oregon Health Services Commission's (now the Health Evidenced Review Commission or HERC), January 1, 2011 to December 31, 2012 Prioritized List of Health Services.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## **410-141-0520**

### **Prioritized List of Health Services**

(1) Effective Jan. 1, 2012, per HB 2100 (2010 Oregon Legislative Assembly), the Oregon Health Services Commission (HSC) was abolished and the new Health Evidenced Review Commission (HERC) shall assume responsibility for the former HSC's Prioritized List of Health Services (Prioritized List). The Prioritized List is the listing of physical and mental health services with "expanded definitions" of preventive services and the practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HERC. The HERC maintains the most current list on their website: [www.oregon.gov/OHA/OHPR/HERC/Current-Prioritized-List.shtml](http://www.oregon.gov/OHA/OHPR/HERC/Current-Prioritized-List.shtml), or for a hardcopy contact the Division of Medical Assistance Programs. This rule incorporates by reference the Centers for Medicare and Medicaid Services (CMS) approved biennial January 1, 2011–December 31, 2012 Prioritized List, including January 1, 2012 modifications and technical revisions, expanded definitions, practice guidelines and condition treatment pairs funded through line 498.

(2) Certain mental health services are only covered for payment when provided by a Mental Health Organization (MHO), Community Mental Health Program (CMHP) or authorized Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO).

(3) Chemical dependency (CD) services are covered for eligible OHP clients when provided by an FCHP, PCO, or by a provider who has a letter of approval from the Addictions and Mental Health Division and approval to bill Medicaid for CD services.

Stat. Auth.: ORS 192.527, 192.528, 413.042 & 414.065

Stats. Implemented: ORS 192.527, 192.528, 414.065 & 414.727

Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. & cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. & cert. ef. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-0; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 6-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 14-2007(Temp), f. & cert. ef. 10-1-07 thru 3-28-08; DMAP 28-2007(Temp), f. & cert. ef. 12-20-07 thru 3-28-08; DMAP 8-2008, f. & cert. ef. 3-27-08; DMAP 10-2008(Temp), f. & cert. ef. 4-1-08 thru 9-15-08; DMAP 23-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 31-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DMAP 40-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 4-2009(Temp), f. & cert. ef. 1-30-09 thru 6-25-09; DMAP 6-2009(Temp), f. 3-26-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 8-2009(Temp), f. & cert. ef. 4-17-09 thru 9-25-09; DMAP 26-2009, f. 8-3-09, cert. ef. 8-5-09; DMAP 30-2009(Temp), f. 9-15-09, cert. ef. 10-1-09 thru 3-29-10; DMAP 36-2009(Temp), f. 12-10-09 cert. ef. 1-1-10 thru 3-29-10; DMAP 1-2010(Temp), f. & cert. ef. 1-15-10 thru 3-29-10; DMAP 3-2010, f. 3-5-10, cert. ef. 3-17-10; DMAP 5-2010(Temp), f. 3-26-10, cert. ef. 4-1-10 thru 9-1-10; DMAP 10-2010, f. & cert. ef. 4-26-10; DMAP 27-2010(Temp), f. 9-24-10, cert. ef. 10-1-10 thru 3-25-11; DMAP 43-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 4-2011, f. 3-23-11, cert. ef. 4-1-11; DMAP 24-2011(Temp), f. 9-15-11, cert. ef. 10-1-11 thru 3-26-12; DMAP 45-2011, f. 12-21-11, cert. ef. 12-23-11; DMAP 47-2011(Temp), f. 12-13-11, cert. ef. 1-1-12 thru 6-25-12

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**Rule Caption:** Inpatient and Outpatient DRG hospital methodology.

**Adm. Order No.:** DMAP 48-2011(Temp)

**Filed with Sec. of State:** 12-23-2011

**Certified to be Effective:** 1-1-12 thru 6-25-12

**Notice Publication Date:**

**Rules Amended:** 410-125-0195, 410-141-0420

**Subject:** The Hospital Services Program (division 125) and Oregon Health Plan (OHP or Managed Care, division 141) Program administrative rules govern Division of Medical Assistance Programs' (Division) payments for services provided to certain clients. The Division temporarily amended 410-125-0195 to establish a methodology in accordance with Code of Federal Regulations 42 Part 419 Prospective Payment System for hospital outpatient services for DRG hospitals using the Ambulatory Payment Classification (APC) group methodology.

The Division also amended 410-141-0420 to incorporate Medicare Severity DRG for inpatient services and Ambulatory Payment Classification (APC) for outpatient services or other alternative payment methods for reimbursing hospitals as of January 1, 2012.

The Division intends to file these rules permanently on or before June 25, 2012.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## **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 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 461-015-0124; 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

# ADMINISTRATIVE RULES

## 410-141-0420

### Managed Care Prepaid Health Plan Billing and Payment under the Oregon Health Plan

The Division of Medical Assistance Programs (Division) may have specific definitions for common terms. Please use OAR 410-141-0000, Definitions, in conjunction with this rule.

(1) Providers must submit all billings for Oregon Health Plan (OHP) clients to Prepaid Health Plans (PHPs) and to the Division within four (4) months and twelve (12) months, respectively, of the date of service, subject to other applicable Division billing rules. Providers must submit billings to PHPs within the four (4) month time frame except in the following cases:

- (a) Pregnancy;
- (b) Eligibility issues such as retroactive deletions or retroactive enrollments;
- (c) Medicare is the primary payer;
- (d) Other cases that could have delayed the initial billing to the PHP (which does not include failure of provider to certify the Division member's (see definition) eligibility); or
- (e) Third Party Liability (TPL). Pursuant to 42 CFR 36.61, subpart G: Indian Health Services and the amended Public Law 93-638 under the Memorandum of Agreement that Indian Health Service and 638 Tribal Facilities are the payer of last resort and is not considered an alternative liability or TPL.

(2) Providers must be enrolled with the Division to be eligible for Division fee-for-service (FFS) payments. Mental health providers, except Federally Qualified Health Centers (FQHC), must be approved by the Local Mental Health Authority (LMHA) and the Addictions and Mental Health (AMH) Division before enrollment with the Division or to be eligible for PHP payment for services. Providers may be retroactively enrolled, in accordance with OAR 410-120-1260, Provider Enrollment.

(3) Providers, including mental health providers (see definition), must be enrolled with the Division either as a Medicaid provider or an encounter-only provider prior to submission of encounter data to ensure the servicing provider is not excluded per federal and State standard as defined in OAR 407-120-0300.

(4) Providers shall verify, before rendering services, which Division member is eligible for the Medical Assistance Program on the date of service using the Division tools and optionally the PHP's tools, as applicable and that the service to be rendered is covered under the Oregon Health Plan Benefit Package of covered services. Providers shall also identify the party responsible for covering the intended service and seek pre-authorizations from the appropriate payer before rendering services. Providers shall inform Division members of any charges for non-covered services (see definition) prior to the services being delivered.

(5) Capitated services:

- (a) PHPs receive a capitation payment to provide services to Division members. These services are referred to as capitated services;
- (b) PHPs are responsible for payment of all capitated services. Such services should be billed directly to the PHP, unless the PHP or the Division specifies otherwise. PHPs may require providers to obtain preauthorization to deliver certain capitated services.

(6) Payment by the PHP to participating providers for capitated services is a matter between the PHP and the participating provider, except as follows:

- (a) Pre-authorizations:
  - (A) PHPs shall have written procedures for processing pre-authorization requests received from any provider. The procedures shall specify time frames for:
    - (i) Date stamping pre-authorization requests when received;
    - (ii) Determining within a specific number of days from receipt whether a pre-authorization request is valid or non-valid;
    - (iii) The specific number of days allowed for follow up on pended preauthorization requests to obtain additional information;
    - (iv) The specific number of days following receipt of the additional information that a redetermination must be made;
    - (v) Providing services after office hours and on weekends that require preauthorization;
    - (vi) Sending notice of the decision with appeal rights to the Division member when the determination is made to deny the requested service as specified in 410-141-0263.

(B) PHPs shall make a determination on at least 95% of valid pre-authorization requests, within two working days of receipt of a preauthorization or reauthorization request related to urgent services; alcohol and drug services; and/or care required while in a skilled nursing facility. Preauthorization for prescription drugs must be completed and the pharma-

cy notified within 24 hours. If a preauthorization for a prescription cannot be completed within the 24 hours, the PHP must provide for the dispensing of at least a 72-hour supply if the medical need for the drug is immediate. PHP shall notify providers of such determination within 2 working days of receipt of the request;

(C) For expedited prior authorization requests in which the provider indicates, or the PHP determines, that following the standard timeframe could seriously jeopardize the Division member's life or health or ability to attain, maintain, or regain maximum function:

(i) The PHP must make an expedited authorization decision and provide notice as expeditiously as the Division member's health condition requires and no later than three working days after receipt of the request for service;

(ii) The PHP may extend the three working days time period by up to 14 calendar days if the Division member requests an extension, or if the PHP justifies to Division a need for additional information and how the extension is in the Division member's interest.

(D) For all other preauthorization requests, PHPs shall notify providers of an approval, a denial or a need for further information within 14 calendar days of receipt of the request. PHPs must make reasonable efforts to obtain the necessary information during that 14-day period. However, the PHP may use an additional 14 days to obtain follow-up information, if the PHP justifies (to the Division upon request) the need for additional information and how the delay is in the interest of the Division member. The PHP shall make a determination as the Division member's health condition requires, but no later than the expiration of the extension.

(b) Claims payment:

(A) PHPs shall have written procedures for processing claims submitted for payment from any source. The procedures shall specify time frames for:

(i) Date stamping claims when received;

(ii) Determining within a specific number of days from receipt whether a claim is valid or non-valid;

(iii) The specific number of days allowed for follow up of pended claims to obtain additional information;

(iv) The specific number of days following receipt of additional information that a determination must be made; and

(v) Sending notice of the decision with appeal rights to the Division member when the determination is made to deny the claim.

(B) PHPs shall pay or deny at least 90% of valid claims within 45 calendar days of receipt and at least 99% of valid claims within 60 calendar days of receipt. PHPs shall make an initial determination on 99% of all claims submitted within 60 calendar days of receipt;

(C) PHPs shall provide written notification of PHP determinations when such determinations result in a denial of payment for services, for which the Division member may be financially responsible. Such notice shall be provided to the Division member and the treating provider within 14 calendar days of the final determination. The notice to the Division member shall be a Division or AMH approved notice format and shall include information on the PHPs internal appeals process, and the Notice of Hearing Rights (DMAP 3030) shall be attached. The notice to the provider shall include the reason for the denial;

(D) PHPs shall not require providers to delay billing to the PHP;

(E) PHPs shall not require Medicare be billed as the primary insurer for services or items not covered by Medicare, nor require non-Medicare approved providers to bill Medicare;

(F) PHPs shall not deny payment of valid claims when the potential TPR is based only on a diagnosis, and no potential TPR has been documented in the Division member's clinical record;

(G) PHPs shall not delay nor deny payments because a co-payment was not collected at the time of service.

(c) FCHPs, PCOs, and MHOs are responsible for payment of Medicare coinsurances and deductibles up to the Medicare or PHP's allowable for covered services the Division member receives within the PHP, for authorized referral care, and for urgent care services or emergency services the Division member receives from non-participating providers (see definition). FCHPs, PCOs, and MHOs are not responsible for Medicare coinsurances and deductibles for non-urgent or non-emergent care Division members receive from non-participating providers;

(d) FCHPs and PCOs shall pay transportation, meals and lodging costs for the Division member and any required attendant for out-of-state services (as defined in General Rules, chapter 410, division 120) that the FCHP and PCO has arranged and authorized when those services are available within the state, unless otherwise approved by the Division;

# ADMINISTRATIVE RULES

(e) PHPs shall be responsible for payment of covered services (see definition) provided by a non-participating provider which was not pre-authorized if the following conditions exist:

(A) It can be verified that the participating provider (see definition) ordered or directed the covered services to be delivered by a non-participating provider; and

(B) The covered service was delivered in good faith without the pre-authorization; and

(C) It was a covered service that would have been pre-authorized with a participating provider if the PHP's referral protocols had been followed;

(D) The PHP shall be responsible for payment to non-participating providers (providers enrolled with the Division that do not have a contract with the PHP) for covered services that are subject to reimbursement from the PHP, the amount specified in OAR 410-120-1295. This rule does not apply to providers that are Type A or Type B hospitals, as they are paid in accordance with ORS 414.727.

(E) PHP shall reimburse hospital for services provided on or after January 1, 2012 using Medicare Severity DRG for inpatient services and Ambulatory Payment Classification (APC) for outpatient services or other alternative payment methods per Oregon Senate Bill 204 (2011) which incorporates the most recent Medicare payment methodologies for both inpatient and outpatient services established by the Centers for Medicare and Medicaid Services for hospital services; and alternative payment methodologies, including but not limited to pay-for-performance, bundled payments and capitation. An alternative payment methodology does not include reimbursement payment based on percentage of billed charges. This requirement does not apply to type A or type B hospitals as referenced in ORS 442.470. PHP shall attest annually to OHA, in a manner to be prescribed, to PHP's compliance with section 3, 4, 6 and 8 of Oregon Senate Bill 204 (2011).

(7) Other services:

(a) Division members enrolled with PHPs may receive certain services on a Division FFS basis. Such services are referred to as non-capitated services (see definition);

(b) Certain services must be authorized by the PHP or the Community Mental Health Program (CMHP) for some mental health services, even though such services are then paid by the Division on a Division FFS basis. Before providing services, providers should verify a Division member's eligibility via the web portal or AVR. For some mental health services, providers will need to contact the CMHP directly. In addition, the provider may call the PHP to obtain information about coverage for a particular service or pre-authorization requirements;

(c) Services authorized by the PHP or CMHP are subject to the rules and limitations of the appropriate Division administrative rules and supplemental information, including rates and billing instructions;

(d) Providers shall bill the Division directly for non-capitated services in accordance with billing instructions contained in the Division administrative rules and supplemental information;

(e) The Division shall pay at the Medicaid FFS rate in effect on the date the service is provided subject to the rules and limitations described in the relevant rules, contracts, billing instructions and Division administrative rules and supplemental information;

(f) The Division shall not pay a provider for provision of services for which a PHP has received a capitation payment unless otherwise provided for in OAR 410-141-0120;

(g) When an item or service is included in the rate paid to a medical institution, a residential facility or foster home, provision of that item or service is not the responsibility of the Division, AMH, nor a PHP except as provided for in Division administrative rules and supplemental information (e.g., capitated services that are not included in the nursing facility all-inclusive rate);

(h) FCHPs and PCOs that contract with FQHCs and RHCs shall negotiate a rate of reimbursement that is not less than the level and amount of payment which the FCHP or PCO would make for the same service(s) furnished by a provider, who is not an FQHC nor RHC, consistent with the requirements of BBA 4712(b)(2).

(8) Coverage of services through the Oregon Health Plan Benefit Package of covered services is limited by OAR 410-141-0500, excluded services and limitations for OHP clients.

(9) OHP clients who are enrolled with a PCM receive services on a FFS basis:

(a) PCMs are paid a per client-per month payment to provide Primary Care Management Services, in accordance with OAR 410-141-0410, Primary Care Manager Medical Management;

(b) PCMs provide primary care access, and management services for preventive services, primary care services, referrals for specialty services, limited inpatient hospital services and outpatient hospital services. The Division payment for these PCM managed services is contingent upon PCCM authorization;

(c) All PCM managed services are covered services that shall be billed directly to the Division in accordance with billing instructions contained in the Division administrative rules and supplemental information;

(d) The Division shall pay at the Division FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Division administrative rules and supplemental information.

(10) All OHP clients who are enrolled with a PCO receive inpatient hospital services on a Division FFS basis:

(a) May receive services directly from any appropriately enrolled Division provider;

(b) All services shall be billed directly to the Division in accordance with FFS billing instructions contained in the Division administrative rules and supplemental information;

(c) The Division shall pay at the Division FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Division administrative rules and supplemental information.

(11) OHP clients who are not enrolled with a PHP receive services on a Division FFS basis:

(a) Services may be received directly from any appropriate enrolled Division provider;

(b) All services shall be billed directly to the Division in accordance with billing instructions contained in the Division administrative rules and supplemental information;

(c) The Division shall pay at the Division FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Division administrative rules and supplemental information.

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 15-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 52-2001, f. & cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 53-2006(Temp), f. 12-28-06, cert. ef. 1-1-07 thru 6-29-07; DMAP 9-2007, f. 6-14-07, cert. ef. 6-29-07; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 16-2010, f. 6-11-10, cert. ef. 7-1-10; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 29-2011, f. 10-19-11, cert. ef. 10-20-11; DMAP 48-2011(Temp), f. 12-23-11, cert. ef. 1-1-12 thru 6-25-12

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**Rule Caption:** Non-payment for Provider Preventable Conditions for outpatient services.

**Adm. Order No.:** DMAP 49-2011(Temp)

**Filed with Sec. of State:** 12-23-2011

**Certified to be Effective:** 1-1-12 thru 6-25-12

**Notice Publication Date:**

**Rules Amended:** 410-125-0450

**Subject:** The Hospital Services Program administrative rules govern Division of Medical Assistance Programs' (Division) payments for services provided to certain clients. The Division needs to temporarily amend OAR 410-125-0450 to meet the required Jan. 1, 2012 due date for compliance with federal guidelines as outlined by the Centers for Medicare and Medicaid services (CMS). The Division shall include provider preventable conditions for outpatient services for dates of services on or after July 1, 2012.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

**410-125-0450**

**Provider Preventable Conditions**

(1) The agency shall no longer cover "hospital-acquired conditions" (HAC) for inpatient hospital claims with dates of admission on or after January 1, 2011.

(2) A hospital-acquired condition is a condition that is reasonably preventable and was not present or identified at the hospital admission.

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(3) 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.

(4) The agency shall use the most recent list of conditions identified as non-payable by Medicare. The agency may revise through addition or deletion the selected conditions at any time during the fiscal year.

(5) For clients with both Medicare and Medicaid (duals) the agency shall not act as secondary payer for Medicare non-payment of hospital acquired conditions.

(6) 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.

(7) The following hospitals are exempt from reporting:

- (a) Critical access hospitals (CAH)
- (b) Maryland waiver hospitals
- (c) Children’s inpatient facilities
- (d) Federally qualified health centers
- (e) Inpatient psychiatric hospitals
- (f) Veterans Administration/Department of Defense hospitals
- (g) Long-term care hospitals (LTCH)
- (h) Cancer hospitals
- (i) Rural health clinics
- (j) Religious non-medical health care institutions
- (k) Inpatient rehabilitation facilities

(8) For a complete list of HACs and billing instructions please see the hospital supplemental guide.

(9) For outpatient hospital claims with the dates of service on or after July 1, 2012 the agency will no longer cover:

- (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.

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

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**Rule Caption:** Hospital Provider Tax Rate Change.

**Adm. Order No.:** DMAP 50-2011(Temp)

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12 thru 4-30-12

**Notice Publication Date:**

**Rules Amended:** 410-050-0861

**Subject:** The rule is being amended to implement a change in the hospital provider tax rate from 5.08% to 4.32%, effective January 1, 2012, through a temporary rule.

This temporary rule is available on the DHS Website: <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>.

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

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-050-0861

### Tax Rate

- (1) The tax rate for the period beginning January 1, 2005 and ending June 30, 2006 is .68 percent.
- (2) The tax rate for the period beginning July 1, 2006 and ending December 31, 2007 is .82 percent.
- (3) The tax rate for the period beginning January 1, 2008 and ending June 30, 2009 is .63 percent.
- (4) The tax rate for the period of January 1, 2008 through June 30, 2009 does not apply to the period beginning July 1, 2009.
- (5) The tax rate for the period beginning July 1, 2009 and ending September 30, 2009 is .15 percent.
- (6) The tax rate for the period beginning October 1, 2009 and ending June 30, 2010 is 2.8 percent.
- (7) The tax rate for the period beginning July 1, 2010 and ending June 30, 2011 is 2.32 percent.
- (8) The tax rate for the period beginning July 1, 2011 and ending September 30, 2011 is 5.25 percent.

(9) The tax rate for the period beginning October 1, 2011 and ending December 31, 2011 is 5.08 percent.

(10) The tax rate for the period beginning January 1, 2012 is 4.32 percent.

Stat. Auth.: ORS 413.042  
Stats. Implemented: 2009 OL Ch. 867 §17, 2007 OL Ch. 780 §1 & 2003 OL Ch. 736 § 2 & 3  
Hist.: OMAP 28-2005(Temp), f. & cert. ef. 5-10-05 thru 11-5-05; OMAP 34-2005, f. 7-8-05, cert. ef. 7-11-05; OMAP 14-2006, f. 6-1-06, cert. ef. 7-1-06; DMAP 29-2007, f. 12-31-07, cert. ef. 1-1-08; DMAP 3-2008, f. & cert. ef. 1-25-08; DMAP 24-2009, f. & cert. ef. 7-1-09; DMAP 25-2009(Temp), f. & cert. ef. 7-15-09 thru 1-10-10; DMAP 27-2009, f. & cert. ef. 9-1-09; DMAP 33-2009, f. & cert. ef. 10-1-09; DMAP 21-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 16-2011(Temp), f. & cert. ef. 7-1-11 thru 11-1-11; DMAP 26-2011(Temp), f. 9-29-11, cert. ef. 10-1-11 thru 11-1-11; DMAP 31-2011, f. 10-28-11, cert. ef. 11-1-11; DMAP 50-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 4-30-12

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**Rule Caption:** Align with OAR chapter 461, division 155 medical eligibility rules.

**Adm. Order No.:** DMAP 1-2012(Temp)

**Filed with Sec. of State:** 1-13-2012

**Certified to be Effective:** 1-13-12 thru 7-10-12

**Notice Publication Date:**

**Rules Amended:** 410-120-0006

**Subject:** The General Rules Program administrative rules govern the Division’s payments for services provided to clients, and medical assistance eligibility determinations made by the Oregon Health Authority. In coordination with the Department of Human Services’ (Department), temporary revision of medical eligibility rules in chapter 461 the Division is temporarily amended OAR 410-120-0006 to assure that the Division’s medical eligibility rule aligns with and reflects information found in Department’s medical eligibility rules. In OAR 410-120-0006, the Division adopts in rule by reference Department eligibility rules and must update OAR 410-120-0006 in conjunction. The Division intends to file this rule permanently on or before July 10, 2012.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-120-0006

### Medical Eligibility Standards

As the state Medicaid and CHIP agency, the Oregon Health Authority (Authority) is responsible for establishing and implementing eligibility policies and procedure consistent with applicable law. As outlined in 943-001-0020, the Authority, and the Department of Human Services (Department) work together to adopt rules to assure that medical assistance eligibility procedures and determinations are consistent across both agencies.

(1) The Authority adopts and incorporates by reference the rules established in OAR chapter 461, and in effect January 13, 2012, for all medical eligibility requirements for medical assistance when the Authority conducts eligibility determinations.

(2) Any reference to OAR chapter 461 in Oregon Administrative Rules or contracts of the Authority are deemed to be references to the requirements of this rule, and shall be construed to apply to all eligibility policies, procedures and determinations by or through the Authority.

(3) For purposes of this rule, references in OAR chapter 461 to the Department or to the Authority shall be construed to be references to both agencies.

(4) Effective on or after July 1, 2011 the Authority shall conduct medical eligibility determinations using the OAR chapter 461 rules which are in effect on the date the Authority makes the medical eligibility determination.

(5) A request for a hearing resulting from a determination under this rule, made by the Authority shall be handled pursuant to the hearing procedures set out in division 25 of OAR chapter 461. References to “the Administrator” in division 25 of chapter 461 or “the Department” are hereby incorporated as references to the Authority.”

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

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 413.042 & 414.065  
Hist.: DMAP 10-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 18-2011(Temp), f. & cert. ef. 7-15-11 thru 1-11-12; DMAP 21-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-11-12; DMAP 25-2011(Temp), f. 9-28-11, cert. ef. 10-1-11 thru 1-11-12; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 1-2012(Temp), f. & cert. ef. 1-13-12 thru 7-10-12

# ADMINISTRATIVE RULES

## Oregon Health Authority, Office for Oregon Health Policy and Research Chapter 409

**Rule Caption:** Pain Management Commission Rules.

**Adm. Order No.:** OHP 10-2011

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 12-22-11

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 409-050-0130

**Rules Repealed:** 409-050-0130(T)

**Subject:** The Oregon Health Authority, Office for Oregon Health Policy and Research is implementing amendments to the Pain Management Commission rules to clarify pain management education program requirements for dentists licensed by the Oregon Board of Dentistry.

**Rules Coordinator:** Zarie Haverkate—(503) 373-1574

### 409-050-0130

#### Pain Management Education Program Requirements

(1) Licensed health care professionals must complete a pain management education program in order to improve the care and treatment of individuals with painful conditions. The program includes:

(a) Six accredited hours of continuing education in pain management, end of life care or a combination of both; and

(b) The web-based training offered by the Commission.

(c) Dentists licensed under Oregon Board of Dentistry are only required to complete the web-based training offered by the Commission.

(2) For out of state health care professionals obtaining Oregon licensure or newly licensed health care professionals within Oregon, the pain management education program must be completed within 24 months of their first license renewal.

**Example:** If an individual becomes newly licensed in Oregon on June 15, 2009, their first renewal will be June 15, 2011. The individual may obtain their training from June 15, 2009 through June 15, 2013 under section (2) to comply with this requirement.

(3) If the licensing board for a licensed health care professional adopts, by rule, a pain management education program with topics substantially similar to the topics in the Commission's curriculum, that program satisfies this rule for the continuing education portion of the requirement, as long as the total number of hours is the same.

(4) The Commission shall review its curriculum every two years and update as needed.

Stat. Authority: ORS 409.570

Stats. Implemented: ORS 409.500 - 409.570

Hist.: DHSD 1-2007, f. & cert. ef. 2-1-07; Renumbered from 407-020-0015, OHP 1-2011, f. 1-26-11, cert. ef. 2-1-11; OHP 8-2011(Temp), f. & cert. ef. 10-19-11 thru 2-27-12; OHP 10-2011, f. & cert. ef. 12-22-11

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**Rule Caption:** Adoption of OAR 409-045-0000 related to physician credentialing and recredentialing.

**Adm. Order No.:** OHP 1-2012(Temp)

**Filed with Sec. of State:** 1-11-2012

**Certified to be Effective:** 1-11-12 thru 6-30-12

**Notice Publication Date:**

**Rules Adopted:** 409-045-0000

**Subject:** The Oregon Health Authority, Office for Oregon Health Policy and Research is adopting temporary administrative rules to comply with the mandates in ORS 442.807, as amended by the 75th Legislative Assembly in section 768, chapter 595, 2009 Oregon Laws (Enrolled House Bill 2009). That legislation transferred the rule-making authority for adoption of credentialing and recredentialing procedures and standards related to health care service contractors from the Department of Consumer and Business Services and the Department of Human Services to the Oregon Health Authority.

Until receiving recommended changes from the Advisory Committee on Physician Credentialing, the rules last amended by the Department of Consumer and Business Services functioned to provide the necessary forms and procedures. Because changes are now being made, it is necessary to complete the transfer of the substance of the rule to the Oregon Health Authority. These temporary rules will establish the new rule in the Oregon Health Authority and incorporate the recommendations of the advisory committee until per-

manent rules can be adopted. Concurrently, the Department of Business and Consumer Services is adopting a temporary suspension of the rule adopted under prior authority and will begin permanent rule-making to repeal that rule (OAR 836-052-0900).

These temporary rules are available on the OHPR Website: <http://www.oregon.gov/OHA/OHPR/rulemaking/index.shtml>.

For hardcopy requests, call: (503) 373-1574.

**Rules Coordinator:** Zarie Haverkate—(503) 373-1574

### 409-045-0000

#### Physician Credentialing, Health Care Service Contractors

(1) The Oregon Practitioner Credentialing Application and the Oregon Practitioner Recredentialing Application, both of which were approved by the Advisory Committee on Physician Credentialing Information (ACPCI) on September 22, 2008, and both of which carry that date, are adopted with respect to hospitals and health care service contractors as Exhibits 1 and 2 to this rule.

(2) Each hospital and health care service contractor shall use the application forms adopted in section (1) of this rule.

(3) This rule is adopted pursuant to the authority of ORS 442.807 for the purpose of enabling the collection of uniform information necessary for hospitals and health care service contractors to credential physicians seeking designation as a participating practitioner for a health plan, thereby implementing ORS 442.800 to 442.807 with respect to hospitals and health care service contractors.

Stat. Auth.: ORS 442.807

Stats. Implemented: ORS 442.800 - 442.807

Hist.: OHP 1-2012(Temp), f. & cert. ef. 1-11-12 thru 6-30-12

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## Oregon Health Authority, Office of Private Health Partnerships Chapter 442

**Rule Caption:** Eliminate open enrollment periods.

**Adm. Order No.:** OPHP 10-2011

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 12-22-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 442-010-0020, 442-010-0030, 442-010-0040, 442-010-0055, 442-010-0060, 442-010-0070, 442-010-0075, 442-010-0080, 442-010-0085, 442-010-0090, 442-010-0100, 442-010-0110, 442-010-0120, 442-010-0160, 442-010-0170, 442-010-0180, 442-010-0190, 442-010-0210, 442-010-0215, 442-010-0220, 442-010-0230, 442-010-0240, 442-010-0260

**Rules Repealed:** 442-010-0065, 442-010-0200, 442-010-0250, 442-010-0020(T), 442-010-0060(T), 442-010-0075(T)

**Subject:** The Office of Private Health Partnerships is amending administrative rules for the Healthy Kids Connect program. Rules include: Definitions, Carrier and Plan Selection, Member Eligibility, Subsidy Levels, Enrollment, Annual Renewal, Cost Sharing Out of Pocket Maximum, Member Billing, Member Payments, Carrier Payments, Carrier Refunds, Member Refunds, Enrollment in HKC ESI, Continuing Coverage Options HKC ESI, Adding Family Members, Member Reporting, HKC or HKC ESI Member Termination, Overpayments, Member Refund Due to Dual Enrollment, Payment Plan, Collections, Audits Contested Case Hearings.

**Rules Coordinator:** Margaret Moran—(503) 378-5664

### 442-010-0020

#### Definitions

(1) "Appeal" means a process for requesting a formal change to an official decision (ref. 442-010-0250).

(2) "Benchmark" means a specific minimum level of health insurance benefits that qualify for subsidy. The benchmark is:

(a) Established by the Office in agreement with the Health Insurance Reform Advisory Committee; and

(b) Sent to and approved by the federal government.

(3) "Carrier" means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services that authorizes the transaction of health insurance. Carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

# ADMINISTRATIVE RULES

(4) “Contracted HKC carrier” means a carrier hired by OPHP (see OAR 442-010-0030 “Carrier and Plan Selection”) to take part in the HKC program.

(5) “Department of Human Services (DHS)” is an Oregon state agency that serves children, adults and families and seniors and people with disabilities.

(6) “Federal poverty level” means the poverty income guidelines as defined by the United States Department of Health and Human Services. The Oregon Health Authority adopts these guidelines no later than May 1 each year.

(7) Healthy Kids (HK) is also known as the Health Care for All Oregon Children program. (ref. ORS 414.231)

(8) Healthy KidsConnect (HKC) is part of the Oregon Healthy Kids program providing health care to Oregon children through the private insurance market.

(9) HKC also refers to the benefit plans offered through the HK private insurance option. For subsidized members the benefit plans must:

(a) Meet or exceed the requirements for a federal standard benchmark described in ORS 414.856;

(b) Be comparable to the health services provided to children receiving Oregon Health Plan Plus medical assistance, including mental health, vision, pharmacy, and dental services;

(c) Not exclude or delay coverage for preexisting conditions;

(d) Limit subsidized family’s cost sharing to no more than 5 percent of the family’s annual income; and

(e) Qualify for federal financial participation.

(10) HK ESI means Employer Sponsored Insurance that is subsidized by HK funds. It is also known as group insurance for families eligible for HK ESI.

(11) “Member” means a child enrolled in HKC or a HK ESI plan or the child’s parent or adult representative.

(12) “Member share” means the portion of the health insurance premium a family pays.

(13) “Office of Private Health Partnerships (OPHP)” is an Oregon state agency within the Oregon Health Authority. OPHP provides access to health insurance through programs for low-income, uninsured Oregonians, including HKC and HK ESI.

(14) “Oregon Health Authority (OHA)” is an Oregon state agency that includes most of the state’s health care programs including Public Health, the Oregon Health Plan, Healthy Kids, Family Health Insurance Assistance Program, Medical Assistance Programs, the Office of Client and Community Services and state and school employee benefit plans.

(15) “OHP” means the Oregon Health Plan Medicaid program and other programs that include medical assistance provided under 42 U.S.C. section 396a (section 1902 of the Social Security Act).

(16) “Overpayment” is a debt owed to the State of Oregon and may be subject to collection.

(17) “Premium” means the amount charged for health insurance.

(18) “Standard Health Statement” means the Oregon Standard Health Statement described in OAR 836-053-0510.

(19) “Subsidy” means the amount OPHP pays on behalf of the member to offset monthly premium costs. Subsidy is also known as “premium assistance.”

(a) HKC subsidies are paid directly to the HKC carriers; and

(b) HK ESI subsidies are paid by reimbursing the member’s portion of the premium.

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

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 8-2011(Temp), f. & cert. ef. 8-1-11 thru 1-26-12; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0030

### HKC Carrier and Plan Selection

(1) OPHP selects health insurance carriers to offer Healthy KidsConnect benefit plans through a competitive bid process. The process includes releasing a request for proposal (RFP). Selection criteria may include, but is not limited to:

(a) Administrative and Online Services;

(b) Case, Disease, Utilization and Pharmacy Management;

(c) Member Access and Provider Network Capacity;

(d) Information Services and Reporting;

(e) References; and

(f) Premium rates.

(2) HKC benefit plans for full cost families (over 300 percent FPL):

(a) Are not required to be comparable to OHP Plus;

(b) Do not limit the family’s cost sharing to 5 percent of the family’s annual income;

(c) Do not exclude or delay coverage for preexisting conditions.

(d) Do not qualify for federal financial participation.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: IPGB 1-2005, f. & cert. ef. 3-1-05; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0040

### Member Eligibility

(1) OHA/DHS eligibility staff determine whether children are eligible for HKC or HK ESI based on family size, income, Oregon residency, citizenship and other criteria (ref. OAR 410-120-0006).

(2) HKC and HK ESI applicants must be uninsured for two months as described in the federal Children’s Health Insurance Program State Plan or in subsequent written directive by CMS. This requirement can be waived for the reasons outlined in OAR 461-135-1101(1).

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0055

### Subsidy Levels

(1) HK ESI subsidies are on a sliding scale based on household income and federal poverty level. Members:

(a) Zero up to and including 200 percent of the federal poverty level will receive 100 percent subsidy;

(b) Over 200 up to and including 250 percent of the federal poverty level will receive about 90 percent subsidy;

(c) Over 250 up to and including 300 percent of the federal poverty level will receive about 85 percent subsidy; and

(d) Over 300 percent of the federal poverty level will not receive a subsidy.

(e) Eligible American Indian/Alaska Native (AI/AN) children over 200 percent FPL up to and including 300 percent FPL will receive 100 percent subsidy. AI/AN families above 300 percent FPL are not eligible for a subsidy, and will pay full premium per child, and pay all regular out of pocket expenses.

(2) HKC is an option for families with or without access to ESI. Subsidies are on a sliding scale based on household income and federal poverty level. Members:

(a) Zero up to and including 200 percent of the federal poverty level are not eligible for HKC;

(b) Over 200 up to and including 250 percent of the federal poverty level will receive about 90 percent subsidy;

(c) Over 250 up to and including 300 percent of the federal poverty level will receive about 85 percent subsidy;

(d) Over 300 percent of the federal poverty level will not receive a subsidy.

(e) Eligible American Indian/Alaska Native (AI/AN) children over 200 percent FPL up to and including 300 percent FPL will receive 100 percent subsidy and will pay no coinsurance or copayments. AI/AN families above 300 percent FPL are not eligible for a subsidy, and will pay full premium per child, and pay all regular out of pocket expenses.

(3) Subsidy levels will be reevaluated at least once each year at re-termination. Subsidy levels may also be reviewed when:

(a) An administrative error is made. If this error results in direct coverage (OHP) and the change occurs before the member is enrolled in HKC, OHA/DHS will enroll the child in direct coverage. If the change occurs after the member is already enrolled, the change will be effective the first of the following month, after eligibility staff are notified.

(b) An audit identifies an error; or

(c) Family circumstances change. If the family reports a change affecting eligibility, eligibility staff will change the member’s FPL based on the family circumstance change:

(A) If the new FPL results in a better subsidy or direct coverage (OHP), the change may be made effective no earlier than the first of the following month.

(B) If the new FPL results in less or no subsidy, no change is made until the end of the 12-month eligibility period, unless the member requests that it be changed.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11



# ADMINISTRATIVE RULES

## 442-010-0060

### Enrollment In HKC

(1) HKC members must complete, sign and return all enrollment paperwork within the program's timeframes to remain eligible for the subsidy.

(a) Subsidized members have at least 45 days to choose a plan. If the member does not choose a plan within the established timeframe, OHA/DHS will close the eligibility case file. OPHP may request that OHA/DHS extend the enrollment timeframe for administrative issues.

(b) Members approved for HKC must select a plan and return all paperwork by 5:00 p.m. on the 23rd of the month or the last business day before the 23rd of the month for insurance to be effective the 1st of the following month. OPHP may approve an extension for administrative issues.

(2) A family may choose to enroll approved children into HKC or HK ESI. Families are not required to enroll all their children. Those who receive a state subsidy, however, must choose a plan within the same market (not split between HKC and HK ESI) for all enrolled children. Subsidized and non-subsidized families choosing HKC must choose the same plan insurance carrier for all eligible children.

(3) Newborn children born to a covered HKC member or a family in which there is a covered HKC sibling are covered on the date of birth if:

(a) The parent(s) applies for HK for the unborn child; and

(b) Selects a plan and returns all enrollment paperwork within 31 days of birth. If the request to enroll in HKC is received beyond 31 days of birth, the coverage effective date will be the first day of the month following the date of enrollment request.

(4) Non-member pregnant teens who want their unborn to be covered effective the date of birth, must:

(a) Apply for HK;

(b) Be determined eligible and enroll in HKC, within required timeframes, and;

(c) Be covered under the selected HKC plan before the child is born.

(5) Adults who want their unborn child to be covered on the date of birth must apply for HK, choose a plan and complete enrollment within required timeframes.

(6) A newborn will not be covered any earlier than children from the same family enrolled in the plan.

(7) Premiums are due for the full birth month no matter what date the child was born. Premiums will not be prorated.

(8) OPHP will pay the first month's premium for children in subsidized families.

(9) Coverage for newborns who have been pre-enrolled will be effective the first of the month following enrollment or the date of birth, whichever is later.

(10) HKC members may not be enrolled in or receiving benefits from other private, government, or public health options while receiving benefits from a HKC plan, except:

(a) During brief times of transition (typically less than 30 days) when an HKC member is changing to or from another plan such as Oregon Medical Insurance Pool (OMIP) or Oregon Health Plan (OHP);

(b) When a child with end state renal disease (ESRD) who is need of dialysis or a kidney transplant is covered by other health coverage including Medicare. The HKC insurance carrier is secondary in all cases; and

(c) For tribal members who may be enrolled in a qualified tribal health plan. In these cases the tribal plan is secondary to HKC coverage.

(11) If a carrier elects to discontinue participation in HKC, members served by that carrier will have to select another HKC carrier within 60 days of notification. Members who do not enroll within 60 days must reapply through OHA/DHS.

(a) HKC members electing coverage through a new plan must select the plan and complete, sign and return all enrollment paperwork within program timeframes to be covered the first of the following month. OPHP may extend the enrollment timeframe for administrative issues.

(b) Carriers who elect to discontinue participation in HKC will not be responsible for any claims incurred after the HKC contract period ends.

(c) If a member does not timely enroll in a new plan, the member will be responsible to pay for services received.

(12) Members may only change HKC carriers:

(a) At their next eligibility determination;

(b) If they move out of the carrier's service area; or

(c) If the member's carrier terminates their contract with HKC.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 8-2011(Temp), f. & cert. ef. 8-1-11 thru 1-26-12; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0070

### Annual Renewal

(1) Each year OPHP contacts enrolled subsidized members after OHA/DHS determines the member's annual eligibility. Those members who live in areas with more than one HKC carrier option, will have 30 days from the date OPHP sends the renewal notice to request a change of carrier. Members who live in area with only one carrier will be automatically renewed for another year into that carrier.

(a) If the member does not notify OPHP of a decision to change carriers and complete the required HKC enrollment paperwork within the 30 days, they will be automatically reenrolled with their current carrier. Members will not have the option to change carriers until the following year's annual renewal.

(b) Member requests for carrier changes and required enrollment paperwork received before the enrollment deadline of the 23rd of the month or the last business day before the 23rd will take effect the first of the following month.

(2) If a member's subsidy rate changes as a result of the annual re-determination, OPHP will notify the member and the carrier of the change.

(3) If the redetermination by OHA/DHS shows that the member is no longer eligible for a subsidy, the member may choose to enroll in a:

(a) Benefit plan available to full-cost members; or

(b) A portability plan.

(c) Or discontinue coverage through HKC.

(4) At annual renewal, full-cost members may choose to:

(a) Continue with HKC on their current plan. Full cost members who live in areas with more than one HKC carrier option, will have 30 days from the date OPHP sends the renewal notice to request a change of carrier and submit all required enrollment paperwork. Full cost member requests for carrier changes and required enrollment paperwork received before the enrollment deadline of the 23rd of the month or the last business day before the 23rd will take effect the first of the following month.

(b) Choose a portability plan through their current insurance carrier; or

(c) Discontinue coverage through HKC.

(5) If at any time a full cost member's income level or situation has changed, OPHP will let the member know that they can submit an application to OHA/DHS to apply for a subsidy. If approved for a subsidy, the member may change to a subsidized plan but are not allowed to change carriers.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0075

### Cost Sharing Out of Pocket Maximum

(1) Out of Pocket (OOP) expenses for the purposes of subsidized HKC members include: copayments, coinsurance and member premiums.

(2) Annual OOP expenses for subsidized HKC members are limited to five percent of the family's annual income.

(3) Accumulated OOP expenses are re-set to zero on January 1 each year for all HKC members, regardless of income level.

(4) When a member reapplies or at annual redetermination:

(a) If the member remains eligible at the same subsidy level and chooses to stay with the same carrier, OOP expenses will continue to accumulate until the end of the calendar year. The OOP limit will reset in January of the next calendar year.

(b) If the member remains eligible but the subsidy level changes, OPHP will notify the member and the carrier of the new out of pocket maximum to be used for the remainder of the calendar year.

(5) If a subsidized member chooses to change carriers at annual redetermination, the new carrier is not responsible for OOP costs incurred while covered with the former carrier.

(a) The former carrier will provide OPHP with an estimated year-to-date total of the member's out of pocket costs within 30 days of the member's coverage termination;

(b) The former carrier will report a final corrected total within 90 days of the member's coverage termination.

(c) OPHP will calculate the amount remaining on the member's OOP limit and report that information to the new carrier.

(6) If the member is determined ineligible for a subsidy at redetermination the member may enroll in:

(a) A full cost benefit plan with any HKC carrier;

(b) A portability plan through their current HKC insurance carrier; or

# ADMINISTRATIVE RULES

(c) Any insurance carrier in Oregon that issues individual or group coverage to children under 19 years of age.

(7) Accumulated OOP costs under a subsidized plan will not be applied to the full cost plan's OOP maximum.

(8) When a full cost member is determined eligible for subsidy, OPHP will calculate the five percent OOP maximum. OOP expenses generated when the member was enrolled in the full cost plan (except premiums) will be applied to the OOP limit.

(a) Premiums paid while the member was enrolled in the full cost plan are excluded from expenses that apply to the family's new maximum OOP.

(b) Families will continue to pay the member's share of the premium costs.

(c) If the member has exceeded the five percent OOP under the full cost plan, no additional coinsurance or co payments will be charged to the member.

(d) The member is not eligible for refunds of any amount exceeding the maximum OOP.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 8-2011(Temp), f. & cert. ef. 8-1-11 thru 1-26-12; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0080

### Member Billing — HKC

(1) Subsidies are available for members who choose HKC and are over 200 percent and up to and including 300 percent of the federal poverty level. OPHP will bill members for their share of the monthly premium.

(2) OPHP pays the first full month's premium for subsidized new members on a one-time only basis. If a member terminates and then reapplies for coverage, the member will be responsible for their share of the first month's premium unless the member:

(a) Was enrolled in error; and

(b) Did not receive a benefit.

(3) OPHP does not pay the first full month's premium for full-cost new members. OPHP will only pay the carrier for full cost members once the agency receives the member's premium payment.

(4) Beginning the second month, after initial enrollment, OPHP will only pay the carrier once the agency receives the subsidized member's portion of the premium.

(5) OPHP mails bills to members at least one month before the premium is due to the HKC carrier to ensure timely payment.

(6) OPHP mails a final reminder notice to members with unpaid balances greater than \$5.00, about 21 days before the premium is due to the HKC carrier.

(7) If payment is not received, OPHP mails a 10-day final notice of cancellation to members with unpaid balances greater than \$5.00. The notice is mailed, at least 10 days before the premium is due to the HKC carrier.

(8) OPHP sends a cancellation notice at the end of the 10-day notice period.

(9) If a member's coverage is terminated for non-payment of premium, OPHP may grant the member an exception for administrative issues.

(10) If an exception is granted, the carrier will reinstate the member's benefits with no break in coverage.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0085

### Member Payments — HKC

(1) OPHP will process member payments at least once each business day.

(2) OPHP will notify members of payments returned by the bank for non-sufficient funds (NSF):

(a) OPHP considers NSF checks the same as non-payment.

(b) Members must replace funds by the premium due date or within 10 calendar days of the notification letter date if the account is past due.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0090

### Carrier Payments — HKC

OPHP will only pay the carrier once the member's share of the premium is received except for the first month's premium for brand new subsidized accounts.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0100

### Carrier Refunds — HKC

(1) OPHP will resolve premiums overpaid by the member by requesting a refund from the carrier when necessary.

(2) OPHP will not process refunds resulting from member misrepresentation or NSF checks.

(3) OPHP will request a refund from the HKC carrier for the first full month's premium for new members who were enrolled in error.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0110

### Member Refunds — HKC

(1) Active member:

(a) Refunds for amounts not yet paid to the HKC carrier will be:

(A) Processed for amounts over \$25.00;

(B) Processed at least once weekly; and

(C) Sent to members only for their share of the premiums.

(b) Amounts under \$25.00 will be applied as a credit to future premiums.

(2) Terminated member:

(a) Refunds for amounts not yet paid to the carrier will be:

(A) Processed at least once weekly; and

(B) Sent to members for their share of the premiums only. Members are not eligible for a refund for the first month's premium if paid by OPHP.

(b) Refunds for amounts already paid to the HKC carrier will be paid once the carrier refunds OPHP.

(c) There is no minimum balance required for a refund on a terminated account.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0120

### Enrollment in Healthy Kids — ESI

(1) Subsidies are available to eligible members who choose to enroll in their ESI.

(2) Subsidies will only be paid for members enrolled in an ESI plan that meets the federal benchmark.

(3) Subsidized families have at least 45 days to enroll in their employer plan. If the family does not enroll in an approved plan within the established timeframe, OHA/DHS will close the eligibility case file. OPHP may request that OHA/DHS extend the enrollment timeframe for administrative purposes.

(4) If the referred member is unable to enroll in the employer plan for a period of time, the member may enroll in a HKC plan while they wait for the ESI enrollment period. If the member later enrolls in their employer plan, and then loses coverage during the same eligibility period, the member must re-enroll with the same HKC carrier. The member may choose a new HKC carrier their next eligibility period.

(5) The subsidy effective date will be determined based on the referral date and ESI enrollment date. If an approved child is able to enroll in the family's ESI plan the same month the case is referred to OPHP, the agency will begin paying subsidies for that month.

(6) Subsidies will not be paid until the employer plan has been benchmarked. If the benchmark process delays subsidy payment, OPHP will retroactively reimburse the member's portion of the premium back to the referral month as long as the plan meets the federal benchmark. If the plan does not meet the federal benchmark, OPHP will not subsidize the premiums.

(7) Subsidy reimbursement is based on the coverage month, not when the premium is paid. Examples:

(a) Insurance premium deductions are taken in advance for the coverage month (e.g. the member's portion of the premium is paid in October for November coverage. If the child is referred to OPHP in November and enrolled and covered by the ESI plan in that same month, OPHP will reimburse the October premium payment if it is for November coverage).

(b) Insurance premium payments are taken after the coverage month (e.g. the member's portion of the premium is paid in November for October

# ADMINISTRATIVE RULES

coverage). OPHP will begin subsidy payments in December for the November coverage month.

(8) Subsidy will be paid for the full referral month no matter what day in the month the referral was made. Premiums and subsidies will not be prorated.

(9) OPHP will subsidize various coverage options referenced in 442-010-0160 if:

- (a) A member loses ESI coverage due to loss of employment;
- (b) The employer discontinues the ESI plan; or
- (c) The member chooses to disenroll during an open enrollment period.

Stat. Auth.: ORS 414.231 & 414.826  
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839  
Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0160

### Continuing Coverage Options

Eligible members who lose their insurance coverage may choose COBRA, a prevailing portability plan, a state continuation plan, OMIP portability, or HKC.

(1) OPHP will subsidize premiums for any of these options if the member is eligible. Options available to members are based on the member's individual circumstances.

(2) Eligible plans must meet the federal benchmark. Low cost portability plans are not eligible for a subsidy.

Stat. Auth.: ORS 414.231 & 414.826  
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839  
Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0170

### Adding Family Members

(1) Subsidized families may add members to their HKC or HK ESI enrollment at any time throughout the 12-month eligibility period as long as the family member applies through OHA/DHS and meets the eligibility requirements. The member then receives a new 12-month eligibility period.

(2) HKC premium rates and the member's portion of the premium may change as a result of adding new family members. The reimbursement amount may change for ESI members.

(3) HKC plan rates may change each year in January. Plan rate changes may result in member premium changes.

(4) OHA/DHS will recalculate the member FPL based on family circumstance changes. If the new FPL results in a better subsidy or direct coverage (OHP) the change may be effective the first of the following month. If the new FPL results in less or no subsidy, no change will be made until the end of the 12-month eligibility period.

Stat. Auth.: ORS 414.231 & 414.826  
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839  
Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0180

### Member Reporting

(1) Members must report changes in circumstance within 10 calendar days as required by OHA/DHS

(2) Members must report the following changes to OPHP either by phone or in writing. Changes include:

- (a) Employer;
- (b) Home or mailing address, even if temporarily away (more than 30 days);
- (c) Loss of ESI;
- (d) New or additional health insurance including ESI;
- (e) Any family member who becomes ineligible for their health insurance; and
- (f) Employer contribution amounts for OPHP members receiving subsidy in ESI.

(3) If the member reports an eligibility change to OPHP, OPHP must notify OHA/DHS of the change in writing within 10 calendar days of receiving notice from the member. OHA/DHS will make the change effective the date it was reported to OPHP.

(4) If a member reports a change not related to eligibility, eligibility staff must notify OPHP within 10 calendar days of receiving notice.

Stat. Auth.: ORS 414.231 & 414.826  
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0190

### HKC or HK ESI Member Termination

(1) OPHP may terminate a members benefits when:

(a) Payment of the member's share of the premium is not received by the due date;

(b) The member is no longer a permanent Oregon resident;

(c) The member loses their HK ESI and fails to notify OPHP;

(d) OHA/DHS determines the member to be ineligible at redetermination or any time during the eligibility year;

(e) A member is found to be currently enrolled in another private, public, government sponsored health insurance plan, or qualified employer-sponsored health insurance plan while enrolled in HKC. In these instances HKC benefits may be terminated back to the effective date or the effective date of coverage under the other insurance if the coverage started while the member was insured with HKC.

(f) An HK ESI member fails to provide monthly verification of coverage, premiums, and employer contribution within 30 days from the date OPHP requests documentation;

(g) The member fails to pay an overpayment amount as per OAR 442-010-0210;

(h) Projected program costs exceed the funding available to cover subsidy payments for those enrolled; or

(i) A member requests disenrollment. The member will submit a signed OHA/DHS 457D closure request form to OPHP or OHA/DHS.

(j) The member turns 19 years old;

(A) The coverage is terminated at the end of the member's birthday month.

(B) OHA/DHS will notify the member prior to the change in their benefits.

(C) The member may have the right to apply for medical assistance or other OHA/DHS programs.

(D) OPHP will notify the family 60 days in advance of the pending termination.

(2) If OPHP terminates a member for non-payment of premium, the member must wait two months to re-enroll in a HKC plan. Once a member is terminated, they must reapply through OHA/DHS.

(3) If a member is terminated for non-payment of premium, any outstanding balance due must be paid before the member can re-enroll in HKC or be subsidized for an ESI plan.

(4) If a member is terminated with an outstanding balance, the balance will be handled per OAR 442-010-0230 (Collections). Terminated members with an unpaid balance that re-qualify for the program must establish a payment plan per OAR 442-010-0220 in order to be eligible to re-enroll.

(5) OPHP will notify members of their right to appeal decisions made by OPHP.

(6) HKC terminations resulting from a OHA/DHS referral administrative error will be effective the first of the month following when the paid coverage month ends.

Stat. Auth.: ORS 414.231 & 414.826  
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839  
Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0210

### Overpayments

(1) Any overpayment amount is a debt owed to the State of Oregon and may be subject to collection. An overpayment may result from member error. An overpayment is a member error when the member intentionally or unintentionally:

(a) Did not provide correct or complete information to OPHP or OHA/DHS;

(b) Did not report changes in circumstances to OPHP or OHA/DHS;

(c) Claimed and was reimbursed premiums paid on their behalf by the employer for an ineligible subsidy period.

(2) An overpayment to the carrier may occur when a member is enrolled in a Healthy KidsConnect program and another state medical or private insurance plan during the same benefit period.

(3) OPHP will notify members in writing of overpayments. This written notice will inform members of:

(a) The amount of and the reason for the overpayment;

(b) Contested case hearing rights.

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(4) OPHP will collect overpayment amounts in one lump sum if the member is financially able to repay the overpayment amount in that manner.

(5) If the member is financially unable to pay the amount due in one lump sum, OPHP will accept regular installment payments as outlined in 442-010-0220 — Payment Plans.

(6) If OPHP is unable to recover the overpayment amount from the member within overpayment guidelines OPHP may renegotiate the payment plan agreement or refer the balance to the Department of Revenue, the Department of Justice, or another outside agency for collection. If an account is referred to an outside agency for collection, any expenses incurred for collection will be added to the member's balance due.

(7) If the member requests a contested case hearing, OPHP will discontinue any attempts at collection until the conclusion of the hearing.

(8) If the hearing decision is in the member's favor, OPHP will refund any money collected as overpayment recovery as outlined in OAR 442-010-0220 and 442-010-0230.

(9) In order to re-enroll, any former HKC or HK ESI member with an outstanding overpayment balance must agree to pay the overpayment amount using one of the following options:

(a) In one lump sum;

(b) A minimum of \$10 per month or the amount necessary to collect the balance due in one year, whichever is greater; or

(c) An approved payment plan as referenced in 442-005-0220.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0215

### Member Refund Due To Dual Enrollment

(1) The HKC program is intended for uninsured children. Member's benefits may be terminated back to the effective date if the member is dual enrolled with other health insurance coverage or government coverage such as CHAMPVA and TRICARE.

(2) OAR 442-010-0060(7) and the HKC carrier contracts prohibit dual enrollment with a few exceptions. Examples of dual enrollment situations:

(a) The HKC member had other insurance when they first applied for HKC, but failed to disclose it or failed to cancel the other insurance when enrolling into the HKC program.

(b) The HKC member acquired new health insurance after enrollment in HKC. Obtaining other health insurance coverage may make a member ineligible for the program.

(3) If a member is terminated due to dual enrollment and OHA/DHS closes out the account, HKC will refund the members premium share that was paid during the dual enrollment time period. The member is not eligible for a refund for the first month's premium share if paid by OPHP. See Member Refund (442-010-0110).

(4) The member has 30 days from the date of the refund notice to request a hearing.

(5) Once a member's case is closed, the member must reapply if they want future HKC benefits. Members who had prior subsidized HKC coverage are not eligible for the first month's premium to be paid by OPHP when they re-enroll.

Stat. Auth.:

Stats. Implemented:

Hist.: OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0220

### Payment Plans

Members may establish a payment plan to reimburse OPHP.

(1) Payment plans may be established for currently enrolled or terminated members. Members and former members will have an option to either repay the overpayment in full or through a payment arrangement.

(2) Once a payment plan is approved, OPHP sends the member or former member a letter that:

(a) Outlines the agreed upon payment arrangement; and

(b) Informs the member or former member of OPHP's method for collecting the overpayment. OPHP will:

(A) Bill HKC members for the overpayment amount in addition to the normal monthly-billed amount;

(B) Bill former members for the overpayment amount; or

(C) Deduct the overpayment amount from subsidy payments made to HK ESI members.

(3) If the member does not follow the payment plan, OPHP will terminate the account for non-payment. HKC Operations will notify OPHP's Fiscal Recovery Unit for collection. See Collections section 442-010-0230.

(4) Terminated members with an unpaid balance who re-qualify for the program must establish a payment plan before they are enrolled in order to be eligible to reenroll.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0230

### Collections

(1) OPHP staff will reconcile terminated accounts with unpaid balances as outlined in this rule.

(2) OPHP staff will notify the member in writing of the collection amount. The terminated member may contest the collection decision as provided in OAR 442-010-0260.

(3) Current and terminated members may be eligible to establish a payment plan as outlined in OAR 442-010-0220.

(4) If OPHP is unable to recover the unpaid balance from the terminated member or no payment is made within 90 days, OPHP may:

(a) Renegotiate the collection agreement or refer the balance to the Department of Revenue, the Department of Justice, or another outside agency for collection. If an account is referred to an outside agency for collection, any expenses incurred for collection will be added to the member's balance due; or

(b) File civil action to obtain a court ordered judgment for the amount of the debt. OPHP may also file a claim for costs and fees associated with obtaining a court judgment for the debt. When a judgment for costs is awarded, OPHP will collect this amount in addition to the overpayment amount, using the methods of recovery allowable under state law and administrative rule.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0240

### Audits

(1) Quality assurance audits will be performed to verify that State and Federal laws, rules, policies and procedures are followed.

(2) As a result of an audit:

(a) A member may be found ineligible for a HKC or HK ESI subsidy.

(b) A member may be found ineligible for a prior subsidy period.

(c) OPHP may adjust the subsidy level for a current or previous subsidy period.

(3) If additional information is requested during an audit, the member has 30 days from the date of the Request for Information letter to submit the information. If a member fails to cooperate with an OPHP audit, the member may be disenrolled.

(4) If an audit finding is different than the original eligibility determination, OPHP will notify OHA/DHS.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

## 442-010-0260

### Contested Case Hearings

(1) A member may request a hearing on a decision or action.

(2) A member must request a hearing in writing. The member or the member's representative must sign the request.

(3) The member has 30 days from the notice date to request the hearing.

(4) The hearing request must include the reasons for the hearing. The reasons must be limited to the decision or action cited in the notice.

(5) OPHP will conduct a contested case hearing according to ORS 183.413 to 183.470.

(6) OPHP may conduct the hearing in cooperation with OHA/DHS.

(7) Once a hearing is requested, OPHP will not pursue collection of any overpayment until HKC has issued a final order that confirms the overpayment.

(8) If an account remains open during the hearing process, the member must continue to pay premiums in order for the health coverage and subsidy to remain active.

(9) If an account is closed and the hearing decision results in reinstatement of health coverage, the time frame for reinstatement of coverage

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will not exceed 60 calendar days prior to the date of the Administrative Law Judge's decision. Reinstated coverage will begin on the first of the month.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11

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**Rule Caption:** Changes income criteria and modifies reservation list.

**Adm. Order No.:** OPHP 1-2012

**Filed with Sec. of State:** 1-13-2012

**Certified to be Effective:** 1-13-12

**Notice Publication Date:** 8-1-2011

**Rules Amended:** 442-005-0020, 442-005-0030, 442-005-0050, 442-005-0070

**Subject:** At the request of Legislative Council, OPHP is re-filing the following administrative rules:

FHIAP is amending 442-005-0020 to add an additional reservation list for families with children.

FHIAP is amending 442-005-0030 to change non-self employment income document requirements from three months to one month to strengthen internal efficiency and lessen the paperwork burden for applicants.

FHIAP is amending 442-005-0050 to clarify eligibility.

FHIAP is amending 442-005-0070 to change non-self employment income document requirements from three months to one month to strengthen internal efficiency and lessen the paperwork burden for applicants.

**Rules Coordinator:** Margaret Moran—(503) 378-5664

## 442-005-0020

### Reservation Lists

(1) To manage enrollment and ensure that funds are available to cover subsidy payments for those enrolled, FHIAP will establish three reservation lists for prospective applicants. One reservation list for each of the following:

- (a) Applicants who have or will have access to group coverage;
- (b) Applicants who do not have access to group coverage; and
- (c) Applicants who are families with potentially eligible children.

(2) The Office will establish procedures to manage the reservation lists with the goal of equal distribution of funds between the reservation lists. This may require FHIAP to release applications from one reservation list ahead of the other.

(3) An applicant may obtain an individual or group application by first getting on the reservation list; or may access a group application via FHIAP's website, or from an employer or insurance producer.

(4) Prospective applicants will be added to the appropriate reservation list or assigned a reservation number in order of the date FHIAP receives a completed reservation request either in writing or over the telephone. A completed application form may be deemed a reservation request if no prior request was made.

(5) Each request will be assigned a reservation number, which will also function as confirmation of placement on the appropriate reservation list.

(6) Prospective applicants on the reservation list will be notified of their right to apply for FHIAP, as program funds are available.

(7) When enrollment in FHIAP reaches the maximum that funding will allow, additional enrollment may occur as current members terminate or if additional program funding becomes available.

(8) A prospective applicant has 75 calendar days from the date the Office mails the application form, or notifies the prospective applicant that they may apply for a FHIAP subsidy, to return a completed application form to the Office.

(9) If a prospective applicant does not return an application form within 75 calendar days from the original date of mailing or notification, the Office will remove the prospective applicant's name from the reservation list.

(10) A prospective applicant may enroll in a health benefit plan while on the reservation list as long as they have met the two-month period of uninsurance requirement or exceptions to the period of uninsurance requirement prior to enrolling in the plan.

(11) FHIAP applicants may add new dependents to an existing insurance plan or their FHIAP application without adding them to the reservation list first.

(12) Members who have terminated from FHIAP cannot re-enroll in the program without first being placed on the appropriate reservation list unless they have a family member who is still enrolled in FHIAP.

Stat. Auth.: ORS 735.734, 735.722(2) & 735.728(2)

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 7-2011(Temp), f. & cert. ef. 7-15-11 thru 1-10-12; OPHP 9-2011, f. & cert. ef. 11-4-11; OPHP 1-2012, f. & cert. ef. 1-13-12

## 442-005-0030

### Application Process

(1) FHIAP will use an application and any documentation required on the application, will be used to determine eligibility and subsidy level.

(2) Applicants may only send in information providing program eligibility during the application process. FHIAP will not accept information sent outside of the application timeframe to use in an audit, appeal or contested case hearing except as provided in OARs' OARs 442-005-0310, 442-005-0320, 442-005-0330 and 442-005-0340.

(3) Program openings occur when funds are available.

(4) Applicants are mailed an application on a first come first serve basis, when there are program openings.

(5) FHIAP reviews applications in the order they are received. Eligibility decisions include:

- (a) Approval for immediate subsidy;
- (b) Denial; or
- (c) Request for more information.

(6) When there are no program openings, FHIAP may approve the application, but the applicant may not be eligible for a subsidy right away. These approved applications are held in a queue. Applicants are mailed a notice when they are able to enroll for subsidies.

(7) Documents that verify required information requested on the application must be provided with the application if FHIAP is not able to verify the information electronically. Required documentation includes but is not limited to:

(a) A copy of a current Oregon identification or other proof of Oregon residency for all adult applicants;

(b) For non-United States citizens, a copy of documentation from the Department of Homeland Security showing their status and when they arrived in the United States.

(c) Documents verifying all adult applicant's and spouse's earned and unearned income and children's unearned income for the one month prior to the month in which the application is signed. Documentation may include, but is not limited to, pay stubs, award letters, child support documentation and unemployment benefit stubs or printouts. If an applicant or spouse is employed by a business or partnership that is either partially or wholly owned by the applicant or spouse, business documentation as described in OAR 442-005-0070(2)(d) must also be submitted

(d) A completed Self-Employment Income Worksheet and documents verifying income from self-employment and fishing for the twelve months prior to the signature month on the application for those submitting an income attestation. Documentation may include, but is not limited to, business ledgers, profit and loss statements and bank statements;

(e) A completed Farming and Ranching Income Worksheet and documents verifying income from farming, fishing and ranching for the 12 months prior to the signature month on the application for those submitting an income attestation. Documentation may include, but is not limited to, business ledgers, profit and loss statements and bank statements;

(f) The most recently filed federal tax return and all schedules for applicants who have income from self-employment, fishing, farming, or ranching, rentals or royalties, or capital gains, interest and dividends.

(g) A copy of any group insurance handbook, summary, or contract that is available to any applicant.

(h) A completed Group Insurance Information (GII) form, if the applicant has group insurance available to them.

(i) For applicants with no income, the completed No Income form or other signed statement explaining how the applicant is meeting their basic needs, such as food, clothing and shelter.

(8) Additional verification must be provided when FHIAP requests it.

(9) FHIAP may verify any factors affecting eligibility, benefit levels or any information reported, such as:

(a) Data or other information received by FHIAP that is inconsistent with information on the FHIAP application;

(b) Information provided on the application is inconsistent;

(c) Information reported on previous applications that is inconsistent with a current FHIAP application.

(10) FHIAP may decide at any time during the application process that additional eligibility factors must be verified.

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(11) FHIAP may deny an application or end ongoing subsidy when acceptable verification or required documentation is not provided.

Stat. Auth.: ORS 735.734, 735.722(2) & 735.728(2)  
Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 6-2010(Temp), f. & cert. ef. 10-11-10 thru 4-8-11; OPHP 1-2011(Temp), f. & cert. ef. 1-5-11 thru 4-8-11; Administrative correction 4-25-11; OPHP 5-2011, f. & cert. ef. 4-22-11; OPHP 7-2011(Temp), f. & cert. ef. 7-15-11 thru 1-10-12; OPHP 9-2011, f. & cert. ef. 11-4-11; OPHP 9-2011, f. & cert. ef. 11-4-11; OPHP 1-2012, f. & cert. ef. 1-13-12

## 442-005-0050

### Eligibility

In order for an applicant to qualify for a FHIAP subsidy, applicants must:

(1) Be a resident of Oregon or a full-time college student with a parent who is a resident of Oregon.

(2) Be a United States citizen or a qualified non-citizen who meets the alien status requirement.

(3) Not be eligible for or receiving Medicare benefits.

(4) Have income of zero through 200 percent of the Federal Poverty Level in effect at the time of eligibility determination. Income determination is outlined in OAR 442-005-0070.

(5) Meet one of the statutory definitions of family in ORS 414.841(3) at the time of eligibility determination. To be included in the family size for FHIAP eligibility determination, the applicant's family members must meet the definition of dependent under OAR 442-005-0010(8):

(a) A dependent may be counted in two separate households for the purposes of determining eligibility for FHIAP and any other state assistance program;

(b) A dependent may be counted in two separate households for the purpose of determining eligibility for both families in FHIAP;

(c) A dependent may not be enrolled in FHIAP and OHP (or any other state medical assistance program) at the same time;

(d) A dependent may be enrolled in FHIAP and any other state assistance program (except medical) at the same time;

(e) If a dependent is counted in two separate households for the purpose of determining eligibility in two different assistance programs, enrollment will be determined by criteria established in procedure.

(6) Meet either a period of uninsurance requirement or exceptions listed in OAR 442-005-0060.

(7) Not be incarcerated for more than 30 days or be a ward of the State.

(8) Provide necessary materials by the due dates specified in FHIAP correspondence in order to allow for eligibility determination. If information is not submitted by the dates specified in FHIAP correspondence or the information is inconsistent or incomplete, the application may be denied.

(9) If applying for subsidy in the group market, must be able to enroll in a group insurance plan that meets the benchmark standard established by the Office within twelve months of eligibility determination. If an applicant to the group market does not have access to a group plan, the group plan they have access to does not meet the benchmark standard, or they cannot enroll into their group plan within twelve months of eligibility determination, the applicant will be denied and placed on the reservation list for an individual subsidy using the same date they were placed on the group reservation list.

(10) If an application is sent from the child-only reservation list, subsidies will only be approved for children. Adults are not eligible for subsidy on this type of application. If an application from the child-only list is denied, the family will be placed at the end of the group or individual reservation list, depending on the available insurance market.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; IPGB 3-2006(Temp), f. & cert. ef. 11-27-06 thru 5-25-07; Administrative Correction, 6-16-07; OPHP 1-2007, f. & cert. ef. 6-18-07; OPHP 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-5-10; Administrative correction 7-27-10; OPHP 3-2010, f. & cert. ef. 7-22-10; OPHP 3-2011, f. & cert. ef. 2-25-11; OPHP 7-2011(Temp), f. & cert. ef. 7-15-11 thru 1-10-12; OPHP 9-2011, f. & cert. ef. 11-4-11; OPHP 9-2011, f. & cert. ef. 11-4-11; OPHP 1-2012, f. & cert. ef. 1-13-12

## 442-005-0070

### Income Determination

(1) In order to qualify for FHIAP an applicant must have an average monthly gross income, from all sources, up through 200 percent of the federal poverty level in effect at the time of determination. Subsidies will be approved on a sliding scale determined by income and family size. Income from more than one source will be determined individually based on the criteria for each source and the results totaled for a final average monthly income amount. For the purposes of FHIAP, there are six primary categories of income; these categories are:

- (a) Earned and unearned income from non-self-employment sources.
- (b) Self-employment and fishing income.
- (c) Farming and ranching income.
- (d) Income to owners of corporations and/or partnerships.
- (e) Rental and royalty income.
- (f) Interest and dividend income.

(2) FHIAP will determine into which category or categories an applicant's income falls and treat each type of income appropriately. FHIAP will determine the applicant's income eligibility according to the following detail:

(a) For earned and unearned income from non-self-employment sources, average gross monthly income will be determined using income received in the one month prior to the month in which the application was signed.

(b) For self-employment and fishing, average income will be determined using figures from the applicant's most recently filed federal Schedule C or C-EZ.

(c) For farming and ranching, income will be determined using figures from the applicant's most recently filed federal Schedule F.

(d) For owners of corporations and partnerships, income will be determined using wages paid to the applicant(s) plus any payments made from business funds for personal expenses in the three-calendar months prior to the month in which the application was signed. The following documents are required for eligibility determination:

(A) Owners of corporations must submit the corporation's most recently filed federal taxes with all schedules.

(B) Owners of partnerships must submit the partnerships most recently filed federal taxes with all schedules.

(C) Owners of either corporations or partnerships must submit three months of both personal and business bank statements.

(e) Income from rentals and royalties will be determined using figures from the applicant's most recently filed federal Schedule E.

(f) Income from interest and dividends will be determined using figures from the applicant's most recently filed federal Schedule B, C, D, or 1099 DIV.

(3) In the event the taxes of an applicant with income in categories (1)(b) and (1)(c) do not reflect the applicant's current income, the applicant may submit an attestation of their income with documentation of their income for the previous six months for self-employed applicants or 12 months for farming, fishing and ranching applicants.

(a) Documentation includes but is not limited to business ledgers, profit and loss statements and bank statements.

(b) Average adjusted income will be determined by either method described below as specified by the applicant on the Self-Employment or Farming, Ranching and Fishing Income Worksheet. Whichever method the applicant chooses to use will be the method used throughout that year's eligibility determination, including appeal and contested case hearing processes.

(A) Income received from farming, fishing, ranching and self-employment will be reduced by 50 percent for business expenses; or

(B) Income received from farming, fishing, ranching or self-employment will be reduced by the actual allowable expenses incurred during the six or 12 months prior to the month in which the application was signed. Allowable expenses are listed on the Self-Employment or Farming, Ranching and Fishing Income Worksheets.

(c) Attestations are subject to future audit for accuracy. The file may be referred for collection if misrepresentation or overpayment are found.

(4) Income is available immediately upon receipt, or when the applicant has a legal interest in the income and the legal ability to make the income available, except in the following situations when it is considered available as indicated:

(a) For earned and unearned income:

(A) Income available prior to any deductions such as garnishments, taxes, payroll deductions, or voluntary payroll deductions will be considered as available; however, support payments as defined in OAR 442-005-0010(25) may be deducted from gross income if the applicant is able to prove the payments were made.

(B) Income usually paid monthly or on some other regular schedule, but paid early or late is treated as available on the regular payday.

(C) Payments made in a "lump sum" will be divided out over the number of months the payment is for. "Lump sum" payments will only be divided if the applicant can provide proof of the period for which the payment was made.

(b) Earned income is available as follows:

# ADMINISTRATIVE RULES

(A) Income withheld or diverted at the request of an employee is considered available in the month the wages would have been paid;

(B) An advance or draw that will be subtracted from later wages is available when received; and

(c) Payments that should legally be made directly to an applicant, but are paid to a third party on behalf of an applicant, are considered available the date that is on the check or stub.

(6) Income is not available if:

(a) The wages are withheld by an employer, with the exception of garnishment, even if in violation of the law;

(b) The income is paid jointly to the applicant and other individuals and the other individuals do not pay the applicant his/her share; and

(c) It is received by a separated spouse. FHIAP will determine when an applicant's spouse is deemed separated for purposes of this subsection (5)(c).

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 5-2011, f. & cert. ef. 4-22-11; OPHP 7-2011(Temp), f. & cert. ef. 7-15-11 thru 1-10-12; OPHP 9-2011, f. & cert. ef. 11-4-11; OPHP 9-2011, f. & cert. ef. 11-4-11; OPHP 1-2012, f. & cert. ef. 1-13-12

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## Oregon Health Authority, Oregon Educators Benefit Board Chapter 111

**Rule Caption:** Amendments to the OEBB procurement and contracting rules.

**Adm. Order No.:** OEBB 1-2012(Temp)

**Filed with Sec. of State:** 1-13-2012

**Certified to be Effective:** 1-13-12 thru 7-10-12

**Notice Publication Date:**

**Rules Amended:** 111-005-0040, 111-005-0042

**Subject:** The current rule language in 111-005-0040 and 111-005-0042 does not specifically support the most judicious process for releasing the names of vendors submitting proposals for the OEBB Board's consideration. The amendments made in 111-005-0040 and 111-005-0042 reflects the process OEBB has used since its inception and is consistent with the type of services the OEBB Board contracts for.

**Rules Coordinator:** April Kelly — (503) 378-6588

### 111-005-0040

#### Extensive Procurement Process

The Board will use the following procedure except as provided for under OAR 111-005-0046 or 111-005-0048.

(1) Announcement. The Board will post solicitation notices for benefits via the Oregon Procurement and Information Network (ORPIN). The Board may also post solicitation notices for benefits in trade periodicals or newspapers of general or specialized circulation. The solicitation notice will include a description of the benefits or services sought, the scope of the services required, evaluation and selection criteria, and a description of any special requirements. The notice will invite qualified prospective proposers to submit proposals. The notice will specify when and where to obtain the RFP, where to return the proposal, the method of submission, and the closing date.

(2) No remuneration will be offered to prospective proposers for attendance, travel, document preparation, etc. Unless otherwise specified in the RFP, the pre-proposal conference will:

(a) Be voluntary; and

(b) Be held in Salem, Oregon.

(3) RFP protest; request for change or request for clarification.

(a) Protest.

(A) A proposer may deliver a protest to the Board not less than ten calendar days prior to closing, unless otherwise specified in the RFP.

(B) Proposer protests must be in writing and must include:

(i) A detailed statement of the legal and factual grounds for the protest;

(ii) A description of the resulting prejudice to the proposer; and

(iii) A statement of the desired changes to the RFP.

(C) The Board will not consider a proposer's protest after the submission deadline.

(i) The Board will provide notice to the applicable entity if it entirely rejects a protest. If the Board agrees with the entity's protest, in whole or in part, the Board will issue an addendum reflecting its determination under

OAR 137-030-0055 and 137-047-0430 or cancel the solicitation under 137-030-0115.

(ii) If the Board receives a written protest from a proposer according to this rule, the closing may be extended if the Board determines an extension is necessary to consider the protest and to issue any addendum to the RFP.

(b) Request for change.

(A) A proposer may request in writing a change to the RFP specifications, unless otherwise specified in the RFP. If the RFP allows a proposer to make a request for changes and does not specify otherwise, proposer must deliver the written request for change to the Board not less than ten calendar days prior to closing.

(B) A proposer's written request for change must include a statement of the requested changes to the RFP specifications, including the reason for the requested change.

(C) The Board will not consider a proposer's request for change after the submission deadline.

(i) The Board will provide notice to the applicable entity if it entirely rejects a change. If the Board agrees with the entity's request for change, in whole or in part, the Board will issue an addendum reflecting its determination under OAR 137-030-0055 and 137-047-0430 or cancel the solicitation under 137-030-0115.

(ii) If the Board receives a written request for a change from a proposer according to this rule, closing may be extended if the Board determines an extension is necessary to consider the request and to issue any addendum to the RFP.

(c) Request for clarification.

(A) A proposer may request in writing clarification of the RFP specifications, unless otherwise specified in the RFP. If the RFP allows a proposer to make a request for clarification and does not specify otherwise, a proposer must deliver the written request for clarification to the Board not less than ten calendar days prior to closing.

(B) A proposer may request that the Board clarify any provision of the RFP.

(C) The Board will not consider a proposer's request for clarification after the submission deadline. The Board's clarification to a proposer, whether orally or in writing, does not change the RFP and is not binding on the Board unless the Board amends the RFP by addendum.

(4) Addenda to an RFP following an appeal or request for change or clarification.

(a) Issuance; receipt. The Board may change an RFP only by written addenda. A proposer must provide written acknowledgement of receipt of all issued addenda with its proposal, unless the Board otherwise specifies in the addenda.

(b) Notice and distribution. The RFP must specify how the Board will provide notice of addenda and how the Board will make the addenda available.

(c) Timelines; extensions. The Board will issue addenda within a reasonable time to allow prospective proposers to consider the addenda in preparing their proposals. The Board may extend the closing if the Board determines prospective proposers need additional time to review and respond to addenda. The Board will not issue addenda less than 72 hours before the closing unless an addendum also extends the closing, except to the extent required by public interest.

(d) Request for change or protest. A proposer may submit a written request for change or protest to the addendum by the close of the Board's next business day after issuance of the addendum, unless a different deadline is set forth in an addendum.

(5) Submission. All proposals submitted must comply with the procurement's specifications.

(a) If portions of the proposal to any solicitation are deemed unacceptable or non-responsive to the specifications of the solicitation, the proposal will be deemed non-responsive and will not be given further evaluation or consideration. If a proposal to any solicitation is delivered late, it will be deemed non-responsive to the specification of the solicitation and will be returned to the proposer unopened.

(b) Submission of proposals must be in written hard copy or electronic format and delivered, as required by the specifications of the solicitation. OEBB is not responsible for unreadable or incomplete electronic transmissions of proposals or for electronic transmissions that are not received by the designated OEBB recipient by the closing date and time stated in the RFP.

(6) Evaluation. The Selection Committee will evaluate proposals only in accordance with criteria set forth in the RFP and applicable law. The

# ADMINISTRATIVE RULES

Selection Committee and/or Consultants will provide their recommendations to the Board on the apparent successful proposer(s).

(7) Rejection of proposal. The Board may reject any proposal for good cause and deem it as non-responsive upon written finding that it is in the states', Educational Entities', or Employees, Early Retirees and their Dependents' interest to do so or acceptance of the proposal may impair the integrity of the procurement process. The Board will notify the proposer of its rejection of the proposal in writing and provide the good cause justification and finding. OEBC is not liable to any Proposer for any loss or expense caused by or resulting from any rejection, cancellation, delay or suspension. Without limiting the generality of the foregoing, the Board may reject any Proposal upon OEBC's finding that the Proposal:

(a) Is contingent upon OEBC's acceptance of terms and conditions (including Specifications) that differ from the RFP;

(b) Takes exception to terms and conditions set forth in the RFP;

(c) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the RFP or in contravention of applicable law;

(d) Offers services that fail to meet the specifications of the RFP;

(e) Is late;

(f) Is not in substantial compliance with the RFP;

(g) Is not in substantial compliance with all prescribed procurement procedures;

(h) Is from a Proposer that has been debarred as set forth in ORS 279B.130;

(i) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(j) Is from a Proposer found non-responsible as described in OAR 111-005-0055.

(8) Intent to award, discuss or negotiate. After the protest period provided in subsection (3)(a) expires, or after the Board has provided a final response to any protest, whichever date is later, the Board may engage in discussions and negotiations with proposers in the competitive range.

(9) Discussions and negotiations. If the Board chooses to enter into discussions and negotiations with the Proposers in the competitive range, the Board will proceed as follows:

(a) Initiating discussions. The Board must initiate oral or written discussions and negotiations with all of the proposers in the competitive range regarding their proposals.

(b) Conducting discussions. The Board may conduct discussions and negotiations with each proposer in the competitive range as necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions or negotiations with each proposer. The Board may terminate discussions and negotiations with any proposer in the competitive range at any time. All proposers in the competitive range will be offered the opportunity to discuss their proposals with the Board before the Board notifies proposers of the award decisions. In conducting discussions, the Board and any designated representatives:

(A) Will treat all proposers fairly and will not favor any proposer over another.

(B) Will not discuss proposers' proposals with any other proposers and will maintain all proposals as confidential documents to the extent permitted by the Public Records Law.

(C) Will not divulge the name of the proposers or the content of the proposals until cost negotiations are complete or an apparent successful proposer has been announced.

(D) Will determine whether other factors, including but not limited to, Oregon residency of the primary business office and proposer demonstration of services and products, will be used to determine the apparent successful proposer, if a tie between proposers occurs.

(c) At any time during the period allowed for discussions and negotiations, the Board may:

(A) Continue discussions and negotiations with a particular proposer or proposers; or

(B) Terminate discussions with a particular proposer and continue discussions with other proposers in the competitive range.

(d) The Board may continue discussions and negotiations with proposers until determining who will be awarded contracts.

(10) Notice of intent to award. The Board will provide written notice to all proposers of intent to award the contract, unless otherwise provided in the RFP. The Board's award will not be final until the later of the following:

(a) Seven calendar days after the date of the notice, unless the RFP provided a different period for protest; or

(b) The Board's written response to all timely filed protests that denies the protests and affirms the award.

(11) Right to protest award. An adversely affected or aggrieved proposer may submit to the Board a written protest of the Board's intent to award. The protest must be made within seven calendar days after issuance of the notice of intent to award the contract, unless otherwise specified in the RFP.

(a) The proposer's protest must be in writing and must specify the grounds upon which the protest is based.

(b) A proposer is adversely affected or aggrieved only if the Proposer would be eligible to be awarded the contract in the event that the protest were successful, and the reason for the protest is that:

(A) All higher ranked Proposals are nonresponsive;

(B) OEBC has failed to conduct the evaluation of Proposals in accordance with the criteria or processes described in the RFP;

(C) OEBC has abused its discretion in rejecting the protestor's Proposal as nonresponsive; or

(D) OEBC's evaluation of Proposals or OEBC's subsequent determination of award is otherwise in violation of OEBC's rules or ORS 243.860 to 243.886.

(c) The Board will not consider a protest submitted after the time period specified in this section or a different period if provided in the RFP.

(d) The Board Chair, or designee, has the authority to settle or resolve a written protest meeting the submission requirements of this rule.

(e) If a protest is not settled, the Board Chair, or designee, will promptly issue a written decision on the protest. Judicial review of this decision will be available if provided by statute.

(12) Award of contracts. The Board will approve the apparent successful proposer(s) based on the Selection Committee and/or Consultants recommendation and the evaluation criteria included in OAR 111-002-0005(3) and the RFP including, but not limited to, contractor or consultant availability; capability; experience; approach; compensation requirements; previous litigation and remedy applied; customer service history with the OEBC, members and clients; debarment status; and references.

(13) Confidentiality: Until after the notice of intent to award and contract is issued, Proposals are not required to be open for public inspection, and OEBC shall in good faith seek to protect Proposals from disclosure under ORS 192.502(4) as a confidential submission or under other applicable exemptions from disclosure. There will be no public opening of proposals. OEBC will not disclose the content of proposals, the number of proposals submitted, or the names of the proposers that submitted proposals until after the notice of intent to award. That information may then be obtained by means of a "Public Records Request" submitted to OEBC. The Intent to Award letter sent to each individual proposer will include the name of the Apparent Successful Proposer and the name and ranking of each proposer that ranked higher than the individual proposer receiving the Intent to Award letter. After the notice of intent to award and contract is issued, OEBC may withhold from disclosure to the public, materials included in a Proposal that are exempt or conditionally exempt from disclosure under ORS 192.501 or 192.502.

(14) Contract. The successful proposer must promptly execute the contract after the award is final and all contractual terms and conditions have been negotiated and agreed upon. The Board Chair, or designee, will execute the contract only after it has obtained all applicable required documents and contractor signatures.

Stat. Auth.: Ch. 7 OL 2007

Stats. Implemented: Sec. 19, Ch. 7 OL 2007

Hist.: OEBC 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBC 1-2008, f. & cert. ef. 1-4-08; OEBC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-10-11; OEBC 10-2011, f. & cert. ef. 5-3-11; OEBC 1-2012(Temp), f. & cert. ef. 1-13-12 thru 7-10-12

## 111-005-0042

### Intermediate Procurement Process

For an intermediate procurement, the Board will use the following procedure except as provided for under OAR 111-005-0046 or 111-005-0048.

(1) Announcement. The Board will post solicitation notices for benefits via the Oregon Procurement and Information Network (ORPIN). The Board may also post solicitation notices for benefits in trade periodicals or newspapers of general or specialized circulation. The notice will include a description of the benefits or services sought, the scope of the services required, and a description of any special requirements. The notice will invite qualified prospective proposers to submit proposals. The notice will specify when and where to obtain the RFP and return the proposal and the closing date.

(2) Submission. All submitted proposals must comply with the RFP's specifications. If portions of the proposal to any solicitation are deemed



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unacceptable or non-responsive to the specifications of the solicitation, the proposal will be deemed non-responsive and will not be given further evaluation or consideration. If a proposal to any solicitation is delivered late, it will be deemed non-responsive to the specification of the solicitation and will be returned to the proposer unopened.

(a) Submission of proposals must be in written hard copy or electronic format and delivered as required by the specifications of the solicitation. OEBB is not responsible for unreadable or incomplete electronic transmissions of proposals or for electronic transmissions that are not received by the designated OEBB recipient by the closing date and time stated in the RFP.

(b) The proposal from the prospective proposer will describe the proposer's credentials, performance data and other information sufficient to establish proposer's qualifications for providing the benefits sought and all other information requested in the RFP.

(3) Opening. There will be no public opening of proposals. OEBB will not disclose the content of proposals, the number of proposals submitted, or the names of the proposers that submitted proposals until after the notice of intent to award. That information may then be obtained by means of a "Public Records Request" submitted to OEBB. The Intent to Award letter sent to each individual proposer will include the name of the Apparent Successful Proposer and the name and ranking of each proposer that ranked higher than the individual proposer receiving the Intent to Award letter.

(4) Evaluation. The Selection Committee will evaluate proposals only in accordance with criteria set forth in the RFP and applicable law. The Selection Committee and/or Consultants will provide their recommendations to the Board on the apparent successful proposer(s).

(5) Discussions and negotiations. If the Board chooses to enter into discussions and negotiations with the proposers, the Board:

(a) Will treat all proposers fairly and will not favor any proposer over another.

(b) Will not discuss proposers' proposals with any other proposers and will maintain all proposals as confidential documents.

(c) Will not divulge the name of the proposers or the content of the proposals until cost negotiations are complete. (d) Will determine whether other factors, including but not limited to, Oregon residency of the primary business office and proposer demonstration of services and products, will be used to award the contract.

(6) Notice of intent to award. The Board will provide written notice to all proposers of intent to award the contract, unless otherwise provided in the RFP. The Board's award will not be final until the later of the following:

(a) Seven calendar days after the date of the notice, unless the RFP provided a different period for protest; or

(b) The Board's written response to all timely filed protests that denies the protests and affirms the award.

(7) Right to protest award. An adversely affected or aggrieved proposer may submit to the Board a written protest of the Board's intent to award. The protest must be made within seven calendar days after issuance of the notice of intent to award the contract, unless otherwise specified in the RFP.

(a) The proposer's protest must be in writing and must specify the grounds upon which the protest is based.

(b) A proposer is adversely affected or aggrieved only if:

(A) the proposer is eligible for award of the contract as a responsible proposer; and

(B) the Board committed a substantial violation of a provision in the RFP or of an applicable procurement statute or administrative rule.

(c) The Board will not consider a protest submitted after the time period specified in this section or a different period if provided in the RFP.

(d) The Board Chair, or designee, has the authority to settle or resolve a written protest meeting the submission requirements of this rule.

(e) If a protest is not settled, the Board Chair, or designee, will promptly issue a written decision on the protest. Judicial review of this decision will be available if provided by statute.

(8) Award of contracts. The Board will approve the apparent successful proposer(s) based on the evaluation the Selection Committee and/or Consultant recommendation and the criteria included in OAR 111-002-0005(3) and the RFP including, but not limited to, contractor availability; capability; experience; approach; compensation requirements; previous litigation and remedy applied; customer service history with the OEBB, members and clients; debarment status; and references. The Board will place emphasis on employee choice among high-quality plans, plan performance and information, a competitive marketplace, employer flexibility

in plan design and contracting, quality customer service, creativity and innovation and the improvement of employee health.

(9) Confidentiality: Until after the notice of intent to award and contract is issued, Proposals are not required to be open for public inspection, and OEBB shall in good faith seek to protect Proposals from disclosure under ORS 192.502(4) as a confidential submission or under other applicable exemptions from disclosure. After the notice of intent to award and contract is issued, OEBB may withhold from disclosure to the public, materials included in a Proposal that are exempt or conditionally exempt from disclosure under ORS 192.501 or 192.502.

(10) Contract. The successful proposer must promptly execute the contract after the award is final. The Board Chair, or designee, will execute the contract only after it has obtained all applicable required documents and contractor signatures.

(11) An amendment for additional services shall not increase the total contract cost to a sum that is greater than twenty-five percent of the original contract cost.

Stat. Auth.: ORS 243.860 – 243.886

Stats. Implemented: ORS 243.864

Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08; OEBB 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-10-11; OEBB 10-2011, f. & cert. ef. 5-3-11; OEBB 1-2012(Temp), f. & cert. ef. 1-13-12 thru 7-10-12

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**Oregon Health Authority,  
Public Health Division  
Chapter 333**

**Rule Caption:** New definitions and new cancer reporting requirements.

**Adm. Order No.:** PH 13-2011

**Filed with Sec. of State:** 12-28-2011

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**Rules Adopted:** 333-010-0032

**Rules Amended:** 333-010-0000, 333-010-0010, 333-010-0020, 333-010-0030, 333-010-0035, 333-010-0040, 333-010-0050, 333-010-0055, 333-010-0060, 333-010-0070, 333-010-0080

**Subject:** The Oregon Health Authority, Public Health Division is permanently amending administrative rules in chapter 333, division 10 related to cancer reporting. The amendments will amend the cancer reporting regulations to reflect amendments to ORS 432.500–432.900, and amend the cancer reporting regulations to: (a) require submission of pathology reports by clinical laboratories for diagnoses of certain pre-cancerous conditions; (b) modify patient notification procedures; and (c) expand the provisions for special studies to include the potential procurement of pathological tissue samples in connection with public health investigations.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-010-0000

### Definitions

(1) "Active follow-up program" means a program for contacting a caregiver or cancer patient to determine, at least annually, information including but not limited to the vital status of each case.

(2) "Admitted" means a rendering of any service by the reporting facility to a patient under the authority or auspices of the facility's license under ORS 441.015, including but not limited to routine admission to the hospital, admission to the emergency room, or receiving services in an out-patient clinic.

(3) "Authority" means the Oregon Health Authority.

(4) "Cancer reporting facility" means a hospital or other health care facility in which cancer is diagnosed or treated and is also one of the following:

(a) A facility currently licensed as a hospital as defined under the provisions of ORS 442.015(13); or

(b) A facility currently licensed as an ambulatory surgical center as defined under ORS 442.015(3)(a).

(5) "Central cancer registry" means the Oregon Health Authority, Public Health Division program authorized to collect, receive, and maintain cancer data for the entire state and which maintains the system by which the collected information is reported to the Division.

(6) "Central Registry Cancer Notification Form" means the form required for health care providers to report a case of reportable cancer or reportable non-malignant condition.

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(7) "Certified tumor registrar" means an individual who passes the certification examination and is currently certified by the Council on Certification of the National Cancer Registrars Association.

(8) "Clinical laboratory" means a facility where microbiological, serological, chemical, hematological, immunohematological, immunological, toxicological, cytogenetical, exfoliative cytological, histological, pathological or other examinations are performed on material derived from the human body, for the purpose of diagnosis, prevention of disease or treatment of patients by physicians, dentists and other persons who are authorized by license to diagnose or treat humans.

(9) "Date of diagnosis" means the date of initial diagnosis by a health care provider for the cancer being reported.

(10) "Division" means the Public Health Division of the Oregon Health Authority.

(11) "First course of treatment" means all methods of treatment recorded in the treatment plan and administered to a person with a case of reportable cancer or reportable non-malignant condition before disease progression or recurrence, as defined in the American College of Surgeons Commission on Cancer Facility Oncology Registry Data Standards Manual, 2011.

(12) "Health care provider" means any person whose professional license allows him/her to diagnose or treat cancer patients.

(13) "Health system cancer registry" means a cancer registry that includes all reportable cancer cases occurring in the population served by a health system, whether or not the cases are diagnosed or treated in the cancer reporting facility.

(14) "OSCaR" means the Oregon State Cancer Registry, Oregon's central cancer registry.

(15) "Quality control system" means operational procedures by which the accuracy, completeness, and timeliness of the information reported to OSCaR can be determined and improved.

(16) "Reportable cancer" means all malignant neoplasms including carcinoma in situ, except basal and squamous cell carcinoma of the skin, carcinoma in situ of the cervix uteri, and CIN III (diagnosed on or after January 1, 1996), and PIN III (diagnosed on or after January 1, 2001).

(17) "Reportable Cancer Data Items List" means the list of variables for reportable cancers and reportable non-malignant conditions reported by cancer reporting facilities following the recommendations of the Centers for Disease Control and Prevention National Program of Cancer Registries ("CDC-NPCR") and further defined by the North American Association of Central Cancer Registries ("NAACCR") Data Standards and Data Dictionary, 2011.

(18) "Reportable non-malignant condition" means benign or borderline tumors of the brain (including the meninges and intracranial endocrine structures) and central nervous system, diagnosed on or after January 1, 2004.

(19) "Reportable pre-malignant condition" means all high-grade squamous intraepithelial lesion (CIN 2,3) and adenocarcinoma in situ (AIS) of the uterine cervix, high-grade squamous intraepithelial lesion of the vagina and vulva (VAIN 2,3/VIN 2,3), and high-grade squamous intraepithelial lesion (AIN 2,3) and carcinoma in situ of the anus.

(20) "Special study" means a Division-sponsored project that explores a particular facet of cancer incidence, morbidity, or mortality including, but not limited to, exploring hypotheses of disease risk, treatment options or cancer control authorized under ORS 432.520.

Stat. Auth.: ORS 432.500, 432.510, 432.540

Stats. Implemented: ORS 432.510, 432.520, 432.540

Hist.: HD 2-1996, f. & cert. ef. 2-29-96; OHD 7-1998, f. 7-14-98, cert. ef. 8-1-98; PH 13-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-010-0010

### General Authority

ORS 432.510 directs the Oregon Health Authority to "establish a uniform, statewide, population-based registry system for the collection of information determining the incidence of cancer and benign tumors of the brain and central nervous system and related data. The purpose of the registry shall be to provide information to design, target, monitor, facilitate, and evaluate efforts to reduce the burden of cancer and benign tumors among the residents of Oregon." ORS 432.510, subsections (a) through (e) further specify that such efforts may include but are not limited to:

(1) Targeting populations in need of screening or other cancer control services;

(2) Supporting the operation of hospital registries and upgrading the care of cancer and benign tumors;

(3) Investigating suspected clusters;

(4) Conducting studies to identify cancer hazards; and

(5) Projecting the benefits or costs of alternative policies regarding the prevention or treatment of benign tumors or cancer.

Stat. Auth.: ORS 432.510

Stats. Implemented: ORS 432.510

Hist.: HD 2-1996, f. & cert. ef. 2-29-96; PH 13-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-010-0020

### Reporting Requirements for Cancer Reporting Facilities

This rule describes the specific requirements for cancer reporting facilities. Such facilities include inpatient facilities, outpatient facilities acting under the license of a hospital, ambulatory surgical centers, and privately owned treatment or diagnostic centers contracted to and acting as a department of a cancer reporting facility.

(1) Cancer reporting facilities must report to OSCaR each case of reportable cancer or reportable non-malignant condition, as defined in OAR 333-010-0000(16) and 333-010-0000(18) respectively, in patients admitted for diagnosis and/or any part of the first course of treatment for that cancer. OSCaR will make lists of reportable cancers and reportable non-malignant conditions available on the Oregon State Cancer Registry website: [www.healthoregon.org/oscar](http://www.healthoregon.org/oscar).

(2) Cancer reporting facilities must report cases of reportable cancer or reportable non-malignant conditions to OSCaR as stipulated in OAR 333-010-0020(1) within 180 days of the date the case first receives cancer diagnostic or treatment services at the facility.

(3) Cancer reporting facilities with an active follow-up program must annually report vital status, date of last patient contact, and, if available, cancer or tumor status of reportable cancers and reportable non-malignant conditions to OSCaR.

(4) Cancer reporting facilities must report their cases of reportable cancer or reportable non-malignant conditions and any follow-up information to OSCaR in the electronic data exchange format and codes, Record Type A: Case Abstract, as specified by NAACCR, including the variables specified in the Reportable Cancer Data Items List. The OSCaR Reportable Data Items List will be available on the Oregon State Cancer Registry website: [www.healthoregon.org/oscar](http://www.healthoregon.org/oscar).

(5) OSCaR shall establish a system of confirmation of receipt of cases submitted by each cancer reporting facility.

(6) Cancer reporting facilities reporting cases of reportable cancer or reportable non-malignant conditions to a health system cancer registry have discharged their reporting responsibilities provided that the health system registry reports those cases to OSCaR according to the requirements for cancer reporting facilities.

(7) Cancer reporting facilities may also elect to contract with a private vendor or contractor to report cases of reportable cancer and reportable non-malignant conditions to OSCaR as outlined above in OAR 333-010-0020(1) through (4).

(8) Any cancer reporting facility designated as a Type A or Type B rural hospital by the Oregon Office of Rural Health, may elect to meet the cancer reporting requirements by conducting their own identification of cases of reportable cancer and reportable non-malignant conditions and mailing a copy of the relevant portions of the medical record for each case to the central registry. The central registry staff will abstract and report such cases and bill the hospital for this service at its cost. Type A or Type B rural hospitals which authorize the central registry to abstract and report cases have fulfilled their abstracting and reporting requirements under these rules.

(9) Upon application to OSCaR by a cancer reporting facility, OSCaR may grant to the facility an extension of time, not to exceed two years, in which to meet the reporting requirements. Such requests must be in writing and directed to the Medical Director of OSCaR. On request, the central registry staff shall provide technical assistance to facilities to meet the reporting requirements.

(10)(a) If cancer reports from a reporting facility do not meet reporting requirements, OSCaR shall inform the facility in writing of the disparity between the facility's reports and the reporting standards. OSCaR will then consult with the facility regarding its options for meeting the reporting standards, as defined in OAR 333-010-0020(1) through (4). Options shall include, but are not limited to:

(A) Further consultation and training;

(B) Referral to contractors for reporting services;

(C) Provision, at cost, of reporting services by OSCaR. By selecting this option, cancer reporting facilities will fulfill all reporting requirements.

(b) If, after a minimum of 30 days from the receipt of the written notification, the facility cannot meet the reporting requirements, OSCaR may activate its reporting service for the facility. When activated, OSCaR may enter the facility, obtain the information and report it in conformance with

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the appropriate format and standards. In these instances, the facility shall reimburse OSCaR or its authorized representative for the cost of obtaining and reporting the information.

Stat. Auth.: ORS 432.510, 432.520  
Stats. Implemented: ORS 432.510, 432.520  
Hist.: HD 2-1996, f. & cert. ef. 2-29-96; OHD 7-1998, f. 7-14-98, cert. ef. 8-1-98; PH 13-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-010-0030

### Reporting Requirements for Health Care Providers

(1) Any health care provider diagnosing a case of reportable cancer or a reportable non-malignant condition, as defined in OAR 333-001-0000(16) and 333-010-0000(18) respectively, must notify OSCaR of each such case within 180 days of the diagnosis of the case. OSCaR will make lists of reportable cancers and reportable non-malignant conditions available on the Oregon State Cancer Registry website: [www.healthoregon.org/oscar](http://www.healthoregon.org/oscar).

(2) Data items required for reporting a case of reportable cancer or reportable non-malignant condition shall include, but not be limited to, cancer diagnosis and treatment information, patient demographics, and health care provider contact information, as specified on the Central Registry Cancer Notification Form. Copies of the Central Registry Cancer Notification Form will be available on the Oregon State Cancer Registry website: [www.healthoregon.org/oscar](http://www.healthoregon.org/oscar).

(3) Health care providers must comply with one of the following optional notification methods as may be directed by OSCaR:

(a) Completion and submission (by mail or facsimile) of the Central Registry Cancer Notification Form; or

(b) An encrypted electronic communication directed to OSCaR containing the information required by the Central Registry Cancer Notification Form.

(4) Health care providers need not report any case admitted to an Oregon reporting facility for:

(a) A diagnosis of a reportable cancer or reportable non-malignant condition; or

(b) All or any part of the first course of treatment for that case, providing that admission to the facility occurs within 180 days of diagnosis.

(5) Health care providers reporting cases of reportable cancer and reportable non-malignant conditions to a health system cancer registry have discharged their reporting responsibilities provided that the health system cancer registry reports those cases to OSCaR according to the requirements for cancer reporting facilities.

(6) If a health care provider fails to notify OSCaR of cases of reportable cancer and reportable non-malignant conditions according to the standards and format prescribed for health care providers, OSCaR may inform the health care provider in writing of the disparity between the health care provider's reporting performance and the reporting standards and consult with the health care provider regarding methods for bringing the health care provider's reporting performance into compliance with the reporting standards.

(7) If OSCaR does not receive information from another source completing the information required for a case of reportable cancer or reportable non-malignant condition submitted by a health care provider, or if OSCaR learns of an unreported case for which the health care provider has reporting responsibility but of which the central registry has not been notified by the health care provider, OSCaR may notify the health care provider of the missing information or case and the health care provider must, within 30 days, submit requested additional information to OSCaR. In the alternative, OSCaR may contact the health care provider and schedule a time to abstract the necessary data from the health care provider's records. The health care provider must provide access to those portions of a patient's medical record which provide data for the items specified in the Reportable Cancer Data Items List. In these instances, the health care provider must reimburse OSCaR or its authorized representative for the cost of obtaining and reporting the information.

(8) OSCaR shall establish a system of confirmation of receipt of cases submitted by health care providers.

Stat. Auth.: ORS 432.510, 432.520  
Stats. Implemented: ORS 432.510, 432.520  
Hist.: HD 2-1996, f. & cert. ef. 2-29-96; OHD 7-1998, f. 7-14-98, cert. ef. 8-1-98; PH 13-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-010-0032

### Reporting Requirements for Clinical Laboratories

(1) Clinical laboratories must report to OSCaR all cases with test results indicative of and specific for a reportable cancer or reportable non-malignant condition, as defined in OAR 333-010-0000(16) and 333-010-

0000(18) respectively, ("Cancer Pathology Reports") in accordance with the following provisions. Clinical laboratories must submit all Cancer Pathology Reports to OSCaR using the electronic data exchange format and codes set forth in the guidelines for Pathology Laboratory Electronic Reporting issued by the North American Association of Central Cancer Registries ("NAACCR"), unless reported to a health system cancer registry. The NAACCR Guidelines for Pathology Laboratory Electronic Reporting are available from OSCaR.

(2) Clinical laboratories must also report to OSCaR all cases with biopsies (excluding cytologic tests) indicative of and specific for a reportable pre-malignant condition, as defined in OAR 333-010-0000(16), in an electronic format mutually agreed to by OSCaR and the clinical laboratory. These reports must include (if available to the clinical laboratory):

(a) Name, address, and telephone number of the physician listed on the lab order;

(b) Name, address, and telephone number of the reporting laboratory;

(c) Patient name, gender, address (if available), birth date, race/ethnicity;

(d) Primary site and type of cancer-related condition; and

(e) Date of diagnosis.

(3) OSCaR will make lists of reportable cancers, reportable non-malignant conditions, and reportable pre-malignant conditions available on the Oregon State Cancer Registry website: [www.healthoregon.org/oscar](http://www.healthoregon.org/oscar). If a clinical laboratory fails to submit the required cancer pathology reports or reports of pre-malignant conditions to OSCaR according to the standards and format prescribed, OSCaR may inform the laboratory in writing of the disparity between the laboratory's reporting performance and the reporting standards and consult with the laboratory regarding methods for bringing the clinical laboratory's reporting performance into compliance with the reporting standards.

(4) If a clinical laboratory is not able to submit cancer pathology reports or reports of pre-malignant conditions electronically, OSCaR may authorize the clinical laboratory to report by mail or facsimile for a limited period of time to be specified by OSCaR.

(5) OSCaR shall establish a system of confirmation of receipt of cancer pathology reports and reports of pre-malignant conditions submitted by clinical laboratories.

Stat. Auth.: ORS 432.510, 432.520  
Stats. Implemented: ORS 432.510, 432.520  
Hist.: PH 13-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-010-0035

### Patient Notification Requirement

This rule describes the process for notifying patients that information about a reportable cancer has been reported to OSCaR.

(1) OSCaR may, but is not required to notify patients that information about a diagnosis of reportable cancer has been included in the registry. OSCaR may make a determination, based on budgeting constraints or otherwise, to curtail patient notification activities.

(2) Information to be provided to patients. The notification to the patient shall include the following information about the purposes of the registry and the protection of confidentiality:

(a) That Oregon statute requires that every cancer newly diagnosed in Oregon, or in an Oregon resident, be reported to the Oregon State Cancer Registry maintained by the Oregon Health Authority;

(b) That information reported to the Authority includes the type and characteristics of the cancer, details of the diagnosis and treatment given, and patient demographic information;

(c) That the information is used to understand how cancer affects the population in Oregon, to design and implement prevention and control programs, and for research;

(d) That the information is confidential and no identifiable information about the patient can be released to anyone unless very strict requirements, as provided by law, are met;

(e) If those specific requirements, as provided by law, are met, researchers may be allowed to contact patients to offer them the opportunity to participate in research projects. Any invitation to participate in research is always voluntary and may be freely declined; and

(f) That the researcher shall first notify the patient's physician regarding the patient's participation in a research project, unless the patient specifies to OSCaR that their name never be released for any research purpose.

Stat. Auth.: ORS 432.500  
Stats. Implemented: ORS 432.500-432.900  
Hist.: OHD 7-1998, f. 7-14-98, cert. ef. 8-1-98; PH 13-2011, f. 12-28-11, cert. ef. 1-1-12

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## 333-010-0040

### Quality Standards

The usefulness of OSCaR data is directly dependent upon the accuracy, completeness, and timeliness of the data available in its database. ORS 432.510(5) directs the Oregon Health Authority to establish a quality control program for the data reported to the state registry. In order to assess these aspects of quality for cancer reporting, the central registry will institute a program of continuous quality improvement.

(1) The continuous quality improvement system must include, but is not limited to, coding edits, completeness audits or checks, reabstracting audits, and data analysis techniques to estimate data accuracy, validity, and reliability.

(2) For the purpose of assuring the accuracy and completeness of reported data, OSCaR shall have the right to periodically review all records that would identify cases of reportable cancer and reportable non-malignant conditions or would establish characteristics of the cancer, treatment of the cancer or the medical status of any identified cancer patient. OSCaR will provide advance notification of a minimum of 30 days, to allow time for the reporting sources to prepare records for review.

(3) The collection of cancer data from cancer reporting facilities, including data collection performed by OSCaR staff, must be performed either by certified tumor registrars or by staff knowledgeable about the following, as recommended by the American College of Surgeons, Commission on Cancer:

- (a) Cancer as a disease process;
- (b) General anatomy and physiology;
- (c) Cancer epidemiology and statistics;
- (d) Casefinding procedures; and
- (e) Basic coding and staging schemes.

(4) A cancer reporting facility must report a minimum of 98 percent of the cases reportable by that facility for any calendar year in order to meet the requirement of these rules.

(5) The item-specific agreement rate of reported data from a cancer reporting facility with the information in the facility's medical record must not be less than 95 percent for those data items identified in the OSCaR Reportable Data Items list as quality control items.

(6) A cancer reporting facility must submit 98 percent of reportable cases to the central cancer registry within 180 days of either:

- (a) The date of diagnosis; or
- (b) The date of admission for receipt of any part of the first course of treatment provided in that facility, whichever is later.

(7) A health care provider must submit a minimum of 95 percent of reportable cases to the central cancer registry within 180 days of the date of diagnosis.

Stat. Auth.: ORS 432.510

Stats. Implemented: ORS 432.510

Hist.: HD 2-1996, f. & cert. ef. 2-29-96; PH 13-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-010-0050

### Confidentiality and Access to Data

(1) All identifying information regarding individual patients, cancer reporting facilities, clinical laboratories, and health care providers reported pursuant to ORS 432.510 and 432.520, OAR 333-010-0020, 333-010-0030 and 333-010-0032 shall be confidential and privileged. Except as required in connection with the administration or enforcement of public health laws or rules, no public health official, employee, or agent shall be examined in an administrative or judicial proceeding as to the existence or contents of data collected under the cancer registry system.

(2) The information collected and maintained by OSCaR must be stored in secure locations, must be used solely for the purposes stated in ORS 432.510 and 432.520 and must not be further disclosed unless required by law, with the following exceptions:

(a) When OSCaR has entered into reciprocal cooperative agreements with other states to exchange information on resident cases, as provided for in ORS 432.540. Such agreements must provide for obtaining data on Oregon resident cases diagnosed or treated out of state, and for reciprocal rights of other states to receive information on residents of those states diagnosed or treated in Oregon. Before entering into an agreement with any other state, OSCaR must determine that the other state has comparable confidentiality protections;

(b) When disclosure to officers or employees of federal, state, or local government public health agencies is necessary to investigate or avoid a clear and immediate danger to other individuals or to the public generally;

(c) When the Authority elects to contract with another agency for performance of a registry function the Authority will require the contractor to agree to use the information only for the purposes of the central cancer reg-

istry, to maintain the information securely, and to protect the information from unauthorized disclosure as referred to in OAR 333-010-0050(1). Before entering into any contract with another agency the Authority must determine the agency has comparable confidentiality protections; and

(d) When the Authority deems that the information is necessary for others to conduct research in conformance with the purposes for which the data are collected.

(3) Cancer reporting facilities shall have access to confidential and privileged data on any case submitted by that facility. When a patient has been seen for care of a case of cancer by multiple cancer reporting facilities, OSCaR may share information on treatment and follow-up among the facilities, provided that all participating facilities have signed agreements with OSCaR to do so.

(4) Health care providers shall have access to confidential and privileged data on any case submitted by that health care provider. When a patient has been seen for care of a case of cancer by multiple health care providers, OSCaR may share information on treatment and follow-up among the health care providers, provided that all participating health care providers have signed agreements with OSCaR to do so.

Stat. Auth.: ORS 432.510, 432.520

Stats. Implemented: ORS 432.530, 432.540

Hist.: HD 2-1996, f. & cert. ef. 2-29-96; OHD 7-1998, f. 7-14-98, cert. ef. 8-1-98; PH 13-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-010-0055

### Research Studies

(1) Requirements for Research Studies. Before any confidential data may be disclosed to a researcher, OSCaR must:

(a) Approve a submitted protocol for the proposed research, which describes how the research will be used to determine the sources of cancer among the residents of Oregon or to reduce the burden of cancer in Oregon, in accordance with ORS 432.510 and OAR 333-010-0010;

(b) Agree that the data requested are necessary for the effective and efficient conduct of the study;

(c) Approve the researcher's submitted protocol and procedures for:

(A) Identifying patients to be contacted;

(B) Protecting against inadvertent disclosure of confidential and privileged data;

(C) Providing secure conditions to use and store the data;

(D) Assuring that the data will only be used for the purposes of the study; and

(E) Assuring that confidential and privileged data will be destroyed upon conclusion of the research;

(d) Determine that the researcher has access to sufficient resources to carry out the proposed research before releasing any confidential data;

(e) Facilitate appropriate review of the research, including peer review for scientific merit, and review by the body used by the Authority as the Committee for the Protection of Human Research Subjects and established in accordance with 45 C.F.R. 46; and

(f) Determine the need for and require the researcher to implement other safeguards which, in the judgment of OSCaR, may be necessary for protecting confidential and privileged data from inadvertent disclosure due to unique or special characteristics of the proposed research.

(2) Contacting Patients for Research. As outlined in OAR 333-010-0035(2)(e) & (f), participation in research is voluntary and patients may choose whether or not they want to participate in research studies.

(a) Before disclosing confidential patient information to a researcher, OSCaR must determine whether any of the patients meeting the criteria for the research study have previously informed OSCaR that they do not wish to participate in research. Such patients will be excluded from the list of patients provided to the researcher or contacted by OSCaR regarding research.

(b) Unless OSCaR determines it to be impracticable, OSCaR and/or the researcher must contact the patient's current treating physician to inform them of the study prior to any contact with a patient. In situations where the treating physician of record is no longer the patient's physician, OSCaR and/or the researcher must make a good faith effort to find the patient's current physician.

(c) When contacted, the patient's physician must be informed of the study and the identity of the eligible patient. Within three weeks the physician must:

(A) Agree that direct contact by the researcher would be appropriate;

or

(B) Indicate the presence of a medical, psychological or social situation in the patient's life that would make contact inappropriate at that time.

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The physician is under no obligation to disclose the specifics of the medical, psychological or social situation.

(d) If a researcher does not receive a response from the physician within one month, the researcher may contact the patient directly.

(e) Researchers are strictly prohibited from redisclosing patient names or other confidential information to other researchers, individuals, or institutions not specifically identified in the approved study protocol as outlined above.

Stat. Auth.: ORS 432.510, 432.530, 432.540  
Stats. Implemented: ORS 432.510, 432.530, 432.540  
Hist.: OHD 7-1998, f. 7-14-98, cert. ef. 8-1-98; PH 13-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-010-0060 Special Studies

(1) From time to time, OSCaR may elect to conduct special studies of cancer mortality, morbidity, treatment options and cancer control. OSCaR is specifically authorized to obtain any information which may apply to a patient's reportable cancer or reportable non-malignant condition, and which may be found in the medical record of the patient under ORS 432.510 and 432.520. Upon request, the health care provider or health care facility must provide the requested information to OSCaR or provide OSCaR personnel access to the relevant portions of the medical records. Neither OSCaR nor the record holder shall bill the other for the cost of providing or obtaining this information.

(2) If, in the conduct of a special study, OSCaR identifies a need for access to pathological specimens that have been collected in connection with a case, OSCaR must make a written request to the clinical laboratory or the cancer reporting facility with which the clinical laboratory is affiliated for the purpose of making arrangements for the procurement of such pathological specimens upon mutually agreeable terms.

Stat. Auth.: ORS 432.510, 432.520  
Stats. Implemented: ORS 432.510, 432.520  
Hist.: HD 2-1996, f. & cert. ef. 2-29-96; PH 13-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-010-0070 Advisory Committee

The Authority shall appoint an advisory committee to review the operations of the central registry and to make recommendations regarding registry policy, and to review research protocols for which confidential and privileged data are requested. The composition of the advisory committee must generally represent those with a professional or personal interest in cancer.

Stat. Auth.: ORS 432.510, 432.520  
Stats. Implemented: ORS 432.510  
Hist.: HD 2-1996, f. & cert. ef. 2-29-96; PH 13-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-010-0080 Training and Consultation

The Authority shall provide annual continuing education for interested persons involved in cancer registry reporting. Continuing education content must include, but is not limited to, cancer diagnosis and management, epidemiology and statistics, and hardware and software registry applications. The central registry staff must supplement the continuing education with one-on-one consultations to assist cancer reporting facilities and health care providers as needed in meeting the reporting requirements.

Stat. Auth.: ORS 432.510  
Stats. Implemented: ORS 432.510  
Hist.: HD 2-1996, f. & cert. ef. 2-29-96; PH 13-2011, f. 12-28-11, cert. ef. 1-1-12

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**Rule Caption:** Vaccine stewardship, requiring storage/handling/administration training; changing ALERT IIS data use and reporting requirements.

**Adm. Order No.:** PH 14-2011

**Filed with Sec. of State:** 12-28-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 333-047-0010, 333-047-0030, 333-047-0040, 333-047-0050

**Rules Amended:** 333-049-0010, 333-049-0040, 333-049-0050, 333-049-0065, 333-049-0070, 333-049-0090

**Subject:** The Oregon Health Authority, Public Health Division, Office of Family Health is permanently adopting rules in chapter 333, division 47. These rules outline the training requirements for any entity who receives vaccine from the Oregon Health Authority's

Immunization Program, including training in clinical administration of vaccine, and vaccine storage and handling.

The Authority is also permanently amending rules in chapter 333, division 49 to clarify Oregon ALERT Immunization Information System (IIS) data use protocols, while also documenting the data elements and timelines for data submission for all entities receiving state-supplied vaccine.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-047-0010 Definitions Used in the Vaccine Accountability Rules

(1) All definitions of ORS 433.090 and 433.235 apply to these rules.  
(2) In addition to the definitions of ORS 433.090 and 433.235, the following definitions apply:

(a) "Authority" means the Oregon Health Authority.  
(b) "Certify" means to attest, in writing, on a form prescribed by the Oregon Health Authority that at least two employees, owners or partners have completed required vaccine-related trainings as provided or approved by the Oregon Health Authority.

(c) "Entity" means a health clinic or provider, pharmacy or pharmacist who receives state-supplied vaccine.

(d) "Oregon Immunization Program" means the Oregon Health Authority, Public Health Division, Immunization Program.

(e) "Public Health Division" means the Oregon Health Authority, Public Health Division.

(f) "Receives vaccines" means an entity is supplied with vaccines by the Oregon Immunization Program, including vaccines acquired with federal and state funds, including the Vaccines for Children Program (VFC), the Section 317 Vaccine Program, state Special Project vaccine, and state Billable Project vaccine.

(g) "State supplied vaccine" means vaccine provided by the federal government or the Oregon Immunization Program.

(h) "State-supplied Vaccine User Vaccine Accountability Reporting Requirements and Timelines" means the schedule of reporting timelines found in the Vaccine User Accountability Reporting Table of OAR 333-047-0050.

Stat. Auth.: HB 2371 (OL 2011, ch. 362)  
Stats. Implemented: HB 2371 (OL 2011, ch. 362)  
Hist.: PH 14-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-047-0030 Training

(1) Any entity receiving state supplied vaccine shall require that at least two currently employed staff persons, owners or partners complete immunization related training at least once every two years as follows:

(a) Clinical administration of vaccines; and  
(b) Storage, handling and inventory management of vaccines.

(2) An entity shall provide Authority staff with written documentation that it has met the requirements of section (1) of this rule or that it is exempt from training upon request or at every official Vaccines for Children site visit.

(3) An entity receiving state-supplied vaccine is responsible for retaining documentation that at least two currently employed staff persons, owners, or partners have completed the required clinical administration and vaccine management training course at least once every two years.

(4) The Authority will make available to entities no-cost internet based training available in on-demand format.

(5) Web-based training will include an official certification receipt for staff meeting competence standards.

(6) The Authority will exempt an entity from the training requirement in section (1) of this rule if an entity demonstrates to the satisfaction of the Authority that it, or that a licensing board with jurisdiction over some employees of the entity, requires training that is substantially similar to the training available from the Authority. An entity may submit a request for an exemption on a form prescribed by the Authority.

(7) The training requirements required by section (1) of this rule are effective January 1, 2013.

Stat. Auth.: HB 2371 (OL 2011, ch. 362)  
Stats. Implemented: HB 2371 (OL 2011, ch. 362)  
Hist.: PH 14-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-047-0040 Accounting for Vaccine

Any entity receiving state supplied vaccine shall account for vaccines through data submission and inventory management via the Authority's Immunization Registry, as outlined in OAR 333-049-0010 through 333-

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049-0050. (See the Vaccine User Accountability Reporting Table, OAR 333-047-0050).

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: HB 2371 (OL 2011, ch. 362)  
Stats. Implemented: HB 2371 (OL 2011, ch. 362)  
Hist.: PH 14-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-047-0050

### Timeline for Reporting

An entity receiving state supplied vaccine shall submit vaccine accounting information required under OAR 333-047-0040 according to the schedule set out in the Vaccine User Accountability Reporting Table.

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: HB 2371 (OL 2011, ch. 362)  
Stats. Implemented: HB 2371 (OL 2011, ch. 362)  
Hist.: PH 14-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-049-0010

### Definitions

- (1) All definitions of ORS 433.090 and 433.235 apply to these rules.
- (2) In addition to the definitions of ORS 433.090 and 433.235, the following definitions apply:
  - (a) "Authorized user" has the meaning as defined in ORS 433.090(1).
  - (b) "Client" has the meaning as defined in ORS 433.090(3).
  - (c) "Exempt" means the special status of information on certain clients that will limit its disclosure.
  - (d) "Manager" means the manager of the statewide immunization registry or his/her designee.
  - (e) "Oregon Immunization Program" means the Oregon Health Authority, Public Health Division, Immunization Program.
  - (f) "Public Health Division" means the Oregon Health Authority, Public Health Division.
  - (g) "State Public Health Division Timelines" means the schedule of reporting timelines shown in the Vaccine User Accountability Reporting Table (OAR 333-047-0050), detailing data elements required and when each element must be included for submission.
  - (h) "State supplied vaccine" means vaccine provided by the federal government or the Oregon Immunization Program.

Stat. Auth.: ORS 433.100  
Stats. Implemented: ORS 433.100  
Hist.: HD 6-1996(Temp), f. & cert. ef. 11-26-96; HD 4-1997, f. & cert. ef. 2-24-97; OHD 13-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0100; PH 6-2008, f. & cert. ef. 3-17-08; PH 14-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-049-0040

### Collection and Release of Information

- (1) The manager may collect information for a client's immunization record from any authorized user. Such information to be collected shall be determined by the manager and provided to the registry on forms or in a format provided by the manager.
- (2) The manager may collect information for a client's tracking and recall record from any authorized user. Information to be collected includes such information necessary to send reminder cards to, place telephone calls to, or personally contact the client or the parent or the guardian of a client. Such information shall be determined by the manager and provided to the tracking and recall system on forms or in a format provided by the manager.
- (3) The manager may receive information from other registries and may share information with other such registries, provided that the manager makes a determination that other registries have confidentiality protection at least equivalent to those under ORS 433.090 through 433.102 and these rules. The manager shall prescribe the information that may be shared and the forms for sharing information to and from other registries.
- (4) The manager may request information to determine the name of any person and information on contacting the person or such person's parent or guardian in order to notify them about the existence of the registry. The manager may seek information on persons in the state who have not enrolled in the registry through contacting other state agencies, and other appropriate organizations that have access to such information.
- (5) The manager may release and publish information in the registry in an aggregate form that does not identify a client.

Stat. Auth.: ORS 433.096, 433.094 & 432.119  
Stats. Implemented: ORS 433.096 & 433.094  
Hist.: HD 6-1996(Temp), f. & cert. ef. 11-26-96; HD 4-1997, f. & cert. ef. 2-24-97; OHD 13-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0115; PH 6-2008, f. & cert. ef. 3-17-08; PH 14-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-049-0050

### Reporting to the Immunization Registry

- (1) Any provider who participates in the registry and who administers immunizations identified by the manager shall report such immunization to the registry within 14 calendar days of such immunization.
- (2) Any pharmacist who immunizes must report all immunizations administered to the registry.
- (3) Reports shall be submitted to the registry in a manner and on such forms as required by the manager. Such forms shall be provided by the manager.
- (4) Any authorized user may report immunizations, and other such information, permitted under ORS 433.090(3) and (5), as prescribed by the manager, to the registry without the consent of the client or the parent or guardian of the client. Reporting this information without the consent mentioned above shall not subject a person to liability or civil action.
- (5) Any authorized user who administers state-supplied vaccine must report in a manner prescribed by the Authority the following data elements for all administered doses to the Statewide Immunization Registry in accordance with Public Health Division timelines in the Vaccine User Accountability Reporting Table (OAR 333-047-0050):
  - (a) The name, address, phone number, gender, and date of birth of a client;
  - (b) The date of administration of the vaccine;
  - (c) The CPT, CVX, or NDC code of the vaccine administered;
  - (d) The dose-level vaccine eligibility code;
  - (e) The organizational identifier of the administering or reporting clinic or site;
  - (f) The lot number of the vaccine;
  - (g) The dose amount and manufacturer of the vaccine, when available;and
  - (h) Other data elements as specified by the Public Health Division.
- (6) Any authorized user who administers state-supplied vaccine shall utilize, in accordance with OAR 333-047-0050:
  - (a) The ordering module for ordering state-supplied vaccines; and
  - (b) The inventory module for tracking public or public and private vaccine supply.

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 433.096, ORS 689.645, HB 2371 (OL 2011, ch. 362)  
Stats. Implemented: ORS 433.096, ORS 689.645, HB 2371 (OL 2011, ch. 362)  
Hist.: HD 6-1996(Temp), f. & cert. ef. 11-26-96; HD 4-1997, f. & cert. ef. 2-24-97; OHD 13-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0120; PH 6-2008, f. & cert. ef. 3-17-08; PH 24-2010, f. & cert. ef. 9-30-10; PH 14-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-049-0065

### Fees

- For the purpose of implementing ORS 433.090 through 433.104 fees may be charged in accordance with this rule:
- (1) Fees may be charged to authorized users including, but not limited to, the following: health plans, health provider associations, private or non-profit institutions, other state registries, federal health agencies or their contractors.
  - (2) Fees shall not be charged to the following users: individual health care providers and clinics, Oregon schools, Oregon children's facilities, Oregon hospitals or the Oregon Health Authority, Division of Medical Assistance Programs.
  - (3) Fees may be waived at the discretion of the ALERT Manager or the Oregon Health Authority Immunization Program Manager in accordance with Immunization Policy.
  - (4) Unless waived, or exempt under subsection (2) of this rule, a fee of \$10 per client shall be charged to each authorized user for each client specific immunization data request.
  - (5) A request for client specific data shall be responded to only when made by an authorized user for information about a client under its care or by a public health entity for clients within its jurisdiction. Requests from persons other than authorized users or from authorized users for data beyond that of a specific patient(s) under its care or within the public health entity's jurisdiction will be considered on a case by case basis in the interests of public health practice and may be responded to only with aggregate/de-identified data.

Stat. Auth.: ORS 433.100  
Stats. Implemented: ORS 433.100  
Hist.: PH 6-2005, f. & cert. ef. 4-13-05; PH 6-2008, f. & cert. ef. 3-17-08; PH 14-2011, f. 12-28-11, cert. ef. 1-1-12

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333-049-0070

## Limitations on Access to Information in the Immunization Registry and Tracking and Recall System

(1) An authorized user may only access information in the Registry or Tracking and Recall System as follows:

(a) An authorized user may access information on a client who is presently under that authorized user's care, or enrolled in the authorized user's children's facility, school, post-secondary educational institution, program or health plan, except as otherwise provided by law.

(b) An authorized user that is a state or local public health authority may, in addition to accessing information described in subsection (1)(a) of this rule, access information on an individual within a public health entity's jurisdiction for:

(A) Assessment, evaluation, surveillance and outreach related to immunization promotion and vaccine-preventable disease prevention; and

(B) The Pregnancy Risk Assessment Monitoring System (PRAMS).

(2) The manager may monitor and audit all access to a client's record contained in the registry.

(3) The manager may require any person who has accessed a client's record to provide evidence that such client was under the care of the person or enrolled in the person's post-secondary educational institution, school, children's facility, program or health plan at the time the client's record was accessed.

(4) The Public Health Division may report violations of these rules by any authorized user who has accessed a client's record to the appropriate licensing or regulatory authority.

Stat. Auth.: ORS 433.098

Stats. Implemented: ORS 433.098

Hist.: HD 6-1996(Temp), f. & cert. ef. 11-26-96; HD 4-1997, f. & cert. ef. 2-24-97; OHD 13-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0130; PH 6-2008, f. & cert. ef. 3-17-08; PH 14-2011, f. 12-28-11, cert. ef. 1-1-12

333-049-0090

## Notification of Needed Immunizations, Hearing Screening, or Lead Screening

(1) The manager, authorized user, or public health entity may contact or provide notice to clients or parents and guardians of clients less than 18 years of age when the tracking and recall system indicates that a client has missed:

(a) A scheduled immunization;

(b) Lead screening; or

(c) Hearing screening for clients zero through 12 years of age.

(2) The manager, authorized user, or public health entity may also notify the client's provider of last record of the client's needed immunizations, hearing screening, or lead screening. Notification shall be in such form as prescribed by the manager.

Stat. Auth.: ORS 433.096

Stats. Implemented: ORS 433.096

Hist.: HD 6-1996(Temp), f. & cert. ef. 11-26-96; HD 4-1997, f. & cert. ef. 2-24-97; OHD 13-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0140; PH 6-2008, f. & cert. ef. 3-17-08; PH 14-2011, f. 12-28-11, cert. ef. 1-1-12

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**Rule Caption:** Update of rules pertaining to licensure of Emergency Medical Services Providers.

**Adm. Order No.:** PH 15-2011

**Filed with Sec. of State:** 12-28-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 333-265-0000, 333-265-0010, 333-265-0012, 333-265-0014, 333-265-0015, 333-265-0016, 333-265-0018, 333-265-0020, 333-265-0022, 333-265-0023, 333-265-0025, 333-265-0030, 333-265-0040, 333-265-0050, 333-265-0060, 333-265-0070, 333-265-0080, 333-265-0083, 333-265-0085, 333-265-0087, 333-265-0090, 333-265-0100, 333-265-0105, 333-265-0110, 333-265-0140, 333-265-0150, 333-265-0160, 333-265-0170

**Subject:** The Oregon Health Authority, Public Health Division, Emergency Medical Services and Trauma Systems program is permanently amending Oregon Administrative Rules, chapter 333, division 265 pertaining to emergency medical services providers, to streamline and clarify rules, address requirements for training, testing and licensure of emergency medical services providers, to comply with SB 234 passed during the 2011 legislative session, and to implement upcoming curriculum changes and certification levels.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

333-265-0000

## Definitions

(1) "Advanced Emergency Medical Technician (AEMT or Advanced EMT)" means a person who is licensed by the Authority as an Advanced Emergency Medical Technician.

(2) "Ambulance Service" means any person, governmental unit, corporation, partnership, sole proprietorship, or other entity that operates ambulances and holds itself out as providing pre-hospital care or medical transportation to sick, injured or disabled persons.

(3) "Authority" means the Emergency Medical Services and Trauma Systems Program, within the Oregon Health Authority.

(4) "Business day" is any day, Monday through Friday, from 8:00 a.m. to 5:00 p.m., except legal state holidays.

(5) "Candidate" means an applicant that has completed training in an Emergency Medical Services Provider course and has not yet been licensed by the Authority.

(6) "Clinical Experience (Clinical)" means those hours of the curriculum that synthesize cognitive and psychomotor skills and are performed under a preceptor.

(7) "Continuing Education" means education required as a condition of licensure under ORS chapter 682 to maintain the skills necessary for the provision of competent pre-hospital care. Continuing education does not include attending EMS related business meetings, EMS Exhibits or Trade Shows.

(8) "Didactic Instruction" means the delivery of primarily cognitive material through lecture, video, discussion, and simulation by program faculty.

(9) "Direct Medical Oversight" means real-time direct communication by a physician who is providing direction to an Emergency Medical Services Provider during a patient encounter.

(10) "Direct Visual Supervision" means that a person qualified to supervise is at the patient's side to monitor the Emergency Medical Services Provider in training.

(11) "Emergency Care" means the performance of acts or procedures under emergency conditions in the observation, care and counsel of the ill, injured or disabled; in the administration of care or medications as prescribed by a licensed physician, insofar as any of these acts is based upon knowledge and application of the principles of biological, physical and social science as required by a completed course utilizing an approved curriculum in pre-hospital emergency care. However, "emergency care" does not include acts of medical diagnosis or prescription of therapeutic or corrective measures.

(12) "EMS" means Emergency Medical Services.

(13) "EMS Medical Director" has the same meaning as "Supervising Physician" in ORS 682.025.

(14) "Emergency Medical Responder (EMR)" means a person who is licensed by the Authority as an Emergency Medical Responder.

(15) "Emergency Medical Services (EMS) Agency" means any person, partnership, corporation, governmental agency or unit, sole proprietorship or other entity that utilizes Emergency Medical Services Providers to provide pre-hospital emergency or non-emergency care. An emergency medical services agency may be either an ambulance service or a nontransporting service.

(16) "Emergency Medical Services Provider (EMS Provider)" means a person who has received formal training in pre-hospital and emergency care and is state-licensed to attend to any ill, injured or disabled person. Police officers, fire fighters, funeral home employees and other personnel serving in a dual capacity, one of which meets the definition of "emergency medical services provider" are "emergency medical services providers" within the meaning of ORS Chapter 682.

(17) "Emergency Medical Technician (EMT)" means a person who is licensed by the Authority as an Emergency Medical Technician.

(18) "EMT-Basic" has the same meaning as Emergency Medical Technician.

(19) "EMT-Intermediate" means a person who is licensed by the Authority as an EMT-Intermediate.

(20) "EMT-Paramedic" has the same meaning as Paramedic.

(21) "Exam Evaluator" is a person who attends an EMS Provider practical examination and who objectively observes and records each student's performance consistent with the standards of the National Registry of EMTs.

(22) "First Responder" has the same meaning as Emergency Medical Responder.

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(23) "In Good Standing" means a person who is currently licensed in Oregon, who does not have any restrictions placed on his or her license, or who is not on probation with the licensing agency for any reason.

(24) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian and person authorized to make health care decisions of the patient or client.

(25) "Licensing Officer" is a person who is responsible for conducting an Emergency Medical Technician (EMT) or EMT-Intermediate practical examination in a manner consistent with the standards of the National Registry for EMTs and the Authority.

(26) "Non-Emergency Care" means the performance of acts or procedures on a patient who is not expected to die, become permanently disabled or suffer permanent harm within the next 24-hours, including but not limited to observation, care and counsel of a patient and the administration of medications prescribed by a physician licensed under ORS chapter 677, insofar as any of those acts are based upon knowledge and application of the principles of biological, physical and social science and are performed in accordance with scope of practice rules adopted by the Oregon Medical Board in the course of providing pre-hospital care as defined by this rule.

(27) "Paramedic" means a person who is licensed by the Authority as a Paramedic.

(28) "Patient" means a person who is ill or injured or who has a disability and who is transported in an ambulance.

(29) "Person" means any individual, corporation, association, firm, partnership, joint stock company, group of individuals acting together for a common purpose, or organization of any kind and includes any receiver, trustee, assignee, or other similar representatives thereof.

(30) "Pre-hospital Care" means that care rendered by an EMS Provider as an incident of the operation of an ambulance as defined by ORS Chapter 682 and that care rendered by an EMS Provider as an incident of other public or private safety duties, and includes, but is not limited to "emergency care" as defined by ORS Chapter 682.

(31) "Preceptor" means a person approved by an accredited teaching institution and appointed by the EMS Agency, who supervises and evaluates the performance of an EMS Provider student during the clinical and field internship phases of an EMS Provider course. A preceptor must be a physician, physician assistant, registered nurse, or EMS Provider with at least two years field experience in good standing at or above the level for which the student is in training.

(32) "Protocols" has the same meaning as standing orders.

(33) "Reciprocity" means the manner in which a person may obtain Oregon EMS Provider licensure when that person is licensed in another state and certified with the National Registry

(34) "Scope of Practice" means the maximum level of emergency or non-emergency care that an EMS Provider may provide that is set forth by the rules adopted by the Oregon Medical Board.

(35) "Skills Lab" means those hours of the curriculum that provides the student with the opportunity to develop the skills for the level of training obtained.

(36) "Standing Orders" means the written protocols that an EMS Provider follows to treat patients when direct contact with a physician is not maintained.

(37) "Successful completion" means having attended 85 percent of the didactic and skills instruction hours (or makeup sessions) and 100 percent of the clinical and field internship hours, and completing all required clinical and internship skills and procedures and meeting or exceeding the academic standards for those skills and procedures.

(38) "Teaching Institution" means a two-year community college or four-year degree granting college or a licensed vocational school that is accredited by the Office of Career and Technical Education, or the Department of Community Colleges and Workforce Development/Oregon Department of Education.

(39) "Unprofessional Conduct" has the meaning given that term in ORS 682.025.

(40) "Volunteer" means a person who is not compensated for their time to staff an ambulance or rescue service, but who may receive reimbursement for personal expenses incurred.

Stat. Auth.: ORS 682.025 & 682.215

Stats. Implemented: ORS 682.017 - 682.991

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0010

### Application for Approval of EMT, AEMT, EMT-Intermediate, and Paramedic Courses

(1) The Authority is responsible for approving EMT, AEMT, EMT-Intermediate, and Paramedic courses.

(2) EMT, AEMT, EMT-Intermediate, and Paramedic courses must be offered by a teaching institution accredited by the Oregon Department of Education or the Oregon State Board of Higher Education and must meet the standards established by the Oregon Department of Education in OAR chapter 581, division 49.

(3) Notwithstanding section (2) of this rule, the Authority may allow a hospital to conduct an EMT course if there is no training available at a teaching institution in a rural part of the state. A hospital that wishes to conduct an EMT course in a rural area must send a request to the Authority in writing explaining why there is a need and why there is no training available in its area. The Authority will inform the hospital in writing whether it has permission to conduct the EMT course.

(4) EMT, AEMT, EMT-Intermediate, and Paramedic courses must meet the requirements prescribed by the Authority in OAR 333-265-0014.

(5) EMT, AEMT, EMT-Intermediate, and Paramedic courses must be taught by instructors that meet the requirements of OAR 333-265-0020.

(6) A teaching institution described in section (2) of this rule or a hospital approved by the Authority under section (3) of this rule must submit an application to the Authority on a form prescribed by the Authority that includes all the information necessary to determine whether the course meets the Authority's standards. The form must be received by the Authority at least 30 business days prior to the first day of class.

(7) The Authority will return an application that is incomplete to the applicant.

(8) The Authority will inform an applicant in writing whether the application has been denied or approved.

(9) No teaching institution shall conduct an EMT, AEMT, EMT-Intermediate, or Paramedic course until the Authority has approved the course.

(10) The Authority may deny or revoke the approval to conduct an EMT, AEMT, EMT-Intermediate, or Paramedic course in accordance with ORS 183.310 through 183.550 for failure to comply with OAR chapter 333, division 265.

Stat. Auth.: ORS 682.017, 682.208

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0630; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 8-1993, f. 6-22-93, cert. ef. 7-1-93; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0030; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0012

### Requirements for Conducting Emergency Medical Responder Courses

(1) An ambulance service or any other entity in Oregon may conduct EMR courses that meet the requirements of OAR 333-265-0014.

(2) An entity that wants to conduct an EMR course must submit an application to the Authority on a form prescribed by the Authority that includes all the information necessary to determine whether the course meets the Authority's standards and whether the course director meets the requirements in OAR 333-265-0018. The form must be received by the Authority at least 30 business days prior to the first day of class.

(3) The Authority shall return an application that is incomplete to the applicant.

(4) No entity shall conduct an EMR course until the Authority has approved the course.

(5) The Authority may deny or revoke the approval to conduct an EMR course in accordance with ORS 183.310 through 183.550 for failure to comply with OAR chapter 333, division 265.

Stat. Auth.: ORS 682.017, 682.208

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0014

### EMS Provider Course Requirements

(1) All EMS Provider courses must have a medical director. The EMS medical director must meet the qualifications of a supervising physician as defined in OAR 847-035-0020.

(2) All EMS Provider courses must have a course director as defined in OAR 333-265-0020.



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(3) An Oregon teaching institution conducting EMT, Advanced EMT, EMT-Intermediate or Paramedic courses must have program faculty consisting of a designated program director, course medical director, and course directors, and may have guest instructors. The number of persons carrying out the responsibilities of conducting an EMT, AEMT, EMT-Intermediate or Paramedic course may vary from program to program. One person, if qualified, may serve in multiple roles.

(4) An EMR course must include:

(a) A curriculum that meets or exceeds the National Emergency Medical Services Education Standards published by the National Highway Traffic Safety Administration, January 2009 (DOT HS 811 077B);

(b) Didactic and skills instruction; and

(c) A practical and cognitive examination.

(5) An EMT course must include:

(a) A curriculum that meets or exceeds the National Emergency Medical Services Education Standards published by the National Highway Traffic Safety Administration, January 2009 (DOT HS 811 077B);

(b) Didactic and skills instruction;

(c) Clinical education of at least eight hours in a hospital or acute care department or other appropriate clinical or acute care medical facility where the skills within an EMT scope of practice are performed under the supervision of a preceptor; and

(d) Prehospital experience of at least eight hours under the supervision of an EMT or above where the skills within an EMT scope of practice are performed.

(6) An Advanced EMT course must include:

(a) A curriculum that meets or exceeds the National Emergency Medical Services Education Standards published by the National Highway Traffic Safety Administration, January 2009 (DOT HS 811 077B);

(b) Didactic and skills instruction;

(c) Clinical education in hospital clinical areas where the skills within an Advanced EMT scope of practice are performed under the supervision of a preceptor; and

(d) A field internship that is described in OAR 333-265-0015.

(7) An EMT-Intermediate course must include:

(a) The EMT-Intermediate curriculum, 2006, incorporated by reference;

(b) Didactic and skills instruction;

(c) Clinical experience performed under the supervision of a preceptor of at least eight hours and 20 patient contacts in a hospital emergency department or medical clinic where the skills within an EMT-Intermediate scope of practice are performed under the supervision of a preceptor; and

(d) Prehospital experience of at least eight hours under the supervision of an EMT-Intermediate or above where the skills within the scope of practice of an EMT-Intermediate are performed.

(8) A Paramedic course must include:

(a) Paramedic curriculum that meets or exceeds the National Emergency Medical Services Education Standards published by the National Highway Traffic Safety Administration, January 2009 (DOT HS 811 077B);

(b) Didactic and skills instruction;

(c) Clinical experience in hospital clinical areas where the skills within a Paramedic scope of practice are performed under the supervision of a preceptor; and

(d) A field internship that is described in OAR 333-265-0016.

(9) All EMS Provider courses must include instructions on Oregon statutes and rules governing the EMS system, medical-legal issues, roles and responsibilities of EMS Providers, and EMS professional ethics.

(10) The Authority may deny or revoke course approval in accordance with the provisions of ORS 183.310 through 185.550 for failure to comply with the requirements of this rule.

(11) A person must have a current Oregon EMT license or higher at the time of enrollment in an Advanced EMT or Paramedic course.

(12) A person must have a current Oregon Advanced EMT license at the time of enrollment in an Oregon EMT-Intermediate course.

(13) A person must maintain a current Oregon EMT license or higher throughout the interval of the Advanced EMT or Paramedic cognitive and practical exams.

(14) A person must maintain a current Oregon Advanced EMT license throughout the interval of the EMT-Intermediate cognitive and practical exams.

Stat. Auth.: ORS 682.017, 682.208

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0015

### Advanced Emergency Medical Technician Field Internships

(1) A field internship is required as part of an Advanced EMT course.

(2) A field internship must provide a student the opportunity to demonstrate the integration of didactic, psychomotor skills, and clinical education necessary to perform the duties of an entry-level AEMT.

(3) The student must successfully demonstrate a skill in the classroom lab or hospital clinical setting before that skill is performed and evaluated in a field internship.

(4) During a field internship a student must participate in providing care. All EMS calls shall be under the direct visual supervision of a preceptor. In order for a call to be accepted, the preceptor must document and verify satisfactory student performance, including application of specific assessment and treatment skills required of a licensed Advanced EMT.

(5) For purposes of this section, "EMS call" means a pre-hospital emergency medical services response requiring patient care at the advanced life support level and "ambulance call" means an advanced life support pre-hospital emergency medical services response, which includes dispatch, scene response, patient care while riding in the patient compartment of an ambulance, and participating in specific assessment and treatment skills required of a licensed Advanced EMT.

Stat. Auth.: ORS 682.017, 682.208

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0016

### Paramedic Field Internships

(1) A field internship is required as part of a Paramedic course.

(2) A field internship must provide a student the opportunity to demonstrate the integration of didactic, psychomotor skills, and clinical education necessary to perform the duties of an entry-level paramedic.

(3) The student must successfully demonstrate a skill in the classroom lab or hospital clinical setting before that skill is performed and evaluated in a field internship.

(4) During a field internship a student must participate in providing care in at least 40 EMS calls with no less than eight each in cardiac, respiratory, general medical, and trauma emergencies, and with at least 30 of the calls being advanced life support ambulance calls. All EMS calls shall be under the direct visual supervision of a preceptor. In order for a call to be accepted, the preceptor must document and verify satisfactory student performance, including application of specific assessment and treatment skills required of a licensed Paramedic.

(5) The intern must not be one of the minimum staff required for an ambulance as described in OAR chapter 333, division 250.

(6) For purposes of this section, "EMS call" means a pre-hospital emergency medical services response requiring patient care at the advanced life support level and "ambulance call" means an advanced life support pre-hospital emergency medical services response, which includes dispatch, scene response, patient care while riding in the patient compartment of an ambulance, and participating in specific assessment and treatment skills required of a licensed Paramedic.

Stat. Auth.: ORS 682.017, 682.208

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0018

### Course Director Qualifications for EMR Courses

(1) An ambulance service or entity that has contracted with the Authority to conduct an EMR course must have a qualified Course Director.

(2) An EMR Course Director must:

(a) Have appropriate training and experience to fulfill the role and have the credentials that demonstrate such training and experience;

(b) Be currently licensed in Oregon as an EMT or higher with three years of pre-hospital care experience and in good standing with the Authority, or an EMS medical director;

(c) Have a current healthcare provider CPR instructor card or certificate of course completion that meets or exceeds the 2010 American Heart Association ECC guidelines or equivalent standards approved by the Authority;

(d) Have successfully completed one of the following:

(A) The National Association of EMS Educator Course, developed by the U.S. Department of Transportation, 2002;

(B) The National Fire Protection Association (NFPA) Fire Instructor I or Fire Service Instructor I and II programs developed by the Department of Public Safety Standards and Training (DPSST);

# ADMINISTRATIVE RULES

(C) Have at least 40 hours of the Instructor Development Program offered by the DPSST; or

(D) A minimum of three college credits in adult educational theory and practice or vocational educational theory and practice from an accredited institution of higher learning.

(e) Have participated in a course director program offered by the Authority; and

(f) Agree to participate in the course director program updates offered by the Authority.

(3) An EMR Course Director:

(a) Is responsible for course planning and organizing, including scheduling lectures, coordinating, arranging, and conducting the written and practical course completion and licensure examination;

(b) Is the primary instructor, who conducts at least 50 percent of the didactic sessions, unless this requirement is waived by the Authority in advance;

(c) Must ensure, if guest instructors are used, that the guest instructor is qualified to teach the subject matter, meets requirements set forth in OAR 333-265-0020, and presents lessons that address all objectives identified in the course curriculum for the topic being presented. A guest instructor must:

(A) Be qualified and have the expertise in the specific course subject; and

(B) Follow the course curriculum and meet the course objectives for that specific subject.

(d) Must ensure that after completion of the course and successfully passing the written and practical examinations each student completes an application form prescribed by the Authority and that the completed application forms are collected and submitted to the Authority within 30 calendar days of the completion of the course.

(e) Must have written documentation showing whether a student has successfully completed the course as defined in OAR 333-265-0014.

Stat. Auth.: ORS 682.017, 682.208

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0020

### Approved EMT, AEMT, EMT-Intermediate, and Paramedic Course Director

(1) A course director for a specific course must:

(a) Be an EMS Medical Director; or

(b) Hold at least the level of Oregon licensure as the course being taught and be in good standing with the Authority, and have at least three years of experience at that licensure level or higher, and:

(A) Have a current healthcare provider CPR instructor card or certificate of course completion that meets or exceeds the 2010 American Heart Association ECC guidelines or equivalent standards approved by the Authority;

(B) Have successfully completed one of the following:

(i) The National Association of EMS Educator Course, developed by the U.S. Department of Transportation, 2002;

(ii) The National Fire Protection Association (NFPA) Fire Instructor I or Fire Service Instructor I and II programs developed by the Department of Public Safety Standards and Training (DPSST);

(iii) At least 40 hours of the Instructor Development Program offered by the DPSST; or

(iv) A minimum of three college credits in adult educational theory and practice or vocational educational theory and practice from an accredited institution of higher learning;

(C) Participated in the Course Director Program offered by the Authority; and

(D) Participated in the Course Director Program updates offered by the Authority.

(2) In addition to the Course Director requirements in section (1) of this rule, a Paramedic Course Director must:

(a) Be an EMS Medical Director and hold a current:

(A) American Board of Emergency Medicine Certificate; or

(B) Advance Cardiac Life Support (ACLS) Instructor certificate and Advance Trauma Life Support certificate or equivalent as approved by the Authority; or

(b) Be a licensed Paramedic in good standing with the Authority with at least three years of experience at the licensure level and:

(A) Possess at least an associate's degree from an accredited institution of higher learning;

(B) Hold an Advance Cardiac Life Support (ACLS) Instructor certificate from the American Heart Association or equivalent that has been approved by the Authority; and

(C) Hold a Basic Trauma Life Support (BTLS) Instructor certificate or equivalent that has been approved by the Authority, or a Pre-hospital Trauma Life Support (PHTLS) Instructor certificate or equivalent that has been approved by the Authority.

(3) A guest instructor must:

(a) Be qualified and have the expertise in the specific course subject; and

(b) Follow the course curriculum and meet the course objectives for that specific subject.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017

Hist.: HD 8-1993, f. 6-22-93, cert. ef. 7-1-93; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0032; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0022

### Program Administrator and Faculty Responsibilities

(1) A Program Administrator is responsible for course planning, the organizing and administration of courses, periodic review of courses, program evaluation, and continued development and effectiveness of courses.

(2) A course EMS Medical Director shall:

(a) Provide medical direction for the didactic, clinical and field internship portions of an EMS Provider course; and

(b) Act as the ultimate medical authority regarding course content, procedures and protocols.

(3) A Course Director for a specific course:

(a) Is responsible for course planning and organizing, including scheduling lectures, coordinating and arranging clinical rotations, and field internships;

(b) Is the primary instructor, who conducts at least 50 percent of the didactic sessions, unless this requirement is waived by the Authority in advance;

(c) Must ensure, if guest instructors are used, that the guest instructor is qualified to teach the subject matter, meets requirement set forth in OAR 333-265-0020, and presents lessons that address all objectives identified in the course curriculum for the topic being presented;

(d) Must ensure that:

(A) On the first day of class each student completes a registration form prescribed by the Authority;

(B) Each student is informed that failure to complete a registration form will make them ineligible to take the licensure exam; and

(C) The completed registration forms are collected and submitted to the Authority within 21 calendar days of the first day of class.

(e) Must have written documentation showing whether a student has successfully completed the course as defined in OAR 333-265-0014.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017

Hist.: PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0023

### EMS Provider Examinations

(1) In order to be an EMR, a candidate must take and pass a cognitive and practical licensure examination.

(2) The EMR cognitive and practical examinations must be administered by an entity approved by the Authority to conduct EMR courses. An approved entity must use an Authority approved cognitive and practical exam. The National Registry of Emergency Medical Technicians cognitive examination for EMRs may also be used.

(3) EMT, Advanced Emergency Medical Technician and Paramedic candidates must complete the cognitive examination designated by the National Registry of EMTs. The fee for this exam must be paid directly to the National Registry of EMTs.

(4) EMT-Intermediate students must complete a cognitive examination designated by the Authority.

(5) The EMT and EMT-Intermediate examinations for licensure will be administered by a Licensing Officer and hosted by a teaching institution that offers EMT and EMT-Intermediate courses.

(6) An Advanced EMT and Paramedic practical examination is a National Registry of EMTs examination offered at various times during the year by the Authority. An Advanced EMT or Paramedic candidate may also take the appropriate practical examination in any state.

(7) The Authority or the National Registry of EMTs shall establish the passing scores of all cognitive and practical licensure examinations.

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(8) An EMT candidate who fails:

(a) Not more than two skill stations of the EMT practical examination may retest those skill stations failed on the same day with no additional charge by the Authority.

(b) An EMT skill station a second time must submit a re-examination fee to the Authority and be scheduled through his or her teaching institution to retest any skill station failed.

(c) More than two skill stations of the EMT practical examination must schedule a retest for a separate day through his or her teaching institution, and submit a re-examination fee to the Authority.

(9) An EMT-Intermediate candidate who fails:

(a) Not more than three skill stations of the EMT-Intermediate practical examination may retest those skill stations failed on the same day with no additional charge by the Authority.

(b) An EMT-Intermediate skill station a second time must submit a re-examination fee and be scheduled through the Authority to retest any skill station failed.

(c) More than three skill stations of the EMT-Intermediate practical examination must schedule a retest for a separate day, and submit a re-examination fee to the Authority.

(10) If a candidate fails either the cognitive or practical examination three times, the candidate must successfully complete an Authority approved refresher course for that specific license level to become eligible to re-enter the licensure process. Following successful completion of a refresher course, a candidate must re-take and pass both the cognitive and practical examination within three additional attempts.

(11) The passing results of the cognitive and practical licensure examinations for each level of licensure will remain valid for a 12-month period from the date the examination was successfully completed. A candidate not successfully completing the failed portion of an examination within that 12-month period shall be required to repeat the entire cognitive and practical examinations.

(12) A candidate must pass both the cognitive and practical examinations within 24 months after the completion of the required courses.

(13) A candidate who fails the cognitive or practical examination six times or does not complete the examination process within 24 months of the completion date of the initial required courses, must successfully complete the entire EMT, AEMT, EMT-Intermediate, or Paramedic course for that license level and reapply for licensure.

(14) The entity providing a cognitive examination must have a policy for the accommodation of a person with a documented learning disability.

(15) No accommodation shall be provided for a practical licensure examination.

(16) EMT and EMT-Intermediate practical examinations must be attended by an Authority approved Licensing Officer that:

(a) Is licensed in Oregon at least at the level of examination they are administering with at least two years field experience at that level or above and is in good standing with the Authority; and

(b) Has completed training offered by the Authority explaining the role and responsibilities of a Licensing Officer.

Stat. Auth.: ORS 682.017, ORS 682.208, & ORS 682.216

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0025

### Application Process to Obtain an EMS Provider License

(1) For any person to act as an EMS Provider a license must be obtained from the Authority.

(2) An applicant for EMR must:

(a) Be at least 16 years of age;

(b) Submit proof of successfully completing an approved course, including completion of all clinical and internship requirements, if applicable;

(c) Submit proof of passing the required cognitive and practical examinations;

(d) Submit a completed application on a form prescribed by the Authority along with the applicable fee;

(e) Consent to a criminal background check through the Law Enforcement Data System (LEDS), including a nationwide criminal record check by fingerprint identification under the authority of ORS 181.534 and 181.537 if required; and

(f) Provide authorization for the release of information, as necessary, from any persons or entities, including but not limited to educational institutions, employers, hospitals, treatment facilities, institutions, organization, governmental or law enforcement agencies.

(3) An individual who wishes to become licensed as an EMT, Advanced EMT, EMT-Intermediate, or Paramedic shall:

(a) Be at least 18 years of age;

(b) Submit a completed application on a form prescribed by the Authority along with the applicable fee;

(c) Submit proof of successfully completing an approved course, including all clinical and internship requirements if applicable;

(d) Submit proof of passing the required cognitive and practical examinations;

(e) For an EMT, Advanced EMT or EMT-Intermediate applicant, submit proof that the applicant received a high school diploma or equivalent or a degree from an accredited institution of higher learning;

(f) For a Paramedic applicant submit proof that the applicant has received an associate's degree or higher from an accredited institution of higher learning;

(g) Consent to a criminal background check through the Law Enforcement Data System (LEDS), including a nationwide criminal record check by fingerprint identification under the authority of ORS 181.534 and 181.537 if required;

(h) Provide an authorization for the release of information, as necessary, from any persons or entities, including but not limited to educational institutions, employers, hospitals, treatment facilities, institutions, organizations, governmental or law enforcement agencies in order for the Authority to complete the review of the application; and

(4) EMT and EMT-Intermediate applications for licensure must be received by the Authority three weeks prior to the date of the licensing practical examination.

(5) Advanced EMT and Paramedic applications for licensure must be received by the Authority four weeks prior to the date of the practical examinations.

(6) Any fee for a criminal background check through LEDS or a nationwide criminal background check shall be the responsibility of the applicant.

(7) An applicant for an initial license as an EMS Provider, who completed training in a program outside Oregon and has never been licensed in another state, must:

(a) Meet all requirements for that level as established in OAR 333-265-0000 through 333-265-0023;

(b) Demonstrate proof of current National Registry certification; and

(c) Make application within 24 months from the date that their training program was completed, unless an applicant has been on active duty in the military within the last four years and in that case, the application may be submitted more than 24 months from the date the training program was completed.

(8) An initial license must not exceed 30 months.

(9) If an applicant has been on active duty in the military within the past four years and the applicant can demonstrate proof of current National Registry certification for the level of license desired, current licensure in another state is not mandatory.

(10) The Authority may return any application that is incomplete or is not accompanied by the appropriate fee.

Stat. Auth.: ORS 682.017, 682.028 & 682.208

Stats. Implemented: ORS 682.017, 682.028 & 682.208

Hist.: OHD 9-2001, f. & cert. ef. 4-24-01; Hist.: PH 10-2008, f. & cert. ef. 6-16-08; PH 11-2008(Temp), f. 6-19-08, cert. ef. 6-20-08 thru 12-12-08; Administrative correction 12-22-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0030

### Fees for Licensure and License Renewal of an EMS Provider

(1) Beginning on July 1, 2011 through June 30, 2013 the following fees apply:

(a) Initial application for EMR — \$40;

(b) The initial application and same-day practical examination fees for EMTs:

(A) EMT — \$100;

(B) Advanced EMT — \$110

(C) EMT-Intermediate — \$110; and

(D) Paramedic — \$275.

(c) Cognitive re-examination fees for EMT-Intermediate — \$60.

(d) Practical re-examination fees:

(A) EMT — \$50;

(B) Advanced EMT — \$75

(C) EMT-Intermediate — \$75; and

(D) Paramedic — \$95.

(e) Reciprocity licensure fees:

(A) EMR — \$40;

(B) EMT — \$125;

# ADMINISTRATIVE RULES

24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

- (C) Advanced EMT — \$150
- (D) EMT-Intermediate — \$150; and
- (E) Paramedic — \$300.
- (f) Provisional licensure fee is an additional \$50.
- (g) License renewal fees:
  - (A) EMR — \$20;
  - (B) EMT — \$50;
  - (C) Advanced EMT — \$80
  - (D) EMT-Intermediate — \$80; and
  - (E) Paramedic — \$140.
- (2) Beginning on July 1, 2013 the following fees apply:
  - (a) Initial application for EMR — \$45;
  - (b) The initial application and same-day practical examination fees

for EMTs:

- (A) EMT — \$110;
- (B) Advanced EMT — \$125
- (C) EMT-Intermediate — \$125; and
- (D) Paramedic — \$290.
- (c) Cognitive re-examination fees for EMT-Intermediate — \$60.
- (d) Practical re-examination fees:
  - (A) EMT — \$55;
  - (B) Advanced EMT — \$85
  - (C) EMT-Intermediate — \$85; and
  - (D) Paramedic — \$100.
- (e) Reciprocity licensure fees:
  - (A) EMR — \$50;
  - (B) EMT — \$140;
  - (C) Advanced EMT — \$165
  - (D) EMT-Intermediate — \$165; and
  - (E) Paramedic — \$300.
- (f) Provisional licensure fee is an additional \$50.
- (g) License renewal fees:
  - (A) Licensed EMR — \$23;
  - (B) EMT — \$55;
  - (C) Advanced EMT — \$85
  - (D) EMT-Intermediate — \$85; and
  - (E) Paramedic — \$150.

(3) As authorized by ORS 682.216, a license renewal application submitted or postmarked after May 1 of the license renewal year must include a \$40 late fee in addition to the license renewal fee.

(4) If an EMS Provider has been on active military duty for more than six months of a license renewal period which prevented them from accessing continuing education, the Authority may approve an extension of the current license to permit obtaining the required educational hours.

(5) An ambulance service or rescue service which utilizes volunteers to provide a majority of its services may request that the Authority waive the EMS Provider license renewal fee for its volunteers by applying for a waiver on forms prescribed by the Authority that includes:

(a) A statement certifying that the ambulance or rescue service is unable to maintain an adequate number of volunteer EMS Providers due to the required EMS Provider license renewal fees; and

(b) A copy of a signed agreement between the volunteer service and the volunteer EMS Provider attached to the EMS Provider's application for license renewal specifying that the EMS Provider:

- (A) Is not employed as an EMS Provider elsewhere;
- (B) Will be affiliated with the volunteer service for the entire upcoming licensure period;

(C) Will be scheduled monthly to staff the ambulance or rescue service; and

(D) Will immediately pay the Authority the required current EMS Provider license renewal fee if the EMS Provider is not scheduled monthly or is no longer affiliated with a volunteer ambulance or rescue service and wants to remain licensed as an EMS Provider.

(6) An Oregon-licensed EMS Provider wishing to obtain a duplicate EMS Provider license must submit a written request to the Authority in the form required by the Authority and pay a fee in the amount of \$25.

(7) All fees established in this section are nonrefundable except that the Authority may waive a subsequent examination fee for a person who fails to appear for an examination due to circumstances that are beyond the control of the candidate.

(8) The fees established in sections (1) and (2) of this rule apply to any application submitted on or after the effective date of these rules.

Stat. Auth.: ORS 682.017, 682.212, 682.216  
Stats. Implemented: ORS 682.017, 682.212, 682.216  
Hist.: HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0017; HD 8-1995, f. & cert. ef. 11-6-95; OHD 2-1999, f. & cert. ef. 2-4-99; OHD 9-2001, f. & cert. ef. 4-

## 333-265-0040 Licensure as an EMS Provider

(1) The Authority will review an application for licensure as an EMS Provider and will conduct a criminal background check.

(2) If there are no issues that arise during the review of the application and the applicant meets all the requirements of ORS chapter 682 and these rules, the Authority will grant the applicant a license.

(3) If the applicant does not meet the standards for licensure or there are criminal history or personal history issues that call into question the ability of the applicant to perform the duties of a licensed EMS Provider in accordance with ORS Chapter 682 or these rules, the Authority may deny the applicant on the basis of the information provided in the application, or conduct an additional investigation in accordance with OAR 333-265-0085.

(4) Following an investigation the Authority may:

- (a) Deny the application;
- (b) Grant the application but place the applicant on probation;
- (c) Grant the application but place practice restrictions on the applicant; or

(d) Grant the application if the criminal or personal history issues were resolved through the investigation to the Authority's satisfaction.

(5) Final actions taken by the Authority in denying an applicant, placing an applicant on probation, or by placing restrictions on the applicant's practice shall be done in accordance with ORS Chapter 183.

(6) Nothing in this rule precludes the Authority from taking an action authorized in ORS Chapter 682.

(7) The licenses of EMRs expire on June 30 of even-numbered years.

(8) The licenses of EMTs, Advanced EMTs, EMT-Intermediates and Paramedics expire on June 30 of odd-numbered years.

Stat. Auth.: ORS 682.017, 682.208, 682.216  
Stats. Implemented: ORS 682.017, 682.208, 682.216  
Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0615; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0015; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 11-2008(Temp), f. 6-19-08, cert. ef. 6-20-08 thru 12-12-08; Administrative correction 12-22-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0050 EMS Provider Licensure by Reciprocity

(1) A person licensed with another state as an EMS Provider and registered with the National Registry of EMT's as an EMR, First Responder, EMT, EMT-Basic, Advanced EMT, EMT-Intermediate I-99, EMT-Intermediate I-85, Paramedic, or EMT-Paramedic may apply to the Authority for licensure by reciprocity until January 1, 2015 at which time only National Registry EMR, EMT, Advanced EMT, and Paramedic will be accepted for reciprocity.

(a) A National Registry EMT-Intermediate I-99 may apply for an Oregon EMT-Intermediate licensure by reciprocity until January 1, 2015 at which time National Registry EMT-Intermediate I-99 will no longer be accepted for reciprocity.

(b) A National Registry EMT-Intermediate I-85 may apply for an EMT licensure by reciprocity until January 1, 2015 at which time National Registry EMT-Intermediate I-85 will no longer be accepted for reciprocity.

(2) A person applying for Oregon EMS Provider licensure by reciprocity shall:

(a) Submit a completed application on a form prescribed by the Authority along with the applicable nonrefundable fee;

(b) Submit documentation of the EMS Provider training which meets or exceeds the requirements for Oregon EMS Provider licensure at the level of licensure for which the person is applying;

(c) If applying for Paramedic licensure by reciprocity, submit proof of having received an associate's degree or higher from an accredited institution of higher learning or submit proof of having worked for at least three years out of the last five years as a paramedic in either another state or in the United States military at the National Registry Paramedic level.

(d) Be in good standing with the applicant's current licensing agency and with the National Registry of EMTs; and

(e) Consent to a criminal background check in accordance with OAR 333-265-0025(3).

(3) The Authority shall review an application for licensure by reciprocity and shall conduct a criminal background check.

(4) If there are no issues that arise during the review of the application and the applicant meets all the applicable requirements of ORS

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Chapter 682 and these rules, the Authority shall grant the applicant a license by reciprocity.

(5) If the applicant does not meet the standards for licensure, or there are criminal history or personal history issues that call into question the ability of the applicant to perform the duties of a licensed EMS Provider, in accordance with ORS chapter 682 or these rules, the Authority may deny the application on the basis of the information provided, or conduct an additional investigation in accordance with OAR 333-265-0085. Following such an investigation the Authority may take any action as specified in OAR 333-265-0040(4).

(6) The Authority shall be the sole agency authorized to determine equivalency of course work presented from an out of state accredited institution of higher learning.

(7) The Authority shall be the sole agency authorized to determine equivalency of work experience in lieu of the associate degree requirement for Paramedics.

(8) The Authority shall return any application that is incomplete, or cannot be verified.

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0620; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 18-1990(Temp), f. & cert. ef. 6-19-90; HD 19-1991, f. & cert. ef. 10-18-91; HD 8-1993, f. 6-22-93, cert. ef. 7-1-93; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0020; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 1-2011, f. & cert. ef. 1-6-11; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0060

### Paramedic Provisional Licensure

(1) As authorized by ORS 682.216, the Authority may issue a provisional Paramedic license to an out-of-state licensed Paramedic who meets the requirements in OAR 333-265-0050, except for the educational requirements in OAR 333-265-0050(3)(a) and is in the process of obtaining an associate's degree or higher from an accredited institution for higher learning.

(2) An applicant shall comply with the application requirements in OAR 333-265-0050 and shall submit:

(a) A letter of recommendation from the applicant's most recent Medical Director;

(b) A letter from an Oregon EMS agency specifying that the person shall be immediately employed or has a conditional offer of employment, whether in a paid or volunteer capacity; and

(c) A letter from the applicant's prospective EMS Medical Director stating that the EMS Medical Director will serve as his or her EMS Medical Director while being provisionally licensed.

(3) The Authority may return any application that is incomplete, cannot be verified, or is not accompanied by the appropriate fee.

(4) A Paramedic with a provisional license issued under these rules shall enter into an agreement with the Authority and shall submit quarterly reports to the Authority describing the license holder's progress in obtaining an associate's degree or higher from an accredited institution for higher learning.

(5) A Paramedic provisional license shall be revoked if the person:

(a) Ceases active involvement in emergency medical services;

(b) Fails to meet the conditions set forth in the agreement;

(c) Fails to cooperate or actively participate in a request from the Authority in order to obtain more information or required materials;

(d) Has his or her EMS Provider scope of practice revoked or restricted by his or her EMS Medical Director; or

(e) Does not submit written documentation of the successful completion of any of the educational requirements set out in this rule.

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0070

### Licensure as an EMS Provider of Any Person in Another State

(1) Any person who provides pre-hospital emergency or non-emergency care in Oregon must be licensed as an Oregon EMS Provider and function under an Authority-approved EMS Medical Director.

(2) Oregon EMS Provider licensure is not required when:

(a) Specifically exempted by ORS 682.035;

(b) An out-of-state licensed EMS Provider is transporting a patient through the state;

(c) An out-of-state licensed EMS Provider is caring for and transporting a patient from an Oregon medical facility to an out-of-state medical facility or other out-of-state location;

(d) An out-of-state licensed EMS Provider is caring for and transporting a patient originating from outside of Oregon to a medical facility or other location in Oregon; or

(e) A disaster or public health emergency has been declared under ORS Chapter 401 or 433 and licensing provisions have been waived by the Governor.

Stat. Auth.: ORS 682.017, 682.204

Stats. Implemented: ORS 682.017, 682.204

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0625; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0025; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0080

### Reportable Events; Investigations and Discipline of License Holders

(1) In accordance with ORS 676.150 and using a form prescribed by the Authority, EMS Providers must notify the Authority of the actions or events listed in section (3) of this rule. Failure to comply with the reporting requirements of this rule may result in disciplinary action against the EMS Provider.

(2) An EMS Provider who has reasonable cause to believe another EMS Provider has engaged in prohibited, dishonorable or unprofessional conduct as defined in ORS 676.150, 682.025 and 682.220 shall report that conduct to the Authority without undue delay, within 10 days, after the EMS Provider learns of the conduct unless state or federal laws relating to confidentiality or the protection of health information prohibit such a disclosure.

(3) Within 10 calendar days an EMS Provider shall report to the Authority the following:

(a) Conviction of a misdemeanor or felony;

(b) A felony arrest;

(c) A disciplinary restriction placed on a scope of practice of the license holder by the EMS Medical Director;

(d) A legal action being filed against the license holder alleging medical malpractice or misconduct;

(e) A physical disability that affects the ability of the license holder to meet the Functional Job Analysis, Appendix A of the EMT, National Standard Curriculum, incorporated by reference, and the license holder continues to respond to calls and is providing patient care; or

(f) A change in mental health which may affect a license holder's ability to perform as a licensed EMS Provider.

(4) State or federal laws relating to confidentiality or the protection of health information that might prohibit an EMS Provider from reporting prohibited or unprofessional conduct include but are not limited to:

(a) Public Law 104-191, 42 CFR Parts 160, 162, and 164 (The Health Insurance Portability and Accountability Act, HIPAA);

(b) 42 CFR Part 2 (federal law protecting drug and alcohol treatment information);

(c) ORS 192.518 through 192.529 (state law protecting health information); and

(d) ORS 179.505 (written accounts by health care providers).

Stat. Auth.: ORS 682.017, 682.220, 682.224

Stats. Implemented: ORS 682.017, 682.220, 682.224

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0635; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0035; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0083

### Conduct or Practice Contrary to Recognized Standards of Ethics

The following list includes, but is not limited to, conduct or practice by an EMS Provider that the Authority considers to be contrary to the recognized standards of ethics of the medical profession:

(1) Knowing or willful violation of patient privacy or confidentiality by releasing information to persons not directly involved in the care or treatment of the patient;

(2) Illegal drug use on or off duty;

(3) Alcohol use within eight hours of going on duty or while on duty or in an on-call status;

(4) Violation of direct verbal orders from a physician who is responsible for the care of a patient;

(5) Violation of orders given by an online medical resource physician, whether delivered by radio or telephone;

(6) Violation of standing orders without cause and documentation;

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(7) Use of invasive medical procedures in violation of generally accepted standards of the medical community;

(8) Any action that constitutes a violation of any statute, municipal code, or administrative rule that endangers the public, other public safety officials, other EMS Provider, patients, or the general public (including improper operation of an emergency medical vehicle);

(9) Instructing, causing or contributing to another individual violating a statute or administrative rule, including EMS Provider acting in a supervisory capacity;

(10) Participation in the issuance of false continuing education documents or collaboration therein, including issuing continuing education verification to one who did not legitimately attend an educational event;

(11) Signing-in to an educational event for a person not actually present;

(12) Knowingly assisting or permitting another EMS Provider to exceed his or her lawful scope of practice;

(13) Unlawful use of emergency vehicle lights and sirens;

(14) Providing false or misleading information to the Authority, to the State EMS Committee, to the Subcommittee on EMT Licensure and Discipline, to an EMS teaching institution or clinical/field internship agency;

(15) Responding to scenes in which the EMS Provider is not properly dispatched ("call-jumping"), whether in a private auto, ambulance, or other vehicle, in contravention of local protocols, procedures, or ordinances, or interfering with the safe and effective operation of an EMS system;

(16) Cheating on any examination used to measure EMS related knowledge or skills;

(17) Assisting another person in obtaining an unfair advantage on an EMS Provider examination;

(18) Defrauding the Authority;

(19) Knowingly providing emergency medical care aboard an unlicensed ambulance;

(20) Violation of the terms of a written agreement with the Authority or an order issued by the Authority;

(21) Sexual misconduct that includes but is not limited to:

(a) Sexual harassment; and

(b) Engaging or attempting to engage in a sexual relationship, whether or not the sexual relationship is consensual, with a patient, client, or key party;

(c) Using the EMT-patient, EMT-client, or EMT-key party relationship to exploit the patient, client or key party by gaining sexual favors from the patient, client or key party.

(22) Arriving for duty impaired or in a condition whereby the EMS Provider is likely to become impaired through fatigue, illness, or any other cause, as to make it unsafe for the employee to begin to operate an ambulance or provide patient care;

(23) Failure to cooperate with the Authority in an investigation, including failure to comply with a request for records, or a psychological, physical, psychiatric, alcohol or chemical dependency assessment; and

(24) Any violation of these rules or any law, administrative rule, or regulation governing ambulances, EMS Providers, or emergency medical service systems.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017, 682.220, 682.224

Hist.: PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0085

### Investigations

(1) The Authority may conduct an investigation of an EMS Provider if:

(a) The Authority receives a complaint concerning an EMS Provider;

(b) Personal or criminal history questions arise during a review of an application that raise questions about the EMS Provider's ability to safely perform the duties of an EMS Provider;

(c) A reportable action is received pursuant to OAR 333-265-0080; or

(d) The Authority receives information in any manner that indicates an EMS Provider has violated ORS chapter 682 or these rules, may be medically incompetent, guilty of prohibited, unprofessional or dishonorable conduct or mentally or physically unable to safely function as an EMS Provider.

(2) The Authority may investigate the off-duty conduct of an EMS Provider to the extent that such conduct may reasonably raise questions about the ability of the EMS Provider to perform the duties of an EMS Provider in accordance with the standards established by this division.

(3) Upon receipt of a complaint about an EMS Provider or applicant, the Authority may conduct an investigation as described under ORS 676.165 and 682.220. Investigations shall be conducted in accordance with ORS 676.175.

(4) The fact that an investigation is conducted by the Authority does not imply that disciplinary action will be taken.

(5) During an investigation the Authority may do any of the following:

(a) Request additional information from the EMS Provider;

(b) Conduct a phone or in-person interview; or

(c) Request or order that the EMS Provider undergo a psychological, physical, psychiatric, alcohol or chemical dependency assessment.

Stat. Auth.: ORS 676.165, 676.175

Stats. Implemented: ORS 682.017, 682.220, 682.224

Hist.: PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0087

### Discipline

(1) Upon completion of an investigation the Authority may do any of the following:

(a) Close the investigation and take no action;

(b) Issue a letter of reprimand or instruction;

(c) Place the EMS Provider on probation;

(d) Place a practice restriction on the EMS Provider;

(e) Suspend the EMS Provider;

(f) Revoke the license of the EMS Provider;

(g) Enter into a stipulated agreement with the EMS Provider to impose discipline; or

(h) Take such other disciplinary action as the Authority, in its discretion, finds proper, including assessment of a civil penalty not to exceed \$5,000.

(2) Any disciplinary action taken by the Authority will be done in accordance with ORS Chapter 183.

(3) The Authority may assess the costs of a disciplinary proceeding against an EMS Provider. Costs may include, but are not limited to:

(a) Costs incurred by the Authority in conducting the investigation;

(b) Costs of any evaluation or assessment requested by the Authority;

and

(c) Attorney fees.

(4) Voluntary Surrender:

(a) An EMS Provider may voluntarily surrender his or her license if the EMS Provider submits a written request to the Authority specifying the reason for the surrender and the Authority agrees to accept the voluntary surrender.

(b) The Authority may accept a voluntary surrender of the EMS Provider on the condition that the EMS Provider does not reapply for licensure, or agrees not to reapply for a specified period of time.

(5) If an EMS Provider who voluntarily surrendered his or her EMS Provider license applies for reinstatement, the Authority may deny that person's application if the Authority finds that the person has committed an act that would have resulted in discipline being imposed while they were previously licensed.

(6) If an EMS Provider's license is revoked he or she may not reapply for licensure for at least two years from the date of the final order revoking the license.

Stat. Auth.: ORS 682.017, 682.220, 682.224

Stats. Implemented: ORS 682.017, 682.220, 682.224

Hist.: PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0090

### Reverting to a Lower Level of EMT Licensure

(1) An EMT, Advanced EMT, EMT-Intermediate, or Paramedic may revert to a lower level of licensure at any time during a license period if the EMT, Advanced EMT, EMT-Intermediate, or Paramedic:

(a) Submits a written request to the Authority specifying the reason for the change in the licensure level;

(b) Submits an application for license renewal for the lower level of licensure sought with the appropriate fee;

(c) Surrenders his or her current EMT, Advanced EMT, EMT-Intermediate, or Paramedic license to the Authority;

(d) Is in good standing with the Authority;

(e) Adequately documents appropriate continuing education hours and courses for the licensure level the individual would revert to; and

(f) Receives written approval from the Authority for a change in licensure level.

(2) If an EMT, Advanced EMT, EMT-Intermediate, or Paramedic requests reinstatement of the higher level of licensure within one year of

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reverting to a lower level of licensure the EMT, Advanced EMT, EMT-Intermediate, or Paramedic must complete the requirements specified in OAR 333-265-0100(3) and 333-265-0105.

(3) If an EMT, Advanced EMT, EMT-Intermediate, or Paramedic requests reinstatement of the higher level of licensure after one year, but less than two years the EMT, Advanced EMT, EMT-Intermediate, or Paramedic must complete the requirements specified in OAR 333-265-0105.

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0037; OH 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 16-2010(Temp), f. & cert. ef. 7-16-10 thru 1-1-11; PH 1-2011, f. & cert. ef. 1-6-11; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0100

### Expiration and Renewal of EMS Provider License

(1) The licenses of EMRs expire on June 30 of even-numbered years.

(2) The licenses of EMTs, Advanced EMTs, EMT-Intermediates and Paramedics expire on June 30 of odd-numbered years.

(3) An applicant for license renewal must:

(a) Complete and sign an application form prescribed by the Authority certifying that the information in the application is correct and truthful;

(b) Meet the requirements of ORS Chapter 682 and these rules;

(c) Consent to a criminal background check in accordance with OAR 333-265-0025(3);

(d) Provide an authorization for the release of information to the Authority, as necessary, from any persons or entities, including but not limited to employers, educational institutions, hospitals, treatment facilities, institutions, organizations, governmental or law enforcement agencies in order for the Authority to make a complete review of the application.

(e) Complete the continuing education requirements in OAR 333-265-0110; and

(f) Submit a fee set out in OAR 333-265-0030.

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0640; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0040; HD 8-1995, f. & cert. ef. 11-6-95; OH 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0105

### Reinstatement of an EMS Provider License

(1) To reinstate an expired Oregon EMR, EMT, Advanced EMT, EMT-Intermediate, or Paramedic license that has been expired for less than one year, an applicant must:

(a) Submit a completed application for license renewal;

(b) Submit the appropriate license renewal fee plus a late fee; and

(c) Provide evidence of completion of continuing education requirements as specified in Appendices 1 through 3, incorporated by reference, and courses completed from the license holder's last successful application through the date of the present application for license renewal, as specified in this rule:

(A) EMR before July 1, 2012 or on or after July 1, 2014 refer to Appendix 1;

(B) EMR on or after July 1, 2012 but before July 1, 2014 refer to Appendix 2;

(C) EMT, AEMT, EMT-Intermediate, and Paramedic before July 1, 2013 or on or after July 1, 2015 refer to Appendix 1;

(D) EMT, AEMT, EMT-Intermediate, and Paramedic on or after July 1, 2013 but before July 1, 2015 refer to Appendix 3;

(2) Reinstatement of an EMR license that has been expired for more than one year is not available.

(3) To reinstate an Oregon EMT, EMT-Intermediate, or EMT Paramedic license that has been expired for more than one year, but less than two years, a license holder must submit a completed application for licensure with the appropriate fee and successfully complete an Authority approved reinstatement program described in these rules.

(4) Reinstatement program for an EMT:

(a) Obtain an American Heart Association "Health Care Provider," or American Red Cross "Basic Life Support for the Professional Rescuer," or other Authority approved equivalent CPR course completion document;

(b) Complete the EMT Authority approved Refresher Training Program;

(c) Pass the EMT cognitive and practical examinations within three attempts, including a same-day re-examination; and

(d) Complete the above listed program requirements within 730 calendar days from expiration date.

(5) Reinstatement program for an Advanced EMT:

(a) Obtain an American Heart Association "Health Care Provider," or American Red Cross "Basic Life Support for the Professional Rescuer," or other Authority approved equivalent CPR course completion document;

(b) Complete a Basic Trauma Life Support (BTLS) course, or Pre-Hospital Trauma Life Support (PHTLS) course, provider or instructor course; and

(c) Complete the above listed program requirements within 730 calendar days from expiration date.

(6) Reinstatement program for an EMT-Intermediate:

(a) Obtain an American Heart Association "Health Care Provider," or American Red Cross "Basic Life Support for the Professional Rescuer," or other Authority approved equivalent CPR course completion document;

(b) Complete an Authority approved EMT-Intermediate refresher course consisting of at least:

(A) Thirty six hours of didactic instruction;

(B) Demonstration of five supervised and documented successful pharyngeal esophageal airway device placements (mannequin permitted) and five supervised and documented successful intravenous line placements (mannequin permitted);

(c) Pass the EMT-Intermediate cognitive and practical examination within three attempts, including the same day re-examination; and

(d) Complete the above listed program requirements within 730 calendar days from expiration date.

(7) Reinstatement program for a Paramedic:

(a) Complete an Advanced Cardiac Life Support (ACLS) course, provider or instructor course;

(b) Complete a Basic Trauma Life Support (BTLS) course, or Pre-Hospital Trauma Life Support (PHTLS) course, provider or instructor course;

(c) Complete an Advanced Pediatric Life Support (APLS), Pediatric Advanced Life Support (PALS), Pediatric Education for Pre-hospital Professionals (PEPP), or Neonatal Advance Life Support (NALS) course, provider or instructor course;

(d) Complete the U.S. Department of Transportation, National Highway Traffic Safety Administration 2001 Paramedic: National Standard Curriculum Refresher Training Program, incorporated by reference;

(e) Pass the Paramedic cognitive and practical examinations within three attempts, including the same-day re-examination;

(f) Complete the above listed program requirements within two years of applying for reinstatement; and

(g) Document completion of a DOT Paramedic Training Program taken after January 1, 1977.

(h) If the requirements described in OAR 333-265-0105(6) cannot be met prior to 730 calendar days from expiration date an applicant must follow the National Registry's re-entry requirements to obtain a new National Registry certification before applying for a new license as outlined in OAR 333-265-0025.

[ED. NOTE: Appendices referenced are not included in rule text.]

Stat. Auth.: ORS 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 16-2010(Temp), f. & cert. ef. 7-16-10 thru 1-1-11; PH 1-2011, f. & cert. ef. 1-6-11; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0110

### Licensed EMS Provider Continuing Education Requirements for License Renewal

(1) An EMR is required to:

(a) Complete 12 hours of continuing education as specified in Appendix 1, incorporated by reference;

(b) On or after July 1, 2012 but before July 1, 2014 an EMR must complete 12 hours of continuing education as specified in Appendix 2, incorporated by reference during which period a current National Registry of Emergency Medical Technicians certification will not be accepted in lieu of requirements listed in Appendix 2

(c) On or after July 1, 2014 an EMR must complete 12 hours of continuing education as specified in Appendix 1, incorporated by reference; or

(d) Complete all requirements of the National Registry of Emergency Medical Technicians for EMR re-registration.

(2) An EMT is required to:

(a) Complete 24 hours of continuing education as specified in Appendix 1, incorporated by reference;

(b) On or after July 1, 2013 but before July 1, 2015 an EMT must complete 24 hours of continuing education as specified in Appendix 3, incorporated by reference during which period a current National Registry

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of Emergency Medical Technicians certification will not be accepted in lieu of requirements listed in Appendix 3;

(c) On or after July 1, 2015 an EMT must complete 24 hours of continuing education as specified in Appendix 1, incorporated by reference; or

(d) Complete all requirements of the National Registry of EMT or Emergency Medical Technician re-registration.

(3) An Advanced EMT is required to:

(a) Complete 36 hours of continuing education as specified in Appendix 1, incorporated by reference;

(b) On or after July 1, 2013 but before July 1, 2015 an Advanced EMT must complete 36 hours of continuing education as specified in Appendix 3, incorporated by reference during which period a current National Registry of Emergency Medical Technicians certification will not be accepted in lieu of requirements listed in Appendix 3;

(c) On or after July 1, 2015 an Advanced EMT must complete 36 hours of continuing education as specified in Appendix 1, incorporated by reference; or

(d) Complete all requirements of the National Registry of EMTs re-registration.

(4) An EMT-Intermediate is required to:

(a) Complete a course with published standards and guidelines for cardiopulmonary resuscitation and emergency cardiac care in which the EMT has demonstrated knowledge and skills in the performance of subcutaneous (SQ) injections, automated external defibrillator (AED) operation, one and two person rescuer cardiopulmonary resuscitation (adult, child, and infant) and relief of foreign body airway obstruction; and

(b) Obtain at least 36 hours of continuing education as specified in Appendix 1, incorporated by reference; or

(c) On or after July 1, 2013 but before July 1, 2015 an EMT-Intermediate must complete 36 hours of continuing education as specified in Appendix 3, incorporated by reference during which period a current National Registry of Emergency Medical Technicians certification will not be accepted in lieu of requirements listed in Appendix 3; or

(d) On or after July 1, 2015 an EMT-Intermediate must complete 36 hours of continuing education as specified in Appendix 1, incorporated by reference.

(5) A Paramedic is required to:

(a) Complete all requirements of the National Registry of EMTs re-registration; or

(b) Obtain at least 48 hours of continuing education as specified in Appendix 1, incorporated by reference; or

(c) On or after July 1, 2013 but before July 1, 2015 a Paramedic must complete 48 hours of continuing education as specified in Appendix 3, incorporated by reference during which period a current National Registry of Emergency Medical Technicians certification will not be accepted in lieu of requirements listed in Appendix 3; or

(d) On or after July 1, 2015 a Paramedic must complete 48 hours of continuing education as specified in Appendix 1, incorporated by reference.

(6) All continuing education credits specified in sections (1) through (5) of this rule shall be completed between the date of the license holder's last successful application to the date of the license holder's current license renewal application.

(7) Continuing education credit shall be granted for:

(a) Attending training seminars, educational conferences, and continuing education classes within the license holder's scope of practice;

(b) Attending approved courses for the same or higher level of licensure;

(c) Online continuing education that provides a certificate of completion and is approved by the Continuing Education Coordinating Board for Emergency Medical Services (CECBEMS);

(d) Related accredited college courses will count one hour per credit hour received; and

(e) Authority approved license renewal courses.

(8) Up to 50 percent of the hours of continuing education credits for each subject listed in section 1 of the appropriate Appendix as incorporated by reference may be obtained by:

(a) Watching a video, CD-ROM, or other visual media;

(b) Being an EMT practical licensure exam evaluator, if the license holder is qualified as such;

(c) Reading EMS journals or articles; and

(d) Teaching any of the topics listed in the Appendices as incorporated by reference, if the license holder is qualified to teach the subject.

(9) In addition to the hours of continuing education required in this rule, any affiliated EMS Provider license holder must, as specified in section 2 of the Appendices, incorporated by reference, demonstrate skills pro-

ficiency through a hands-on competency examination supervised by the EMS Medical Director or his or her designee. An EMS Medical Director may require successful performance in a minimum number of clinical skills in these areas on either human subjects or mannequins (e.g. venipunctures, endotracheal intubations, etc.).

(10) An EMS Medical Director may require additional continuing education requirements and skill competency.

(11) When a license holder obtains an initial license and there is:

(a) Less than six months until license renewal, no continuing education credits are required to obtain license renewal;

(b) More than six months but less than one year until license renewal, the license holder must complete 50 percent of the continuing education credits in each category; or

(c) More than one year until license renewal, the license holder must complete all continuing education credits.

(12) Continuing education credits are granted on an hour-for-hour basis.

(13) It shall be the responsibility of each license holder to ensure the hours obtained meet the Authority's license renewal requirements.

(14) A license holder must submit proof, in a manner prescribed in OAR 333-265-0140 that the continuing education requirements have been met.

(15) Education programs, journals and articles used towards continuing education must be approved by the EMS Medical Director or the Authority.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0645; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, f. 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0045; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 1-2011, f. & cert. ef. 1-6-11; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0140

### Maintaining Licensed EMS Provider Continuing Education Records

(1) A license holder is responsible for retaining records that show successful completion of all required continuing education for the two previous licensure periods.

(2) The Authority will accept as proof of successful completion:

(a) A class roster that contains:

(A) The name of the teaching institution or EMS agency;

(B) The date of the class;

(C) The class topic;

(D) The length of the class;

(E) The full name of the license holder attending the class; and

(F) The full name of the instructor.

(b) A computer-generated printout history of the license holder's continuing education record that contains:

(A) The full name of the license holder;

(B) The name of the teaching institution or EMS agency conducting the classes;

(C) The dates of the classes;

(D) The class topics;

(E) The length of each class; and

(F) The full name of each instructor.

(c) A certificate of course completion for one or more topics that contains:

(A) The name of the teaching institution or EMS agency conducting the course;

(B) The date(s) of the course;

(C) The course topic(s);

(D) The length of the course; and

(E) The full name of the license holder attending the course.

(d) If the certificate does not list each course topic, then a copy of the program listing each course topic and length of each presentation must be attached to the certificate.

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; OHD 9-2001, f. & cert. ef. 4-24-01; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0150

### Licensed EMS Provider Continuing Education Records Audit

(1) The Authority may conduct an audit of a license holder's continuing education records:



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(a) The Authority shall notify the license holder by certified mail that he or she is being audited and provide him or her with the necessary audit forms and the date the completed forms are to be returned to the Authority; and

(b) Upon the return of the completed audit forms to the Authority, the Authority shall begin the process of verifying the continuing education records.

(2) If, in the course of an audit of continuing education records, the Authority learns that, contrary to the sworn statement in the application for license renewal or in the official audit form, the license holder has not completed all necessary continuing education requirements, the Authority may:

(a) Discipline the license holder as set out in OAR 333-265-0080;

(b) Assess a monetary penalty in the amount of \$10 per each hour of deficient continuing education; or

(c) Require the license holder to demonstrate his or her knowledge and psychomotor skills by taking and passing a cognitive and practical examination conducted by the Authority.

(3) The actions taken by the Authority in section (2) of this rule will be done in accordance with ORS Chapter 183.

Stat. Auth.: ORS 682.017, 682.216, 682.220, 682.224

Stats. Implemented: ORS 682.017, 682.208, 682.220, 682.224

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0160

### License Holder's Responsibility to Notify the Authority of Changes

(1) A license holder must keep the Authority apprised of and report the following changes within 30 calendar days of a change in:

(a) EMS Medical Director, unless the license holder is affiliated with an ambulance service that is on file with the Authority.

(b) Legal name;

(c) Home address;

(d) Main contact phone number; or

(e) EMS affiliation.

(2) When reporting a new affiliation an EMS Provider must supply the Authority with verification of completion of skills competency as referenced in Appendix 1 and it must be signed by his/her medical director or designee unless verification was completed during the most recent license renewal period.

[ED. NOTE: Appendices referenced are not included in rule text.]

Stat. Auth.: ORS 682.017, 682.208, 682.220, 682.224

Stats. Implemented: ORS 682.017, 682.208, 682.220, 682.224

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-265-0170

### Displaying EMS Provider Licensure Level

(1) A licensed EMS Provider providing patient care must display his or her level of licensure on the outmost garment of his or her usual work uniform.

(2) A licensed EMS Provider-licensure level need not be displayed on emergency work apparel not normally worn during the provision of pre-hospital patient care, such as haz-mat suits, anti-contamination or radiation suits, firefighting apparel, etc.

(3) A licensed EMS Provider responding from home or other off-duty locations shall make a reasonable effort to display his or her licensure level. Baseball-type hats, T-shirts, safety vests, etc. are accepted for this purpose.

Stat. Auth.: ORS 682.017, 682.204, 682.220, 682.265

Stats. Implemented: ORS 682.017, 682.204, 682.220, 682.225

Hist.: OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 15-2011, f. 12-28-11, cert. ef. 1-1-12

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**Rule Caption:** Updates rules for county issuance of certified copies and state amendment of vital records.

**Adm. Order No.:** PH 16-2011

**Filed with Sec. of State:** 12-28-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 333-011-0006, 333-011-0016, 333-011-0061, 333-011-0101

**Subject:** The Oregon Health Authority, Public Health Division, Center for Health Statistics is permanently amending administrative rules in chapter 333, division 11 related to vital records. The proposed amendments clarify and update the rules to current procedures for

county registration and issuance of vital records, and amendment of vital records at the State Vital Records office.

The proposed amendments: Defines registrant for purposes of amending records and obtaining certified copies; Clarifies that all requested data, including health and statistical, is required prior to registration of vital record; Describes method to amend declarations of Oregon registered domestic partnerships and reports of dissolution of domestic partnerships; Limits amendments to parent information on certificates of birth; Revises process of issuing certified copies of vital records at county offices; and Modifies time to forward vital records to the State Vital Records office.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-011-0006

### Definitions

As used in OAR 333-011-0006 to 333-011-0116, unless the context denotes otherwise:

(1) "Dead Body" means a human body or such parts of such human body from the condition of which it reasonably may be concluded that death recently occurred.

(2) "Division" means the Oregon Public Health Division.

(3) "Fetal Death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy; the death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles:

(a) "Induced termination of pregnancy" means the purposeful interruption of pregnancy with the intention other than to produce a live-born infant or to remove a dead fetus and which does not result in a live birth;

(b) "Spontaneous fetal death" means the expulsion or extraction of a product of human conception resulting in other than a live birth and which is not an induced termination of pregnancy.

(4) "File" means the presentation of a vital record provided for in ORS chapter 432 for registration by the Vital Statistics Section.

(5) "Final Disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

(6) "Institution" means any establishment, public or private, which provides in-patient medical, surgical, or diagnostic care or treatment or nursing, custodial, or domiciliary care, or to which persons are committed by law.

(7) "Live Birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes, or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(8) "Physician" means a person authorized or licensed under the laws of this state to practice medicine, osteopathy, chiropractic, or naturopathy.

(9) "Registrant" is the subject of the vital record including the child on a birth record, the decedent on the death record, the husband or wife on a marriage or divorce record, and a partner on a declaration of Oregon registered domestic partnership or dissolution of domestic partnership record.

(10) "Registration" means the acceptance by the Vital Statistics Section and the incorporation of vital records provided for in ORS Chapter 432 into its official records.

(11) "Search of the Files" means consultation of the file or the index to the file for the year in which the event is stated to have occurred. A consultation of the file or index to the file for two years on each side of the year in which the event is stated to have occurred will be considered a part of the same search procedure when the record is not located in the stated year.

(12) "System of Vital Statistics" means the registration, collection, preservation, amendment and certification of vital records; the collection of other reports required by ORS Chapter 432, and activities related thereto including the tabulation, analysis and publication of vital statistics.

(13) "Vital Records" means certificates or reports of birth, death, marriage, dissolution of marriage and data related thereto.

(14) "Vital Statistics" means the data derived from certificates and reports of birth, death, spontaneous fetal death, induced termination of pregnancy, marriage, dissolution of marriage and related reports.

Stat. Auth.: ORS 432.005

Stats. Implemented: ORS 432.005

Hist.: HB 169, f. & ef. 10-16-63; HB 247, f. 6-2-70; HB 286-A(2) and HB 38, f. 7-23-73, ef. 8-15-73; HD 24-1981, f. & ef. 11-17-81; PH 16-2011, f. 12-28-11, cert. ef. 1-1-12

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## 333-011-0016

### Duties of State Registrar

(1) Forms. All forms, certificates, and reports used in the system of vital statistics are the property of the Public Health Division — hereinafter referred to as “State Agency” — and shall be surrendered to the State Registrar of Vital Statistics — hereinafter referred to as “State Registrar” — upon demand. The forms prescribed and distributed by the State Registrar for reporting vital statistics shall be used only for official purposes. Only those forms furnished or approved by the State Registrar shall be used in the reporting of vital statistics or in making copies thereof.

(2) Requirements for preparation of certificates. All certificates and records relating to vital statistics must either be prepared on a typewriter with a black ribbon or printed legibly in black, unfading ink. All signatures required shall be entered in black, unfading ink. Unless otherwise directed by the State Registrar, no certificate shall be complete and correct and acceptable for registration:

(a) That does not have the certifier’s name typed or printed legibly under his or her signature;

(b) That does not supply all items of information called for thereon, including those items identified as for medical, health or statistical use, or satisfactorily account for their omission;

(c) That contains alterations or erasures;

(d) That does not contain handwritten signatures as required;

(e) That is marked “copy” or “duplicate”;

(f) That is a carbon copy;

(g) That is prepared on an improper form;

(h) That contains improper or inconsistent data;

(i) That contains an indefinite cause of death which denotes only symptoms of disease or conditions resulting from disease;

(j) That is not prepared in conformity with regulations or instructions issued by the State Registrar.

Stat. Auth.: ORS 432.030

Stats. Implemented: ORS 432.030

Hist.: HB 169, f. & ef. 10-16-63; HD 24-1981, f. & ef. 11-17-81; PH 16-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-011-0061

### Amendment of Vital Records

(1) All Amendments. Unless otherwise provided in these regulations or in the statute, all amendments to vital records shall be supported by:

(a) An affidavit setting forth:

(A) Information to identify the certificate;

(B) The incorrect data as it is listed on the certificate;

(C) The correct data as it should appear.

(b) One or more items of documentary evidence which support the alleged facts and which were established at least five years prior to the date of application for amendment or within seven years of the date of the event;

(c) The State Registrar shall evaluate the evidence submitted in support of any amendment, and when the State Registrar finds reason to doubt its validity or adequacy the amendment may be rejected and the applicant advised of the reasons for this action.

(2) Who May Apply:

(a) To amend a birth certificate, application may be made by one of the parents, the legal guardian, the registrant if 18 years of age or over, or the individual responsible for filing the certificate;

(b) To amend a death certificate, application may be made by the next of kin or the funeral director or person acting as such who signed the death certificate. Applications to amend the medical certification of cause of death shall be made only by the physician who signed the medical certification or the medical examiner;

(c) To amend certificates of marriage and reports of dissolution of marriage a signed statement must be received from the custodian of the official record from which the report or certificate was prepared, stating in what manner such record has been amended. Those items appearing on the dissolution of marriage record which are not a part of the dissolution of marriage decree may be amended either upon query by the State Registrar or application of the parties to the dissolution of marriage or their legal representatives;

(d) To amend declarations of Oregon registered domestic partnership and reports of dissolution of domestic partnership a signed statement must be received from the custodian of the official record from which the declaration or record was prepared, stating in what manner such record has been amended. Those items appearing on the dissolution of domestic partnership record which are not a part of the dissolution of domestic partnership decree may be amended either upon query by the State Registrar or application of the parties to the dissolution of domestic partnership or their legal

representatives.

(3) Amendment of Registrant’s First, Middle and Last Names on Birth Certificates Within the First Year. Until the registrant reaches the age of one year first, middle, and last names may be amended upon written request of:

(a) Both parents; or

(b) The mother in the case of a child born out of wedlock or in the case of the death or incapacity of the father; or

(c) The father in the case of the death or incapacity of the mother; or

(d) The legal guardian or agency having legal custody of the registrant.

(4) Amendment of Registrant’s First, Middle and Last Names on Birth Certificates After the First Year.

(a) After one year from the date of birth the provisions of section (1) of this rule must be followed to amend a first, middle or last name if the name was misspelled on the birth certificate.

(b) A legal change of name order must be submitted from a court of competent jurisdiction to change a first, middle or last name that appears on the birth certificate after one year from date of birth.

(5) Addition of First, Middle and Last Name of a Registrant on a Birth Certificate.

(a) Until the registrant’s seventh birthday, first, middle and last names, for a child whose birth was recorded without such names, may be added to the certificate upon written request of:

(A) Both parents; or

(B) The mother in the case of a child born out of wedlock or in the case of death or incapacity of the father; or

(C) The father in the case of the death or incapacity of the mother; or

(D) The legal guardian or agency having legal custody of the registrant.

(b) After seven years the provisions of section (1) of this rule must be followed to add a first, middle or last name.

(6) Amendment of Parents’ Information on Birth Certificates. When a requested amendment to an item, in combination with previous amendments or concurrent requests for amendment, would appear to change the identity of the parent through cumulative changes to name, date of birth, or place of birth, the State Registrar shall only make such an amendment upon receipt of a court order from a court of competent jurisdiction.

(7) Medical Items on Death Certificates. All items of a medical nature may be amended only upon receipt of a signed statement from those persons responsible for the completion of such items. The State Registrar may require documentary evidence to substantiate the requested amendment.

(8) Amendment of the Same Item More Than Once. Once an amendment of a non-medical item is made on a vital record, that item shall not be amended again except upon receipt of a court order from a court of competent jurisdiction.

(9) Amendment of Minor Errors on Birth Certificates During the First Year. Amendment of obvious errors, transposition of letters in words of common knowledge, or omissions may be made by the State Registrar within one year after the date of birth either upon the State Registrar’s observation or upon request of one of the parents, the legal guardian, or the individual responsible for filing the certificate. The certificate shall not be marked “Amended”.

(10) Methods of Amending Certificates. Certificates of birth, death, marriage, reports of dissolution of marriage, declaration of Oregon registered domestic partnership and dissolution of domestic partnership may be amended by the State Registrar in the following manner:

(a) Preparing a new certificate showing the correct information when the State Registrar deems that the nature of the amendment so requires:

(A) The new certificate shall be prepared on the form used for registering current events at the time of amendment. Except as provided elsewhere in these regulations, the item that was amended shall be identified on the new certificate;

(B) In all cases, the new certificate shall show the date the amendment was made and be given the same state file number as the existing certificate. Signatures appearing on the existing certificate shall be typed on the new certificate.

(b) Completing the item in any case where the item was left blank on the existing certificate;

(c) Drawing a single line through the item to be amended and inserting the correct data immediately above or to the side thereof. The line drawn through the original entry shall not obliterate such entry;

(d) Completing a special form for attachment to the original record. Such form shall include the incorrect information as it appears on the original certificate, the correct information as it should appear, an abstract of the documentation used to support the amendment, and sufficient informa-

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tion about the registrant to link the special form to the original record. When a copy of the original record is issued, a copy of the amendment must be attached;

(e) A certificate of birth amended for gender shall be amended by preparing a new certificate. The item that was amended shall not, however, be identified on the new certificate or on any certified copies that may be issued of that certificate;

(f) In all cases, there shall be inserted on the certificate a statement identifying the affidavit or documentary evidence used as proof of the correct facts, the date the amendment was made, and the initials of the person making the change. As required by statute or regulation, the certificate shall be marked "Amended".

Stat. Auth.: ORS 432.235

Stats. Implemented: ORS 432.235

Hist.: HB 169, f. & ef. 10-16-63; HD 24-1981, f. & ef. 11-17-81; HD 2-1985, f. & ef. 2-19-85; PH 16-2011, f. 12-28-11, cert. ef. 1-1-12

## 333-011-0101

### Copies of Data From Vital Records

(1) Full or short form certified copies of vital records may be made by mechanical, electronic, or other reproductive processes, except that the information contained in the "Information for Medical and Health Use Only" section of the birth certificate shall not be included.

(2) When a certified copy is issued, it shall be certified as a true copy by an authorized agent and shall include the date issued, the name of the State Registrar, the State Registrar's signature or an authorized facsimile thereof, and the seal of the State and Agency authorized under ORS 432.010.

(3) Confidential verification of the facts contained in a vital record may be furnished by the State Registrar to any federal, state, county, or municipal government agency or to any other agency representing the interest of the registrant, subject to the limitations as indicated in section (1) of this rule. Such confidential verifications shall be on forms prescribed and furnished by the State Registrar or on forms furnished by the requesting agency and acceptable to the State Registrar; or, the State Registrar may authorize the verification in other ways when it shall prove in the best interests of his or her office.

(4) When the State Registrar finds evidence that a certificate was registered through misrepresentation or fraud, he or she shall have authority to withhold the issuance of a certified copy of such certificate until a court determination of the facts has been made.

(5) The State Registrar shall determine the minimum information needed to locate and identify a particular record within the files.

(6) Subject to the penalties of ORS 432.993, no person is authorized to photograph, photostat, duplicate, or issue what purports to be a certified copy, certification, or certificate of birth, death, or fetal death except authorized employees of the Public Health Division, county registrars, or their deputies, acting in accordance with directives, regulations, or law governing their official duties.

(7) The county registrar shall forward death records that have been registered at the county to the State Registrar within three business days of the date registered by the county registrar. County registrars may issue certified copies from the original record while the original record is in the possession of the county. County registrars may maintain a copy of the completed death record for a period up to fourteen calendar days from the date the record is forwarded to the state and within that time period may issue from that copy until the record is registered in the state vital records system. After the death record is registered in the state vital records system, the County Registrar may issue only from the state vital records system for a period not to exceed six months from the date of death.

(8) The county registrar shall forward any completed original birth records received to the State Registrar immediately for registration at the state.

(9) County registrars may apply to the State Registrar for authorization to issue certified copies of birth certificates for a period not to exceed six months from the date of birth. The application shall specify local needs and interests which the issuance would serve. If approved, the county registrar may issue certified copies of registered birth records from the state vital records system for a period not to exceed six months from the date of birth.

Stat. Auth.: ORS 432.010, 432.085 & 432.121

Stats. Implemented: ORS 432.010, 432.085 & 432.121

Hist.: HB 169, f. & ef. 10-16-63; HD 24-1981, f. & ef. 11-17-81; HD 3-1986, f. & ef. 2-5-86; PH 16-2011, f. 12-28-11, cert. ef. 1-1-12

## Oregon Health Licensing Agency Chapter 331

**Rule Caption:** Adopt requirements for specialty level one and two body piercing including supervision requirements.

**Adm. Order No.:** HLA 14-2011(Temp)

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12 thru 6-25-12

**Notice Publication Date:**

**Rules Adopted:** 331-905-0000, 331-905-0005, 331-905-0010, 331-905-0015, 331-905-0020, 331-905-0025, 331-905-0030, 331-905-0035, 331-905-0040, 331-905-0045, 331-905-0050, 331-905-0055, 331-905-0060, 331-905-0065

**Subject:** During the 2011 Legislative Session, HB 2013 was enacted which requires the Oregon Health Licensing Agency (Agency) consult with the Oregon Medical Board (OMB) regarding certain body art practices. Following a presentation to the Oregon Medical Board in October 2011 the Agency received written response from the OMB stating that all the procedures listed in specialty level one and two body piercing services may be considered surgical procedures but with proper training/education and informed consent from clients body piercers may be able to perform certain specialty body piercing procedures.

**Definitions:** Adopt temporary definitions for specialty body piercing, including defining specialty level one genital piercings and specialty genital piercings and cheek piercings.

**Education & Training:** Adopt temporary rules creating an approved education or training program for specialty level one body piercing. Currently there is no Department of Education Private Career Schools licensed under ORS 345 in Oregon. A training program has been developed to include 150 of combined theory and practical hours which include 50 various specialty level one body piercing procedures.

Adopt temporary rules creating an approved education or training program for specialty level two body piercing. Currently there is no Department of Education Private Career Schools licensed under ORS 345 in Oregon. A training program has been developed to include 220 hours of combined theory and practical hours which include 40 various specialty level two body piercing procedures.

Body piercing licensees who obtained their license prior to January 1, 2012, must qualify for licensure as a specialty level one or two body piercer. Qualifications include licensure as a standard body piercer, years of experience, client records and references.

Individuals seeking licensure after January 1, 2012, as a specialty level one or two body piercer must qualify for licensure through the following pathways graduate from an Oregon licensed career school or qualification through a specialty level one or two body piercing trainee license. Trainees must be under direct supervision.

Supervisors must qualify to train specialty level one or two body piercing trainees qualifications include years of experience, written and practical examination professional references.

**Informed Consent:** Require that each licensee provide a uniform document which provides procedures, risks and alternatives related to specialty level one and two body piercings. The client is required to sign that they have been informed and agree to the procedure.

**Rules Coordinator:** Samantha Patnode—(503) 373-1917

### 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) "Field of practice" has the definition set forth in ORS 690.350.

(7) "Official transcript" means:

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(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

(8) "Practitioner" means a person licensed to perform services included within a field of practice.

(9) "Specialty level one body 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 and exiting on the underside of the penis (called a "Prince Albert"); and

(b) Female genital piercing including the labia major, labia minor, frenulum labiorum pudenda (the perineum between the vagina and the anus), and a vertical piercing of the clitoral hood (called a "Princess Diana").

(10) "Specialty level two body piercing" includes the following:

(a) Cheek piercing;

(b) Male genital piercings including a vertical piercing of the head of the penis that passes through the urethra (called an "apadravya"), a horizontal piercing of the head of the penis that passes through the urethra (called an "ampallang"), a piercing through the corona or edge of the head or glans of the penis, a piercing of the penis entering through the urethra and exiting in the upper side of the penis (called a "reverse Prince Albert"); and

(c) Female genital piercings including the clitoris, a horizontal piercing beneath the shaft of the clitoris (called a "triangle"), and a piercing of the base of the vagina exiting through the urethra (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

## 331-905-0005

### Specialty Level One Body Piercing Education or Training

All education curriculum or training for specialty level one body 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 done prior to the practical portion of the curriculum or training.

(1) Specialty level one body piercing career school course of study must include 150 hours of theory and practical education. The education must include a minimum of 30 hours of theory instruction, 120 hours of practical experience and a minimum of 50 practical operations.

(2) The 50 practical operations required must include:

(a) 15 practical operations observed by the student;

(b) 15 practical operations in which the student participated; and

(c) 20 practical operations performed by the student under direct supervision, but without assistance.

(3) The 30 hours of theory instruction required must include 20 hours of genital anatomy and physiology, 5 hours of ethics related to genital piercings.

(a) Genital Anatomy & Physiology: 15 hours;

(b) Ethics and legalities related to genital piercing: 5 hours;

(c) Emergencies related to genital piercing: 5 hours;

(d) Client consultation related to genital piercing: 5 hours.

(4) The 120 hours of practice required must include client consultation, cleaning, disinfection and sterilization.

(5) The 50 practical operations must include the content listed in section

(4) of this rule and the specialty level one body piercing procedures listed in subsections (a) through (j) below:

(a) Frenum: minimum of 5;

(b) Scrotum: minimum of 5;

(c) Foreskin: minimum of 5;

(d) Guiche: minimum of 5;

(e) Prince Albert: minimum of 5

(f) Clitoral head: minimum of 5;

(g) Labia majora: minimum of 5;

(h) Labia minora: minimum of 5;

(i) Fourchette: minimum of 5;

(j) Princess Diana: minimum of 5;

(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 Department of Education, Private Career School licensed instructor who holds an active specialty level one 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 Specialty Level One Body Piercing Trainee: Specialty level one body piercing training program must include 150 hours of theory and practical education. The training must include a minimum of 30 hours of theory instruction, 120 hours of practical experience and a minimum of 50 practical operations.

(10) The 50 practical operations required must include:

(a) 15 practical operations observed by the trainee;

(b) 15 practical operations in which the trainee participated; and

(c) 20 practical operations performed by the trainee under direct supervision, but without assistance.

(11) The 30 hours of theory instruction required must include 20 hours of genital anatomy and physiology, 5 hours of ethics related to genital piercings.

(a) Genital Anatomy & Physiology: 15 hours;

(b) Ethics and legalities related to genital piercing: 5 hours;

(c) Emergencies related to genital piercing: 5 hours;

(d) Client consultation related to genital piercing: 5 hours.

(12) The 120 hours of practice required must include client consultation, cleaning, disinfection and sterilization.

(13) The 50 practical operations must include the content listed in section (12) of this rule and the specialty level one body piercing procedures listed in subsections (a) through (j) below:

(a) Frenum: minimum of 5

(b) Scrotum: minimum of 5;

(c) Foreskin: minimum of 5;

(d) Guiche: minimum of 5;

(e) Prince Albert: minimum of 5

(f) Clitoral head: minimum of 5;

(g) Labia majora: minimum of 5;

(h) Labia minora: minimum of 5;

(i) Fourchette: minimum of 5;

(j) Princess Diana: minimum of 5;

(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 three months from the date the Agency issues a specialty level one body piercing trainee 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.

(17) Supervisors of a specialty level one body piercing trainee must hold a specialty level one piercing license being sought by the trainee, and must adhere to OAR 331-905-0055.

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

## 331-905-0010

### Specialty Level Two Piercing Education or Training

All education curriculum or training for specialty level two body 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 done prior to the practical portion of the curriculum or training.

(1) Specialty level two body piercing career school course of study must include 220 hours of theory and practical education. The education must include a minimum of 40 hours of theory instruction, 180 hours of practical experience and a minimum of 40 practical operations.

(2) The 40 practical operations required must include:

(a) 10 practical operations observed by the student;

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(b) 10 practical operations in which the student participated; and  
(c) 20 practical operations performed by the student under direct supervision, but without assistance.

(3) The 40 hours of theory instruction required must include:

- (a) Anatomy and physiology related to cheek and genitals: 20 hours;
- (b) Ethics and legalities related to genital piercings: 5 hours;
- (c) Emergencies related to cheek and genital piercings: 10 hours;
- (d) Client consultation related to cheek and genital piercings: 5 hours.

(4) The 180 hours of practice required must include client consultation, cleaning, disinfection and sterilization.

(5) The 40 practical operations must include the content listed in section (4) of this rule and the specialty level two piercing procedures listed in subsections (a) through (h) below:

- (a) Cheek: minimum of 5;
- (b) Reverse Prince Albert: minimum of 5;
- (c) Dydoe: minimum of 5;
- (d) Ampallang: minimum of 5;
- (e) Apadravya: minimum of 5;
- (f) Clitoris: minimum of 5;
- (g) Triangle: minimum of 5;
- (h) Princess Albertina: minimum of 5.

(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 Department of Education, Private Career School licensed instructor who holds an active specialty level one 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 Specialty Level Two Body Piercing Trainee: Specialty level two body piercing training program must include a minimum of 40 hours of theory instruction, 180 hours of practical experience and a minimum of 40 practical operations.

(10) The 40 practical operations required must include:

- (a) 10 practical operations observed by the student;
- (b) 10 practical operations in which the student participated; and
- (c) 20 practical operations performed by the student under direct supervision, but without assistance.

(11) The 40 hours of theory instruction required must include:

- (a) Anatomy and physiology related to cheek and genitals: 20 hours;
- (b) Ethics and legalities related to genital piercings: 5 hours;
- (c) Emergencies related to cheek and genital piercings: 10 hours;
- (d) Client consultation related to cheek and genital piercings: 5 hours.

(12) The 180 hours of practice required must include client consultation, cleaning, disinfection and sterilization.

(13) The 40 practical operations must include the content listed in section (12) of this rule and the specialty level two piercing procedures listed in subsections (a) through (h) below:

- (a) Cheek: minimum of 5;
- (b) Reverse Prince Albert: minimum of 5;
- (c) Dydoe: minimum of 5;
- (d) Ampallang: minimum of 5;
- (e) Apadravya: minimum of 5;
- (f) Clitoris: minimum of 5;
- (g) Triangle: minimum of 5;
- (h) Princess Albertina: minimum of 5.

(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 three months from the date the Agency issues a specialty level one body piercing trainee 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.

(17) Supervisors of a specialty level two body piercing trainee must hold a specialty level one piercing license being sought by the trainee, and must adhere to OAR 331-905-0060.

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

## 331-905-0015

### Specialty Level One Body Piercing License Issued to a Body Piercer Licensed Prior to January 1, 2012

(1) A specialty level one body piercing license may perform services defined under OAR 331-905-0000(9).

(2) A specialty level one body 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 one body piercing license holder must adhere to all standards within OAR 331-900-0100, 331-900-0105, 331-900-0110 and OAR chapter 331, division 930.

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

## 331-905-0020

### Application Requirements for Specialty Level One Body Piercer Licensed as Body Piercer Prior to January 1, 2012

A specialty level one body piercing is valid for one year and becomes inactive on the last day of the month one year from the date of issuance.

(1) An individual applying for licensure who obtained an Oregon body piercing license before January 1, 2012, to qualify for a specialty level one body 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 General Education Degree (GED);

(g) Meet the requirements of OAR 331-900-0005;

(h) Submit copies of client records demonstrating proof of having successfully performed a minimum of five of each of the specialty level one body piercing; and

(i) Pay all licensing fees.

(2) Experience claimed under subsections (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

## 331-905-0025

### Specialty Level Two Body Piercing License Issued to a Body Piercer Licensed Prior to January 1, 2012

(1) A specialty level two body piercing license may perform services defined under OAR 331-905-0000(10).

(2) A specialty level two body 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 body piercing license holder must adhere to all standards within OAR 331-900-0100, 331-900-0105, 331-900-0110 and OAR chapter 331, division 930.

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

## 331-905-0030

### Application Requirements for Specialty Level Two Body Piercing Licensed as Body Piercers 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 body 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;

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(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 General Education Degree (GED);

(g) Meet the requirements of OAR 331-900-0005;

(h) Submit copies of client records demonstrating proof of having successfully performed a minimum of 5 of each specialty level one body piercing;

(i) Submit copies of client records demonstrating proof of having a minimum of three years of experience successfully performing specialty level two body piercing services; and

(j) Pay all licensing fees.

(2) Experience claimed under subsections (1)(h) and (1)(i) 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

## 331-905-0035

### Specialty Level One Body Piercing License Issued to a Body Piercer Licensed After January 1, 2012

(1) A specialty level one body piercing license pursuant ORS 676.615 may perform standard body piercing services defined under OAR 331-900-0000.

(2) A specialty level one body piercing license may perform services defined under OAR 331-905-0000(9).

(3) A specialty level one body 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 body piercing license holder must adhere to all standards within OAR 331-900-0100, 331-900-0105, 331-900-0110 and OAR chapter 331, division 930.

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

## 331-905-0040

### Application Requirements Specialty Level One Body Piercer Licensed After January 1, 2012

(1) An individual applying for licensure to practice specialty level one 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 GED;

(g) Submit proof of holding a current Oregon standard body piercing license; and

(h) Provide documentation of completing a qualifying pathway.

(2) License Pathway 1 – Graduate from an Oregon Licensed Career School for Specialty Level One Body Piercing:

(a) Submit official transcript from a body piercing career school under ORS 345 and showing proof of completion of required body 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 within two years before the date of application;

(d) Submit a passing score of an Agency approved practical examination in 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.

(3) License Pathway 2 – Qualification through Specialty Level One Body Piercing Trainee License:

(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 331-905-0005 (9) through (17), on a form prescribed by the Agency;

(b) Pay examination fees;

(c) Submit passing score of an Agency approved written examination within two years before the date of application;

(d) Submit a passing score of an Agency approved practical examination in 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.

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

## 331-905-0045

### Specialty Level Two Body Piercing License Issued to a Body Piercer Licensed After January 1, 2012

(1) A specialty level two body piercing license may perform standard body piercings services defined under OAR 331-900-0000.

(2) A specialty level two body piercing license may perform specialty level one body piercing services defined under OAR 331-905-0000(9).

(3) A specialty level two body piercing license may perform specialty level two body piercing services defined under OAR 331-905-0000(10).

(4) A specialty level two body 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 body piercing license holder must adhere to all standards within OAR 331-900-0100, 331-900-0105, 331-900-0110 and OAR chapter 331, division 930.

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

## 331-905-0050

### Application Requirements Specialty Level Two Body Piercer Licensed After January 1, 2012

(1) An individual applying for licensure to practice specialty level one 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 General Education Degree (GED);

(g) Submit proof of holding a current Oregon standard body piercing license;

(h) Submit proof of holding a current Oregon specialty level one body piercing license; and

(i) Provide documentation of completing a qualifying pathway.

(2) License Pathway 1 – Graduate from an Oregon Licensed Career School for Specialty Level One Body Piercing:

(a) Submit official transcript from a body piercing career school under ORS 345 and showing proof of completion of required body piercing curriculum as approved by the Agency under OAR 331-905-0010 (1) through (8);

(b) Pay examination fees;

(c) Submit passing score of an Agency approved written within two years before the date of application;

(d) Submit a passing score of an Agency approved practical examination 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.

(3) License Pathway 2 – Qualification through Specialty Level One Body Piercing Trainee License:

(a) Submit documentation approved by the Agency showing proof of having completed training listed under OAR 331-900-0005, verified by a

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supervisor approved under to OAR 331-905-0010 (9) through (17), on a form prescribed by the Agency;

(b) Pay examination fees;

(c) Submit passing score of an Agency approved written examination within two years before the date of application;

(d) Submit a passing score of an agency approved practical examination 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.

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

## 331-905-0055

### Requirements for Specialty Level One Body Piercing Supervisor

(1) To be an approved supervisor for a specialty level one body 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 holding an active, standard body piercing license with no current or pending disciplinary action;

(c) Submit proof of having been actively practicing standard body piercing for at least three years prior to submitting application on a form prescribed by the Agency;

(d) Submit proof of current cardiopulmonary resuscitation and basic first aid training from an Agency approved provider;

(e) Submit proof of current blood borne pathogens training from an Agency approved provider;

(f) Submit copies of client records demonstrating proof of having successfully performed a minimum of five of each specialty level one body piercings defined under OAR 331-905-0000(9).

(g) Submit copies of client records demonstrating proof of having a minimum of three years of experience successfully performing the piercing procedures listed in paragraph (f) above;

(h) Provide a list of three professional references on a form prescribed by the Agency.

(2) Experience claimed under subsections (1)(f), (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

## 331-905-0060

### Requirements for Specialty Level Two Body Piercing Supervisor

(1) To be an approved supervisor for a specialty level one body 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 holding an active, standard body piercing license with no current or pending disciplinary action;

(c) Submit proof of having been actively practicing standard body piercing for at least three years prior to submitting application;

(d) Submit proof of current cardiopulmonary resuscitation and basic first aid training from an Agency approved provider;

(e) Submit proof of current blood borne pathogens training from an Agency approved provider;

(f) Submit copies of client records demonstrating proof of having successfully performed a minimum of five of each specialty level one body piercings defined under OAR 331-905-0000(9).

(g) Submit copies of client records demonstrating proof of having successfully performed a minimum of five of each specialty level two body piercings defined under OAR 331-905-0000(10).

(h) Provide a list of references on a form prescribed by the Agency.

(2) Experience claimed under subsections (1)(f), (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

## 331-905-0065

### Informed Consent for Certain Body Piercing Procedures

(1) A specialty level one body piercer must provide information prescribed by the Agency to the client, regarding the following body piercing procedures:

(a) Cheek;

(b) Specialty one genital;

(2) A specialty level two body piercer must provide information prescribed by the Agency to the client, regarding specialty level two genital piercings.

(3) Informed consent documents for certain body piercing procedures is published on the Agency's website at <http://www.oregon.gov/OHLA/BAP/forms.shtml>.

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

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**Rule Caption:** Align rules with current statutory, industry, agency and rulemaking standards including one year registration cycles.

**Adm. Order No.:** HLA 15-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 10-1-2011

**Rules Adopted:** 331-705-0072, 331-705-0080, 331-710-0005, 331-710-0015, 331-710-0040, 331-710-0045, 331-710-0050, 331-712-0000, 331-712-0010, 331-712-0020, 331-718-0000, 331-718-0010, 331-718-0020, 331-720-0015, 331-740-0000

**Rules Amended:** 331-705-0050, 331-710-0010, 331-710-0020, 331-715-0010, 331-720-0010

**Rules Repealed:** 331-705-0060, 331-705-0072(T), 331-710-0030, 331-715-0030, 331-715-0045, 331-725-0020

**Subject:** Passage of SB 723 (Oregon Laws 2011, chapter 715) by the 2011 Legislature integrated polysomnographic technologists into the Respiratory Therapist Licensing Board (Board) creating the Respiratory Therapist & Polysomnographic Technologist Licensing Board within the Oregon Health Licensing Agency (Agency), and establishing a Practice Act for licensing polysomnographic technologists. The Agency begins licensing polysomnographic technologists on January 1, 2012 and licensure is required by January 1, 2013.

Continue protocols for a sleep lab exemption for polysomnographic technologists through January 1, 2013.

Identifies licensure exemptions for polysomnography students if in an approved program or under appropriate supervision.

Require national fingerprint based criminal background checks to new applicants for permanent or temporary respiratory therapy licensure as well as aligns rules with statutory requirements regarding age and education. Adopt rule that defines a "temporary" respiratory therapist.

Implement education and licensing standards for polysomnographic technologists including national criminal background checks, education, grandfathering criteria, and reciprocity.

Create new divisions which specifically address approved examinations, standards of practice, and fees for respiratory therapy and polysomnography.

Revise renewal requirements to include Agency administrative changes and add renewal requirements for polysomnography. Add rule which clarifies continuing education requirements for polysomnography.

Allow for general amendments to align with current industry, agency and statewide rulemaking standards and principles, as well as changes to administrative rule and statutory references.

**Rules Coordinator:** Samantha Patnode—(503) 373-1917

## 331-705-0050

### Definitions

The following definitions apply to OAR 331-705-0000 through 331-720-0020:

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(1) "Affidavit of Licensure" means an original document or other approved means of verifying an authorization to practice (certification, licensure or registration) status and history, including information disclosing all unresolved or outstanding penalties and/or disciplinary actions. Refer to OAR 331-030-0040.

(2) "Agency" means the Oregon Health Licensing Agency.

(3) "AASM" means the American Academy of Sleep Medicine.

(4) "A-STEP" means the Accredited Sleep Technology Education Program.

(5) "BRPT" means Board of Registered Polysomnographic Technologists.

(6) "CAAHEP" means Commission on Accreditation of Allied Health Education Programs.

(7) "CoARC" means Commission on Accreditation for Respiratory Care.

(8) "CRT" means Certified Respiratory Therapist.

(9) "NBRC" means the National Board for Respiratory Care.

(10) "Official transcript" means an original document authorized by the appropriate office in the Oregon Department of Education and certified by a college or university indicating applicant identity information, hours and types of course work, examinations and scores that the student has completed. Original documents must be submitted directly to the Agency from the college or university by United States Postal Service mail or other recognized mail service providers in a sealed envelope; or

(11) "RPSGT" means Registered Polysomnographic Technologists.

(12) "RRT" means Registered Respiratory Therapist.

(13) "Qualified Medical Director for Polysomnography" has the definition set forth in ORS Chapter 688.800.

(14) "Qualified Medical Director for Respiratory Care" has the definition set forth in ORS Chapter 688.800.

Stat. Auth.: ORS 676.605, 676.615 & 688.830

Stats. Implemented: ORS 676.605, 676.615 & 688.830

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 7-2010, f. & cert. ef. 11-1-10; HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-705-0072

### Sleep Lab Exemption

This rule is in effect through January 1, 2013, upon requirement for licensure for polysomnographic technologists.

(1) The following are exempt from the definition of Respiratory Care Services under ORS 688.800(7) when performed in a sleep lab environment:

(a) Positive airway pressure titration on spontaneously breathing patients;

(b) Supplemental low-flow oxygen therapy during polysomnogram (up to 6 liters per minute);

(c) Capnography during polysomnogram;

(d) Cardiopulmonary resuscitation;

(e) Pulse oximetry;

(f) Electrocardiography;

(g) Respiratory effort including thoracic and abdominal;

(h) Plethysmography blood flow;

(i) Nasal and oral airflow monitoring;

(j) Monitoring the effects positive airway pressure, used to treat sleep-related breathing disorders, has on sleep patterns, provided that the device does not extend into the trachea;

(k) Monitoring the effect on sleep patterns of an oral device that does not extend into the trachea and that is used to treat sleep apnea;

(l) Maintenance of nasal and oral airways that do not extend into the trachea;

(m) The use of continuous positive airway pressure and bi-level modalities;

(n) Set-up for use of durable medical equipment; and

(o) Long term follow-up care.

(2) For the purpose of this rule, "sleep lab" is:

(a) A physical space, including any commercial space, used by a hospital for conducting sleep testing and under the supervision of a medical director; or

(b) A facility accredited by the American Academy of Sleep Medicine (AASM) or the Joint Commission for conducting sleep testing under the supervision of a medical director.

(c) A facility provisionally accredited by the AASM for conducting sleep testing under the supervision of a medical director.

(3) For purpose of this rule, "medical director" means the medical director of any inpatient or outpatient facility or department who is a physi-

cian licensed by the State of Oregon and who has special interest and knowledge in the diagnosis and treatment of sleep disorders.

(4) For the purpose of this rule, "sleep lab" does not include the home environment.

(5) The exemption under this rule does not include partial or full ventilatory support services involving tidal volume regulation or which require the setting of respiratory back-up rates unless these services are for the treatment of central and mixed sleep apnea.

(6) All documentation and information regarding the provisional accreditation or accreditation through the AASM must be made available to the Agency if requested.

(7) All policies, procedures and protocols for unlicensed individuals related to positive airway pressure treatment and titration including but not limited to central and mixed sleep apnea must be made available to the Agency if requested.

Stat. Auth.: ORS 676.606, 676.607, 676.611, 676.615, 688.830

Stats. Implemented: ORS 688.800, 688.805

Hist.: HLA 13-2011(Temp), f. & cert. ef. 11-22-11 thru 5-10-12; HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-705-0080

### Licensure Exemption for Supervisors and Polysomnography Students

(1) Students actively enrolled in the following education programs are exempt from polysomnographic technologist licensure pursuant to ORS 688.805(2)(b)(A):

(a) Associate's degree program in polysomnography, polysomnographic technology, or sleep technology from an accredited community college, college, or university; or

(b) Polysomnography course of study from a CAAHEP accredited institution;

(2) In accordance with ORS 688.805(2)(b)(B) to be exempt from licensure students in subsection (1) of this rule must be supervised by one of the following:

(a) A licensed polysomnographic technician;

(b) A qualified medical director for polysomnography; or

(c) Respiratory therapist who holds a Sleep Disorder Specialty credential through the NBRC.

(3) Direct supervision, for the purpose of this rule, is supervision of a student in polysomnography by an approved supervisor who is physically present with the student while the student is working. The supervisor must exercise direction and control over the student's work. An approved supervisor supervising a student may not supervise more than one student per shift.

Stat. Auth.: ORS 676.606, 676.607, 676.611, 676.615, 688.830

Stats. Implemented: ORS 688.800, 688.805

Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-710-0005

### Respiratory Therapist License

(1) A respiratory therapist license holder, licensed under ORS 688.815, may perform respiratory care services and polysomnography services defined under ORS 688.800.

(2) A respiratory therapist license is good for one year and becomes inactive on the last day of the month one year from the date of issuance.

Stat. Auth.: ORS 676.605, 676.615, 688.815 & 688.830

Stats. Implemented: ORS 676.605, 676.615, 688.815 & 688.830

Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-710-0010

### Application Requirements for a Respiratory Therapist License

An individual applying for licensure to practice respiratory care 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 and license fees.

(3) Submit fingerprint-based national criminal background check pursuant to OAR 331-030-0004;

(4) Be at least 18 years of age and provide official documentation confirming date of birth, such as a copy of the birth certificate, driver's license, passport or military/government identification;

(5) Submit proof of having completed four years of standard high school education or the equivalent General Education Diploma (GED) passing scores;

(6) Submit current certification in cardiopulmonary resuscitation from an Agency approved provider; and

(7) Submit documentation of qualification for licensure through one of the following pathways:



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(a) License Pathway One — National Credentialing: An applicant for licensure through national credentialing must submit:

(A) An official documentation demonstrating that the applicant has successfully passed the Board approved examination listed under OAR 331-712-0000, within one year before the date of application. The documentation of a passing score must be mailed by the organization to the Agency. Copies of examination results or other documentation provided by the applicant are not acceptable.

**NOTE:** The applicant is responsible for payment of fees assessed by the organization when obtaining required official documentation.

(b) License Pathway Two – Reciprocity

An applicant for licensure through reciprocity must submit:

(A) Submit an affidavit of licensure pursuant to OAR 331-030-0040, from every state where the applicant has been licensed as a respiratory therapist, including an affidavit of licensure demonstrating proof of a current respiratory therapist license from another state, obtained through qualifications substantially equivalent to Oregon's requirements. At least one of the applicant's out-of-state licenses must be active and all of the applicant's out-of-state licenses must not be subject to current or pending disciplinary action, and must be free from disciplinary history for three years before the date of application for Oregon respiratory therapist licensure;

(B) Official documentation demonstrating that the applicant has successfully passed the Board approved examination listed under OAR 331-712-0000, within one year before the date of application. The documentation of a passing score must be mailed by the organization to the Agency. Copies of examination results or other documentation provided by the applicant are not acceptable.

**NOTE:** The applicant is responsible for payment of any service fee the originating jurisdiction may assess for producing the Affidavit of Licensure.

Stat. Auth.: ORS 676.605, 676.615, 688.815 & 688.830

Stats. Implemented: ORS 676.605, 676.615, 688.815 & 688.830

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04; HLO 10-2004(Temp), f. & cert. ef. 11-8-04 thru 3-31-05; HLO 1-2005, f. 2-28-05 cert. ef. 3-1-05; HLA 7-2010, f. & cert. ef. 11-1-10; HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-710-0015

### Temporary Respiratory Therapist Licensure

(1) A respiratory therapist temporary license authorizes a holder to practice respiratory care under supervision and pending passage of the qualifying examination.

(2) For the purpose of this rule supervision means the required presence of a licensed respiratory therapist or qualified Medical Director for respiratory care within the work location at the same time as the respiratory therapist temporary license holder.

(3) A respiratory therapist temporary license holder must notify the Agency within 10 calendar days of changes in employment status or supervisor.

(4) A respiratory therapy temporary license is valid for six months and may not be renewed.

Stat. Auth.: ORS 676.605, 676.615, 688.815 & 688.830

Stats. Implemented: ORS 676.605, 676.615, 688.815 & 688.830

Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-710-0020

### Application Requirements for a Temporary Respiratory Therapist License

To qualify for a respiratory therapist temporary license for the applicant 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 and license fees;

(3) Submit fingerprint-based national criminal background check pursuant to OAR 331-030-0004;

(4) Be at least 18 years of age, and provide official documentation confirming the applicant's date of birth, such as a copy of the birth certificate, driver's license, or passport;

(5) Submit current certification in cardiopulmonary resuscitation from an Agency approved provider;

(6) Submit a statement, signed by the Registrar or a Dean of a college or university and sent directly to the Agency from that college or university, verifying the applicant has completed all work necessary to obtain a degree in respiratory care; and

(7) Submit documentation identifying approved supervisor on a form prescribed by the Agency.

Stat. Auth.: ORS 676.605, 676.615, 688.815 & 688.830

Stats. Implemented: ORS 676.605, 676.615, 688.815 & 688.830

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 7-2010, f. & cert. ef. 11-1-10; HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-710-0040

### Polysomnographic Technologists Grandfathering Requirements

Pursuant to Oregon Laws 2011, Chapter 715, Sections 7 and 9, polysomnographic technologists must be licensed by January 1, 2013. A polysomnographic technologist license is valid for one year and becomes inactive on the last day of the month one year from the date of issuance.

(1) An individual applying for licensure who does not meet the requirements listed in Oregon Laws 2011, Chapter 715, Section 8, may be grandfathered into licensure by meeting the requirements of this rule on or before January 1, 2013. An applicant applying for licensure to practice polysomnography through the grandfathering process 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 fingerprint-based national criminal background check pursuant to OAR 331-030-0004;

(d) Be at least 18 years of age and provide official documentation confirming date of birth, such as a copy of the applicant's birth certificate, driver's license, or passport;

(e) Submit proof of having completed four years of standard high school education or the equivalent General Education Diploma (GED) passing scores;

(f) Submit current certification in cardiopulmonary resuscitation by an Agency approved provider;

(2) Submit documentation of qualification through one of the following pathways:

(a) License Pathway One – RSPGT Credential from the BRPT. An applicant who has a credential as an RSPGT from the BRPT must:

(A) Submit proof of having obtained national credential as an RSPGT from the BRPT. Proof of national credentialing must be mailed to the Agency directly from the BRPT; copies of national credentialing mailed by the applicant are not acceptable;

(B) Submit official documentation verifying current registration with the BRPT at the time of application for Oregon licensure;

(C) Submit documentation of having worked in polysomnography for 18 months out of the last five years, immediately before application on an Agency prescribed form.

(D) Submit examination fees;

(E) Complete and pass the Board approved examination listed under OAR 331-712-0010(37); and

(F) Submit appropriate licensing fees.

(b) License Pathway Two – CRT or RRT Credential with the Sleep Disorder Specialty from the NBRC. An applicant who has a credential as a CRT or RRT with the Sleep Disorder Specialty from the NBRC must:

(A) Submit proof of having obtained national credential as an CRT or RRT with the Sleep Disorder Specialty from the NBRC. Proof of national credentialing must be mailed to the Agency directly from the NBRC; copies of national credentialing mailed by the applicant are not acceptable;

(B) Submit official documentation verifying current certification or registration with the NBRC at the time of application for Oregon licensure;

(C) Submit documentation of having worked in polysomnography for 18 months out of the last five years, immediately before application on an Agency prescribed form.

(D) Submit examination fees;

(E) Complete and pass the Board approved examination listed under OAR 331-712-0010(3); and

(F) Submit licensing fees.

Stat. Auth.: ORS 676.605, 676.615, 688.815 & 688.830

Stats. Implemented: ORS 676.605, 676.615, 688.815 & 688.830

Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-710-0045

### Polysomnographic Technologist License

(1) A polysomnographic technologist, licensed under ORS 688.815, may perform polysomnography services defined under ORS 688.800.

(2) A polysomnographic technologist license is good for one year and becomes inactive on the last day of the month one year from the date of issuance.

Stat. Auth.: ORS 676.605, 676.615, 688.815 & 688.830

Stats. Implemented: ORS 676.605, 676.615, 688.815 & 688.830

Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

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## 331-710-0050

### Application Requirements for Polysomnographic Technologist License

(1) Pursuant to Oregon Laws 2011, Chapter 715, Sections 7 and 9, polysomnographic technologists must be licensed by January 1, 2013.

(2) An individual applying for licensure to practice polysomnography who does not meet the grandfathering requirements or who applies for licensure after January 1, 2013 must:

(a) Meet the requirements of OAR 331 division 30;

(b) Submit a completed application form prescribed by the Agency, containing the information listed in OAR 331-030-0000 and accompanied by payment of the required application fees;

(c) Submit fingerprint-based national criminal background check pursuant to OAR 331-030-0004;

(d) Be at least 18 years of age, and must provide documentation, confirming date of birth, such as a copy of the birth certificate, driver's license or passport;

(e) Submit current certification in cardiopulmonary resuscitation by an Agency approved provider; and

(3) Submit documentation of qualification through one of the following pathways:

(a) License Pathway One — Education: An applicant from an Education Program must:

(A) Submit official transcripts defined under OAR 331-705-0050 showing successful completion of an Associate's degree in polysomnography, polysomnographic technology, or sleep technology from an accredited community college, college or university, or successful completion of a polysomnography course of study from a CAAHEP accredited institution;

(B) Submit satisfactory evidence of passage a Board approved examination listed under OAR 331-712-0010(1) within one year before the date of application. Examination results must be submitted to the Agency directly from the examination provider; examination results or other documentation provided directly by the applicant are not acceptable;

(C) Submit examination fees;

(D) Submit satisfactory evidence of passage of a Board approved examination listed under OAR 331-712-0010(3) within one year before the date of application. and

(E) Submit licensing fees.

(b) License Pathway Two — Reciprocity: An applicant for licensure by reciprocity must:

(A) Submit an affidavit of licensure pursuant to OAR 331-030-0040, from every state where the applicant has been licensed as a polysomnographic technologist, including an affidavit of licensure demonstrating proof of a current polysomnographic technologist license from another state, obtained through qualifications substantially equivalent to Oregon's requirements. At least one of the applicant's out-of-state licenses must be active and all of the applicant's out-of-state licenses must not be subject to current or pending disciplinary action, and must be free from disciplinary history for three years before the date of application for Oregon polysomnographic licensure;

(B) Submit satisfactory evidence of passage a Board approved examination listed under OAR 331-712-0010(3) within one year before the date of application; and

(C) Submit licensing fees.

(c) License Pathway Three — Endorsement: An applicant for licensure by endorsement through a qualifying credential must:

(A) Submit proof of a an RPSGT credential obtained through a CAAHEP accredited educational program (BRPT Pathway Three); or

(B) Submit an affidavit of licensure pursuant to OAR 331-030-0040 demonstrating proof of a current license, which is active with no current or pending disciplinary action, and no disciplinary history for the three years before the date of application for Oregon polysomnographic licensure, as a:

(C) Physician (Doctor of Medicine or Doctor of Osteopathy) licensed under ORS 677;

(D) Respiratory therapist licensed under ORS 688 with the RSPGT credential from the BRPT; or

(E) CRT or RRT who holds a Sleep Disorder Specialty credential through NBRC; and

(F) Submit licensing fees.

Stat. Auth.: ORS 676.605, 676.615, 688.815 & 688.830

Stats. Implemented: ORS 676.605, 676.615, 688.815 & 688.830

Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-712-0000

### Respiratory Care Approved Examination

The Board has selected the CRT or RRT examination administered by the NBRC as its minimal qualifying examination for licensure. Individual

applicants are responsible for payment of all NBRC application, examination, national certification or other fees directly to NBRC.

**NOTE:** An applicant is responsible for direct payment to the NBRC of all application, examination, national certification or other fees associated with the NBRC.

Stat. Auth.: ORS 676.607, 676.615, 688.830, OL 2011, Ch. 715

Stats. Implemented: ORS 676.606, 676.607, 676.612, 676.615, 676.625, 688.815 & 688.830, 688.834, 688.836, OL 2011, Ch. 715

Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-712-0010

### Polysomnography Approved Examinations

The Board has approved the following examinations for qualification as a licensed polysomnographic technologist:

(1) The RSPGT "registration examination" administered by the BRPT;

(2) The SDS examination administered by the NBRC; and

(3) The Oregon Laws and Rules examination for polysomnography administered by the Agency.

**NOTE:** An applicant is responsible for direct payment to the organization of all application, examination, national certification or other fees associated with the examination.

Stat. Auth.: ORS 676.607, 676.615, 688.830, OL 2011, Ch. 715

Stats. Implemented: ORS 676.606, 676.607, 676.612, 676.615, 676.625, 688.815 & 688.830, 688.834, 688.836, OL 2011, Ch. 715

Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-712-0020

### General Examination Information

(1) To be eligible for examination administered by the Agency, 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 Board.

(5) Notes, notetaking, textbooks, notebooks, 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.

(6) 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, attempting to give, receive or solicit aid during the examination process;

(b) Violations of subsections (1), (5), or (6) 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.

(7) If the candidate is disqualified from taking the examination or the candidate's examination is deemed invalid for reasons under subsection (6) 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, 688.830, OL 2011, Ch. 715

Stats. Implemented: ORS 676.606, 676.607, 676.612, 676.615, 676.625, 688.815 & 688.830, 688.834, 688.836, OL 2011, Ch. 715

Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-715-0010

### License Renewal

(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 under this rule is valid for one year.

(3) LICENSE RENEWAL: To avoid delinquency penalties, 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 OAR 331-705-0060;

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(c) Attestation of having obtained required biannual continuing education under OAR 331-720-0010 or 331-720-0015, on a form prescribed by the Agency, whether license is current or inactive; and

(d) Information, on a form prescribed by the Agency, permitting the Agency to perform a state criminal background check pursuant to OAR 331-030-0004;

(4) **INACTIVE LICENSE RENEWAL:** A 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 must submit the following:

(a) Renewal application form;

(b) Payment of delinquency and license fees pursuant to OAR 331-705-0060;

(c) Attestation of having obtained required biannual continuing education under OAR 331-720-0010 or 331-720-0015, on a form prescribed by the Agency, whether license is current or inactive;

(d) Information, on a form prescribed by the Agency, permitting the Agency to perform a state criminal background check pursuant to OAR 331-030-0004;

(5) **EXPIRED LICENSE:** A license that has been inactive for more than three years is expired and the licensee must reapply for licensure and meet the requirements listed in OAR 331-710-0010 or 331-710-0050.

(6) A licensee failing to meet continuing education requirements listed under OAR 331-720-0010 or 331-720-0015 is considered to have an expired license and must reapply and meet requirements pursuant to OAR 331-710-0010 or 331-710-0050.

Stat. Auth.: ORS 676.605, 676.615 & 688.830

Stats. Implemented: ORS 676.605, 676.615 & 688.830

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 1-1998(Temp), f. & cert. ef. 3-20-98 thru 4-1-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04; HLO 10-2004(Temp), f. & cert. ef. 11-8-04 thru 3-31-05; HLO 1-2005, f. 2-28-05 cert. ef. 3-1-05; HLA 7-2010, f. & cert. ef. 11-1-10; HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-718-0000

### Standards of Practice for Respiratory Care

(1) A licensee must comply with the prevailing community standards for professional conduct. The Board recognizes and adopts the American Association of Respiratory Care (AARC) Statement of Ethics and Professional Conduct effective March 2000 as its professional standards model. Documents are available on the AARC Website at <http://www.aarc.org/>.

(2) At minimum, licensees are subject to directives and policies established by the medical facilities, businesses or agencies by which they are employed or regulated.

(3) A licensee must comply with the following safety and infection control requirements:

(a) All devices or items that come into direct contact with a client must be cleaned, sanitized or disinfected according to the manufacturer's instructions or Centers for Disease Control and Prevention (CDC) Standard Precautions;

(b) All items that come in direct contact with the client's skin that do not require disinfecting must be clean;

(c) All items that come in direct contact with the client's skin that cannot be cleaned or disinfected must be disposed of in a covered waste receptacle immediately after use;

(d) All disinfecting solutions and agents must be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times unless equipment is prepackaged and pre-sterilized;

(e) All high-level and low-level disinfecting agents must be EPA registered. High-level disinfectant means a chemical agent which has demonstrated tuberculocidal activity. Low-level disinfectant means a chemical agent which has demonstrated bactericidal, germicidal, fungicidal and limited virucidal activity;

(f) Before use, disposable prepackaged products and sterilized reusable instruments must be stored in clean, sterilized containers that can be closed between treatments to maintain effective sterilization of the instrument until removed from the container.

(4) A licensee must observe and follow the Standard Precautions adopted by the CDC as defined in OAR 437 division 2, subdivision Z, and the CDC Standard Precautions for public service workers regarding personal protection equipment and disposal of blood or bodily fluid contaminated articles, tools and equipment when providing services to patients.

Stat. Auth.: ORS 676.607, 676.615, 688.830, OL 2011, Ch. 715

Stats. Implemented: ORS 676.606, 676.607, 676.612, 676.615, 676.625, 688.815 & 688.830, 688.834, 688.836, OL 2011, Ch. 715

Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-718-0010

### Pharmacological Agents for Respiratory Care

(1) A licensee administering intravenous narcotics, paralytics and opioids under ORS 688.800(3)(a) is prohibited from monitoring the patient and must have another qualified licensed individual present to monitor the patient throughout procedures with intravenous narcotics, paralytics and opioids.

(2) All policies, procedures and protocols for respiratory therapists related to administration of intravenous pharmacological agents must be made available to the Agency if requested.

Stat. Auth.: ORS 676.607, 676.615, 688.830, OL 2011, Ch. 715

Stats. Implemented: ORS 676.606, 676.607, 676.612, 676.615, 676.625, 688.815 & 688.830, 688.834, 688.836, OL 2011, Ch. 715

Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-718-0020

### Standards of Practice for Polysomnography

(1) A licensee must comply with the prevailing community standards for professional conduct. The Board recognizes and adopts the BRPT Standards of Conduct as its professional standards model. Documents are available on the BRPT Website at <http://www.brpt.org>.

(2) At minimum, licensees are subject to directives and policies established by the medical facilities, businesses or agencies by which they are employed or regulated.

(3) A licensee must comply with the following safety and infection control requirements:

(a) All devices or items that come into direct contact with a client must be cleaned or disinfected according to the manufacturer's instructions or Centers for Disease Control and Prevention (CDC) Standard Precautions;

(b) All items that come in direct contact with the client's skin that do not require disinfecting must be clean;

(c) All items that come in direct contact with the client's skin that cannot be cleaned or disinfected must be disposed of in a covered waste receptacle immediately after use;

(d) All disinfecting solutions and agents must be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times unless equipment is prepackaged, pre-sterilized and within the expiration date listed on the label of the disinfecting solution;

(e) All high-level and low-level disinfecting agents must be EPA registered. High-level disinfectant means a chemical agent which has demonstrated tuberculocidal activity. Low-level disinfectant means a chemical agent which has demonstrated bactericidal, germicidal, fungicidal and limited virucidal activity;

(f) Before use, disposable prepackaged products and sterilized reusable instruments must be stored in clean containers that can be closed between use to maintain effective cleanliness until removed from the container.

(g) Masks must be disinfected before each use on a client by removing foreign and completely saturating the mask with a high level disinfectant solution, spray or foam used to manufacturer's instructions.

(4) A licensee must observe and follow the Standard Precautions adopted by the CDC as defined in OAR 437 division 2, subdivision Z, and the CDC Standard Precautions for public service workers regarding personal protection equipment and disposal of blood or bodily fluid contaminated articles, tools and equipment when providing services to patients.

Stat. Auth.: ORS 676.605, 676.615 & 688.830

Stats. Implemented: ORS 676.605, 676.615 & 688.830

Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-720-0010

### Continuing Education Requirements for Respiratory Care

(1) A licensee is required to complete 15 hours of Board approved continuing education every two years. At least two-thirds of the required continuing education hours must be related to clinical practice of respiratory care.

(2) To renew the license, evidence of required continuing education must be provided at the time of renewal by means of a prescribed self-attestation statement certifying participation in approved continuing education. To ensure that adequate proof of attainment of required continuing education is available for audit or investigation by the Agency, the licensee must maintain a record of attendance for two years following the two-year continuing education cycle and renewal of the license.

(3) Continuing education is acceptable if provided by:

(a) A medical organization or association accredited by the Oregon Medical Association, the Oregon Osteopathic Association, the American

# ADMINISTRATIVE RULES

Medical Association Continuing Medical Education, the American Osteopathic Association, the American Nurses Association, the American Association for Respiratory Care, and its affiliates, to provide continuing education to physicians, nurses, or respiratory therapists;

(b) A hospital not accredited to provide continuing education but the continuing education provided meets the following requirements:

(A) The content of the course or program must be relevant to the scope of practice of respiratory care as defined in ORS 688.800(7);

(B) The faculty must be knowledgeable in the subject matter as evidenced by a degree from an accredited college or university and verifiable experience in the subject matter or teaching and clinical experience in the same or similar subject matter;

(C) Educational objectives must be listed;

(D) The teaching methods must be described, e.g., lecture, seminar, audiovisual, simulation;

(E) Evaluation methods must document that the objectives have been met.

(c) An institution of higher education accredited by the Northwest Association of Secondary and Higher Schools or its successor, or the State Board of Higher Education, providing the course(s) meet the requirements of paragraph (a) of this subsection. Five hours of continuing education credit per course, and up to two-thirds of the continuing education requirement, can be obtained by successfully completing the course(s) with a grade "C" or above, or a "pass" for a pass/fail course;

(d) A respiratory care educational program accredited by the American Medical Association Committee on Allied Health Education and Accreditation in collaboration with the Committee On Accreditation for Respiratory Care, or its successor, or the Commission on Accreditation for Allied Health Education Programs offering an Associate Degree in Respiratory Care;

(e) The NBRC through passing the examination for initial certification as a RRT, or Perinatal/Pediatric Respiratory Care Specialist (PPRCS), or the NBRC through passing the re-credentialing examination for a CRT, RRT, or PPRCS. Fifteen hours of continuing education can be obtained by passing these certification and re-credentialing examinations;

(f) The NBRC through passing the examination for initial certification as a Certified Pulmonary Function Technician (CPFT), or Registered Pulmonary Function Technician (RFPT). Seven and one-half hours of continuing education can be obtained by passing these certification examinations;

(g) Publication in a peer reviewed journal as the author or co-author of a clinical paper or abstract. A total of five credit hours will be accepted per biennium for the publication of articles or abstracts in professional journals;

(h) An established and approved organization conducting humanitarian activities in another state or country, that is providing respiratory care services as defined in ORS 688.800(7) under its auspices. The organization and services are subject to Board approval on a case-by-case basis for continuing education credit.

(4) A licensee who instructs continuing education courses may obtain the same number of continuing education hours for each initial course taught during the two-year continuing education cycle, in which the course is initially presented, as granted to course participants.

(5) A licensee is awarded continuing education credit once for completion of the initial certification course for Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS) courses, and Neonatal Resuscitation Program (NRP). Up to four hours of continuing education credit may be obtained for each re-certification in ACLS, PALS, or NRP courses.

(6) Continuing education credit will not be granted for completion of the Basic Life Support (BLS) course.

(7) A licensee who does not meet continuing education requirements must reapply and meet requirements for licensure according to OAR 331-710-0010 at the time of application.

Stat. Auth.: ORS 676.605, 676.615 & 688.830

Stats. Implemented: ORS 676.605, 676.615 & 688.830

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04; HLO 10-2004(Temp), f. & cert. ef. 11-8-04 thru 3-31-05; HLO 1-2005, f. 2-28-05 cert. ef. 3-1-05; HLA 7-2010, f. & cert. ef. 11-1-10; HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-720-0015

### Continuing Education Requirements for Polysomnography

(1) A licensee is required to complete 15 hours of Board approved continuing education every two years, related to clinical practice of polysomnography.

(2) To renew the license, evidence of required continuing education must be provided at the time of renewal by means of a prescribed self-attestation statement certifying participation in approved continuing education. To ensure that adequate proof of attainment of required continuing education is available for audit or investigation by the Agency, the licensee must maintain a record of attendance for two years following the two-year continuing education cycle and renewal of the license.

(3) Continuing education is acceptable if provided by:

(a) A medical organization or association accredited by the Board of Registered Polysomnographic Technicians, Oregon Medical Association, the Oregon Osteopathic Association, the American Medical Association Continuing Medical Education, the American Osteopathic Association, the American Nurses Association, the American Association for Respiratory Care, American Association of Sleep Technologists and its affiliates, to provide continuing education to physicians, nurses, respiratory therapists or polysomnographic technologists and other organizations approved by the Agency;

(b) A hospital not accredited to provide continuing education but the continuing education provided meets the following requirements:

(A) The content of the course or program must be relevant to the scope of practice of polysomnography as defined in ORS 688.800(2);

(B) The faculty must be knowledgeable in the subject matter as evidenced by a degree from an accredited college or university and verifiable experience in the subject matter or teaching and clinical experience in the same or similar subject matter;

(C) Educational objectives must be listed;

(D) The teaching methods must be described, e.g., lecture, seminar, audiovisual, simulation;

(E) Evaluation methods must document that the objectives have been met.

(c) An institution of higher education accredited by the Northwest Association of Secondary and Higher Schools or its successor, or the State Board of Higher Education, providing the course(s) meet the requirements of paragraph (a) of this subsection. Five hours of continuing education credit per course, and up to two-thirds of the continuing education requirement, can be obtained by successfully completing the course(s) with a grade "C" or above, or a "pass" for a pass/fail course;

(d) A polysomnography educational program accredited by the American Medical Association Committee on Allied Health Education and Accreditation in collaboration with the Committee On Accreditation for Respiratory Care, or its successor, or the Commission on Accreditation for Allied Health Education Programs offering an Associate Degree in Polysomnography;

(e) An established and approved organization conducting humanitarian activities in another state or country, that is providing polysomnography services as defined in ORS 688.800(2) under its auspices. The organization and services are subject to Board approval on a case-by-case basis for continuing education credit.

(4) A licensee who instructs continuing education courses may obtain the same number of continuing education hours for each initial course taught during the two-year continuing education cycle, in which the course is initially presented, as granted to course participants.

(5) Continuing education credit will not be granted for completion of the Basic Life Support (BLS) course.

(6) A licensee who does not meet continuing education requirements must reapply and meet requirements for licensure according to OAR 331-710-0050 at the time of application.

Stat. Auth.: ORS 676.605, 676.615 & 688.830

Stats. Implemented: ORS 676.605, 676.615 & 688.830

Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-740-0000

### Fees

(1) An applicant or licensee are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding the payment of fees, penalties and charges.

(2) Fees established by the Oregon Health Licensing Agency pursuant to ORS 676.607 are as follows:

(a) Application:

(A) License: \$50.

(B) Temporary license: \$50.

(b) Examination — Oregon laws & rules: \$50.

(c) Original issuance of authorization to practice:

(A) License: \$50.

(B) Temporary license: \$50.

(C) Temporary six month license: \$50

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- (d) Renewals:
  - (A) Licenses: \$50.
  - (B) Online license: \$45
  - (C) Temporary license: \$50
  - (e) Delinquent (late) renewal of license: \$50 for each year in inactive status up to three years.
  - (f) Replacement of license, including name change: \$25.
  - (g) Duplicate license document: \$25 per copy with maximum of three.
  - (h) Affidavit of licensure for reciprocity: \$50.
  - (i) Information packets: \$10
  - (j) An additional \$25 administrative processing fee will be assessed if a NSF or non-negotiable instrument is received for payment of fees, penalties and charges. Refer to OAR 331-010-0010.
- Stat. Auth.: ORS 676.607, 676.615, 688.830, OL 2011, Ch. 715  
Stat. Implemented: ORS 676.606, 676.607, 676.612, 676.615, 676.625, 688.815 & 688.830, 688.834, 688.836, OL 2011, Ch. 715  
Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12
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**Rule Caption:** Adopt education/training and application requirements for body art practitioners, and streamline rules for consistency.

**Adm. Order No.:** HLA 16-2011

**Filed with Sec. of State:** 12-30-2011

**Certified to be Effective:** 1-1-12

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**Rules Adopted:** 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, 331-900-0050, 331-900-0055, 331-900-0060, 331-900-0065, 331-900-0070, 331-900-0075, 331-900-0080, 331-900-0085, 331-900-0090, 331-900-0095, 331-900-0100, 331-900-0105, 331-900-0110, 331-910-0000, 331-910-0005, 331-910-0010, 331-910-0015, 331-910-0020, 331-910-0025, 331-910-0030, 331-910-0035, 331-910-0040, 331-910-0045, 331-910-0050, 331-910-0055, 331-910-0060, 331-910-0065, 331-915-0000, 331-915-0005, 331-915-0010, 331-915-0015, 331-915-0020, 331-915-0025, 331-915-0030, 331-915-0035, 331-915-0040, 331-915-0045, 331-915-0050, 331-915-0055, 331-915-0060, 331-915-0065, 331-920-0000, 331-920-0005, 331-925-0000, 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, 331-930-0000, 331-930-0005, 331-930-0010, 331-930-0015, 331-930-0025, 331-930-0020, 331-930-0030, 331-940-0000, 331-950-0010, 331-950-0020, 331-950-0030, 331-950-0040, 331-950-0050, 331-950-0060, 331-950-0070

**Rules Repealed:** 331-205-0020, 331-205-0030, 331-210-0000, 331-210-0010, 331-210-0020, 331-210-0021, 331-215-0000, 331-215-0010, 331-215-0020, 331-215-0030, 331-215-0040, 331-220-0000, 331-220-0010, 331-220-0020, 331-220-0030, 331-220-0040, 331-220-0050, 331-220-0060, 331-225-0080, 331-225-0000, 331-225-0020, 331-225-0030, 331-225-0040, 331-225-0050, 331-225-0060, 331-225-0070, 331-225-0080, 331-225-0090, 331-225-0100, 331-225-0110, 331-225-0120, 331-225-0130, 331-225-0140, 331-225-0150, 331-225-0160, 331-505-0000, 331-505-0010, 331-510-0000, 331-515-0000, 331-515-0010, 331-515-0020, 331-515-0030, 331-520-0000, 331-520-0010, 331-520-0030, 331-520-0040, 331-520-0070, 331-525-0000, 331-525-0020, 331-525-0035, 331-525-0038, 331-525-0040, 331-525-0055, 331-525-0060, 331-525-0065, 331-530-0000, 331-530-0020, 331-535-0000, 331-535-0010, 331-535-0020, 331-535-0030, 331-535-0040, 331-535-0050, 331-535-0060, 331-535-0070, 331-535-0080, 331-540-0000, 331-540-0010, 331-540-0020, 331-540-0030, 331-545-0000, 331-545-0020, 331-550-0000, 331-555-0010, 331-555-0030, 331-555-0040, 331-560-0000, 331-560-0010, 331-560-0020, 331-560-0030, 331-560-0040, 331-560-0060, 331-565-0000, 331-565-0020, 331-565-0025, 331-565-0030, 331-565-0040, 331-565-0050, 331-565-0060, 331-565-0080, 331-565-0085, 331-565-0090, 331-565-0095, 331-570-0000, 331-570-0020, 331-575-0000, 331-575-0010, 331-575-0020, 331-575-0030, 331-575-0040, 331-575-0050, 331-580-0000, 331-580-0010, 331-580-0020, 331-580-0030, 331-585-0000, 331-585-0010, 331-

585-0020, 331-585-0030, 331-585-0040, 331-590-0000, 331-590-0020

**Subject:** During the 2011 Legislative Session the House Health Care Committee introduced House Bill 2013 which created a Board of Body Art Practitioners (Board) within the Oregon Health Licensing Agency (Agency), beginning January 1, 2012, and abolished the Advisory Council for Electrologists, Permanent Color Technicians and Tattoo Artists. The Board was created to advise the Agency with regard to the regulation of each field of practice i.e. body piercing, dermal implanting, electrology, scarification and tattooing including administrative rules.

Repeal administrative rules for the Advisory Council for Electrologists, Permanent Color Technicians and Tattoo Artists (Council) OAR Chapter 331, Division 500 through 590 and the Body Piercing Licensing Program (Program) OAR Chapter 331, Division 205 through 225 and merge the text into Chapter 331, Division 900 through 940 which relates specifically to the Board of Body Art Practitioners.

Adopt amend and repeal rules to align with current industry, Agency and statewide rulemaking standards and principles. Administrative rules have been streamlined to be consistent with statutory authority and Agency protocol.

**Definitions** Adopt definitions for each field of practice (with the exception of standard and specialty piercing) and standards which are relevant to body art. Define terms which are utilized within the rule for efficiency including defining specific types of piercing services including single point and earlobe.

**Education & Training** Adopt rules creating an approved education or training program for standard body piercing. Currently there is no Department of Education Private Career Schools licensed under ORS 345 in Oregon. A training program has been developed to include 1150 of combined theory and practical hours which include 400 various body piercing procedure. The training requires direct supervision of an Agency approved supervisor. The training program includes various health and piercing related topics within its curriculum (jewelry, applied sciences and standards.)

Education for electrology and tattooing has been streamlined to be consistent with statutory authority and Agency protocol.

**Licensing** Currently the Agency licenses earlobe piercers separate from body piercers; however HB 2013 does not delineate between these two practices. A temporary earlobe license has been created to permit an individual to perform earlobe piercing services only on a temporary basis for up to two years. Qualifications to become a temporary earlobe piercer include training in cardiopulmonary resuscitation, basic first aid and aftercare by an agency approved provider.

HB 2013 states that as of January 1, 2012, any individual practicing body piercing must hold a body piercing license unless they are a student under the direct supervision of a faculty of a school licensed under ORS 345. In order to allow training for body piercers to commence a "standard body piercing trainee license" has been created to allow an individual who has met certain qualifications including completing blood borne pathogens, cardiopulmonary resuscitation and basic first aid by an Agency approved provider. A standard body piercing trainee license is valid for one year and may be renewed one time. A standard body piercing trainee must work under the direct supervision of an Agency approved supervisor which requires the supervisor to have a current standard body piercing license, five years experience and pass the Agency approved written and practical examination. Supervisors must adhere to supervising a one to one ratio per shift, notification of a supervisor change and documentation.

Administrative rules address application requirements to become a standard body piercer, including examination. An individual applying for licensure may qualify through one of the following pathways graduate from an Oregon licensing career school, qualification through temporary body piercing trainee license under the direct supervision of an Agency approved supervisor; or through reciprocity. To qualify for a standard body piercing license an individ-

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ual must pass the Agency approved written and practical examination

Adopt temporary practitioner licenses for each field of practice to allow out-of-state individuals the opportunity to perform body art services on a limited basis in Oregon without first meeting the requirements of permanently licensed individuals in a field of practice, while ensuring public protection. Qualifications include attestation to six months experience and current blood borne pathogens training. Temporary practitioner licenses must work in a licensed facility.

Licensing requirements for electrology and tattooing has been streamlined to be consistent with statutory authority and Agency protocol.

**Examinations** Approved examinations for each fields of practice in each division including Agency administered practical examinations for standard body piercing. Set parameters for general examination including identification requirements and retake policy.

**Renewal** Amend rules to standardize renewal requirements for each field of practice and facility licensure renewal. Describe a license as active, inactive or expired and the process for renewal including continuing education requirements when applicable.

As of January 2012 body piercers who currently hold a body piercing license will be required to pass the Agency approved written and practical examinations before renewing their standard body piercing license. Current body piercers will be prohibited from practicing specialty level 1 and 2 piercings. Prohibited piercing services are testes, deep shaft (corpus cavernosa), uvula, eyelids and sub-clavicle.

Upon renewal of any electrology, body piercing or tattoo facility license issued before January 1, 2012, must meet application and qualification requirements for a "body art facility license." Each facility is required to have one body art facility license the single field of practice facility licenses i.e. electrology, body piercing or tattoo facility license are being eliminated.

Rule changes include amending continuing education to 10 hours annually for each field of practice and auditing requirements in order to streamline with Agency protocols and documentation requirements. Also includes disciplinary authority for failing to meet continuing education requirements.

Revise renewal requirements related to notification of changes to business name or ABN for facility license holders.

**Facility Licensing** Align facility license application requirements for electrology, tattooing and body piercing which have been streamlined into a "body art facility license." Align with Agency protocols including requiring a "natural person" be the owner of a facility. Other streamlining initiatives are age requirement and current registration of business name or Assumed Business Name (ABN) as filed with the Secretary of State, Corporations Division corporations. Allow all fields of practice to work under all body art facilities including temporary, mobile and event facilities.

**Standards** Merge standards for all licensees and facilities to one division, uniformly requiring the same safety and infection control standards for all fields of practice. New standards include specific hand washing and glove requirements and sterilization protocols. Client records have been standardized to include pertinent client information, signature from the client that all information has been provided including informed consent documents and aftercare information.

**Civil Penalties** Move civil penalties for each field of practice under one division and align statutory and administrative rule references.

**Dermal Implanting and Scarification** Dermal implanting and scarification are prohibited.

**Informed Consent** Require that each licensee provide a uniform document which provides procedures, risks and alternatives related to specific body piercings and general information related to all body piercings. The client is required to sign that they have been informed and agree to the procedure.

**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) "Earlobe piercing services" means services limited to the soft lower part of the external ear only, not to include cartilage.

(6) "Direct supervision" means the supervisor or instructor is present in the facility and actively involved in direct oversight and training of students.

(7) "Field of practice" has the definition set forth in ORS 690.350.

(8) "High-level disinfectant" means a chemical agent, registered with the EPA, which has demonstrated tuberculocidal activity.

(9) "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

(10) "Practitioner" means a person licensed to perform services included within a field of practice.

(11) "Single point piercing", also referred to as an anchor or micro-dermal, 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;

(12) "Standard body piercing" includes all body piercings with the exception of specialty level one piercings and specialty level two piercings defined under 331-905-0000. Standard body piercing services does 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

## 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 training or education. The theory portion of the curriculum or training must be done 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.

(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.

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(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 (q) 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) 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 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 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) 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) 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

## 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 chapter 331, division 930.

(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

## 331-900-0015

### Earlobe Piercing Temporary License Application Requirements

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 General Education Degree (GED);

(5) Submit proof of current blood borne pathogens training from an Agency approved provider;

(6) Submit proof of current cardiopulmonary resuscitation and 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) and (2) 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.

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

## 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 OAR 331-900-0055.

# ADMINISTRATIVE RULES

(3) Supervisors of a standard body piercing trainee must adhere to OAR 331-900-0050.

(4) A standard body piercing trainee license holder 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

## 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 GED; 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

## 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 services defined under OAR 331-905-0000 or specialty level two services defined under 331-905-0000.

(4) Body piercers licensed prior to January 1, 2012, are prohibited from performing specialty level one services defined under OAR 331-905-0000 or specialty level two services defined under 331-905-0000.

(5) Standard body piercing services does not include uvula, eyelids, or sub-clavicle piercings.

(6) A standard body piercing license holder 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

## 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 GED;

(g) Provide documentation of completing a qualifying pathway.

(2) License Pathway 1 — Graduate from an Oregon Licensed Career School for Standard Body Piercing:

(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(3) 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(4) 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.

(3) License Pathway 2 — Qualification through Standard Body Piercing Trainee License:

(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(3) 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(4) 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 — Reciprocity:

(a) Submit an affidavit of licensure pursuant to OAR 331-030-0040 demonstrating proof of current license 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. The license must have been issued by a regulatory body of another state recognized by the Agency;

(b) Pay examination fees;

(c) Submit passing score of an Agency approved written examination in accordance with OAR 331-900-0060(3) 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(4) 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.

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

## 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;

(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 standard body piercing license holder 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



# ADMINISTRATIVE RULES

## 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;
- (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 General Education Degree (GED);
- (5) Submit proof of current blood borne pathogens training from an Agency approved provider;
- (6) 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
- (7) Submit affidavit of licensure pursuant to OAR 331-030-0040.
- (8) Applications must be received at least 15 days before standard body piercing services are provided.

(9) 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

## 331-900-0050

### Standard Body Piercing Supervisor

(1) An approved supervisor may supervise one standard body piercing trainee per shift.

(2) An approved supervisor must exercise management, guidance, and control over the activities of the standard body piercing trainee and must exercise professional judgment and be responsible for all matters relative to the standard body piercing.

(3) Supervisors must document work done by the standard body 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 standard body 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 standard body piercing trainees.

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

## 331-900-0055

### Requirements for Standard Body Piercing Supervisor

To be an approved supervisor for a standard body piercing trainee an individual must:

(1) Submit a completed form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000;

(2) Hold an active, body piercing license issued prior to January 1, 2012 or a standard body piercing license issued after January 1, 2012, with no current or pending disciplinary action;

(3) Submit proof of having been actively practicing any combination of body piercing experience prior to January 1, 2012, or standard body piercing experience after January 1, 2012, for at least five years prior to submitting application on a form prescribed by the Agency;

(4) Submit proof of current cardiopulmonary resuscitation and basic first aid training from an Agency approved provider;

(5) Submit proof of current blood borne pathogens training from an Agency approved provider; and

(6) Have passed an Agency approved written and practical examination for standard body piercing in accordance with OAR 331-900-0060(3) and (4).

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

## 331-900-0060

### Approved Body Piercing Examinations

The Agency has approved the following examinations for body piercing:

- (1) Oregon client care written examination;
- (2) Oregon safety, sanitation and infection control written examination;

(3) Oregon standard body piercing written examination;

(4) Oregon standard body piercing practical examination;

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

## 331-900-0065

### General 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;

(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 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

## 331-900-0070

### Written Examination Retake Requirements

(1) Notwithstanding OAR 331-900-0060(1)(a) failed sections of a written or practical 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:

# ADMINISTRATIVE RULES

(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

## 331-900-0075

### 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 standard body piercing after three attempts (initial examination plus two retakes) may not retake an examination 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.

(3) After the 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

## 331-900-0080

### Renewal of a Standard Body 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, a standard body 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 331-900-0085, 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.

(3) INACTIVE LICENSE RENEWAL: A standard body 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 331-900-0090 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 standard body piercing license that has been inactive for more than three years is expired and the licensee holder must reapply and meet the requirements listed in OAR 331-900-0035.

(5) LICENSE RENEWAL — STANDARD BODY PIERCERS LICENSED PRIOR TO JANUARY 1, 2012. In addition to other requirements of this rule, for the first license renewal after the effective date of this rule, an individual originally licensed prior to January 1, 2012 to practice body piercing, including earlobe piercing technician registrations, must:

(a) Submit passing score of an agency approved written examination in accordance with OAR 331-900-0060(1)(c);

(b) Submit passing score of an Agency approved practical examination in accordance with OAR 331-900-0060(1)(d);

(c) Licensed standard body piercers are only required to pass the Board approved written and practical examination one time unless the license becomes expired.

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

## 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, 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 331-900-0005, 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;

(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 331-900-0090 pertaining to periodic audit of continuing education.

(4) Hours of continuing education, in excess of the requirement for renewal will not be carried forward.

(5) Continuing education requirements must be met every year, even if the license is 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.

(7) Licensees failing to obtain 10 clock hours of continuing education annually must reapply and qualify according to the requirements of OAR 331-900-0045.

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

## 331-900-0090

### Continuing Education: Audit, Required Documentation and Sanctions

(1) The Agency will audit a select percentage of licenses determined by the Council 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

## 331-900-0095

### Earlobe Piercing 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) Sterilize all parts of the piercing gun must with a high-level disinfectant which is a chemical agent, registered with the United States Environmental Protection Agency, to be effective against mycobacterium tuberculosis.

(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.

**NOTE:** A list of appropriate United States Environmental Protection Agency registered sterilizers, disinfectants and sanitizers is available at <http://www.epa.gov/oppad001/chemregindex.htm>

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

## 331-900-0100

### Standard Body Piercing Practice Standards and Prohibitions

(1) Piercing is prohibited:

(a) On a person who is inebriated or appears to be incapacitated by the use of alcohol or drugs;

(b) On a person who shows signs of recent 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 unless the requirements of OAR 331-930-0025 are met.

(e) On the genital or nipple of a person under the age of 18 regardless of parental consent.

(f) On testes, deep shaft (corpus cavernosa), uvula, eyelids and subclavicle.

(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

## 331-900-0105

### Initial Jewelry for Standard Body Piercing

(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;

(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 during earlobe piercing services defined under OAR 331-900-0000 for an initial earlobe piercing is not required to meet the jewelry grade standards of this rule.

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

# ADMINISTRATIVE RULES

## 331-900-0110

### Informed Consent for Certain 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 body piercing.

(2) Informed consent documents for certain body piercing procedures is published on the Agency's website at <http://www.oregon.gov/OHLA/BAP/forms.shtml>.

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

## 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) "Field of practice" has the definition set forth in ORS 690.350.

(5) "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

(6) "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

## 331-910-0005

### Approved Course of Study for Electrology

To be approved by the agency, a course of study must include, at least 600 hours of training instruction. The course must include at least 235 hours of theory and at least 365 hours of practical experience in the following areas:

(1) Laws and rules: 15 hours of training in theory.

(2) Bacteriology: 20 hours of training in theory.

(3) Infection control and sterilization: 20 hours of training in theory and 15 hours of practical training.

(4) Anatomy and physiology: 20 hours of training in theory.

(5) Endocrinology: 20 hours of training in theory.

(6) Structure, dynamics and diseases of skin and hair: 30 hours of training in theory.

(7) Circulatory and nervous system: 20 hours of training in theory.

(8) Electricity: 15 hours of training in theory.

(9) Electrolysis (galvanic): 20 hours of training in theory and 115 hours of practical training.

(10) Thermolysis: 20 hours of training in theory and 115 hours of practical training.

(11) Combinations of electrolysis and thermolysis (blend): 20 hours of training in theory and 110 hours of practical training.

(12) Draping and positioning: 5 hours of training in theory and 5 hours of practical training.

(13) Professional ethics and business practices: 10 hours of training in theory and 5 hours of practical training.

(14) As part of the approved course of study, all hours of theory must be completed prior to practical work being performed on the general public.

(15) Training must be conducted by an Oregon licensed electrologist registered as a teacher by the Department of Education, Private Career Schools.

(16) A registered teacher must provide direct supervision of practical training on a one-to-one student/teacher ratio for students performing practical training while the student is working on the general public.

(17) For the purpose of this rule direct supervision means the teacher is present and actively involved in direct oversight and training of students.

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

## 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.

(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 license holder 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

## 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;

(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 General Education Degree (GED);

(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) Applications must be received 15 days before standard body piercing services are provided.

(9) 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

## 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 all standards within OAR chapter 331, division 930.

# 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

## 331-910-0025

### Application Requirements for Electrology License

(1) An electrologist, licensed under ORS 690.365, may perform electrology services. An electrologist license is valid for one year and becomes inactive on the last day of the month one year from the date of issuance.

(2) An electrology license holder must adhere to all standards within OAR chapter 331, division 930.

(3) An individual applying for licensure to practice electrology 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 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 general education degree (GED) equivalent.

(e) Provide documentation of completing a qualifying pathway.

(4) 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) 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(2) 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.

(4) 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.

(6) License Pathway 2 — Reciprocity:

(a) Submit an affidavit of licensure pursuant to OAR 331-030-0040 demonstrating proof of current license, which is active with no current or pending disciplinary action, as an electrologist. The license must have been issued by a regulatory body of another state or a national association recognized by the agency;

(b) Pay examination fees;

(c) Submit passing score of an Agency approved written examination in accordance with OAR 331-910-0030(1) 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(2) 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

## 331-910-0030

### Approved Examination for Electrology

The Agency has selected the following examinations for electrology:

(1) Written examination for electrology; and

(2) Oregon electrology practical examination.

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

## 331-910-0035

### General 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) Notes, note taking, textbooks, notebooks, 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.

(6) Taking notes, textbooks or notebooks into the written examination area is prohibited.

(7) 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 written examination area.

(8) 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;

(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.

(9) If the candidate is disqualified from taking the examination or the candidate's examination is deemed invalid for reasons under subsection (8) 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 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

## 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 one of the following: 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 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 one of the following: 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 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

# ADMINISTRATIVE RULES

## 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 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

## 331-910-0050

### Renewal of Electrology 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) Electrology renewal under this rule is valid for one year.

(3) LICENSE RENEWAL: To avoid delinquency penalties, an electrology 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 331-910-0055, on a form prescribed by the agency. Continuing education is required whether the license is current or inactive;

(4) INACTIVE LICENSE RENEWAL: An electrology 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;

(c) Attestation of having obtained required annual continuing education under OAR 331-910-0055, on a form prescribed by the agency. Continuing education is required whether the license is current or inactive;

(5) EXPIRED LICENSE: An electrology 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 331-910-0025.

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

## 331-910-0055

### Continuing Education for Electrology License

A licensed electrologist must comply with the following continuing education requirements:

(1) Complete 10 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) 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;

(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) Hours of continuing education, in excess of the requirement for renewal every two years, will not be carried forward.

(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.

(7) Licensees failing to obtain 10 clock hours of continuing education annually must reapply and qualify according to the requirements of OAR 331-910-0025.

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

## 331-910-0060

### Continuing Education: Audit, Required Documentation and Sanctions

(1) The Oregon Health Licensing Agency will audit a select percentage of licenses determined by the Council 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 331-910-0055.

(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 completion of continuing education through self-study, must show a direct relation to the subjects outlined in OAR 331-910-0005, 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 audio-recorded material, 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 must constitute grounds for disciplinary action.

(6) Misrepresentation of continuing education or failing to meet continuing education requirements or documentation may result in disciplinary action, which may include, but is not limited to, assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth: ORS 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

## 331-910-0065

### Electrology Practice Standards and Prohibitions

(1) Electrologists may provide clients with written information on electrolysis procedures, the purpose for asking specific questions regarding the client's general health, and that any recommendation for medical attention is not to be construed as a medical referral or diagnosis of a physical disease or ailment.

(2) Electrologists are prohibited from performing services on treatment areas with high propensity towards bacterial colonization, such as nostrils and ear canals.

(3) Electrologists must first obtain written authorization from a physician when any of the following exists:

- (a) Request for hair removal from moles or birthmarks;
- (b) Removal of eyelashes; or

# ADMINISTRATIVE RULES

- (c) Clients with a pacemaker.
- (4) Notwithstanding OAR 331-930-0015(2)(f) electrologists may use towels and linens when providing electrolysis 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 stored in a clean, storage area until needed for immediate use;
  - (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 and rinse 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

## 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) "Field of practice" has the definition set forth in ORS 690.350.
- (5) "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.

(6) "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

## 331-915-0005

### Approved Course of Study for Tattooing

(1) To be approved by the Oregon Health Licensing Agency, a course of study must include at least 360 hours of instruction. The course must include at least 210 hours of theory and at least 150 hours of practical work.

(2) For the purposes of determining qualification for licensure, practical work must include a minimum of 50 completed procedures. "Completed procedure" means a tattoo which has been finished on a live human being, including any touchups or additional work following initial healing, and the client is released from service.

(3) All practical applications performed during training in the subject areas listed in subsection (4) of this rule are counted toward meeting the minimum 150 hours of practical tattooing experience.

(4) A course of study must include, but is not limited to, the following areas:

- (a) Needles and needle bars — metal or plastic device used to attach the needle to a tattoo machine: 20 hours of theory;
- (b) Tattoo machines and equivalent equipment: 20 hours of theory;
- (c) Equipment/Supplies: 20 hours of theory;
- (d) Safety, Infection Control and Sterilization: 40 hours of theory;

- (e) Basic color theory and pigments: 10 hours of theory;
  - (f) Design, art and placement: 10 hours of theory;
  - (g) Skin: 20 hours of theory;
  - (h) Client services 20 hours of theory;
  - (i) Business operations, including exposure control plan and federal regulations: 40 hours of theory;
  - (j) Oregon Laws and Rules: 10 hours of theory training.
- (5) As part of the approved course of study, all hours of theory must be completed prior to practical work being performed on the general public.

(6) Training must be conducted by an Oregon licensed tattoo artist registered as a teacher by the Department of Education, Private Career Schools.

(7) A registered teacher must provide direct supervision of practical training on a one-to-one student/teacher ratio for students performing practical training while the student is working on the general public.

(8) For the purpose of this rule direct supervision means the teacher is present and actively involved in direct oversight and training of students.

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

## 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 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

## 331-915-0015

### Application Requirements for Tattoo 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 documentation having completed blood borne pathogens training from an agency approved;

(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 General Education Degree (GED);

(g) Provide documentation of completing a qualifying pathway.

(3) 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) within two years from the date of application;

(d) Submit passing score of an Agency approved practical examination in accordance with OAR 331-915-0030(2) within two years from the date of application;

(e) Upon passage of all required examinations and before issuance of registration, applicant must pay all registration fees.

(4) License Pathway 2 — Reciprocity:

(a) Submit an affidavit of licensure pursuant to OAR 331-030-0040 demonstrating proof of current licensure, which is active with no current or pending disciplinary action, as a tattoo artist. The license must have been issued by a regulatory body of another state or a national association recognized by the agency;

# ADMINISTRATIVE RULES

- (b) Pay examination fees;
- (c) Submit passing score of an Agency approved written examination in accordance with OAR 331-915-0030(1) within two years from the date of application; and
- (d) 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

## 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 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.

(b) Must submit all requests to renew on a form prescribed by the Agency. Request 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 at least 24 hours before services are performed on a form prescribed by the Agency;

(d) Must work in a licensed facility.

(2) A tattoo license holder 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

## 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;

(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 General Education Degree (GED);

(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 tattooing on a form prescribed by the Agency; or

(7) Submit affidavit of licensure pursuant to OAR 331-030-0040.

(8) Applications must be received 15 days before tattooing services are provided.

(9) 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

## 331-915-0030

### Approved Examination for Tattoo

The Agency has approved the following examinations for tattooing:

(1) Oregon written examination; and

(2) Oregon practical skills assessment examination.

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

## 331-915-0035

### General Tattooing 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) Notes, note taking, textbooks, notebooks, 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.

(6) Taking notes, textbooks or notebooks into the written examination area is prohibited.

(7) 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 written examination area.

(8) 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;

(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.

(9) If the candidate is disqualified from taking the examination or the candidate's examination is deemed invalid for reasons under subsection (8) 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 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

## 331-915-0040

### 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 331-915-0005 from a career school licensed under 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 331-915-0005 from a career school licensed under 345 on a form prescribed by the Agency; or

(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



# ADMINISTRATIVE RULES

## 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 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

## 331-915-0050

### Renewal of a Tattoo 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) Tattoo license renewal under this rule is valid for one year.

(3) LICENSE RENEWAL: To avoid delinquency penalties, a tattoo 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 331-915-0055, 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 an Agency approved provider; and

(f) Attestation of current certification in blood borne pathogens training from an Agency approved provider.

(4) INACTIVE LICENSE RENEWAL: A tattoo 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;

(c) Attestation of having obtained required annual continuing education under OAR 331-915-0055, 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 an Agency approved provider; and

(f) Attestation of current certification in blood borne pathogens training from an Agency approved provider.

(5) EXPIRED LICENSE: A tattoo 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 331-915-0015.

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

## 331-915-0055

### Continuing Education for Tattoo License

A licensed tattoo holder must comply with the following continuing education requirements:

(1) Complete 10 clock hours of satisfactory continuing education, 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 331-915-0005, 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;

(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 331-915-0060 pertaining to periodic audit of continuing education.

(4) Hours of continuing education, in excess of the requirement for renewal will not be carried forward.

(5) Continuing education requirements must be met every year, even if the license is 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.

(7) Licensees failing to obtain 5 clock hours of continuing education annually must reapply and qualify according to the requirements of OAR 331-915-0015.

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

## 331-915-0060

### Continuing Education: Audit, Required Documentation and Sanctions

(1) The Agency will audit a select percentage of licenses determined by the Council 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 331-915-0055.

(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 331-915-0005, 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 audiocassettes, 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

# ADMINISTRATIVE RULES

## 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 is prohibited:

(a) On a person who is 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, except when authorized or prescribed by a physician's statement exclusively for medical repigmentation.

(5) For the purpose of this rule repigmentation means recoloration of the skin:

(a) After dermabrasion, chemical peels, removal or resolution of birthmarks, vitiligo or other skin conditions which result in the loss of melanin to the skin;

(b) Scarring caused by surgical procedures, such as face lifts, mole or wart removal, cauterization, etc.;

(c) Burn grafts and other skin irregularities caused by burns or photo damage;

(d) Mastectomy, i.e. recreation of an areola or nipple; or

(e) Blotchy pigmentation requiring camouflage.

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

## 331-920-0000

### Dermal Implanting Prohibitions

Dermal implanting services defined under ORS 690.350 are 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 16-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-920-0005

### Scarification Prohibited

Scarification services defined under ORS 690.350 are 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 16-2011, f. 12-30-11, cert. ef. 1-1-12

## 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 owner of a facility license must be a 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 from person to person, business to business, or to a new location. Requirements under OAR 331-925-0005 must be met.

(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

## 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 application 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) 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

## 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 owner 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

## 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 application 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.

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(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

## 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 owner of a facility license must be a natural person.

(5) A mobile facility license is not transferable from person to person, business to business or mobile unit to mobile unit. 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 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

## 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 application 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

## 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 owner of an event facility license must be a natural person.

(8) An event facility license is not transferable from person to person, business to business, or location to location. 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

## 331-925-0035

### Application Requirements for an Event Facility License

To be issued an event facility license the applicant must:

(1) Meets the requirements of OAR 331 division 30;

(2) Submit completed application form prescribed by the Agency and payment of the required application fees 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.

**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

## 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

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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 licensed before January 1, 2012 must apply and qualify for a new body art facility license pursuant to OAR 331-925-0005 on or before the electrology, body piercing or tattoo license becomes inactive.

(7) In addition to other requirements of subsection (3) and (4) of this rule, if a facility or mobile facility license changes name or assumed business name the facility must provide at the time of renewal:

(a) A current registration as required by Secretary of State, Corporations Division pursuant to under ORS 648.007; and

(b) A current copy of the Assumed Business Name (ABN) filing if applicant is operating under an ABN prior to renewing 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.

(8) 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

## 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.

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

## 331-930-0000

### Definitions

(1) "Agency" means the Oregon Health Licensing Agency.

(2) "EPA" means United States Environmental Protection Agency.

(3) "FDA" means Food and Drug Administration.

(4) "High-level disinfectant" means a chemical agent, registered with the EPA, which has demonstrated tuberculocidal activity.

(5) "Instruments" means equipment used during body piercing services. Types of instruments include but are not limited to needles, forceps, hemostats, tweezers, and jewelry.

(6) "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.

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

## 331-930-0005

### Facility Standards

(1) A facility owner licensed under OAR chapter 331, division 25 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 an enclosed sterilization area separate from public areas, service areas and restrooms where decontamination and sterilization of

reusable instruments is performed. All surfaces in this area must be non-porous;

(f) 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;

(g) Maintain washing accommodations in a clean and sanitary condition;

(h) 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 art services are provided in a cosmetology facility, body art services must be separated from cosmetology services by use of a solid barrier to prevent contact with irritants.

(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 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

## 331-930-0010

### Standards for Facilities Located in Residence

A facility located in a residence must comply with the provisions of all standards listed in OAR chapter 331, division 925 in addition to the following criteria:

(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) Have an entry that is separate from the entry to the living area of the home. 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 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

## 331-930-0015

### General Standards

(1) The cleanliness and sanitation of any common area of separately licensed facilities in one premise 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 except during electrology procedures.

# ADMINISTRATIVE RULES

(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 items that come in direct contact with the client's skin that do not require disinfecting be clean.

(l) 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.

(m) 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.

(n) Ensure all waste items that come in direct contact with the client's skin that cannot be cleaned or disinfected must be disposed of utilizing a "double bagging" technique: completely enclosed inside a discarded glove or disposed of in a sealable plastic bag that is separate from sealable trash or garbage liners in a covered waste receptacle immediately after use.

(o) Adhere to all Centers for Disease Control and Prevention, Standard Precautions.

(4) A licensee must wear eye goggles, shields or a mask if spattering is possible while providing services.

(5) 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.

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

## 331-930-0020

### Standards for Client Services

(1) A licensee must wash hands:

(a) Prior to donning gloves to set-up of instruments used for conducting body art procedures;

(b) Immediately prior to donning gloves to perform a body art procedure;

(c) Immediately after removing gloves at the conclusion of performing a body art 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 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, and turning off the faucet with a new disposable paper towel.

(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 art procedure:

(a) Set-up of instruments used for conducting body art procedures and skin preparation of the body art procedure area;

(b) The body art procedure and post-procedure teardown; or

(c) Cleaning and disinfection of the procedure area after each use/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 art procedures are performed.

(8) When a licensee leaves the body art procedure area in the middle of a body art procedure, gloves must be removed before leaving the procedure area 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 procedures.

(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 16-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-930-0025

### Approved Sterilization Standards

(1) Needles must be single uses on one client then disposed of.

(2) All reusable instruments that come in direct contact with a client's skin or are exposed to blood or bodily fluid must be sterilized before re-use on another client.

(3) New gloves must be worn during any sterilization procedure.

(4) The 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 sterilization process for reusable instruments includes:

(a) Use of autoclave sterilizer, steam or chemical, registered and listed with the FDA, which is used, cleaned and maintained according to the manufacturer's directions; Reusable instruments must be sterilized by using the following ordered method after each use:

(b) Cleaning must be done 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) Cleaned instruments must be placed in a disinfection tub filled with 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. All hinged instruments (including but not limited to piercing forceps) must be in the open position;

(d) Disinfected instruments must be rinsed, patted dry and placed in an ultrasonic cleaner filled with an appropriate ultrasonic solution. 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;

(e) Remove instruments from the ultrasonic unit. All reusable 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;

(f) Individually packaged instruments must be sterilized by using an autoclave sterilizer, steam or chemical.

(g) A pass/fail integrator must be used to monitor the essential conditions of steam sterilization for each autoclaved load or cycle.

(h) After sterilization, the 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)(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 ultrasonic unit must be kept on file at the body art facility.

(8) All sterilization pouches listed in subsection (5)(e) must contain a chemical/temperature and/or humidity sensitive tapes, strips or pellets for monitoring each sterilization cycle. Reactions must be recorded in a log book for each sterilization cycle.

(9) Indicators strips listed in subsection (5)(f) and integrators listed in (5)(g) must be available at all times for inspection by the Agency and kept for a minimum of thirty 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)(f) 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.

# ADMINISTRATIVE RULES

(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 been exceeded without first repackaging and re-sterilizing.

(14) All instruments used in body art procedures must remain stored in sterile packages 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 reusable 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.

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

## 331-930-0030

### Client Records and Information

(1) Licensees must maintain client records. 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 used if the service is a body piercing procedure;
  - (h) Description of complications during procedure(s);
  - (i) Signature from the client that they have received the following written and verbal the aftercare instructions:
    - (A) Care following service;
    - (B) Possible side effects and complications; and
    - (C) Restrictions.
  - (j) Signature from the client that they have been informed, both verbally and in writing, of all information related to the body art service including possible reactions, side effects and potential complications of the service and consent to obtaining the body art service; and
  - (k) Signature from the client that they have been provided both verbally and in writing, information listed in OAR 331-900-0110 and 331-905-0065.

(1) Proof of age or consent consisting of one of the following:  
(A) If the client is of over 18, a copy of a current government issued photographic identification;

(B) If the client is a minor for body piercing or electrology services, written parental or legal guardian consent is required and must be submitted in person to the licensee for piercing services on a minor. Consenting parent or legal guardian must be 18 years of age and present current 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.

(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 16-2011, f. 12-30-11, cert. ef. 1-1-12

## 331-940-0000

### Fees

(1) Applicants and licensees are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding the payment of fees, penalties and charges.

(2) Fees established by the Oregon Health Licensing Agency are as follows:

- (a) Application:
  - (A) Standard Body Piercing — \$50.
  - (B) Specialty Body Piercing Level 1 — \$50.
  - (C) Specialty Body Piercing Level 2 — \$50.
  - (D) Electrology — \$50.
  - (E) Tattoo — \$50.
  - (F) Reciprocity Per Field of Practice — \$150.
  - (G) Facility — \$100.
  - (H) Mobile Facility — \$100.
  - (I) Event Facility — \$100.
  - (J) Temporary Facility License — \$100.
  - (K) Temporary Practitioner Per Field of Practice — \$50.
  - (M) Standard Body Piercing Trainee — \$50.
  - (N) Ear Lobe Piercing Temporary — \$25.
- (b) Examination:
  - (A) Written — \$50.
  - (B) Practical — \$100.
- (c) Original Issuance of License:
  - (A) Standard Body Piercing Trainee — \$50.
  - (B) Standard Body Piercing — \$50.
  - (C) Specialty Body Piercing Level 1 — \$50.
  - (D) Specialty Body Piercing Level 2 — \$50.
  - (E) Electrology — \$25.
  - (F) Tattoo — \$50.
  - (G) License for a Field of Practice by Reciprocity — \$50.
  - (H) Facility — \$150.
  - (I) Mobile Facility — \$150.
  - (J) Event Facility:
    - (i) Up to 100 booths: \$725.
    - (ii) 101 to 200 booths: \$1,450.
    - (iii) 201 to 300 booths: \$2,175.
    - (iv) 301 to 400 booths: \$2,900.
    - (v) 401 to 500 booths: \$3,625.
  - (K) Temporary Practitioner Per Field of Practice — \$20.
  - (L) Temporary Facility — \$50.
  - (M) Earlobe Piercing Temporary — \$25.
- (d) Renewal of License Online:
  - (A) Standard Body Piercing — \$45.
  - (B) Electrology — \$20.
  - (C) Tattoo — \$45.
  - (D) Temporary Earlobe — \$20.
  - (E) Body Art Facility — \$125.
  - (F) Mobile Facility License — \$125.
- (e) Renewal of License Over-the-Counter or Through the Mail:
  - (A) Standard Body Piercing Trainee — \$50.
  - (B) Standard Body Piercing — \$50.
  - (C) Specialty Body Piercing Level 1 — \$50.
  - (D) Specialty Body Piercing Level 2 — \$50.
  - (E) Electrology — \$25.
  - (F) Tattoo — \$50.
  - (G) Temporary Earlobe — \$25.
  - (H) Temporary Practitioner Per Field of Practice — \$20.
  - (I) Body Art Facility — \$150.
  - (J) Mobile Facility License — \$150.
- (f) Other administrative fees:
  - (A) Delinquency — \$50 per year, up to three years.
  - (B) Replacement License — \$25.
  - (C) Duplicate License — \$25 per copy with maximum of three.
  - (D) Affidavit of Licensure — \$50.
  - (E) Information Packets — \$10.

# ADMINISTRATIVE RULES

(F) Administrative Processing Fee — \$25.

(3) Individuals taking the body piercing written and practical from January 1, 2012 through December 31, 2012, will have their examination fees waived as long as funding is available.

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

## 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 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 under a person's supervision and control to practice in a field of practice is a violation of ORS 690.360(f).

(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: \$1,000.

(3) Failing to allow an Agency enforcement officer to inspect the facility when it is open for business is a violation of OAR 331-930-0005(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) — \$5000 per violation.

(5) Failing to meet the specifications and standards required under OAR 331-930-0005(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

## 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 331-020-0060 apply.

(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.

(3) 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:

(a) 1st offense: \$500;

(b) 2nd offense: \$1,000;

(c) 3rd offense: \$2,500.

(4) Failing, as a supervisor, to provide supervision to their trainee in accordance with OAR 331-900-0050, 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

## 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 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 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

## 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:

# ADMINISTRATIVE RULES

- (a) 1st offense: \$500;
  - (b) 2nd offense: \$1,000;
  - (c) 3rd offense: \$2,500.
- (2) Any violation of a facility standard listed in OAR 331-930-0005(1) or (2) excluding (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 331-930-0010:
- (a) 1st offense: \$300;
  - (b) 2nd offense: \$500;
  - (c) 3rd offense: \$1000.
- (4) Any violation of a General Standard listed in OAR 331-930-0015:
- (a) 1st offense: \$500;
  - (b) 2nd offense: \$1,000;
  - (c) 3rd offense: \$2,500.
- (5) Any violation of Standards for Serving Clients listed in 331-930-0020:
- (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 331-930-0025 (1) and (2).
- (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 331-930-0025 excluding (1), (2), (9) and (10):
- (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 indicators and pressure 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 331-930-0025(9) or (10)
- (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 331-930-0030:
- (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

## 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 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)(f):
- (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)(f) 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:

- (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

## 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 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

## 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 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(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.

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



# ADMINISTRATIVE RULES

## Oregon Health Licensing Agency, Board of Direct Entry Midwifery Chapter 332

**Rule Caption:** Give a temporary \$1,800 licensure discount to fully qualified Direct Entry Midwife applicants seeking licensure in Oregon.

**Adm. Order No.:** DEM 7-2011(Temp)

**Filed with Sec. of State:** 12-20-2011

**Certified to be Effective:** 1-1-12 thru 6-29-12

**Notice Publication Date:**

**Rules Amended:** 332-040-0000

**Subject:** The Oregon Health Licensing Agency (OHLA), Board of Direct Entry Midwifery is offering a license discount to qualified applicants. The OHLA will give a \$1,800 licensure fee discount to first time fully qualified Direct Entry Midwife licensure applicants residing in Oregon. The discount will be offered as long as funding remains available and to only those qualified applicants who have never held licensure in Oregon. Applicants must meet all qualifications in accordance with OAR 332-015-0030.

Application Fee: \$150.

License Fee: \$1,800.

Discount: \$1,800.

Discounts Available: Until funding is no longer available.

**Rules Coordinator:** Samantha Patnode—(503) 373-1917

### 332-040-0000

#### Fees

(1) An applicant and licensee are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding payment of fees, penalties and charges.

(2) Fees established by the Oregon Health Licensing Agency pursuant to ORS 676.607 are as follows:

(a) Application:

(A) License: \$150.

(B) License by reciprocity: \$750.

(b) Examination – Oregon laws & rules: \$50.

(c) Original issuance of license (including by reciprocity): \$1800 for one year.

(d) Renewal – License: \$1800 for one year;

(e) Reactivation of license: \$150.

(f) Other administrative fees:

(A) Delinquency fee: \$50 for each year in expired status up to three years.

(B) Replacement of license, including name change: \$25.

(C) Duplicate license document: \$25 per copy, with a maximum of three.

(D) Affidavit of licensure for reciprocity: \$50.

(E) An additional \$25 administrative processing fee will be assessed if a non-sufficient funds or non-negotiable instrument is received for payment of fees, penalties and charges. Refer to OAR 331-010-0010.

(3) Applicants for original issuance of direct entry midwifery license may be granted a \$1,800 original license fee discount, upon application for licensure. The license fee discount is available to individuals who meet all application requirements for direct entry midwifery licensure under OAR 332-015-0030 and reside in Oregon. Only applicants who have not held a direct entry midwifery license in Oregon qualify for the discount. The discount is available as long as funding is available.

Stat. Auth.: ORS 676.607, 676.615 & 687.435

Stats. Implemented: ORS 676.607 & 687.435

Hist.: DEM 4-2011, f. & cert. ef. 9-26-11; DEM 7-2011(Temp), f. 12-20-11, cert. ef. 1-1-12 thru 6-29-12

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## Oregon Medical Board Chapter 847

**Rule Caption:** Fees added for supervising physician applications and criminal records checks.

**Adm. Order No.:** OMB 33-2011(Temp)

**Filed with Sec. of State:** 12-28-2011

**Certified to be Effective:** 1-1-12 thru 6-29-12

**Notice Publication Date:**

**Rules Amended:** 847-005-0005

**Subject:** The proposed rule amendment adds a fee of \$225 for a supervising physician application and \$52 for a criminal records check.

**Rules Coordinator:** Nicole Krishnaswami—(971) 673-2667

### 847-005-0005

#### Fees

(1) Fees to be effective upon adoption:

(a) Doctor of Medicine/Doctor of Osteopathy (MD/DO) Initial License Application – \$375.

(b) MD/DO Registration: Active, Military/Public Health, and Teleradiology, Inactive, Locum Tenens, and Telemedicine – \$232/year\*\*.

(c) MD/DO Emeritus Registration – 50/year.

(d) Limited License, SPEX/COMVEX, Visiting Professor, Fellow, Medical Faculty, Postgraduate, Special – \$185.

(e) Physician Application to Supervise a Physician Assistant – \$225.

(f) Acupuncture Initial License Application – \$245.

(g) Acupuncture Registration: Active, Inactive, and Locum Tenens – 148/year\*\*.

(h) Acupuncture Limited License, Special, Visiting Professor, Postgraduate – \$75.

(i) Physician Assistant Initial License Application – \$245.

(j) Physician Assistant Registration: Active, Inactive, and Locum Tenens – \$175/year\*\*.

(k) Physician Assistant Limited License, Special, Postgraduate – \$75.

(l) Podiatrist Initial Application – \$340.

(m) Podiatrist Registration: Active, Inactive, and Locum Tenens – \$222/year\*\*.

(n) Podiatrist Emeritus Registration – 50/year.

(o) Podiatrist Limited License, Special, Postgraduate – \$185.

(p) Workforce Data Fee – \$5/license period.

(q) Criminal Records Check Fee – \$52.

(r) Miscellaneous: All Fines and Late Fees:

(A) MD/DO Registration Renewal Late Fee – \$159.

(B) Acupuncture Registration Renewal Late Fee – \$80.

(C) Physician Assistant Registration Renewal Late Fee – \$80.

(D) Podiatrist Registration Renewal Late Fee – \$159.

(s) Electronic Prescription Monitoring Program – \$25/year per license\*\*\*.

(t) Dispensing MD/DO/DPM Failure to Register – \$159.

(u) Oral Specialty or Competency Examination (\$1,000 deposit required) – Actual costs.

(v) Affidavit Processing Fee for Reactivation – \$50.

(w) Licensee Information Requests:

(A) Verification of Licensure-Individual Requests (1–4 Licenses) – \$10 per license.

(B) Verification of Licensure-Multiple (5 or more) – \$7.50 per license.

(C) Verification of MD/DO License Renewal – \$150 Biennially.

(D) Malpractice Report – Individual Requests – \$10 per license.

(E) Malpractice Report – Multiple (monthly report) – \$15 per report.

(F) Disciplinary – Individual Requests – \$10 per license.

(G) Disciplinary Report – Multiple (quarterly report) – \$15 per report.

(x) Base Service Charge for Copying – \$5 + .20/page.

(y) Record Search Fee (+ copy charges see section (v) of this rule):

(A) Clerical – \$20 per hour\*.

(B) Administrative – \$40 per hour\*.

(C) Executive – \$50 per hour\*.

(D) Medical – \$75 per hour\*.

(z) Data Order:

(A) Standard Data License Order – \$150 each.

(B) Custom Data License Order – \$150.00 + \$40.00 per hour Administrative time.

(C) Address Label Disk – \$100 each.

(D) Active and Locum Tenens MD/DO list – \$75 each.

(E) DPM, PA, or AC list – \$10 each.

(F) Quarterly new MD/DO, DPM, PA, or AC list – \$10 each.

(2) All Board fees and fines are non-refundable, and non-transferable.

\*Plus photocopying charge above, if applicable.

\*\*Collected biennially except where noted in the Administrative Rules.

All active MD/DO registration fees include \$10.00 for the Oregon Health and Science University Library, and are collected biennially.

\*\*\*Per SB 355 (2009), physician, podiatric physician and physician assistant licensees authorized to prescribe or dispense controlled substances in Oregon assessed \$25/year; funds transferred to the Department of Human Services, minus administrative costs, to support the Electronic Prescription Monitoring Program. Licensees with Active, Locum Tenens, Telemonitoring, Teleradiology, and Telemedicine status are included. Licensees with a limited license are not included.

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265

Hist.: ME 7-1984, f. & ef. 1-26-84; ME 17-1984, f. & ef. 11-5-84; ME 6-1985, f. & ef. 7-30-85; ME 3-1986(Temp), f. & ef. 4-23-86; ME 4-1986, f. & ef. 4-23-86; ME 9-1986, f. & ef. 7-31-86; ME 2-1987, f. & ef. 1-10-87; ME 7-1987(Temp), f. & ef. 1-26-87; ME 9-1987, f. & ef. 4-28-87; ME 25-1987, f. & ef. 11-5-87; ME 9-1988, f. & cert. ef. 8-5-88; ME 14-1988, f. & cert. ef. 10-20-88; ME 1-1989, f. & cert. ef. 1-25-89; ME 5-1989(Temp), f. & cert. ef. 2-16-89; ME 6-1989, f. & cert. ef. 4-27-89; ME 9-1989(Temp), f. & cert. ef. 8-1-89; ME 7-1989, f. & cert. ef. 10-20-89; ME 4-1990, f. & cert. ef. 4-25-90; ME 9-1990, f. & cert. ef. 8-2-90; ME 5-1991, f. & cert. ef. 7-24-91; ME 11-1991(Temp), f. & cert. ef. 10-21-91; ME 6-1992, f. & cert. ef. 5-26-92; ME 1-1993, f. & cert. ef. 1-29-93; ME 13-1993, f. & cert. ef. 11-1-93; ME 14-1993(Temp), f. & cert. ef. 11-1-93; ME 1-1994, f. & cert. ef. 1-24-94; ME 6-1995, f. & cert. ef. 7-28-95; ME 7-1996, f. & cert. ef. 10-29-96; ME 3-1997, f. & cert. ef. 11-3-97; BME 7-1998, f. & cert. ef. 7-22-98; BME 7-1999, f. & cert. ef. 4-22-99; BME 10-1999, f. & cert. ef. 7-8-99; BME 14-1999, f. & cert. ef. 10-28-99; BME 4-2000, f. & cert. ef. 2-22-00; BME 6-2001(Temp), f. & cert. ef. 7-18-01 thru 11-30-01; BME 10-2001, f. & cert. ef. 10-30-01; BME 8-2003, f. & cert. ef. 4-24-03; BME 16-2003, f. & cert. ef. 10-23-03; BME 17-2004, f. & cert. ef. 9-9-04; BME 6-2005, f. & cert. ef. 7-20-05; BME 15-2006, f. & cert. ef. 7-25-06; BME 1-2007, f. & cert. ef. 1-24-07; BME 1-2008, f. & cert. ef. 1-22-08; BME 15-2008, f. & cert. ef. 7-21-08; BME 1-2009, f. & cert. ef. 1-22-09; BME 15-2009(Temp), f. & cert. ef. 9-11-09 thru 3-8-10; BME 1-2010, f. & cert. ef. 1-26-10; OMB 10-2011(Temp), f. & cert. ef. 7-13-11 thru 1-4-12; OMB 18-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; OMB 22-2011, f. & cert. ef. 10-18-11; OMB 33-2011(Temp), f. & cert. ef. 1-12-11 thru 6-29-12

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## Oregon State Lottery Chapter 177

**Rule Caption:** Increase price; Modify matrix; Increase Match 5 prize to \$1,000,000 (\$2,000,000 with PowerPlay); other changes.

**Adm. Order No.:** LOTT 9-2011

**Filed with Sec. of State:** 12-20-2011

**Certified to be Effective:** 1-15-12

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 177-085-0000, 177-085-0005, 177-085-0010, 177-085-0015, 177-085-0020, 177-085-0025, 177-085-0030, 177-085-0035, 177-085-0065

**Subject:** The Lottery amended the Powerball® game rules to increase the price of the Powerball ticket from \$1 to \$2 per ticket (\$3 with Power Play®), modify the game matrix and the probability of winning matrix, increase the Match 5 amount from \$200,000 to \$1,000,000, increase the Match 5 Power Play® prize amount from \$1,000,000 to \$2,000,000, modify the Power Play® option to offer set prizes, and eliminate the Match 5 Bonus Roll Down prize.

These changes were necessary to implement changes to the Powerball® game rules made by the national organization that administers the multi-state Powerball® game, and are effective with sales starting January 15, 2012. Other changes included house-keeping changes.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

### 177-085-0000

#### Purpose

These rules, OAR 177-085-0005 to 177-085-0065, establish the procedures and requirements for playing Powerball®, a lotto game operated by the Multi-State Lottery (hereinafter referred to as “MUSL”), of which the Oregon State Lottery is a member.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)  
Stats. Implemented: ORS 461.210

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 2-1992(Temp), f. & cert. ef. 4-17-92; LC 6-1992, f. & cert. ef. 6-23-92; LOTT 11-2008, f. 11-21-08, cert. ef. 1-4-09; LOTT 9-2011, f. 12-20-11, cert. ef. 1-15-12

### 177-085-0005

#### Definitions

The following definitions apply unless the context requires a different meaning.

(1) **“Drawing”** means the formal process of selecting winning numbers which determine the number of winners for each prize level of the game.

(2) **“Game Board”** or **“Boards”** means that area of the game slip which contains two sets of numbered squares to be marked by the player, the first set containing fifty-nine squares, numbered one through fifty-nine, and the second set containing thirty-five squares, numbered one through thirty-five.

(3) **“Game Ticket”** or **“Ticket”** means a ticket produced by a terminal which contains the caption Powerball®, one or more lettered game plays followed by the drawing date, the price of the ticket, a six digit retail-

er number and a serial number that is compatible with the Lottery’s central computer system.

(4) **“Lottery”** means the Oregon State Lottery.

(5) **“MUSL”** means the Multi-State Lottery Association

(6) **“MUSL Board”** means the governing body of the MUSL which is comprised of the chief executive officer of each Party Lottery.

(7) **“Party Lottery”** means a state lottery or lottery of a political subdivision or entity that participates in MUSL and, in the context of these Powerball® Product Group rules, which has joined in selling the Powerball® game.

(8) **“Play”** means the six numbers, the first five from a field of fifty-nine numbers and the last one from a field of thirty-five numbers which appear on a ticket as a single lettered selection and are to be played by a player in the game.

(9) **“Game Slip”** means the paper used in marking a player’s game plays and containing one or more boards.

(10) **“Product Group”** means a group of lotteries which has joined together to offer a product pursuant to the terms of the Multi-State Lottery Agreement and the Group’s own rules.

(11) **“Quick Pick”** means the random selection by the computer system of two-digit numbers that appear on a ticket and are played by a player in the game.

(12) **“Retailer”** means a person or entity authorized by the Lottery to sell lottery tickets.

(13) **“Set Prize”** means all prizes except the Grand Prize that are advertised to be paid by a single lump sum payment and, except in instances outlined in these Division 85 rules, will be equal to the prize amount established by the MUSL Board for the prize level.

(14) **“Draw game terminal”** or **“Terminal”** has the meaning set forth in OAR 177-070-0005(4).

(15) **“Winning Numbers”** means the six numbers, the first five from a field of fifty-nine numbers and the last one from a field of thirty-five numbers, randomly selected at each drawing, which shall be used to determine winning plays contained on a game ticket.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461  
Stats. Implemented: ORS 461.200

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 10-1996, f. & cert. ef. 9-4-96; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LC 9-1997(Temp), f. & cert. ef. 11-7-97; LOTT 2-1998, f. & cert. ef. 5-28-98; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 4-2003(Temp), f. & cert. ef. 4-15-03 thru 10-10-03; LOTT 10-2003, f. & cert. ef. 6-30-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 11-2008, f. 11-21-08, cert. ef. 1-4-09; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 9-2011, f. 12-20-11, cert. ef. 1-15-12

### 177-085-0010

#### Ticket Price

(1) A Powerball® ticket shall cost two dollars (USA \$2) per play.

(2) A Powerball® ticket may only be sold by and purchased from a Lottery retailer authorized to sell Powerball® tickets, or a Lottery sales location, and only by a method which is approved by the Lottery.

(3) The Lottery shall not directly and knowingly sell a Powerball® ticket or combination of tickets to any person or entity which would guarantee said purchaser a Grand Prize win.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)  
Stats. Implemented: ORS 461.240

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 2-1992(Temp), f. & cert. ef. 4-17-92; LC 6-1992, f. & cert. ef. 6-23-92; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 11-2008, f. 11-21-08, cert. ef. 1-4-09; LOTT 7-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 9-2011, f. 12-20-11, cert. ef. 1-15-12

### 177-085-0015

#### Game Description

(1) General Information: Powerball® is a five out of fifty-nine numbers plus one out of thirty-five numbers lottery game, drawn every Wednesday and Saturday, which pays the Grand Prize, at the election of the player made in accordance with these rules or by a default election made in accordance with these rules, either on an annuitized pari-mutuel basis or as a single lump sum payment of the total cash amount held for this prize pool on a pari-mutuel basis. Except as provided in the rules, all other prizes are paid as a single lump sum payment.

(2) Selection of Numbers: To play Powerball®, a player shall select five different numbers, from one through fifty-nine and one additional number from one through thirty-five, for input into a terminal. The additional number may be the same as one of the first five numbers selected by the player, as long as it is from one through thirty-five.

# ADMINISTRATIVE RULES

(3) Purchase of Tickets: Tickets can be purchased either from a terminal operated by a retailer (i.e., a clerk-activated terminal) or from a terminal operated by the player (i.e., a player-activated terminal). If purchased from a retailer, the player may select a set of five numbers and one additional number by marking six numbered squares in any one game board on a game slip and submitting the game slip to the retailer, or by requesting "Quick Pick" from the retailer. The retailer will then issue a ticket, via the terminal, containing the selected set or sets of numbers, each of which constitutes a game play. Tickets can be purchased from a player-activated terminal by use of a touch screen or by inserting a game slip into the machine. A player may purchase tickets for future consecutive drawings up to the maximum permitted by the Lottery.

(4) Player's Responsibility: It is the sole responsibility of the player to verify the accuracy of the game play or plays and other data printed on the ticket. A ticket may not be voided or canceled by returning the ticket to the retailer or to the Lottery, including tickets that are printed in error. No ticket shall be returned to the Lottery for credit. The placing of plays is done at the player's own risk through the Lottery retailer, who when entering the play or plays is acting on behalf of the player.

(5) Determination of Winning Numbers: The winning numbers for the Powerball® game shall be determined at a drawing conducted under the supervision of the MUSL Board. The MUSL Board shall determine the frequency of Powerball® game drawings. Winning numbers shall be selected at random with the aid of mechanical drawing equipment or a random number generator. The Lottery Director shall designate a Drawing Manager who shall review and randomly observe the drawings conducted by the MUSL Board.

Stat. Auth.: ORS 461.250 & OR Const. Art. XV, Sec. 4(4)  
Stats. Implemented: ORS 461.220

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 6-1993, f. & cert. ef. 7-2-93; LC 1-1994, f. 1-27-94, cert. ef. 2-1-94; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 8-2008(Temp), f. 11-21-08, cert. ef. 11-23-08 thru 5-16-09; LOTT 11-2008, f. 11-21-08, cert. ef. 1-4-09; LOTT 2-2009, f. 2-27-09, cert. ef. 3-1-09; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 9-2011, f. 12-20-11, cert. ef. 1-15-12

## 177-085-0020

### Prize Claims

A ticket, subject to the validation requirements set forth in OAR 177-085-0040, is the only proof of a game play or plays. The submission of a winning ticket to the Lottery or an authorized retailer as required by OAR 177-046-0110 is the sole method of claiming a prize or prizes, except that a Grand Prize (and a Match 5+0 prize) must be claimed in person at Lottery Headquarters. A game slip or a copy of a ticket has no pecuniary or prize value and does not constitute evidence of ticket purchase or of numbers selected. A terminal produced paper receipt has no pecuniary or prize value and does not constitute evidence of ticket purchase or of numbers selected.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)  
Stats. Implemented: ORS 461.250

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 11-2008, f. 11-21-08, cert. ef. 1-4-09; LOTT 9-2011, f. 12-20-11, cert. ef. 1-15-12

## 177-085-0025

### Powerball® Prize Pool

(1) Prize Pool: The prize pool for all prize categories shall consist of 50 percent of each drawing period's sales, including any specific statutorily-mandated tax on a Party Lottery to be included in the price of a lottery ticket, after funding the prize reserve accounts to the amounts established by the Product Group. Any amount remaining in the prize pool at the end of the Powerball® game shall be carried forward to a replacement game or expended in a manner as directed by the Product Group in accordance with state law.

(2) Prize Reserve Accounts: An amount equal to up to two percent of a Party Lottery's sales, including any specific statutorily-mandated tax on a Party Lottery to be included in the price of a lottery ticket, shall be deducted from the Party Lottery's Grand Prize Pool and placed in trust in one or more prize reserve accounts until the Party Lottery's share of the prize reserve accounts reaches the amounts designated by the Product Group. Once the Party Lottery's share of the prize reserve accounts exceeds the designated amounts, the excess shall become part of the Grand Prize pool. Any amount remaining in a prize reserve account at the end of the Powerball® game shall be carried forward to a replacement prize reserve account or expended in a manner as directed by the Product Group in accordance with state law.

(3) Expected Prize Payout Percentages: The Grand Prize shall be determined on a pari-mutuel basis. Except as otherwise provided in these rules, all other prizes awarded shall be paid as set lump sum prizes with the following expected prize payout percentages: [Table not included. See ED. NOTE.]

(a) Division of Grand Prize Among Winners: The prize money allocated to the Grand Prize category shall be divided equally by the number of game plays winning the Grand Prize.

(b) Set Prizes: The prize pool percentage allocated to the set prizes (the single lump sum prizes of \$1,000,000 or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw. If the total of the set prizes awarded in a drawing exceeds the percentage of the prize pool allocated to the set prizes, then the amount needed to fund the set prizes awarded shall be drawn from the following sources, in the following order:

(A) The amount allocated to the set prizes and carried forward from previous draws, if any;

(B) An amount from the Set Prize Reserve Account, if available, not to exceed \$25,000,000.00 per drawing.

(c) Lack of Sufficient Prize Funds: If, after these sources are depleted, there are not sufficient funds to pay the set prizes awarded, then the highest set prize shall become a pari-mutuel prize. If the amount of the highest set prize, when paid on a pari-mutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining set prizes awarded, then the next highest set prize shall become a pari-mutuel prize. This procedure shall continue down through all set prize levels, if necessary, until all set prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this rule shall be divided among the winning plays in proportion to their respective prize percentages.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stat. Implemented: ORS 461.220

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 17-1988(Temp), f. & cert. ef. 6-2-88; LC 18-1988, f. & cert. ef. 6-28-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 4-1993, f. & cert. ef. 4-2-93; LC 11-1995, f. 10-30-95, cert. ef. 11-1-95; LC 10-1996, f. & cert. ef. 9-4-96; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 11-2008, f. 11-21-08, cert. ef. 1-4-09; LOTT 9-2011, f. 12-20-11, cert. ef. 1-15-12

## 177-085-0030

### Probability of Winning

The following table sets forth the probability of winning and the probable distribution of winners in and among each prize category, based upon the total number of possible combinations in Powerball®: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stat. Implemented: ORS 461.220

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 11-2008, f. 11-21-08, cert. ef. 1-4-09

## 177-085-0035

### Prize Payment

(1) Selection of Payment Type: Grand prizes shall be paid, at the election of the player made no later than 60 days after validation of the prize, with either a per winner annuity or single lump sum payment. If the payment election is not made by the player within 60 days after validation, then the prize shall be paid as an annuity prize. The election to take the single lump sum payment may be made at the time of validation of the prize claim or within 60 days thereafter. An election made after validation is final and cannot be revoked, withdrawn, or otherwise changed.

(2) Share of the Grand Prize: Shares of the Grand Prize shall be determined by dividing the amount available in the Grand Prize pool equally among all winners of the Grand Prize.

(3) Lump Sum Payment: Winner(s) who elect a lump sum payment shall be paid their share(s) in a single lump sum payment. (Application of the MUSL annuity factor generally is anticipated to result in the Grand Prize winner who elects a single lump sum payment receiving an amount that roughly approximates one-half of the advertised jackpot amount. The actual single lump sum payment amount will vary as a function of the MUSL annuity factor determined as described in subsection (4)(a) of this rule.)

## ADMINISTRATIVE RULES

(4) Annuity Payment: The annuitized option prize shall be determined by multiplying a winner's share of the Grand Prize pool by the MUSL annuity factor.

(a) The MUSL annuity factor is determined by the best total securities price obtained through a competitive bid of qualified, pre-approved brokers made after it is determined that the prize is to be paid as an annuity prize or after the expiration of 60 days after the winner becomes entitled to the prize.

(b) Neither MUSL nor the party lotteries shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to MUSL. In certain instances announced by the Product Group, the Grand Prize shall be a guaranteed amount and shall be determined pursuant to subsection (11) of this rule. If individual shares of the cash held to fund an annuity are less than \$250,000, the Product Group, in its sole discretion, may elect to pay the winners their share of the amount held in the Grand Prize pool.

(5) Initial and Annual Payments: Except as may be controlled by statute, all annuitized prizes shall be paid annually in thirty payments with the initial payment being made directly with available funds, to be followed by twenty-nine payments funded by the annuity. All annuitized prizes shall be paid annually in thirty graduated payments (increasing each year) by a rate as determined by the Product Group. Prize payments may be rounded down to the nearest \$1,000. Annual payments after the initial payment shall be made by the lottery 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. Funds for the initial payment of an annuitized prize or the lump sum payment prize shall be made available by MUSL for payment by the Party Lottery which sold the winning ticket by the 15th calendar day (or the next banking day if the fifteenth day is a holiday) following the drawing.

(6) Lack of Available Funds: If necessary, when the due date for the payment of a prize occurs before the receipt of sufficient funds in the prize pool trust to pay the prize, then the transfer of funds for the payment of the full lump sum payment amount may be delayed pending receipt of funds from the party lotteries. A state may elect to make the initial payment from its own funds after validation, with notice to MUSL.

(7) Death of Winner: In the event of the death of a lottery winner during the annuity payment period, the Product Group, in its sole discretion, upon the petition of the estate of the lottery winner (the "Estate") or the persons identified on the winner's Beneficiary Designation form (BDF), whichever is applicable, to the state lottery of the state in which the deceased lottery winner purchased the winning ticket, and subject to applicable federal, state, or district laws, may make payment to the Estate or the designated beneficiary of the discounted present value of the annuitized prize payments. If the Product Group makes such a determination, then securities and/or amounts held to fund the deceased lottery winner's annuitized prize may be distributed to the Estate or the persons on the BDF. The identification of the securities, if any, to fund the annuitized prize shall be at the sole discretion of the Product Group.

(8) Low-Tier Prizes: All low-tier prizes (all prizes except the Grand Prize) shall be paid directly through the Lottery that sold the winning ticket. The Lottery may begin paying low-tier prizes after receiving authorization to pay from the MUSL central office.

(9) Rounding of Grand Prize Payments: Annuitized payments of the Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first payment to the winner or winners. Prizes other than the Grand Prize which, under OAR 177-085-0025(3)(c) and 177-085-0065(9), may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

(10) Roll Over of Grand Prize: If the Grand Prize is not won in a drawing, the prize money allocated for the Grand Prize shall roll over and be added to the Grand Prize pool for the following drawing.

(11) Minimum Grand Prizes and Increases: The Product Group may offer guaranteed minimum Grand Prize amounts or minimum increases in the Grand Prize amount between drawings or make other changes in the allocation of prize money where the Product Group finds that it would be in the best interest of the game. If a minimum Grand Prize amount or a minimum increase in the Grand prize amount between drawings is offered by the Product Group, then the Grand Prize amount shall be determined as follows.

(a) All Winners Select Annuity: If there are multiple Grand Prize winners during a single drawing, each selecting the annuitized option prize, then a winner's share of the guaranteed annuitized Grand Prize shall be determined by dividing the guaranteed annuitized Grand Prize by the number of winners.

(b) Mix of Lump Sum and Annuity: If there are multiple Grand Prize winners during a single drawing and at least one of the Grand Prize winners has elected the annuitized option prize, then the best bid submitted by MUSL's pre-approved qualified brokers shall determine the cash pool needed to fund the guaranteed annuitized Grand Prize.

(c) No Winners Select Annuity: If no winner of the Grand Prize during a single drawing has elected the annuitized option prize, then the amount of the cash in the Grand Prize pool shall be an amount equal to the guaranteed annuitized amount divided by the average annuity factor of the most recent three best quotes provided by MUSL's pre-approved qualified brokers submitting quotes.

(d) Changes in Allocation of Prizes: In no case shall quotes be used which are more than two weeks old, and if less than three quotes are submitted, then MUSL shall use the average of all quotes submitted. Changes in the allocation of prize money shall be designed to retain approximately the same prize allocation percentages, over a year's time, set out in OAR 177-085-0025(3). Minimum guaranteed prizes or increases may be waived if the alternate funding mechanism set out in OAR 177-085-0025(3)(b) or (c) becomes necessary.

(12) One Prize per Board: The holder of a winning ticket may win only one prize per board in connection with the winning numbers drawn, and shall be entitled only to the prize won by those numbers in the highest matching prize category.

(13) Claim Expires in One Year: Claims for all prize categories, including the Grand Prize, must be submitted within one year after the date of the drawing.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.20

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 8-1992, f. & cert. ef. 7-23-92; LC 4-1993, f. & cert. ef. 4-2-93; LC 10-1996, f. & cert. ef. 9-4-96; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 4-2003(Temp), f. & cert. ef. 4-15-03 thru 10-10-03; LOTT 10-2003, f. & cert. ef. 6-30-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 11-2008, f. 11-21-08, cert. ef. 1-4-09; LOTT 9-2011, f. 12-20-11, cert. ef. 1-15-12

### 177-085-0065

#### Power Play®

(1) General: Power Play® is an optional, limited extension of the Powerball® Game described in OAR division 85. The Lottery Director, in the Lottery Director's sole discretion and based on agreements with MUSL, is authorized to initiate and terminate the Power Play® option.

(2) Set Prizes Only: Power Play® increases the amount of any of the cash Set Prizes (the cash prizes normally paying \$4 to \$1,000,000) won in a drawing. The Grand Prize Jackpot is not a Set Prize and will not be increased.

(3) Power Play® Purchase: A qualifying Power Play® option play is any single Powerball® Play for which the player selects the Power Play® option on either the game slip or by selecting the Power Play® option through a clerk-activated or player-activated terminal, pays one extra dollar for the Power Play® option play, and which is recorded at the Party Lottery's central computer as a qualifying play.

(4) Qualifying Play: Except as otherwise provided in these rules, a qualifying play which wins one of the eight lump sum Set Prizes (excluding the Grand Prize Jackpot) shall be paid as follows: [Table not included. See ED. NOTE.]

(5) Power Play® Prize Pool: The prize pool for all prize categories shall consist of up to 49.96 percent of each drawing period's sales, including any specific statutorily mandated tax on a Party Lottery to be included in the price of a lottery ticket, after the Powerball® prize reserve accounts are funded to the amounts set by the Product Group. Any amount remaining in the prize pool at the end of the Powerball® game shall be carried forward to a replacement game or expended in a manner as directed by the Product Group in accordance with state law.

(6) Power Play® Prize Reserve Accounts: An additional 0.04 percent of sales, including any specific statutorily mandated tax on a Party Lottery to be included in the price of a lottery ticket, may be collected and placed in the rollover account or in trust in one or more prize reserve accounts until the prize reserve accounts reach the amounts designated by the Product Group.

# ADMINISTRATIVE RULES

(7) Power Play® Payout: Except as otherwise provided in these rules, all prizes awarded shall be paid as lump sum set prizes. Instead of the Powerball® set prize amounts, qualifying Power Play® option plays will pay the Power Play® prize amounts shown in section (4) of this rule. In certain rare instances, and as determined under OAR 177-085-0025(3)(c) and section (9) of this rule, the Powerball® set prize amount may be less than the amount shown in section (4) of this rule. In such case, the eight Power Play® prize amounts will be changed to an amount announced after the draw.

(8) Prize Pool Carried Forward: The prize pool percentage allocated to the Power Play® set prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

(9) Pari-Mutuel Prizes – All Prize Amounts: If the total of the original Powerball® set prizes and the Power Play® prizes awarded in a drawing exceeds the percentage of the prize pools allocated to the set prizes, then the amount needed to fund the set prizes (including the Power Play® prize amounts) awarded shall be drawn from the following sources, in the following order:

(a) The amount allocated to the set prizes and carried forward from previous draws, if any;

(b) An amount from the Powerball® Set-Prize Reserve Account, if available in the account, not to exceed twenty-five million dollars (\$25,000,000) per drawing; and

(c) If, after these sources are depleted, there are not sufficient funds to pay the set prizes awarded (including Power Play® prize amounts), then the highest set prize (including the Power Play® prize amounts) shall become a pari-mutuel prize. If the amount of the highest set prize, when paid on a pari-mutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining set prizes awarded, then the next highest set prize, including the Power Play® prize amount, shall become a pari-mutuel prize. This procedure shall continue down through all set prizes levels, if necessary, until all set prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this rule shall be divided among the winning plays in proportion to their respective prize percentages. In rare instances, where the Powerball® set prize amount may be funded but the money available to pay the full Power Play® prize amount may not be available due to an unanticipated number of winners, the Product Group may announce pari-mutuel shares of the available pool for the Power Play® payment only.

(10) Prize Payment: All Power Play® prizes shall be paid in one lump sum. The Lottery may begin paying Power Play® prizes after receiving authorization to pay from the MUSL central office.

(11) Prizes Rounded: Prizes, which under these rules may become pari-mutuel prizes, may be rounded down so that prizes can be paid in whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

[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 3-2001(Temp), f. 3-1-01, cert. ef. 3-2-01 thru 8-29-01; LOTT 10-2001, f. 5-25-01, cert. ef. 5-29-01; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 11-2008, f. 11-21-08, cert. ef. 1-4-09; LOTT 10-2010, f. 11-19-10, cert. ef. 12-12-10; LOTT 9-2011, f. 12-20-11, cert. ef. 1-15-12

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**Rule Caption:** Increases amount available from set prize reserve amount from \$25,000,000 to \$40,000,000.

**Adm. Order No.:** LOTT 10-2011(Temp)

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 1-15-12 thru 7-7-12

**Notice Publication Date:**

**Rules Amended:** 177-085-0025, 177-085-0065

**Subject:** The Oregon Lottery has filed a Notice of Permanent Rule-making Hearing and has filed temporary rules to amend the above referenced administrative rules for the Powerball® game.

The proposed rulemaking and the temporary rules, increases the set prize reserve account from \$25,000,000 to \$40,000,000. The set prize reserve account is only used when the total of the set prizes awarded in a drawing exceeds the percentage of the prize pool allocated to the set prizes, and any amount allocated to the set prizes that was carried forward from previous draws.

These changes are necessary to implement changes to the Powerball® game rules made by the national organization that administers

the multi-state Powerball® game, and will be effective January 15, 2012.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

## 177-085-0025

### Powerball® Prize Pool

(1) Prize Pool: The prize pool for all prize categories shall consist of 50 percent of each drawing period's sales, including any specific statutorily-mandated tax on a Party Lottery to be included in the price of a lottery ticket, after funding the prize reserve accounts to the amounts established by the Product Group. Any amount remaining in the prize pool at the end of the Powerball® game shall be carried forward to a replacement game or expended in a manner as directed by the Product Group in accordance with state law.

(2) Prize Reserve Accounts: An amount equal to up to two percent of a Party Lottery's sales, including any specific statutorily-mandated tax on a Party Lottery to be included in the price of a lottery ticket, shall be deducted from the Party Lottery's Grand Prize Pool and placed in trust in one or more prize reserve accounts until the Party Lottery's share of the prize reserve accounts reaches the amounts designated by the Product Group. Once the Party Lottery's share of the prize reserve accounts exceeds the designated amounts, the excess shall become part of the Grand Prize pool. Any amount remaining in a prize reserve account at the end of the Powerball® game shall be carried forward to a replacement prize reserve account or expended in a manner as directed by the Product Group in accordance with state law.

(3) Expected Prize Payout Percentages: The Grand Prize shall be determined on a pari-mutuel basis. Except as otherwise provided in these rules, all other prizes awarded shall be paid as set lump sum prizes with the following expected prize payout percentages: [Table not included. See ED. NOTE.]

(a) Division of Grand Prize Among Winners: The prize money allocated to the Grand Prize category shall be divided equally by the number of game plays winning the Grand Prize.

(b) Set Prizes: The prize pool percentage allocated to the set prizes (the single lump sum prizes of \$1,000,000 or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw. If the total of the set prizes awarded in a drawing exceeds the percentage of the prize pool allocated to the set prizes, then the amount needed to fund the set prizes awarded shall be drawn from the following sources, in the following order:

(A) The amount allocated to the set prizes and carried forward from previous draws, if any;

(B) An amount from the Set Prize Reserve Account, if available, not to exceed \$40,000,000 per drawing.

(c) Lack of Sufficient Prize Funds: If, after these sources are depleted, there are not sufficient funds to pay the set prizes awarded, then the highest set prize shall become a pari-mutuel prize. If the amount of the highest set prize, when paid on a pari-mutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining set prizes awarded, then the next highest set prize shall become a pari-mutuel prize. This procedure shall continue down through all set prize levels, if necessary, until all set prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this rule shall be divided among the winning plays in proportion to their respective prize percentages.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stat. Implemented: ORS 461.220

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 17-1988(Temp), f. & cert. ef. 6-2-88; LC 18-1988, f. & cert. ef. 6-28-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 4-1993, f. & cert. ef. 4-2-93; LC 11-1995, f. 10-30-95, cert. ef. 11-1-95; LC 10-1996, f. & cert. ef. 9-4-96; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 11-2008, f. 11-21-08, cert. ef. 1-4-09; LOTT 9-2011, f. 12-20-11, cert. ef. 1-15-12; LOTT 10-2011(Temp), f. 12-22-11, cert. ef. 1-15-12 thru 7-7-12

## 177-085-0065

### Power Play®

(1) General: Power Play® is an optional, limited extension of the Powerball® Game described in OAR division 85. The Lottery Director, in the Lottery Director's sole discretion and based on agreements with MUSL, is authorized to initiate and terminate the Power Play® option.

(2) Set Prizes Only: Power Play® increases the amount of any of the cash Set Prizes (the cash prizes normally paying \$4 to \$1,000,000) won in

# ADMINISTRATIVE RULES

a drawing. The Grand Prize Jackpot is not a Set Prize and will not be increased.

(3) **Power Play® Purchase:** A qualifying Power Play® option play is any single Powerball® Play for which the player selects the Power Play® option on either the game slip or by selecting the Power Play® option through a clerk-activated or player-activated terminal, pays one extra dollar for the Power Play® option play, and which is recorded at the Party Lottery's central computer as a qualifying play.

(4) **Qualifying Play:** Except as otherwise provided in these rules, a qualifying play which wins one of the eight lump sum Set Prizes (excluding the Grand Prize Jackpot) shall be paid as follows: [Table not included. See ED. NOTE.]

(5) **Power Play® Prize Pool:** The prize pool for all prize categories shall consist of up to 49.96 percent of each drawing period's sales, including any specific statutorily mandated tax on a Party Lottery to be included in the price of a lottery ticket, after the Powerball® prize reserve accounts are funded to the amounts set by the Product Group. Any amount remaining in the prize pool at the end of the Powerball® game shall be carried forward to a replacement game or expended in a manner as directed by the Product Group in accordance with state law.

(6) **Power Play® Prize Reserve Accounts:** An additional 0.04 percent of sales, including any specific statutorily mandated tax on a Party Lottery to be included in the price of a lottery ticket, may be collected and placed in the rollover account or in trust in one or more prize reserve accounts until the prize reserve accounts reach the amounts designated by the Product Group.

(7) **Power Play® Payout:** Except as otherwise provided in these rules, all prizes awarded shall be paid as lump sum set prizes. Instead of the Powerball® set prize amounts, qualifying Power Play® option plays will pay the Power Play® prize amounts shown in section (4) of this rule. In certain rare instances, and as determined under OAR 177-085-0025(3)(c) and section (9) of this rule, the Powerball® set prize amount may be less than the amount shown in section (4) of this rule. In such case, the eight Power Play® prize amounts will be changed to an amount announced after the draw.

(8) **Prize Pool Carried Forward:** The prize pool percentage allocated to the Power Play® set prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

(9) **Pari-Mutuel Prizes – All Prize Amounts:** If the total of the original Powerball® set prizes and the Power Play® prizes awarded in a drawing exceeds the percentage of the prize pools allocated to the set prizes, then the amount needed to fund the set prizes (including the Power Play® prize amounts) awarded shall be drawn from the following sources, in the following order:

(a) The amount allocated to the set prizes and carried forward from previous draws, if any;

(b) An amount from the Powerball® Set-Prize Reserve Account, if available in the account, not to exceed \$40,000,000 per drawing; and

(c) If, after these sources are depleted, there are not sufficient funds to pay the set prizes awarded (including Power Play® prize amounts), then the highest set prize (including the Power Play® prize amounts) shall become a pari-mutuel prize. If the amount of the highest set prize, when paid on a pari-mutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining set prizes awarded, then the next highest set prize, including the Power Play® prize amount, shall become a pari-mutuel prize. This procedure shall continue down through all set prizes levels, if necessary, until all set prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this rule shall be divided among the winning plays in proportion to their respective prize percentages. In rare instances, where the Powerball® set prize amount may be funded but the money available to pay the full Power Play® prize amount may not be available due to an unanticipated number of winners, the Product Group may announce pari-mutuel shares of the available pool for the Power Play® payment only.

(10) **Prize Payment:** All Power Play® prizes shall be paid in one lump sum. The Lottery may begin paying Power Play® prizes after receiving authorization to pay from the MUSL central office.

(11) **Prizes Rounded:** Prizes, which under these rules may become pari-mutuel prizes, may be rounded down so that prizes can be paid in whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

[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 3-2001(Temp), f. 3-1-01, cert. ef. 3-2-01 thru 8-29-01; LOTT 10-2001, f. 5-25-01, cert. ef. 5-29-01; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-

2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 11-2008, f. 11-21-08, cert. ef. 1-4-09; LOTT 10-2010, f. 11-19-10, cert. ef. 12-12-10; LOTT 9-2011, f. 12-20-11, cert. ef. 1-15-12; LOTT 10-2011(Temp), f. 12-22-11, cert. ef. 1-15-12 thru 7-7-12

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**Rule Caption:** Clarifies amount of Match 5+0 prize with Megaplier® option and conduct of Megaplier® drawing.

**Adm. Order No.:** LOTT 1-2012(Temp)

**Filed with Sec. of State:** 1-9-2012

**Certified to be Effective:** 1-9-12 thru 7-2-12

**Notice Publication Date:**

**Rules Amended:** 177-098-0110

**Subject:** The Oregon Lottery® has adopted temporary rules, and has initiated permanent rulemaking to clarify when the Match 5+0 prize option with the Megaplier® option, which normally pays \$1 million, will be reduced by the same percentage as the Match 5+0 \$250,000 prize is reduced.

The rulemaking also clarifies that in the event the multiplier drawing does not occur prior to the Mega Millions® drawing, the multiplier number will be a 4.

These changes are necessary to implement changes to the Mega Millions® game rules made by the national organization that administers the multi-state Mega Millions® game, and are effective immediately.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

## 177-098-0110

### Megaplier®

(1) **General:** Megaplier® is an optional, limited extension promotion of the Mega Millions® Game described in OAR Division 98. The Lottery Director, in the Lottery Director's sole discretion and based on agreements with MUSL, is authorized to initiate and terminate the Megaplier® option.

(2) **Set Prizes Only:** Megaplier® multiplies or increases the amount of any of the cash Set Prizes (the cash prizes normally paying \$2 to \$250,000) won in a drawing held during the promotion. The Jackpot Prize is not a Set Prize and will not be multiplied or increased by means of the Megaplier® promotion.

(3) **Qualifying Play:** A qualifying Megaplier® option play is any single Mega Millions® Play for which the player selects the Megaplier® option on either the Play Slip or by selecting the Megaplier® option through a clerk-activated or player-activated terminal, pays one extra dollar for the Megaplier® option play, and which is recorded at the Party Lottery's central computer as a qualifying play.

(4) **Prizes to be Multiplied or Increased:**

(a) **Set Prizes:** A qualifying play which wins one of the seven lowest lump sum Set Prizes will be multiplied by the number selected (either 2, 3, or 4), in a separate random Megaplier® drawing announced in a manner determined by the Product Group.

(b) **Match 5+0 Prize:** The Match 5+0 prize, for players selecting the Megaplier® option, shall be \$1,000,000 unless a higher limited promotional dollar amount is announced by the Product Group or unless a lower dollar amount is announced by the Product Group under section (8) of this rule.

(5) **Selection of Multiplier®:** MUSL will either itself conduct, or authorize a U.S. Lottery to conduct on its behalf, a separate random "Megaplier®" drawing. Before each Mega Millions® drawing a single number (2, 3 or 4) shall be drawn. The Mega Millions® Product Group may change one or more of these multiplier numbers and/or the Match 5+0 Megaplier® prize amount for special promotions from time to time. In the event the "Megaplier®" drawing does not occur prior to the Mega Millions® drawing, the multiplier number will be a 4, which shall solely be determined by the lottery authorized to conduct the Megaplier® drawing.

(6) **Megaplier® Prize Pool:** The prize pool for all prize categories offered by the Party Lotteries shall consist of up to fifty-five percent (55%) of each drawing period's sales, as determined by the Product Group, including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery ticket, after the Mega Millions® prize reserve accounts are funded to the amounts set by the Product Group. Any amount remaining in the prize pool at the end of the Mega Millions® game shall be carried forward to a replacement game or expended in a manner as directed by the Product Group in accordance with state or jurisdiction law.

(7) **Megaplier® Prize Rollover or Reserve Accounts:** Any amount not used to pay for multiplied prizes may be collected and placed in the

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rollover account or in trust in one or more prize reserve accounts until the prize reserve accounts reach the amounts designated by the Product Group.

(8) **Expected Prize Payout:** Except as provided in these rules, all prizes awarded shall be paid as lump sum set prizes. Instead of the Mega Millions® set prize amounts, qualifying Megaplier® plays will pay the amounts shown below when matched with the Megaplier® number drawn:  
[Table not included. See ED. NOTE.]

In certain rare instances, the Mega Millions® set prize amount may be less than the amount shown. In such case, the seven lowest Megaplier® prizes will be a multiple of the changed Mega Millions® prize amount announced after the draw. For example, if the Match 4+1 Mega Millions® set prize amount of \$10,000 becomes \$5,000 under the rules of the Mega Millions® game, then a Megaplier® player winning that prize amount with a 4X multiplier would win \$20,000 (\$5,000 x 4). The Match 5+0 prize with the Megaplier® option, which normally pays \$1 million, will be reduced by the same percentage as the Match 5+0 \$250,000 prize is reduced.

(9) **Probability of Winning:** The following table sets forth the probability of the various Megaplier® numbers being drawn during a single Mega Millions® drawing. The Product Group may elect to run limited promotions that may increase the multiplier numbers.

[Table not included. See ED. NOTE.] Megaplier® multiplier numbers do not apply to the Mega Millions® Jackpot Prize or to the Match 5+0 Prize.

(10) **Prize Pool Carried Forward:** The prize pool percentage allocated to the Megaplier® set prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw or may be held in a prize reserve account.

(11) **Pari-Mutuel Prizes — All Prize Amounts:** If the total of the original Mega Millions® set prizes and the Megaplier® prize amounts awarded in a drawing exceeds the percentage of the prize pools allocated to the set prizes, then the amount needed to fund the set prizes (including the Megaplier® prize amounts) awarded shall be drawn from the following sources, in the following order:

(a) The amount allocated to the set prizes and carried forward from previous draws, if any.

(b) An amount from the Mega Millions® reserve accounts not to exceed the lesser of 300% of draw sales or 50% of draw sales plus \$50 million.

(c) If, after these sources are depleted, there are not sufficient funds to pay the set prizes awarded (including Megaplier® prize amounts), then the prize levels two through five shall become a pari-mutuel prize, as set out in OAR 177-098-0040. The Mega Millions® and Megaplier® prize pools shall be combined in the rare instance when the set prizes, pursuant to the rules, are paid on a pari-mutuel basis, so that the multipliers, as provided for in the rules, will remain in effect for all applicable prize levels. The Match 5+0 prizes may be reduced as announced by the Product Group.

(12) **Prize Payment:** All Megaplier® prizes shall be paid in one lump sum. The Lottery may begin paying Megaplier® prizes after receiving authorization to pay from the MUSL central office.

(13) **Prizes Rounded:** Prizes, which under these rules may become pari-mutuel prizes, may be rounded down so that prizes can be paid in whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 190, 461, OR Const. Art. XV, Sec. 4(4) &

Stats. Implemented: ORS 461

Hist.: LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10; LOTT 12-2010, f. 11-19-10, cert. ef. 12-12-10; LOTT 1-2012(Temp), f. & cert. ef. 1-9-12 thru 7-2-12

## Oregon State Marine Board Chapter 250

**Rule Caption:** Clarification of rule language exempting commercial vessels from slow-no-wake in Holgate Channel.

**Adm. Order No.:** OSMB 17-2011(Temp)

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 1-1-12 thru 5-28-12

**Notice Publication Date:**

**Rules Amended:** 250-020-0280

**Rules Suspended:** 250-020-0280(T)

**Subject:** This rule action will remove an overly broad exemption for commercial vessels which is not statutory allowed in ORS 830.015.

**Rules Coordinator:** June LeTarte—(503) 378-2617

### 250-020-0280

#### Boat Operations in Multnomah County

(1) No person shall operate a boat in excess of 5 MPH:

(a) In North Portland Harbor (Oregon Slough):

(A) From the east end of North Portland Harbor (Oregon Slough) to a point 800 yards west of the Burlington Northern Railroad Bridge, as marked;

(B) Within 200 feet of a launching ramp, moorage or houseboat from the east end of North Portland Harbor (Oregon Slough) eastward along the south shore to the Lower Airport wing dike.

(b) Within 300 feet of the entrance to and in Rooster Rock boat channel;

(c) Within 200 feet of west shore, as buoyed, between the southern boundary of Willamette Park Launch Ramp and the northern boundary of the Willamette Sailing Club;

(d) Within Hayden Bay. The Bay is considered to be all waters south and west of a line 200 feet north of the Northeast point of Hayden Island and 200 feet north of the Northwest point of Tomahawk Island as marked;

(e) Within 200 feet of the Oregon Yacht Club floating home moorage as buoyed (a distance of approximately 1,500 feet);

(f) Within 200 feet of houseboat moorages in the Government Island South Channel;

(g) No person shall operate a boat in excess of a maximum 5 MPH, "Slow-No Wake" speed on the Columbia River south of the buoys along the northern shore of Government Island in the waters adjacent to the I-205 Bridge, commonly referred to as Commodore's Cove, as marked;

(h) Within 100 feet of the Landing Boat Club at RM 15, Willamette River.

(2) No person shall operate a watercraft in excess of slow-no-wake in:

(a) The Ross Island Lagoon; and

(b) The Holgate Channel from a line extending northeast from the north side of the Ross Island Lagoon mouth to the east side of the channel, and to a line extending from the southern (upstream) tip of Ross Island due south to the Oregon Yacht Club.

(c) This restriction does not apply to:

(A) Federally documented commercial vessels required to be inspected under Federal law, including those operated for sand and gravel operations, with the exception of passenger vessels of less than 100 gross tons, which are subject to the restriction;

(B) Safety launches while accompanying an organized rowing or paddling program, club or school.

(3) No person shall operate a boat in excess of a maximum 5 MPH, "Slow — No Wake" speed on the Columbia River within 300 feet of shore between the Big Eddy Wing dike and the wing dike east of the entrance to the Chinook Landing boat Basin and within the Chinook Landing Boat Basin, as marked.

(4) A "pass-through" zone is established in the south channel of the Columbia River, adjacent to McGuire Island between the east end of Big Eddy Marina and the west end of McGuire Point Marina as marked.

(a) No person shall operate a motorboat pulling a water skier or towed device in this zone.

(b) No person shall operate a personal watercraft, as defined in OAR 250-021-0020, in continuous operation above 5 MPH in this area, except to transit directly through this zone.

(c) No person shall operate any motorboat in excess of slow-no wake maximum 5 MPH speed within 200 feet of any houseboat moorage within the "pass-through" zone.

(5) No person shall operate a boat in excess of 3 MPH in Rooster Rock Boat Basin.

(6) The following locations are designated racing motorboat testing areas:

(a) On the Willamette River in Swan Island Lagoon. Testing is limited to the hours of 3–6 p.m. on Thursdays, Fridays, and Saturdays;

(b) On the Columbia River between the county launching ramp at 43rd Street and Buoy #18 (NOS Chart #18531). Testing is limited to the hours of 8 a.m.–12 noon, Tuesday through Friday.

(7) No person shall operate a motorboat on Benson Lake.

(8) No person shall operate a boat for any reason within any restricted area at any time without first obtaining permission from the District Engineer, Corps of Engineers, U.S. Army, or his duly authorized representative.

(9) At Bonneville Dam.

(a) The Waters restricted to only Government vessels are described as all waters of the Columbia River and Bradford Slough within 1,000 feet

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above and 2,000 feet below the powerhouse. The restricted areas will be designated by signs;

(b) No person shall operate a boat, including a commercial recreational tour boat subject to inspection and licensing by the U.S. Coast Guard, within the Boating Restricted Zone located below Bonneville lock and dam bounded by a line commencing from the westernmost tip of Robins Island on the Oregon side of the Columbia River and running at a South 65 degrees West direction a distance of approximately 2100 feet to a point 50 feet upstream of the Hamilton Island Boat Ramp on the Washington side of the Columbia River, as marked.

(10) No person shall operate or anchor a boat in the following described zone in Oregon Slough (North Portland Harbor):

(a) Commencing at the northwesterly corner of that tract of land described in a Bargain and Sale Deed to RHODIA, Inc., recorded as Document No. 98028586, Multnomah County Deed Records; Thence, along the northeasterly line of said tract, S 47°46' E, 513.54 feet to the northwest corner of the Alexander Brown Donation Land Claim; Thence, along the north line of said Claim S 48°30' E, 764.51 feet to the POINT OF BEGINNING of the SITE AREA being described herein; Thence, N 29°58'25" E, 133.84 feet; Thence, S 62°44'22" E, 461.47 feet; Thence, S 29°58'25" W, 227.76 feet to the northeasterly line of said tract; Thence, along said northeasterly line, N 61°15' W, 60.85 feet; Thence, along said northeasterly line, N 52°30' W, 115.5 feet; Thence, along said northeasterly line, N 48°30' W, 291.49 feet to the POINT OF BEGINNING as marked.

(b) This area of land contains 2.0 acres (87,008 sq. Ft.), more or less.

(c) The intent of this description is to describe a line that surrounds the limits of the sediment cap location, plus a buffer zone.

(d) Bearings based on Document No. 98028586, Multnomah County Deed Records.

(11) No person shall anchor a boat at approximately River Mile 7 of the Willamette River in Multnomah County described in Department of State Lands Easement No. 31530-EA, Exhibit A — Legal Description — Permanent Easement.

(12) No person shall operate a boat in the Willamette River:

(a) Beginning June 15, 2011, in the area beneath the temporary construction bridges or lifting cranes used for construction of the Portland-Milwaukie Light Rail Bridge near river mile 13.8.

(b) In excess of 5 MPH Slow-No-Wake as marked 500 feet upriver and 500 feet downriver from the centerline of the bridge construction project from June 15, 2011 to December 31, 2012.

(c) Beginning December 1, 2011, in the area of the Sellwood Bridge Construction Project, from approximately 375 feet from the west river bank and 200 feet upstream and downstream of the bridge measured at the bridge centerline; and about 420 feet from the east river bank and about 200 feet upstream and downstream of the bridge measured at the bridge centerline.

(d) In excess of 5 mph Slow-No-Wake as marked 500 feet upriver and 500 feet downriver from the centerline of the Sellwood Bridge construction project, beginning December 1, 2011.

Stat. Auth.: ORS 830  
Stats. Implemented: ORS 830.175  
Hist.: MB 23, f. 9-24-63; MB 26, f. 7-20-64; MB 51, f. 5-3-73, ef. 5-15-73; MB 61, f. 7-26-74, ef. 7-26-74(Temp) & 8-25-74(Perm); Renumbered from 250-020-0155; MB 10-1982, f. 10-13-82, ef. 10-15-82; MB 12-1982, f. 12-29-82, ef. 12-31-82; MB 6-1983, f. 9-28-83, ef. 10-3-83; MB 17-1984, f. & ef. 12-3-84; MB 6-1985, f. & ef. 2-5-85; MB 10-1985, f. & ef. 4-24-85; MB 15-1985, f. 10-18-85, ef. 10-21-85; MB 20-1987, f. 11-4-87, ef. 11-15-87; MB 5-1990, f. & cert. ef. 7-19-90; MB 11-1992, f. & cert. ef. 9-16-92; MB 2-1993, f. & cert. ef. 2-3-93; MB 13-1996, f. & cert. ef. 12-4-96; OSMB 7-1998(Temp), f. & cert. ef. 5-19-98 thru 11-15-98; OSMB 7-1999, f. & cert. ef. 6-18-99; OSMB 2-2005, f. & cert. ef. 1-20-05; OSMB 8-2006, f. & cert. ef. 10-12-06; OSMB 3-2009, f. 10-21-09, cert. ef. 1-1-10; OSMB 4-2011, f. 3-7-11, cert. ef. 5-25-11; OSMB 8-2011, f. 4-25-11, cert. ef. 6-1-11; OSMB 9-2011(Temp), f. 5-13-11, cert. ef. 6-15-11 thru 10-31-11; Administrative correction, 11-18-11; OSMB 16-2011(Temp), f. 11-22-11, cert. ef. 12-1-11 thru 5-28-12; OSMB 17-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 5-28-12

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**Rule Caption:** Clarification to rule language for BUII Qualification and Training.

**Adm. Order No.:** OSMB 18-2011(Temp)

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 12-22-11 thru 6-18-12

**Notice Publication Date:**

**Rules Amended:** 250-010-0440

**Subject:** This action will remove the reference of the Director's authority in the Qualification and Training of Breath Test Equipment Operators rule. This authority remains with the Board.

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-010-0440

### Qualifications and Training of Breath Test Equipment Operators

(1) No individual shall operate approved breath testing equipment to determine the alcohol content of the blood of a person in accordance with the provisions of ORS 830.535 unless that individual has been issued a permit to operate such equipment by the Oregon State Police or the Board.

(2) To qualify for training in the operation of approved breath testing equipment, an individual must be a police officer as defined under ORS 181.610 or a technician of the Marine Board, or a technician of the Oregon State Police:

(3) Upon request of the administrative head of a city, port or county law enforcement unit, as defined in ORS 181.610, the Oregon State Police, or the Board will provide training in the operation of approved breath test equipment for individuals qualified under OAR 250-010-0440.

(4) The Oregon State Police or the Board will provide a course of instruction as outlined in OAR 257-030-0160.

Stat. Auth.: ORS 830.110 & 830.505 - 830.550

Stats. Implemented: ORS 830.535

Hist.: MB 2-1992, f. & cert. ef. 3-13-92; MB 4-1995, f. & cert. ef. 7-14-95; OSMB 14-2011, f. & cert. ef. 11-1-11; OSMB 18-2011(Temp), f. & cert. ef. 12-22-11 thru 6-18-12

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**Rule Caption:** Rule procedures for the Adopt-A-River program.

**Adm. Order No.:** OSMB 1-2012

**Filed with Sec. of State:** 1-13-2012

**Certified to be Effective:** 2-1-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 250-017-0000, 250-017-0010, 250-017-0020, 250-017-0030, 250-017-0040

**Subject:** Rule changes amended, established protocols and best management practices for the identification and removal of invasive species through the perimeters of the Adopt-A-River program.

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-017-0000

### Purpose

The purpose of this program is to provide volunteers an opportunity to remove litter and invasive species to improve the quality of the waters of this state in accordance with ORS 830.055.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.055

Hist.: MB 1-1994, f. & cert. ef. 2-23-94; OSMB 1-2012, f. 1-13-12, cert. ef. 2-1-12

## 250-017-0010

### Scope

Any applicant or person, as defined by ORS 174.100(4), may adopt a section of the rivers and waterbodies of this state for the purpose of picking up and removing litter and invasive species.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.055

Hist.: MB 1-1994, f. & cert. ef. 2-23-94; OSMB 1-2012, f. 1-13-12, cert. ef. 2-1-12

## 250-017-0020

### Definitions

As used in these rules:

(1) An "applicant" is an individual or individuals, group, corporation, company, business, partnership, adopting a section of river or waterbody.

(2) A "spokesperson" is one individual with the authority to speak on behalf of the applicant.

(3) A "participant" is an individual or member performing work on the river or waterbody as a representative of the applicant.

(4) "Invasive Species" are noxious weeds identified by the Oregon Department of Agriculture in OAR chapter 603, division 052 "Quarantine; Noxious Weeds" or the appropriate county governing body as described in ORS 569.

(5) "Litter" is any improperly discarded item including but not limited to wastepaper, garbage, cigarette butts, tires or appliances.

(6) "Director" is the Director of the State Marine Board or the appointed representative or organization administering the Adopt-A-River Program.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.055

Hist.: MB 1-1994, f. & cert. ef. 2-23-94; OSMB 1-2012, f. 1-13-12, cert. ef. 2-1-12



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## 250-017-0030

### General Requirements

(1) The spokesperson must submit a written application to the Director requesting to adopt a river or waterbody and identifying the intended scope of work.

(2) An "Adopt-a-River" adoption will be executed between the spokesperson and the Director. The adoption will list the specific requirements and obligations of both the applicant and the Director.

(3) The section of river or waterbody being adopted shall be at least two miles in length for litter pickup work and can include shorelines of lakes and reservoirs. If unique situations exist then this requirement may be altered if approved by the Director.

(4) The term of the adoption will be for a period of at least two years.

(5) If more than one applicant requests the same section of waterbody, the Director may make the selection by earliest date of application or by a drawing.

(6) Assignment of a specific section of waterbody shall be at the discretion of the Director.

(7) The Director may consider factors such as land ownership, sensitive resource values, congestion, and size of waterway in determining which rivers or waterbody sections will be eligible for this program.

(8) Subcontracting or assigning the adopted section by the applicant is prohibited and will result in cancellation of the adoption.

(9) The Director may cancel an adoption for any reason including, but not limited to safety considerations, failure of the applicant to perform and failure of the applicant or its participants to comply with provisions of the adoption. This cancellation will be issued in writing.

(10) The spokesperson may cancel the adoption with 30 days written notice to the Director.

(11) A spokesperson has the option of renewing the adoption for subsequent terms, subject to the approval of the Director.

(12) The Director shall not issue an adoption under this program to any applicant whose objectives and values are determined to be inconsistent with the public interest and the Marine Board's charge and responsibilities under Oregon law. To make this determination, the Director will rely on:

(a) Oregon Marine Board published mission;

(b) All of the information provided in the application and any other information considered to be common knowledge of the general public in the geographic area of the waterbody section to be adopted and;

(c) Information which may be requested of the applicant by the Director. This information may include bylaws, articles of incorporation, or literature of the applicant. Failure to provide such information upon request may be grounds for denial of an adoption.

(13) If the intended scope of work, as identified on the written application, includes the removal of invasive species, the applicant must also complete a noxious weed removal plan and have it approved by the Director prior to the beginning of any invasive species removal work.

(a) A noxious weed removal plan shall include permission by a landowner for a project to proceed, the species of plant to be removed, the proposed project location, the method of removal, the timing and frequency of removal, how plant material will be disposed of and how any equipment used during the project will be decontaminated to prevent the spread of noxious weeds.

(b) Plans must be completed with direction from one of the following technical assistance agencies:

(A) Oregon Department of Agriculture;

(B) County Weed Control District;

(C) County Soil and Water Conservation District, or

(D) Another qualified technical assistance agency or business pre-approved by the Director.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.055

Hist.: MB 1-1994, f. & cert. ef. 2-23-94; OSMB 1-2012, f. 1-13-12, cert. ef. 2-1-12

## 250-017-0040

### Applicant and Participant Responsibilities

(1) Each participant will be required to execute a liability release form reflecting their awareness and acknowledgement of the potentially hazardous nature of the work involved.

(2) Each participant will be required to comply with and abide by all laws, rules, and regulations relating to safety and use of rivers and waterbodies, and such other terms and conditions as may be required by the Director for special conditions on a particular adopted waterbody section. Individual participants may be excluded from participation or the adoption cancelled, at the discretion of the Director for violation of this section.

(3) Adult supervision is required. Participation by or presence at the work site of individuals under 18 years of age without adult supervision is not permitted.

(4) Each applicant is required to conduct at least one safety meeting per year to inform each participant concerning personal, group and water safety. Each participant is required to attend a safety briefing before participating in the actual work.

(5) Each applicant is required to pick up litter a minimum of once a year. More frequent pick up is permissible.

(6) Each applicant will be responsible for appointing or selecting a spokesperson. The spokesperson's responsibilities include assuring compliance by participants with safety procedures, proper participant clothing and footwear, proper parking of vehicle(s), providing a first-aid kit and adequate drinking water, and arranging transportation of the participants to and from the work site.

(7) Each participant will be responsible for placing litter in trash bags furnished by the Director. The applicant will be responsible for removal of the filled bags and proper disposal. The applicant agrees to coordinate their litter pickup activity with the designated managing agency if another federal, state or local agency is party to the agreement.

(8) If removal of large or heavy items from a river or waterbody is required then prior approval from the Director must be granted to the applicant before such items are removed.

(9) If the noxious weed removal plan is approved and a removal activity is scheduled then an applicant is required to:

(a) Implement the frequency schedule agreed upon in the conditions of the approved noxious weed removal plan;

(b) Review the approved noxious weed removal plan elements with participants;

(c) Follow the procedures identified within the approved noxious weed removal plan when removing noxious weeds from the site; and

(d) Confirm proper identification of noxious weeds as outlined in 250-017-0030(13) prior to removal.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.055

Hist.: MB 1-1994, f. & cert. ef. 2-23-94; OSMB 1-2012, f. 1-13-12, cert. ef. 2-1-12

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**Rule Caption:** Rule procedures for the aquatic invasive species prevention program.

**Adm. Order No.:** OSMB 2-2012

**Filed with Sec. of State:** 1-13-2012

**Certified to be Effective:** 2-1-12

**Notice Publication Date:** 12-1-2011

**Rules Adopted:** 250-010-0660

**Rules Amended:** 250-010-0650

**Rules Repealed:** 250-010-0650(T), 250-010-0660(T)

**Subject:** These rule changes outline the state's authority to conduct mandatory watercraft inspection check stations and remove statutory language citing violations provisions from administrative rule.

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-010-0650

### Aquatic Invasive Species Prevention Permit

(1) Definitions:

(a) "Manually powered boat" means any watercraft as defined in ORS 830.005(2), but not a motorboat as defined in 830.005(6).

(b) "Aquatic Invasive Species Prevention Permit" is an authorization issued by the Oregon State Marine Board (Board) or through designated agents that certifies payment to the Aquatic Invasive Species Prevention Fund.

(c) "Board" means the Oregon State Marine Board.

(d) "Valid temporary permit" means a temporary aquatic invasive species prevention permit generated from a person purchasing a permit from a designated Internet agent.

(e) "Eleemosynary" means an organization supported by gifts or charity which is operated primarily as a part of organized activities for the purpose of teaching youth's scout craft, camping, seamanship, self-reliance, patriotism, courage and kindred virtues.

(2) Permit Rules:

(a) A person may not operate a manually powered boat that is 10 feet or more in length, or a motorboat of any length, or a sailboat 12 feet or more in length, on the waters of this state without first obtaining an aquatic invasive species prevention permit from the Board or designated agent.

(b) The aquatic invasive species prevention permit for manually powered boats may be issued as either an annual or biennial permit to be car-

# ADMINISTRATIVE RULES

ried or otherwise displayed on the boat. The biennial permit is valid for two calendar years and will cost double the annual permit as described in ORS 830.570 and 830.575.

(c) The owner of a boat for which fees for a certificate of number or registration under ORS 830.790(1)(a)(b)(c) are required will pay an aquatic invasive species prevention permit surcharge of \$5 per biennium at the time of boat registration.

(A) The registration validation stickers are in lieu of an Aquatic Invasive Species Prevention Permit.

(B) The validation stickers are non-transferable.

(d) Persons age 14 and older operating manually powered boats that are 10 feet or more in length shall have a valid aquatic invasive species prevention permit or valid temporary permit on board when the boat is in use on the waters of this state.

(e) Out-of-state motorboats and out-of-state sailboats 12 feet in length or more that are of the same boat category that would be required to be registered in Oregon per ORS 830.790, shall carry a non-resident aquatic invasive species prevention permit on board when in use on waters of the state.

(f) Boats required to carry permits must present their permit for inspection upon request by a law enforcement officer.

(A) Motor boats and sailboats 12 feet in length or more, registered in Washington or Idaho, that launch directly into waters that form a common interstate boundary, or launch in Oregon tributaries within one mile of these waters, that have a current boat registration, Coast Guard documentation, or an aquatic invasive species prevention permit issued by the States of Idaho or Washington, are exempt from the non-resident Oregon aquatic invasive species prevention permit.

(B) Manually powered boats from Idaho that are 10 feet or longer and affixed with an Idaho Aquatic Invasive Species Prevention sticker, and all manually powered boats from Washington, are exempt from Oregon aquatic invasive species permit carriage requirements when launching into waters that form a common interstate boundary, or when launching into Oregon tributaries within one mile of these waters.

(g) Non-motorized and out-of-state resident permits are transferrable only within their respective boat categories. The name on the permit does not need to match the name of the person operating the boat. Persons may purchase multiple permits for use by family and friends.

(h) Operators of manually powered boat livery, and guides using manually powered watercraft for group-guided activities, may qualify to purchase aquatic invasive species prevention permits at a discounted rate described in ORS 830.575. To qualify for the discounted rate:

(A) These operators shall register with the Board by documenting current business status as a livery.

(B) All boats rented by the livery must be clearly labeled with the livery name.

(i) Clubs or organizations that possess or own boats for communal use by members, participants, racing teams, or for public educational purposes except as exempted under this rule, may purchase aquatic invasive species prevention permits under the name of the organization or the club's presiding officer or secretary.

(A) For racing shells, dragon boats or resident boats exempt from registration under OAR 250-010-0150(2), aquatic invasive species prevention permits numbering not less than the maximum number of boats in use on the water at any given time during a planned event may be held by the event organizer, coach or other designated person at the event site as long as the permits are readily available for inspection by a peace officer.

(B) A \$5 annual or \$10 biennial aquatic invasive species permit may be held as described in (2)(i)(A) for events involving motorized race boats which are owned by Oregon residents but that are otherwise exempt from registration under OAR 250-010-0150(2).

(j) The Board or designated agent may issue a temporary aquatic invasive species prevention permit to an individual who pays for the permit using a Board designated Internet agent.

(A) The temporary aquatic invasive species prevention permit will be valid for 14 days from the date of issue listed on the temporary permit.

(B) Each temporary permit shall contain a unique number that corresponds to the electronic record for the individual named on the permit and to the annual permit.

(k) A person is considered in violation of the provisions contained this rule and subject to the penalties prescribed by law when they:

(A) Alter an aquatic invasive species prevention permit; or

(B) Produce or possess an unauthorized replica of an aquatic invasive species prevention permit; or

(C) Exhibit an altered aquatic invasive species prevention permit to a peace officer.

(l) The aquatic invasive species prevention permit expires on December 31 of the year indicated on the permit.

(m) The following vessels or classifications are exempt from the requirement to carry an aquatic invasive species prevention permit:

(A) State-owned boats

(B) County-owned boats

(C) Municipality-owned boats

(D) Eleemosynary-owned boats which a supervising adult can confirm through documentation are engaged in an organization-related activity.

(E) A ship's lifeboat used solely for lifesaving purposes.

(F) Seaplanes

(G) Federal government-owned boats

(H) Surfboards, sailboards and kite boards.

Stat. Auth.: ORS 830 & HB 2220

Stats. Implemented: ORS 830.110

Hist.: OSMB 4-2009, f. 10-30-09, cert. ef. 1-1-10; OSMB 1-2010(Temp), f. & cert. ef. 1-5-10 thru 6-30-10; OSMB 6-2010(Temp), f. & cert. ef. 1-15-10 thru 6-30-10; OSMB 7-2010, f. & cert. ef. 5-6-10; OSMB 3-2011, f. 1-14-11, cert. ef. 2-1-11; OSMB 12-2011(Temp), f. & cert. ef. 8-18-11 thru 1-31-12; OSMB 2-2012, f. 1-13-12, cert. ef. 2-1-12

## 250-010-0660

### Watercraft Inspection Stations

(1) For the purpose of this rule, the following definitions apply:

(a) "Check Station" is a location in Oregon that a watercraft inspection team has designated for conducting watercraft inspections for aquatic invasive species.

(b) "Decontamination" is the removal of aquatic invasive species from a watercraft.

(c) "Inspector" is an individual certified and authorized by the Oregon Department of Fish and Wildlife to conduct boat inspections for aquatic invasive species.

(d) "Inspection Certificate" is a form used by the inspector to conduct and record watercraft inspection information.

(e) "Seal" is a plastic zip tie or cable with a unique number that is affixed to the trailer or other device to carry or convey the watercraft.

(f) "Watercraft Inspection Team" is one or more inspectors authorized to inspect for aquatic invasive species on all types of watercraft being transported over roads.

(g) "Watercraft" are recreational or commercial, motorized and non-motorized boats, including canoes, kayaks and rafts, as provided in ORS 830.005, and any equipment used to transport a boat and any auxiliary equipment, as provided in ORS 570.850.

(2) The watercraft inspection team will select Oregon locations to conduct mandatory watercraft inspections as described in the Oregon Department of Fish and Wildlife Aquatic Invasive Species Watercraft Inspection Handbook. Signs will be placed along roads, as prescribed by the Oregon Department of Transportation, directing motorists transporting a watercraft over roads to a designated inspection station.

(3) The watercraft inspection team will inspect every watercraft that enters the check station for the presence of aquatic invasive species and may order decontamination of the watercraft. The inspection will include the hull, motor, propulsion system or component, anchor or other attached apparatus, trailer or other device used to transport the boat, and the bilge, live-well, motor-well and other interior locations that could harbor aquatic plants or animals.

(4) The watercraft inspection team will complete, submit and file an inspection certificate with the Oregon Department of Fish and Wildlife for each watercraft inspection conducted.

(5) The watercraft owner, operator or carrier must provide to the inspector, on request, his or her name and ZIP code. If an inspector determines that decontamination is required, the owner, operator or carrier must provide the additional information requested on the inspection certificate form including contact information.

(a) The decontamination process will include the hull, motor, propulsion system or component, anchor or other attached apparatus, trailer or other device used to transport the watercraft, bilge, live-well, motor-well or other interior location that could harbor aquatic plants or animals.

(b) Means of decontamination include, but are not limited to, one or more of the following: hot water washing or flushing, high-pressure water jets, hand removal and chemical treatment as determined necessary by the watercraft inspection team.

(6) The inspector will determine that the watercraft is a severe risk if the boat contains quagga or zebra mussels or other high risk aquatic invasive species, as defined in Oregon Department of Agriculture OAR chapter 603, division 052 "Quarantine; Noxious Weeds" or Oregon Department of Fish and Wildlife OAR chapter 635, division 056 "Importation, possession,

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confinement, transportation and sale of nonnative wildlife”, or is of a design that prevents or inhibits effective on-site decontamination and the watercraft is from a known aquatic invasive species contaminated waterbody. In such cases, the inspector will place a seal on the watercraft indicating potential contamination. Only the inspector may attach this seal. Tampered, broken or removed seals are void and no longer valid for the purposes as to when they were attached.

(7) When the inspector determines the watercraft is clean or fully decontaminated, the inspector will attach a seal between the watercraft and trailer or other carriage device indicating a completed inspection. Only the inspector may attach this seal. Tampered, broken or removed seals are void.

Stat. Auth.: ORS 830.110

Stats. Implemented: HB3399, ORS 570.855

Hist.: OSMB 13-2011(Temp), f. & cert. ef. 8-23-11 thru 1-31-12; OSMB 2-2012, f. 1-13-12, cert. ef. 2-1-12

## Oregon University System Chapter 580

**Rule Caption:** Refines faculty ranks to reflect national titles, type of faculty work; adds career ladders within ranks.

**Adm. Order No.:** OUS 1-2012

**Filed with Sec. of State:** 1-12-2012

**Certified to be Effective:** 1-12-12

**Notice Publication Date:** 10-1-2011

**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.

**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 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,” or “emeriti” 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

**Rule Caption:** To amend OAR 580-040-0035 and supersede all prior Summer Session fee book rules.

**Adm. Order No.:** OUS 2-2012

**Filed with Sec. of State:** 1-12-2012

**Certified to be Effective:** 1-12-12

# ADMINISTRATIVE RULES

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 580-040-0035

**Subject:** To establish Tuition and Fees for the Summer Session 2012, including Room and Board rates. Supersedes all prior Summer Session fee book rules. This fee book is available at: <http://www.ous.edu/dept/budget/current>.

**Rules Coordinator:** Marcia M. Stuart—(541) 346-5749

**580-040-0035**

**Summer Session Fee Book**

The document entitled “Summer Session Fee Book” dated January 6, 2012, is hereby amended by reference as a permanent rule. All prior adoptions of summer session fee documents are hereby repealed except as to rights and obligations previously acquired or incurred thereunder.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 2-1978, f. & ef. 5-16-78; HEB 3-1979, f. & ef. 4-27-79; HEB 4-1980, f. & ef. 4-18-80; HEB 3-1981, f. & ef. 6-4-81; HEB 3-1982, f. & ef. 4-20-82; HEB 2-1983, f. & ef. 2-11-83; HEB 2-1984, f. & ef. 3-21-84; HEB 3-1985, f. & ef. 3-4-85; HEB 9-1986, f. & ef. 4-7-86; HEB 3-1987, f. & ef. 3-9-87; HEB 3-1988, f. & cert. ef. 3-16-88; HEB 2-1989, f. & cert. ef. 2-14-89; HEB 3-1990, f. & cert. ef. 2-13-90; HEB 2-1991, f. & cert. ef. 3-12-91; HEB 1-1992, f. & cert. ef. 2-12-92; HEB 2-1993, f. & cert. ef. 2-5-93; HEB 2-1994, f. 2-9-94, cert. ef. 2-15-94; HEB 1-1995, f. & cert. ef. 2-23-95; HEB 1-1996, f. & cert. ef. 2-5-96; HEB 1-1997, f. & cert. ef. 1-28-97; OSSHE 1-1998, f. & cert. ef. 1-27-98; OSSHE 7-1998, f. & cert. ef. 12-23-98; OSSHE 7-1999, f. & cert. ef. 12-22-99; OSSHE 5-2000, f. & cert. ef. 12-21-00; OSSHE 1-2002, f. & cert. ef. 1-2-02; OSSHE 6-2003, f. & cert. ef. 12-24-03; OSSHE 2-2005, f. & cert. ef. 2-15-05; OSSHE 2-2007, f. & cert. ef. 1-11-07; OSSHE 1-2008, f. & cert. ef. 1-14-08; OSSHE 1-2009, f. & cert. ef. 1-22-09; OUS 1-2010, f. & cert. ef. 1-19-10; OUS 1-2011, f. & cert. ef. 1-20-11; OUS 2-2012, f. & cert. ef. 1-12-12

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## Oregon University System, Oregon State University Chapter 576

**Rule Caption:** Sets fees/charges at Oregon State University, fiscal year 2011–2012.

**Adm. Order No.:** OSU 8-2011

**Filed with Sec. of State:** 12-27-2011

**Certified to be Effective:** 12-27-11

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 576-010-0000

**Subject:** The proposed amendment will set fees and charges for designated services at Oregon State University for fiscal year 2011–2012. The rule states: “The university hereby adopts by reference a list of fees and charges for fiscal year 2011\_2012. The list of fees and charges is available at Oregon State University’s Valley Library, and is hereby incorporated by reference in this rule.”

**Rules Coordinator:** Beth Giddens—(541) 737-2449

**576-010-0000**

**Fees and Charges**

The University hereby adopts by reference a list of fees and charges for January 1–June 30, 2011. This List of Fees and Charges is available at the Oregon State University Valley Library, and is hereby incorporated by reference in the rule.

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

Stat. Auth.: ORS 351.070, 352.360 & 580-040-0010

Stats. Implemented: ORS 351.070 & 352.360

Hist.: OSU 3-1980, f. & ef. 10-31-80; OSU 1-1982, f. & ef. 8-27-82; OSU 1-1983(Temp), f. & ef. 9-26-83; OSU 1-1986, f. & ef. 6-4-86; OSU 2-1987, f. 6-11-87, ef. 7-1-87; OSU 2-1988, f. 6-15-88, cert. ef. 7-1-88; OSU 4-1989, f. 6-13-89, cert. ef. 7-1-89; OSU 1-1990, f. 6-15-90, cert. ef. 7-1-90; OSU 6-1991, f. 6-3-91, cert. ef. 7-1-91; OSU 2-1992, f. 6-5-92, cert. ef. 7-1-92; OSU 5-1993, f. 6-9-93, cert. ef. 7-1-93; OSU 1-1994, f. 6-8-94, cert. ef. 7-1-94; OSU 2-1995, f. 6-20-95, cert. ef. 7-1-95; OSU 6-1996, f. & cert. ef. 7-1-96; OSU 5-1997, f. 6-16-97, cert. ef. 7-1-97; OSU 7-1998, f. 6-30-98, cert. ef. 7-1-98; OSU 3-1999, f. 6-17-99, cert. ef. 7-1-99; OSU 1-2000, f. 6-21-00, cert. ef. 7-1-00; OSU 5-2001, f. 6-18-01, cert. ef. 7-1-01; OSU 6-2002, f. 6-5-02, cert. ef. 7-1-02; OSU 1-2003, f. 6-19-03, cert. ef. 7-1-03; OSU 1-2004, f. 6-23-04, cert. ef. 7-1-04; OSU 1-2005, f. 6-13-05, cert. ef. 7-1-05; OSU 1-2006, f. 6-23-06, cert. ef. 7-1-06; OSU 1-2007, f. 6-18-07, cert. ef. 7-1-07; OSU 3-2008, f. 6-27-08, cert. ef. 7-1-08; OSU 2-2009, f. 6-16-09, cert. ef. 7-1-09; OSU 1-2010, f. 6-30-10, cert. ef. 7-1-10; OSU 1-2011, f. 6-13-11, cert. ef. 7-1-11; OSU 8-2011, f. & cert. ef. 12-27-11

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**Rule Caption:** Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications.

**Adm. Order No.:** OSU 9-2011

**Filed with Sec. of State:** 12-27-2011

**Certified to be Effective:** 12-27-11

**Notice Publication Date:** 11-1-2011

**Rules Adopted:** 576-001-0060

**Subject:** Provides for confidentiality and inadmissibility of workplace interpersonal mediation communications.

**Rules Coordinator:** Beth Giddens—(541) 737-2449

**576-001-0060**

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

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

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

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

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

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

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

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

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

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

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

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

(B) Is designated by the University to authorize confidentiality for the mediation, and

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

(7) Exceptions to confidentiality and inadmissibility:

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

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

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

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

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

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

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

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

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

(j) The mediator may report the disposition of a mediation to the University at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The University or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

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

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

Stat. Auth.: ORS 36.224  
Stats. Implemented: ORS 36.230(4)  
Hist.: OSU 7-2011(Temp), f. & cert. ef. 9-22-11 thru 3-20-12; OSU 9-2011, f. & cert. ef. 12-27-11

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**Rule Caption:** Amends Oregon State University's Policy on Smoking.

**Adm. Order No.:** OSU 10-2011

**Filed with Sec. of State:** 12-27-2011

**Certified to be Effective:** 12-27-11

**Notice Publication Date:** 11-1-2011

**Rules Amended:** 576-040-0010, 576-040-0012, 576-040-0015

**Rules Repealed:** 576-040-0025, 576-040-0030, 576-040-0035

**Subject:** The proposed amendments and repeals implement a smoke-free campus at Oregon State University's Corvallis campus.

**Rules Coordinator:** Beth Giddens—(541) 737-2449

## 576-040-0010

### Purpose

It is the policy of Oregon State University (the "University") that students, faculty, staff, consultants, contractors and visitors are entitled to and will be provided smoke-free areas in which to study, work, teach, conduct research, transact business, and otherwise participate in University activities.

Stat. Auth.: ORS 243.345, 243.350, 351.070 & 433.835 - 433.850  
Stats. Implemented: ORS 243.345, 243.350, 351.070 & 433.835 - 433.850  
Hist.: OSU 3-1988(Temp), f. 7-12-88, cert. ef. 7-15-88; OSU 6-1988, f. & cert. ef. 11-9-88; OSU 10-2011, f. & cert. ef. 12-27-11

## 576-040-0012

### Definition

(1) "Smoking" means inhaling or exhaling smoke from, or burning or carrying, any lighted Smoking Instrument, or using an electronic cigarette or device intended to simulate smoking.

(2) "Smoking Instrument" means a cigar, cigarette, pipe, electronic cigarette or other device intended to simulate smoking.

(3) "Corvallis Campus" means the entire area within the boundary of the University's Corvallis campus, as illustrated at <http://oregonstate.edu/smokefree/map>, as well as all other University-owned property within Benton County that is marked with signage indicating a no-smoking environment.

(4) "Enclosed University facilities" means all University-owned space between a floor and a ceiling that is enclosed on three or more sides by permanent or temporary walls or windows, exclusive of doors or passageways that extend from the floor to the ceiling.

(5) "Service Line" means any indoor line, or any portion of an indoor line that extends out of doors, at which one or more persons are waiting for or receiving services of any kind, whether or not such services involves the exchange of money.

Stat. Auth.: ORS 243.345, 243.350, 351.070 & 433.835 - 433.850  
Stats. Implemented: ORS 243.345, 243.350, 351.070 & 433.835 - 433.850  
Hist.: OSU 8-1998, f. & cert. ef. 8-24-98; OSU 10-2011, f. & cert. ef. 12-27-11

## 576-040-0015

### Areas in Which Smoking is Prohibited

Smoking or carrying any lighted Smoking Instrument is prohibited:

(1) Within Enclosed University Facilities, including but not limited to offices, reception areas, laboratories, lavatories, classrooms, stairwells, hallways, lobbies, meeting rooms, gymnasiums, elevators, and storage rooms; and

(2) In any indoor or outdoor space on the Corvallis Campus, including but not limited to parking lots, grounds, rooftops, athletic facilities, entrances and exit ways;

(3) Within all vehicles on Corvallis Campus;

(4) With the exception of Corvallis Campus, within ten (10 feet of any entrance, window, or ventilation system of any Enclosed University Facility where smoking is prohibited or of any Service Line that extends out of doors; and

(5) Within any University Motor Pool vehicle.

Stat. Auth.: ORS 243.345, 243.350 & 351.070  
Stats. Implemented: ORS 243.345, 243.350 & 351.070  
Hist.: OSU 3-1988(Temp), f. 7-12-88, cert. ef. 7-15-88; OSU 6-1988, f. & cert. ef. 11-9-88; OSU 11-1991, f. & cert. ef. 11-13-91; OSU 8-1998, f. & cert. ef. 8-24-98; OSU 10-2011, f. & cert. ef. 12-27-11

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## Psychiatric Security Review Board Chapter 859

**Rule Caption:** Transfer of Tier II Offenders Under the Psychiatric Security Review Board to Oregon Health Authority.

**Adm. Order No.:** PSRB 4-2011(Temp)

**Filed with Sec. of State:** 12-22-2011

**Certified to be Effective:** 12-22-11 thru 4-19-12

**Notice Publication Date:**

**Rules Adopted:** 859-200-0001

**Subject:** Section 11a of SB 420 (Act) classifies individuals who have been found guilty except for insanity into tier-one offenders (i.e. Measure 11 offenders) and tier-two offenders (i.e. non-Measure 11 offenders). The Act transfers tier-two offender, who are committed to the state hospital, from the jurisdiction of the Psychiatric Security Review Board (PSRB) to the jurisdiction of the Oregon Health Authority (OHA) by operation of law on January 1, 2012. Section 33(2) grants the PSRB and OHA the authority to adopt rules or take any other action before the operative date of the Act that are necessary for the agencies to be able to exercise all of their duties, functions and powers under the Act of January 1, 2012.

Pursuant to Section 33(2) of the Act, the PSRB must adopt OAR 859-200-0001 on a temporary basis in order to ensure that existing tier-two offenders are identified prior to the operative date of the Act, and those offenders are timely notified of the transfer of jurisdiction over their case to OHA. More, over, the immediate adoption of this rule will ensure that the PSRB and OHA appropriately exercise jurisdiction over existing offenders as outlined in the Act on January 1, 2012. The temporary rules sets forth the process in which the PSRB

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will identify and notify existing tier-two offenders of the transfer of jurisdiction required by SB 420.

**Rules Coordinator:** Mary Claire Buckley—(503) 229-5596

## 859-200-0001

### Existing Tier Two Offenders & Transfer of Jurisdiction

(1) Notwithstanding any other rule adopted by the Board as required by chapter 708, Oregon Laws 2011 (Senate Bill 420), jurisdiction of an Existing Tier Two Offender, as defined in subsection (2) of this rule, is transferred from the Board to the Oregon Health Authority (Authority) by operation of law on January 1, 2012.

(2) An "Existing Tier Two Offender" is a patient:

(a) Committed to the jurisdiction of the Board prior to January 1, 2012;

(b) Committed to a state hospital under ORS Chapter 161 prior to January 1, 2012; and

(c) Found guilty except for insanity only of offenses not considered to be tier one offenses, as defined in section 11a(3) of Senate Bill 420.

(3) If after reviewing its files related to this subject matter the Board determines that a patient meets the criteria of an Existing Tier Two Offender, then it will issue a Proposed and Final Order of Tier Two Classification and Transfer of Jurisdiction to the Oregon Health Authority.

(a) The Board must receive a request for hearing from the patient on or before the date indicated in the Proposed and Final Order in order to contest his or her tier two classification and transfer of jurisdiction to the Authority.

(b) If the Board does not receive a request for hearing from the patient by the deadline, then the Proposed Order will become a Final Order by Default.

(4) A patient, who is committed to the jurisdiction of the Board prior to January 1, 2012 and who does not receive a Proposed and Final Order, may request that the Board make a tier two determination and issue a Proposed and Final Order as described in subsection (3). The patient would have the right to request a hearing as described in subsection (3).

(5) The only issue to be determined by the Board at a hearing under this rule is whether the patient meets the definition of an Existing Tier Two Offender as defined in subsection (2), and therefore jurisdiction should be transferred to the Authority.

(6) If a hearing is held under subsection (3) or (4) of this rule, the patient is not entitled to request a subsequent hearing unless the request relates to a new crime that was not determined at a previous hearing.

(7) If the patient withdraws his or her request for hearing or refuses to attend the hearing, then the Proposed Order will become a Final Order by Default. The relevant portions of the Board's files become the record for purposes of proving a prima facie case upon default. If the Board determines that the party's failure to appear at the hearing was due to circumstances beyond the reasonable control of the patient, the agency will reschedule the hearing.

Stat. Auth.: ORS 161.387; OL 2011, ch 708, §33(2) (SB 420)  
Stats. Implemented: ORS 161.295-161.400; OL 2011, ch 708, §33, 41 (SB 420)  
Hist.: PSRB 4-2011(Temp), f. & cert. ef. 12-22-11 thru 4-19-12

## Public Utility Commission Chapter 860

**Rule Caption:** In the Matter of Updating Rules about Water Regulation including Changes Required by SB 142.

**Adm. Order No.:** PUC 13-2011

**Filed with Sec. of State:** 12-29-2011

**Certified to be Effective:** 1-1-12

**Notice Publication Date:** 10-1-2011

**Rules Adopted:** 860-036-0425, 860-036-0708, 860-036-0816

**Rules Amended:** 860-036-0001, 860-036-0010, 860-036-0015, 860-036-0030, 860-036-0040, 860-036-0050, 860-036-0060, 860-036-0065, 860-036-0097, 860-036-0130, 860-036-0405, 860-036-0505, 860-036-0605, 860-036-0610, 860-036-0615, 860-036-0640, 860-036-0705, 860-036-0710, 860-036-0715, 860-036-0737, 860-036-0739, 860-036-0740, 860-036-0745, 860-036-0750, 860-036-0756, 860-036-0757, 860-036-0815

**Rules Repealed:** 860-036-0407

**Rules Ren. & Amend:** 860-036-0625 to 860-036-0616

**Subject:** The Public Utility Commission of Oregon adopted rule modifications to its Chapter 860, Division 036 rules governing water utility regulation to bring the rules into compliance with changes

required by Senate Bill 142, passed by the Oregon Legislative Assembly in its 2011 regular session. First, the residential rate triggering Commission oversight of a water utility is raised from \$18 per month to \$24 per month, to reflect inflation and the increased cost of providing safe drinking water. Second, the categories of water utilities regulated by the Commission are simplified to two categories, rate regulated and service regulated, and the regulatory responsibilities for each category are clarified. In these rules, the requirements with which water utilities in Oregon must comply, the regulatory requirements for service regulated utilities, and the heightened requirements for rate regulated utilities are described.

**Rules Coordinator:** Diane Davis—(503) 378-4372

## 860-036-0001

### Scope and Applicability of Rules

(1) Upon request or its own motion, the Commission may waive any of the Division 036 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

(2) The rules contained in Division 036 are applicable to water utilities, defined as public utilities in ORS 757.005, providing service in the State of Oregon.

(3) The rules contained in Division 036 do not restrict the authority of the Commission to require service improvements incorporating standards other than those set forth in this division when, after investigation, the Commission determines that such improvements are necessary.

(4) A water utility must provide the Commission with all Commission requested information concerning the water utility and its facilities, operations, management, and administration.

(5) The Commission may physically inspect a water utility's system and the work performed thereon to determine past and present conformance to the Commission rules and regulations.

(6) All water utilities must comply with the Commission's rules and regulations. Inadequate or discriminatory service by a water utility may cause a change in the water utility's regulatory status per ORS 757.061.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 6-2011, f. & cert. ef. 9-14-11; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0010

### Definitions for Water Utilities and Associations

As used in Division 036:

(1) "Applicant" means a person who:

(a) Applies for service with a water utility; or

(b) Reapplies for service at a new or existing location after service has been discontinued.

(2) "Association" means an association of individuals with a shared interest in a water system that furnishes water service to those individuals or members, even if the association does not furnish water directly to or for the public. An association providing water service to a nonmember customer is considered a public water utility as defined in ORS 757.005.

(3) "Co-customer" means a person who meets the definition of "customer" and is jointly responsible with another person for payments for water utility service on an account with the water utility. If only one of the co-customers discontinues service in his/her name, the remaining co-customer shall retain customer status only if he/she reapplies for service in his/her own name within 20 days of such discontinuance provided the water utility contacts the co-customer or mails a written request for an application to the remaining co-customer within one business day of the discontinuance.

(4) "Commercial customer" means a customer who uses the water provided by a water utility in the promotion of a business or business product that is a source of revenue or income to the customer or others using the premises.

(5) "Commission" means the Public Utility Commission of Oregon.

(6) "Contributions in aid of construction" means any money, services or property received by a water utility to fund capital investments at no cost to the company with no obligation to repay.

(7) "Construction work in progress (CWIP)" means the Commission-approved recoverable costs of a water utility plant under construction but not yet placed in service.

(8) "Cost-based" means the direct and indirect costs of a specific item or project, including overhead and a reasonable expected return on investment.

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(9) "Customer" means a person who has applied for, been accepted, and is currently receiving service unless otherwise noted. Notwithstanding section (1) of this rule, a customer who voluntarily disconnects service and subsequently asks for service with the same water utility at a new or existing location within 20 calendar days after disconnection retains customer status.

(10) "Emergency" means an extraordinary interruption of the usual course of water service by a natural cause, an unforeseen event, or a combination of unexpected circumstances; an urgent need for assistance or relief; or the resulting state that calls for immediate action.

(11) "Flat rate" means a periodic stated charge for water utility service not based on metered quantity of service. Such a rate is used where service is provided on an unmetered basis.

(12) "Formal complaint" means a written complaint filed with the Commission's Administrative Hearings Division.

(13) "Mainline extension" means the extension of a main line to an area not previously served.

(14) "Metered rate" means a periodic stated charge for water utility service that is based on metered quantity of water consumed.

(15) "Metered system" means a water system that uses a meter to measure consumption of water and uses a metered rate as a charge to customers.

(16) "Public utility" has the meaning given the term in ORS 757.005.

(17) "Rate-regulated water utility" means a public water utility that is subject to rate regulation under ORS 757.061.

(18) "Rate regulation" means regulation of a water utility's rates and services. A water utility regulated for rates is also regulated for service.

(19) "Registered dispute" means an unresolved issue between a customer or applicant and a water utility that is under investigation by the Commission's Consumer Services Section, but is not the subject of a formal complaint.

(20) "Residential customer" means a customer who receives domestic or irrigation water in residential areas and is not considered a commercial customer.

(21) "Service-regulated water utility" means a public water utility that is subject to service regulation under ORS 757.061.

(22) "Service regulation" means regulation of the adequacy of a water utility's service and product, which includes, but is not limited to, rules, procedures, customer service, billing and collection, disconnects and reconnects, and water pressure, quality, and capacity. Service regulation does not include regulation of the dollar amount of any rate or charge.

(23) "Statement of rates" means a rate schedule or collection of rate schedules and the terms and conditions for use of water service for water utilities that are not rate regulated.

(24) "System impact fee" is the proportionate fee charged by a water utility prior to service being initiated that encompasses the cost of the system allocated to all potential customers.

(25) "Tariff" means a published rate schedule or collection of rate schedules and the terms and conditions for use of water utility service for a rate-regulated water utility that has been filed with and approved by the Commission.

(26) "Unmetered system" means a water system that does not use a meter to measure consumption and charges customers a flat rate.

(27) "Utility" means any water utility, except when a more limited scope is explicitly stated.

(28) "Water system" means all assets, equipment, and infrastructure necessary in the provision of water service to customers.

(29) "Water utility" has the same meaning as public utility in ORS 757.005, except if a more limited scope is explicitly stated.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105 & 757.061

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 9-2001, f. & cert. ef. 3-21-01; PUC 22-2001(Temp), f. & cert. ef. 9-26-01 thru 3-24-02; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04; PUC 13-2009, f. & cert. ef. 11-24-09; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0015

### Information for Customers and Applicants

(1) Upon request, the water utility must provide a customer or applicant with an application form for service and all information necessary to secure efficient service.

(2) Upon request, the water utility providing metered service must inform its customers or applicants how to read meters. The water utility may provide meter reading information either in writing or by explanation at the water utility's offices.

(3) A water utility must keep on file and open for public inspection at its offices: complete rate schedules, service application forms, contract forms, the utility's rules and regulations, and a copy of the Commission's rules and regulations.

(4) Upon request, the water utility must provide a copy of its approved tariffs or statement of rates applicable to the type or types of service furnished to the customer.

(5) A water utility must provide its customers with a written summary of the customers' water service rights and responsibilities when service is initiated and not less than once each year. If service is initiated without a personal contact between the water utility and the customer, the water utility must mail the summary to the customer no later than when the first bill statement is mailed. The summary must include the text approved by the Commission's Consumer Services Section and describe:

(a) The customer's option to designate a third party to receive bills and notices and the availability of notices in languages other than English;

(b) Special payment options such as equal payment plans;

(c) Any late-payment charges and preferred billing date options; and

(d) Procedures for dispute resolution, including how to register a dispute with the water utility and with the Commission and the toll-free number of the Commission's Consumer Services Section.

(6) When service is initiated, the water utility must inquire if the customer would like to receive notices in a language other than English and inform the customer of the types of notices and translations currently available. If the language chosen is not available, the water utility must inform the customer or applicant that the translated version does not yet exist, but that the customer's or applicant's interest will be recorded for the Commission. Each water utility must report the number of requests for notices and summaries in non-English languages to the Commission. The report must specify the number of requests for each language.

(7) Upon request, the Commission will translate the Rights and Responsibilities Summary for Oregon Utility Consumers into the designated non-English languages and provide copies to water utilities. The information published by a water utility per section (5) of this rule must prominently display in bold face type the following statement in the designated non-English languages at the beginning of the summary: A version of the Rights and Responsibilities Summary for Oregon Utility Consumers printed in this language is available by calling (name of utility) at (phone number).

(8) Each water utility must maintain a business location and a regular telephone number at which it may be contacted directly by customers, applicants, or the Commission during its regular business hours. The water utility must respond to nonemergency customer inquiries, complaints, and service problems within a reasonable time. For purposes of this rule, a reasonable time is considered to be within 24 hours.

(9) The water utility must provide a means by which it may be contacted at any hour by a customer or applicant to leave a message reporting a water failure or emergency. The water utility must respond to the caller within one hour of the time of the call or message and promptly take appropriate action to resolve the failure or emergency. If extenuating circumstances exist that prevent the water utility from responding to the caller within one hour, the Commission may require the water utility to justify the delay.

(10) In the event of an emergency involving all customers, a major portion of customers, or a specific geographical area of customers, the water utility must use its best efforts to communicate and provide information to all affected customers as soon as possible.

(11) Notices regarding the customers' rights and responsibilities must be posted in a conspicuous place in each water utility office where credit matters are transacted. The notices must be printed, written using plain language, and approved by the Commission.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 22-2001(Temp), f. & cert. ef. 9-26-01 thru 3-24-02; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0030

### Threshold Levels of Rates and Charges for Water Utilities Serving Fewer than 500 Customers

As required by ORS 757.061(5), the Commission adopts the following maximum rates and charges for water utilities that are not rate regulated and are serving fewer than 500 customers:

(1) An annual average monthly residential rate of \$33 for unmetered water systems and \$36 for metered water systems;

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(2) An annual average monthly service rate for small commercial customers with a meter or pipe diameter one inch or less of \$33 for unmetered water systems and \$36 for metered water systems;

(3) An annual average monthly service rate for large commercial customers with a meter or pipe diameter larger than one inch of \$110 for unmetered water systems and \$119 for metered water systems; and

(4) Any service connection charge, system impact fee, facilities charge, main line extension, or other similar charge must be reasonable and cost based. Upon the Commission's request, a water utility must be able to demonstrate compliance with this requirement.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.061

Stat. Auth.: ORS 183, 756 & 757

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 7-2004, f. & cert. ef. 4-9-04; PUC 2-2008, f. & cert. ef. 5-30-08; PUC 13-2009, f. & cert. ef. 11-24-09; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0040

### Establishing Credit for Residential Service

(1) If a deposit is not required under section (2) of this rule, an applicant or a customer may demonstrate satisfactory credit for new or continuing service by showing any of the following:

(a) Received 12 months of continuous water utility service during the preceding 24 months and the water utility can verify, either by contacting the former water utility or through an authorized letter provided by the applicant or customer, that the applicant or customer voluntarily terminated service and timely paid for all services rendered;

(b) Meets the water utility's minimum credit requirements based on a third party credit report score or based on the water utility's own credit scoring formula approved by the Commission; or

(c) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the water utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the water utility can verify, indicating that the applicant or customer receives a regular source of income.

(2) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of water utility service from it or any Oregon public water utility, as defined in ORS 757.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. This subsection does not apply to a customer who registered a dispute with the Commission within 60 calendar days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon public water utility as defined in ORS 757.005, was found to have tampered with the meter or other water utility facilities, or was otherwise found to have diverted water utility service.

(3) In lieu of paying a deposit, an applicant or customer may provide the water utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of this section of this rule, a responsible party is a customer with the same water utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate if the responsible party no longer meets the conditions in section (1) of this rule. If a responsible party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit.

(4) Deposits for water service must not exceed one-sixth the amount of reasonable billing for one year at the rates then in effect. The estimate must be based on the use of the service at the premises during the prior year or on the type and size of the customer's equipment that will use the service. Each deposit must be rounded to the nearest whole dollar.

(5) A new or additional deposit, calculated in compliance with section (4) of this rule and based upon the most recent information available, may be required from a customer as a condition of continued service when:

(a) The water utility discovers that the customer gave false information to establish an account or credit status;

(b) The water utility discovers that the customer has stolen water service, has tampered with the meter or other water utility facilities, or was otherwise found to have diverted water utility service; or

(c) A customer moves and the anticipated bill at the new residence will be at least 20 percent greater than the basis of the existing deposit.

(6) Paying a deposit does not excuse a customer from complying with the Commission's rules and regulation, the water utility's rules and regulations or the rate-regulated water utility's tariffs on file with the Commission, including the obligation to promptly pay bills.

(7) A water utility may require less stringent deposit requirements than those specified in this rule, as long as the deposit requirement is applied in a consistent and nondiscriminatory manner. Deposit requirements must be stated in the water utility rules and regulations or in the rate-regulated water utility tariffs, whichever is applicable.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04; PUC 11-2004, f. & cert. ef. 6-2-04; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0050

### Interest on Deposits for Residential and Nonresidential Service by Rate-Regulated Utilities

(1) Each year, the Commission will establish an annual interest rate that must be paid by rate-regulated water utilities on customer deposits. The Commission will base the rate upon consideration of the effective interest rate for new issues of one-year Treasury Bills issued during the last week of October, the interest rate on the most recent issuance of one-year Treasury Bills, or the effective interest rate for the average yield of Treasury Bills of the closest term issued during the last week of October. If one-year Treasury Bills have not been issued at such times, the Commission will use Treasury Bills of the closest term to one year that were issued. This interest rate, rounded to the nearest one-half of one percent, will apply to deposits held during January 1 through December 31 of the subsequent year. The Commission will advise all rate-regulated water utilities of the changes in the rate to be paid on customer deposits held as needed.

(2) Upon payment of a deposit, a water utility must provide the customer documentation showing the date, name of the customer or applicant, the service address, the amount of deposit, the interest rate, and an explanation of the conditions under which the deposit will be refunded.

(3) If the deposit is held beyond one year, accrued interest must be paid by a credit to the customer's account. If held less than one year, interest must be prorated. A water utility must keep a detailed record of each deposit received until the deposit is credited or refunded.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0060

### Installation of Water Service Connection

(1) The "service connection" consists of all necessary pipes, valves, equipment, and fittings necessary to make the connection between the water utility's main line and the customer's service line. A water utility must, with the exceptions listed below, furnish at its own expense all necessary trenching, construction, labor, equipment, pipes, valves and fittings necessary to complete the service connection. The water utility owns the water service connection and is required to operate, maintain, repair, and replace the service connection when needed.

(2) A water utility may require the customer to pay a reasonable, cost-based service connection charge to offset its expenses listed in section (1) of this rule. The service connection charge may not include the cost or installation of the meter, except when the cost has been approved for inclusion in the service connection charge and is included in the water utility's tariffs or statement of rates, whichever is applicable. Service connection charges must be applied in a nondiscriminatory manner.

(3) The water utility and the customer must agree on the amount of the charge prior to actual installation. If an amount cannot be agreed upon, the customer may initiate a dispute resolution process.

(4) The water utility bears the burden of proof that the charge for the service connection is necessary, reasonable, and cost based.

(5) The customer must furnish and install the necessary parts and materials to make the connection from the customer's premises to the water utility's service connection. This line is the "customer service line." The customer owns the customer service line and must maintain, repair, and replace it as needed.

(6) A customer service line must extend to that point on the customer's property line of easiest access to the water utility from its distribution system, or requiring the least extension of the system. In any case, where a reasonable doubt exists as to the proper location for the customer



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service line, the water utility should be consulted and a location agreed upon. If agreement cannot be reached, the water utility and customer may pursue dispute resolution.

(7) All construction and installation of water service connections must comply with all applicable rules, regulations, codes, and best practices and standards of the water industry.

(8) The water utility must take reasonable steps to restore the surrounding area disturbed during utility construction or installation to its previous condition. The customer has the burden of demonstrating that steps taken by the water utility to restore the surrounding area were not reasonable.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0065

### Installation of Main Line Extension

(1) A water utility must develop a uniform policy governing main line extensions and applicable charges.

(2) The main line extension policy and charges must be included in a utility's tariff or statement of rates, whichever is applicable, and must be reasonable and cost based. Customers of public utilities may be required to pay a reasonable, cost-based charge consistent with the applicable tariff or statement of rates.

(3) Upon request by a customer or the Commission, the water utility must provide a written breakdown of all costs associated with the main line extension. The breakdown must include all materials and labor necessary for the construction and installation, and it must explain how the customer's proportional cost was calculated.

(4) Each water utility must establish a main line extension policy that includes the following:

(a) Schedule of charges;

(b) Advance and refund provisions that describe the mechanism for collecting main line extension charges and rebating main line extension charges to customers that equitably distributes the cost of the main line extension among customers of the line who contributed to the payment of the cost of the line; and

(c) Time period during which advance and rebate provisions will be in effect.

(5) All main line extension policies must be applied uniformly among the water utility's customers.

(6) All construction and installation of main lines and extensions must comply with all applicable rules, regulations, codes, and best practices and standards of the water industry.

(7) The water utility must take reasonable steps to restore the surrounding area disturbed during utility construction or installation to its previous condition. The customer has the burden of demonstrating that steps taken by the water utility to restore the surrounding area were not reasonable.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0097

### Estimated Annual Fees Payable to the Commission by a Water Utility

(1) For any year in which a water utility fails to file a completed statement form, the Commission may determine a proposed annual fee based upon any information available to the Commission. The proposed annual fee must:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee in accordance with OAR 860-001-0050; and

(c) Be made no later than three (3) years after the statement form's due date.

(2) The Commission will provide written notice of the proposed annual fee to the water utility.

(3) Within 30 calendar days after service of the notice of proposed annual fee, the water utility may file a petition with the Commission for a hearing. In its petition, the water utility must specify its reasons for disputing the proposed annual fee. The Commission may conduct a hearing on the petition under its rules governing hearings and proceedings.

(4) If the water utility has not filed a petition by the end of the 30-day period, the proposed annual fee is due and payable.

(5) During the 30-calendar-day period allowed for filing a petition, the water utility may file its completed statement form and pay the annual fee, penalties, and late statement fee. The Commission will accept the statement form, fees, and penalties in accordance with the original due date for that year's statement form and payment.

Stat. Auth.: ORS 183, 192, 756 & 757

Stats. Implemented: ORS 756.040, 756.310, 756.320 & 756.350

Hist.: PUC 15-2003, f. & cert. ef. 7-24-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0130

### Late-Payment Charge

(1) Except as provided in section (2) of this rule, if a water utility's late payment charge is included in its tariffs or statements of rates, the water utility may apply a late-payment charge to customer accounts not paid in full each month.

(2) The late-payment charge must be based on a monthly late-payment rate applied to only overdue account balances at the time of preparing the subsequent month's bill for residential accounts or by the bill due date for all other accounts. The late-payment charge may not be applied to time-payment or equal-payment accounts that are current.

(3) For rate-regulated water utilities, the Commission will determine the late-payment rate based on a survey of prevailing market rates for late-payment charges of commercial enterprises and will advise all rate-regulated water utilities of the changes in the rate they may use to determine late-payment charges on overdue customer accounts as needed.

(4) The current late-payment rate and the conditions for its application to customer accounts must be specified on the water utility bill.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0405

### Notice of Customer's Right to Petition for Full Rate Regulation

(1) At least 60 calendar days before a water utility serving less than 500 customers increases its rates or charges to a level that exceeds a threshold level established in OAR 860-036-0030, it must provide a written notice to all customers. The notice will inform the customers of the water utility's proposed changes in its rates and charges and the customers' right to file a petition with the Commission to initiate rate regulation of the water utility. At a minimum, the notice must include the following information:

(a) The date;

(b) The name, address, and telephone number of the water utility;

(c) A statement that the water utility intends to increase its water rates and charges;

(d) The current rates and charges to customers;

(e) The proposed rates and charges to customers;

(f) The date the proposed rates and charges are to become effective (minimum of 60 calendar days);

(g) The reasons the water utility is seeking the change in rates and charges;

(h) A statement informing customers of their right to petition the Commission to request rate regulation;

(i) A statement that all customers may submit petitions to the Commission for 45 calendar days from the date of the customer notice;

(j) A statement informing customers that if 20 percent or more of total customers file petitions, the water utility will be subject to rate regulation by the Commission;

(k) A statement that customer petitions should state the purpose for the petition and include each customer's name, address, and signature;

(l) A statement that customer petitions filed with the Commission requesting rate regulation may not be withdrawn or rescinded;

(m) A statement that the water utility must provide a complete customer list within 10 days of a request from any customer; and

(n) The Commission's toll-free telephone number and addresses shown in OAR 860-036-0025.

(2) At the same time the water utility sends notice to its customers, it must provide the Commission with a copy of the customer notice and a complete, current customer list including names and addresses.

Stat. Auth.: ORS 183, 757, 757

Stats. Implemented: ORS 756.040

Hist.: PUC 14-1989, f. & cert. ef. 11-3-89 (Order No. 89-1464; PUC 13-1997, f. & cert. ef. 11-12-97; Renumbered from 860-022-0028; PUC 8-1999, f. & cert. ef. 10-18-99; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

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## 860-036-0425

### Removal of Rate Regulation

(1) When a regulated water utility is reorganized into a municipality or quasi-municipal entity or association through the sale, merger, or transfer of the water system or the transfer of the water utility's customers, the regulated water utility no longer meets the definition of a public utility per ORS 757.005. The Commission's regulation and jurisdiction must be removed by Commission order. If the regulated water utility is reorganized into an association, association members retain their right to petition for rate regulation at any time per ORS 757.063 and OAR 860-036-0412.

(2) A potential buyer of a rate-regulated water utility serving fewer than 500 customers may petition the Commission to have rate regulation, but not service regulation, removed upon the close of the buyer's purchase of the water utility if:

(a) The rate-regulated water utility is currently operating under a Commission-appointed regent; or

(b) A court has ordered the sale of the rate-regulated water system per a complaint filed in court by the Oregon Health Authority Drinking Water Program.

(3) If the Commission grants removal of rate regulation per section (2) of this rule, customers retain their right to petition for rate regulation per ORS 757.061.

Stat. Auth.: ORS Ch. 183 & 757  
Stats. Implemented: ORS 757.005, 757.061 & 757.063  
Hist.: PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0505

### Relating to New Water Utilities

(1) This rule applies to newly constructed water utilities that have not previously offered water service to the public during the past 12 months. This rule does not apply to remodeled, renamed, new additions to, or new ownership of, existing water supply systems.

(2) A new water utility may initially establish a monthly residential rate exceeding the threshold level established in OAR 860-036-0030 if it notifies each customer in writing at the time of connection, or earlier, of the customer's right to petition the Commission for rate regulation. The notice must comply with OAR 860-036-0405. All subsequent rate increases must comply with the requirements of OAR 860-036-0405.

(3) If the Commission receives petitions from 20 percent or more of the new water utility's customers requesting rate regulation, OAR 860-036-0410 applies.

(4) Customer count is calculated per OAR 860-036-0415. The 20 percent calculation of customers will be based upon the total number of customers existing in the month the Commission receives the petition. Petitions will carry over month to month and will be cumulative. Petitioners need not file petitions monthly in order to be counted for any particular month.

(5) Petitions are valid for six months, after which they must be resubmitted to the Commission.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.205  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 7-2004, f. & cert. ef. 4-9-04; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0605

### Tariff Specifications

(1) This rule applies to rate-regulated water utilities.

(2) Form, requirements, and style of tariffs:

(a) A separate tariff must be filed for each service provided;

(b) All tariffs, including rates and rules and regulations, must be typed, single-sided on 8-1/2 inch by 11 inch pages so that changes can be made by reprinting and inserting a single page. If a tariff cannot fit on one page, use additional pages. Blank forms will be furnished by the Commission upon request;

(c) Each water utility must designate the initial tariff as PUC Oregon No. 1, and designate successive tariffs with the next number in consecutive numerical order;

(d) Supplemental information not otherwise provided by the tariff must be inserted in the most appropriate location and denoted by the previous sheet numbers plus a letter, for example, 3A, 3B, etc. Revisions to tariffs must be denoted by 1st Revised Sheet No. 3, 2nd Revised Sheet No. 3, etc.;

(e) The tariffs must include a uniform title page and table of contents;

(f) Tariffs and supplements must be prepared using a readable font that, when printed, will fit on an 8-1/2 x 11 inch page; and

(g) Water utilities must file with the Commission an original of each tariff, rate schedule, revision, or supplement. The advice letter accompany-

ing the tariffs must bear the signature of the issuing officer or water utility representative. Tariffs do not require a signature.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.205  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2004, f. & cert. ef. 12-30-04; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0610

### Tariff Contents

(1) This rule applies to rate-regulated water utilities.

(2) Tariffs must explicitly state the rates and charges for each type of service rendered, designating the area or district to which they apply.

(3) Water utility rules and regulations that in any manner affect the rates charged or to be charged or that define the extent or character of the service to be given must be included with each tariff filing.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.205  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0615

### Tariff Changes Require 30-Calendar Day Notice to the Commission

(1) This rule applies to rate-regulated water utilities.

(2) Except as provided in OAR 860-036-0616, a water utility must file with the Commission all tariffs, rate schedules, revisions, or supplements containing any change in rates, charges, or rules and regulations at least 30 calendar days before the effective date of the changes. The Commission will reject tariffs or schedules not conforming to the rules in this Division.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.007 & 757.220  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2004, f. & cert. ef. 12-30-04; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0616

### Applications to Make Tariffs or Rate Schedules Effective on Less than Statutory Notice

(1) This rule applies to rate-regulated water utilities.

(2) A water utility seeking authority to make tariffs or rate schedules effective on less than statutory notice must use a Commission approved application form. The application form is available upon request.

Stat. Auth.: ORS Ch. 183 & 757  
Stats. Implemented: ORS 757.220  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 18-2004, f. & cert. ef. 12-30-04; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12, Renumbered from 860-036-0625

## 860-036-0640

### Tariff Changes Effective with Service Rendered

(1) This rule applies to rate-regulated water utilities.

(2) All tariff changes must be made applicable with "service rendered" on and after the effective date of the changes, unless otherwise ordered by the Commission. As used in this rule, service rendered means units of water consumed, basic service provided, or likewise as the context requires.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.007, 757.220  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0705

### Form and Filing of Applications

(1) This rule applies to rate-regulated water utilities.

(2) The Commission will furnish to applicants information from the records on file to assist in a full presentation of material facts required by OAR 860-036-0710 to 860-036-0735.

(3) When any document required to be filed under these rules has already been filed with the Commission, it is sufficient if the application makes reference to the filing and the capacity in which it was filed.

(4) Where the words "none" or "not applicable" truly and completely state the fact, they should be used in answering the requirement of any particular section of this rule.

(5) The Commission may require additional information when it appears to be pertinent in a particular case.

(6) Whenever these rules require the filing of financial statements, they must be prepared as of the latest date available. The Income Statement must be for the most recent 12-month period.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 756.105  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

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## 860-036-0708

### Approval Requirements for the Termination of Water Service, Abandonment, or Disposal of a Water Utility

(1) In this rule, the term “water utility” refers to any water utility regardless of whether it is currently under Commission jurisdiction, authority, or regulation.

(2) All water utilities must apply to and obtain approval from the Commission before terminating, abandoning, or disposing of a water system. The water utility must submit a letter requesting Commission approval of the specific action it is seeking. At a minimum, the letter must include:

- (a) The date;
- (b) The name, address, and telephone number of the water utility;
- (c) A statement indicating the action for which the applicant is seeking approval of the Commission;
- (d) The reasons for the abandonment, termination, or disposal;
- (e) The proposed effective date of the abandonment, termination, or disposal;
- (f) A description of the customers’ alternative water service options and estimated, average customer cost for each option;
- (g) The contact information for each affected customer. At a minimum, the list will include each customer’s name, mailing address, and service address (if different); and
- (h) Any other pertinent information.

(3) The water utility must provide each customer with a notice regarding its filing with the Commission. The notice must be delivered within seven calendar days of the date the water utility files its application with the Commission.

(a) At a minimum, the notice must include the information required in section (2) of this rule and the Commission’s Consumer Services Section’s toll-free telephone number and addresses as shown in OAR 860-036-0025.

(b) The water utility may deliver the notice by personal contact at the premises or by US Mail. If the notice is delivered by to the premises, the water utility must attempt personal contact with the customer or an adult resident at the premises. If personal contact cannot be made, the water utility must leave the notice in a conspicuous place at the premises and mail a copy of the notice to the last known mailing addresses of the customer and the customer’s designated representative.

(c) If the water utility’s records show that the billing address is different from the service address or that the premises is a master-metered multi-unit dwelling, the notice may be addressed to “Tenant.” The envelope must bear a bold notice stating, “Important notice regarding water utility service,” or words to that effect.

(d) If notice is delivered by US Mail, the notice must be delivered to the customer’s last known address. Notice is effective on the day after the date of the US postal service postmark or postage metering.

Stat. Auth.: ORS Ch. 183 & 756  
Stats. Implemented: ORS 756.040  
Hist.: PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0710

### Notice and Approval Requirements Relating to the Sale, Transfer, or Merger of a Water Utility

(1) Any rate-regulated water utility seeking to sell, transfer, or merge must apply to and obtain approval of the transaction from the Commission prior to such transaction. Application requirements are found in OAR 860-036-0715.

(2) All water utilities must provide notice of a proposed sale, transfer, or merger to their customers and a copy to the Commission no less than 60 calendar days prior to the closing date of the transaction. The notice must include the following information:

- (a) The name, address, and telephone number of the water utility;
- (b) The purpose of notice;
- (c) The proposed closing date of the transaction;
- (d) The proposed effective date of sale (minimum of 60 calendar days);
- (e) The name, address, and telephone number of potential buyer;
- (f) The reasons for sale;
- (g) The effect of sale upon customers; and
- (h) The Commission’s Consumer Services Section toll-free telephone number and addresses as shown in OAR 860-036-0025.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.480  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0715

### Applications for Authority to Sell, Lease, Assign, Mortgage, Merge, Consolidate, or Encumber its Property, or to Acquire Stock, Bonds, or Property of Another Public Utility

(1) Requirements of this rule apply to rate-regulated water utilities seeking authority under ORS 757.480 and 757.485. Every applicant must, at a minimum, use the application form available from the Commission and provide all required information. At its discretion, the Commission may require further information.

(2) If the owner of the water utility or water utility property to be sold fails to file the application form with the Commission, the purchaser may file the application form.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.480, 757.485  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0737

### Timeliness of Applications Made Under OAR 860-036-0730 and Filings Made Under OAR 860-036-0735

(1) This rule applies to rate-regulated water utilities.

(2) An application made under OAR 860-036-0730 and a filing made under OAR 860-036-0735 must occur no later than 90 calendar days after the execution of the contract giving rise to the application or filing. The contract is deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

Stat. Auth.: ORS 183, 756  
Stats. Implemented: ORS 756.040  
Hist.: PUC 3-1999, f. & cert. ef. 8-10-99; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0739

### Allocation of Costs by a Water Utility

(1) This rule applies to rate-regulated water utilities.

(2) As used in this rule:

(a) “Affiliate” means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a water utility;

(b) “Affiliate transaction” means a transfer of assets, a sale of supplies, or a sale of services between accounts for regulated activities of a water utility and accounts for nonregulated activities of a separate entity that is either an affiliated interest or another company in which the water utility owns a controlling interest. The term also means a transfer of assets, a sale of supplies, or a sale of services between accounts for the regulated and nonregulated activities of a single water utility;

(c) “Asset” means any tangible or intangible property of a water utility or other right, entitlement, business opportunity, or other thing of value to which a water utility holds claim that is recorded or should be recorded as a capital expenditure in the water utility’s financial statements. All water utility tangible or intangible property, rights, entitlements, business opportunities and things of value should be considered assets, services, or supplies;

(d) “Cost” means fully distributed cost, including the water utility’s authorized rate of return and all overheads;

(e) “Fair market value” means the potential sales price that could be obtained by selling an asset in an arm’s-length transaction to a nonaffiliated entity, as determined by commonly accepted valuation principles;

(f) “Market rate” means the lowest price that is available from nonaffiliated suppliers for comparable services or supplies;

(g) “Net book value” means original cost less accumulated depreciation;

(h) “Nonregulated activity” means an activity that is not a regulated activity of the water utility as defined in subsection (1)(i) of this rule;

(i) “Regulated activity” means a Commission regulated activity that is provided by a water utility directly or indirectly relating to the general operations of the water utility such as production, transmission, delivery, or furnishing of water unless the Commission has determined the activity to be exempt from regulation;

(j) “Services” means labor-related activities including, but not limited to advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, and legal. All water utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services, or supplies; and

(k) “Supplies” means any tangible or intangible property of a water utility or other thing of value to which a water utility holds claim that is recorded or should be recorded as an operating expense in the water utility’s financial statements. All water utility tangible or intangible property,

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rights, entitlements, business opportunities, and things of value should be considered assets, services, or supplies.

(3) For purposes of this rule, regulated and nonregulated activities of a water utility must be accounted for per the Uniform System of Accounts for Water Utilities published by the National Association of Regulatory Utility Commissioners as modified by the Commission.

(4) When a water utility is conducting an affiliate interest transaction, as defined in this rule, the water utility must use the following cost allocation methods:

(a) When an asset is transferred to a water utility from an affiliate, the transfer must be recorded in the water utility's accounts at the lower of net book value or fair market value;

(b) When an asset is transferred from a water utility to an affiliate, the transfer must be recorded in the water utility's accounts at the tariff rate if an appropriate tariff is on file with the Commission. If no tariff is applicable, proceeds from the transfer shall be recorded in the water utility's accounts at the higher of net book value or fair market value;

(c) When an asset is transferred from a water utility to an affiliate at a fair market value that is greater than net book value, the difference is considered a gain to the water utility. The water utility must record the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding.

(d) When services or supplies are sold by a water utility to an affiliate, sales must be recorded in the water utility's accounts at rates per the tariff, if an applicable tariff is on file with the Commission. Rates per the tariff must be established whenever possible. If services or supplies are not sold per a tariff, sales must be recorded in the water utility's accounts at the water utility's cost or the market rate, whichever is higher.

(e) When services or supplies are sold to a water utility by an affiliate, sales must be recorded in the water utility's accounts at the affiliate's cost or the market rate, whichever is lower. The affiliate's cost must be calculated using the water utility's most recently authorized rate of return.

(f) Income taxes must be calculated for the water utility on a stand-alone basis for both ratemaking purposes and regulatory reporting. When income taxes are determined on a consolidated basis, the water utility shall record income tax expense as if it were determined for the water utility separately for all time periods.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.490 & 757.495

Hist.: PUC 7-2004, f. & cert. ef. 4-9-04; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0740

### Special Contracts

(1) This rule applies to rate-regulated water utilities.

(2) Special contracts with certain customers prescribing and providing rates, services, and practices not covered by or permitted in the utility's general tariffs, schedules, and rules are in legal effect tariffs and are subject to supervision, regulation, and control as such.

(3) All special contracts designating service to be furnished at rates other than those shown in tariffs currently on file with the Commission must be classified as rate schedules. True and certified copies must be filed subject to review and approval per OAR 860-036-0605 through 860-036-0645.

(4) A special contract must be filed with the Commission not less than 30 calendar days prior to the proposed effective date of the contract and become effective according to its terms the thirty-first day from the date of its filing unless earlier approved, suspended, or rejected by the Commission.

(5) Each special contract filed with the Commission must be accompanied by documentation necessary to show that the terms are fair, just, and reasonable to the remaining customers, including but not limited to:

(a) A statement summarizing the basis of the terms of the contract and an explanation of the deviation from the tariffs on file;

(b) An explanation of all cost computations involved; and

(c) A statement indicating the basis for use of a contract rather than a filed tariff for the specific service involved.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040, 757.007

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0745

### Relating to City Fees, Taxes, and Other Assessments

(1) This rule applies to rate-regulated water utilities.

(2) The aggregate amount of all business or occupation taxes, licenses, franchise or operating permit fees, or other similar exactions imposed upon water utilities by any city in Oregon for engaging in business within

such city or for use and occupancy of city streets and public ways, which does not exceed 3.5 percent, applied to gross revenues as defined herein, is allowed as operating expenses of such water utilities for rate-making purposes and must not be itemized or billed separately.

(3) Except as otherwise provided, "gross revenues" means revenues received from water utility operations within the city less related net uncollectibles. Gross revenues do not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the water utility purchasing the service is not the ultimate customer.

(4) Permit fees or similar charges for street opening, installations, construction, and the like to the extent such fees or charges are reasonably related to the city's costs for inspection, supervision, and regulation in exercising its police powers, and the value of any water utility services or use of facilities provided on November 6, 1967, to a city without charge, will not be considered in computing the percentage levels established in this rule. These services may be continued within the same category or type of use. The value of any additional category of water utility service or use of facilities provided after November 6, 1967, to a city without charge is considered in computing the percentage levels established in this rule.

(5) This rule does not affect franchises existing on November 6, 1967, granted by a city. Payments made or value of service rendered by a water utility under such franchises will not be itemized or billed separately. When compensation different from the percentage levels in section (2) of this rule is specified in a franchise existing on November 6, 1967, the compensation continues to be treated by the affected water utility as an operating expense during the balance of the term of such franchise. Any tax, fee, or other exaction in section (2) of this rule, unilaterally imposed or increased by any city during the unexpired term of a franchise existing on November 6, 1967, and containing a provision for compensation for use and occupancy of streets and public ways, must be charged pro rata to local users.

(6) Except as provided in section (5) of this rule, to the extent any city tax, fee, or other exaction referred to in section (2) of this rule exceeds the percentage levels allowable as operating expenses in section (2) of this rule, the excess amount must be charged pro rata to water utility customers within said city and must be separately stated on the regular billings to the customers.

(7) The percentage levels in section (2) of this rule may be changed if the Commission determines after notice and hearing, as required by law, that fair and reasonable compensation to a city or all cities should be fixed at a different level or that by law or the particular circumstances involved a different level should be established.

(8) The amount allowed as an operating expense may be described on customers' bills in a manner determined by the water utility.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 14-2003, f. & cert. ef. 7-24-03; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0750

### Relating to Local Government Fees, Taxes, and Other Assessments

(1) This rule applies to rate-regulated water utilities.

(2) If any county in Oregon, other than a city-county, imposes upon a water utility any new taxes or license, franchise, or operating permit fees, or increases any taxes or fees, the water utility required to pay the taxes or fees must collect from its customers within the county imposing the taxes or fees the amount of the taxes or fees, or the amount of increase in the taxes or fees. However, if the taxes or fees cover the operations of a water utility in only a portion of a county, then the affected water utility must recover the amount of the taxes or fees or increase in the amount from customers in the portion of the county that is subject to the taxes or fees. "Taxes," as used in this rule, means sales, use, net income, gross receipts, payroll, business or occupation taxes, levies, fees, or charges other than ad valorem taxes.

(3) The amount collected from each water utility customer per section (2) of this rule must be separately stated and identified in all customer billings.

(4) This rule applies to new or increased taxes imposed on and after December 16, 1971, including new or increased taxes imposed retroactively after that date.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.110

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 6-2011, f. & cert. ef. 9-14-11; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

# ADMINISTRATIVE RULES

## 860-036-0756

### Accounting for Contributions in Aid of Construction (CIAC)

- (1) This rule applies to rate-regulated water utilities.
- (2) Each water utility must provide an accounting of CIAC upon Commission request. CIAC accounting must include contributions in any form including contributed utility plant. CIAC record keeping must identify the contributed plant, original date of installation, and original cost.
- (3) Each water utility must keep a record as described in section (2) of this rule and record CIAC on a separate plant and depreciation schedule.
- (4) As of November 2002, CIAC and its resulting depreciation will be excluded from water utility ratemaking. CIAC will be separated from utility plant and accounted for and depreciated on a separate schedule outside the ratemaking process.
- (5) In cases where previous CIAC depreciation was included in rates and removing it all at once would cause irreparable harm to the water utility, the Commission may systematically remove CIAC from rates over a period of time. The schedule for removal of CIAC from rates must be approved by the Commission.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.120, 757.125, 757.135  
Hist.: PUC 9-2003, f. & cert. ef. 5-15-03; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0757

### Accounting for Construction Work In Progress (CWIP)

- (1) This rule applies to rate-regulated water utilities.
  - (2) The Commission may allow into rates the costs of a specific capital improvement project in progress if:
    - (a) The water utility uses the additional revenues solely for the purpose of completing the capital improvement project;
    - (b) The water utility demonstrates that its access to capital is limited and it is in the public interest to provide financing for the capital improvement through rates; and
    - (c) The costs are approved through tariffs filed with the Commission.
- Stat. Auth.: ORS 183, 756 & Ch. 202, OL 2003  
Stats. Implemented: ORS 756.040, 757.355 & Ch. 202, OL 2003  
Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0815

### Annual Results of Operations Reports

By April 1 of each year, all rate-regulated water utilities must submit a financial Results of Operations annual report for the preceding calendar year using the most current form approved by the Commission.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 756.105, 757.120, 757.125, 757.135  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2001, f. & cert. ef. 3-21-01; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

## 860-036-0816

### Annual Affiliated Interest Report

(1) By June 1 of each year, all rate-regulated water utilities having an affiliated interest transaction occurring during the period from January 1 through December 31 of the immediately preceding year must file an Affiliated Interest Report with the Commission. The report consists of a letter listing the names of the parties to the transactions and the dollar amounts of the transactions.

(2) As used in this rule, "affiliated interest transactions" means transactions between affiliated interests as defined by ORS 757.015.

Stat. Auth.: ORS Ch. 183, 756, & 757  
Stats. Implemented: ORS 756.105  
Hist.: PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

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

**Rule Caption:** Expands the number of qualifying continuing professional development courses and adds safety training.

**Adm. Order No.:** BMP 7-2011

**Filed with Sec. of State:** 12-29-2011

**Certified to be Effective:** 12-30-11

**Notice Publication Date:** 12-1-2011

**Rules Adopted:** 856-010-0027

**Rules Amended:** 856-010-0015

**Subject:** Continuing professional development (CPD) requirements were first adopted in 2000 and were changes effective April 27, 2010. The original CPD requirements were deleted from the Renewal of License rules and incorporated into a new rules as an expanded list

of approved topics from which licensees can choose to comply with requirements for annual license renewals. By correspondence of October 11, 2011, Legislative Council advised that the Board failed to submit a copy of the adopted rules within the 10-day period as required by ORS 183.71591). The previous rulemaking is being re-noticed to comply.

**Rules Coordinator:** Susan Johnson—(971) 673-1530

## 856-010-0015

### Renewal of License

(1) Application for renewal of license shall be made on a form provided by the board, signed by the applicant, accompanied by the physical examination form provided by the board and presented to the administrator of the board at least thirty (30) days prior to expiration of license.

(2) All state-licensed pilots shall be required to have an annual physical examination by an Oregon or Washington licensed physician within ninety (90) days prior to expiration of their license, the physical requirements for which are the same as for the original license as specified in OAR 856-010-0010(2), except for drug testing.

(3) All state-licensed pilots shall, within six months prior to the expiration of their license, submit to a test indicating licensee is free of illegal substance abuse. Testing will be for the presence of Cocaine, Opiates, Marijuana (THC), Amphetamines and PCP (phencyclidine). Testing will be in accordance with the Department of Transportation (Coast Guard) guidelines outlined in the Code of Federal Regulations 46, CFR § 16 (2009). Urine specimens are to be analyzed by a laboratory that meets DHHS regulations set forth by the National Institute of Drug Abuse (NIDA); or provide proof to the board that licensee is participating in a US Coast Guard approved random drug testing program;

(4) All applicants for renewal of licenses shall submit a photocopy of their currently applicable United States government license with radar endorsement issued by the United States Coast Guard.

(5) All applicants for renewal of unlimited licenses shall provide certification of meeting the continuing professional development requirements specified in OAR 856-010-0027. Unless waived as provided below in this paragraph, failure to comply with all requirements for renewal of license shall constitute the failure to submit a complete application for renewal and will result in the withholding of the renewal license. A pilot who is unable to complete the requirements within the time allowed due to unexpected, emergency circumstances may request in writing a waiver and the Board may, upon good cause shown, permit a license renewal for one year without the requirements being met, provided that all required certifications must be made by the applicant at the time application for renewal is made the following year.

(6) Each license issued is valid for one year and only the unlimited state license may be renewed.

(7) Notwithstanding subsection (4) of this section, if a pilot has submitted an application for renewal of the pilot's federal license at least 60 days prior to the expiration date of his federal license, but the United States Coast Guard has not completed its renewal process by the expiration date for the federal license and the pilot has, for that reason, no currently applicable federal license at the time of renewing his state license, then the board may issue a provisionally renewed state license. Any pilot to whom a provisionally renewed state license is issued must report to the board every 30 days regarding the status of the pilot's federal license renewal. If the United States Coast Guard completes its processing for the federal license but declines to renew the federal license, the board may treat the refusal to renew the federal license as a suspension or revocation of the federal license.

Stat. Auth.: ORS 776, 670  
Stats. Implemented: ORS 776.115, 670.310  
Hist.: PC 1, f. 10-29-57, ef. 7-1-57; MP 2-1984, f. & ef. 10-4-84; MP 3-1988, f. & cert. ef. 11-9-88; MP 1-1992, f. & cert. ef. 4-29-92; MP 1-1995, f. & cert. ef. 5-9-96; BMOP 1-2000, f. & cert. ef. 12-6-00; BMP 4-2006, f. 9-28-06, cert. ef. 10-6-06; BMP 1-2007, f. 1-25-07, cert. ef. 1-26-07; BMP 4-2008, f. & cert. ef. 1-24-08; BMP 1-2009(Temp), f. & cert. ef. 2-10-09 thru 8-7-09; Administrative correction 8-21-09; BMP 5-2009, f. & cert. ef. 8-24-09; BMP 1-2010, f. & cert. ef. 4-27-10; BMP 1-2011, f. 6-28-11, cert. ef. 6-29-11; BMP 7-2011, f. 12-29-11, cert. ef. 12-30-11

## 856-010-0027

### Continuing Professional Development & Safety Training

(1) All applications for renewal of an unlimited license after January 1, 2012 shall, within the sixty-three (63) months preceding the expiration date of their license, complete a minimum of 10 days of continuing professional development training, as provided in paragraphs (a) and (b) below.

# ADMINISTRATIVE RULES

(a) Each pilot shall satisfactorily complete a five (5) day manned model course at a Board approved manned model facility.

(b) Each pilot shall satisfactorily complete an additional five (5) days of course work, at least one day of which must be Bridge Resources Management for Pilots. All courses must be conducted at an accredited college, maritime academy, U.S. Coast Guard approved training facility or conducted by an expert in a field related to the subject matter of the course. All courses must cover one or more subject matter topics approved by the Board in advance of the course being taken. The Board shall maintain a list of approved topics, which may include, but are not limited to:

- (A) Emergency Shiphandling for Pilots
- (B) Advanced Electronic Navigation Systems
- (C) Azipod Controls and Operations with Azipods
- (D) Fatigue, Sleep and Medications for Pilots
- (E) Legal Aspects of Pilotage, including State Statutes and Regulations for Pilots

- (F) Maritime Domain Awareness and Security for Pilots
- (G) Crisis Management and Media Response
- (H) Pilot Self-Assessment Simulation
- (I) Advanced Shiphandling Simulation
- (J) Operation with Tugs for Pilots
- (K) Radar Observer (credit limited to one day per reporting period)
- (L) Bridge Resources Management for Pilots
- (M) Train the Trainer

(2) In addition to satisfying the requirements set forth above, each pilot holding an unlimited license shall complete a minimum of one day of personal safety training during the 12-month period preceding the expiration date of their license. The Board shall maintain a list of pre-approved training, which may include, but are not limited to:

- (a) CPR.
- (b) Man Overboard (MOB).
- (c) Cold Water Survival.
- (d) Helicopter Dunker.
- (e) Pilot Boat Drills.
- (f) Rescue Systems.
- (g) STCW — Basic Safety Training.

(3) Each pilot shall, within 30 days after completing any training course required by paragraphs (1)(a) or (1)(b) above, submit to the Board an evaluation of the course, on a form provided by the Board. The requirement to provide a course evaluation goes into effect immediately upon the adoption of this rule.

Stat. Auth.: ORS 776 & 670  
Stats. Implemented: ORS 776.115 & 670.310  
Hist.: BMP 1-2010, f. & cert. ef. 4-27-10; BMP 7-2011, f. 12-29-11, cert. ef. 12-30-11

.....  
**Secretary of State,  
Elections Division  
Chapter 165**

**Rule Caption:** Amending Rules Regarding Contested Case Hearings.

**Adm. Order No.:** ELECT 1-2012

**Filed with Sec. of State:** 1-3-2012

**Certified to be Effective:** 1-3-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 165-001-0015, 165-001-0016, 165-001-0025, 165-001-0034

**Subject:** OAR 165-001-0015 is proposed for amendment to update the method by which a person subject to a penalty under ORS 260.232 or ORS 260.995 will be notified of that penalty and to require that the notification include notice that a political committee may be represented by any officer identified in the most recent statement of organization filed with the filing officer.

OAR 165-001-0016 is proposed for amendment to require an individual requesting a contested case hearing in person or by telephone to submit to the Secretary of State Elections Division a signed Hearing Request Form. Additionally the rule is proposed for amendment to provide that if a person fails to indicate their preference for the

type of hearing to be conducted, the hearing will be held by telephone.

OAR 165-001-0025 is proposed for amendment to clarify the deadline to request a hearing.

OAR 165-001-0034 is proposed for amendment to incorporate references to a Hearing Request Form when an individual is submitting notarized testimony in lieu of a contested case hearing.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

**165-001-0015  
Notice of Opportunity for Hearing**

When the Secretary of State proposes to impose a civil penalty or find a violation of an election law, or both, under ORS 260.232 or 260.995, the Secretary of State shall cause a notice to be served on the person(s) subject to the penalty. For a violation under ORS 260.232 the notice shall be served by first class mail; for a violation under ORS 260.995 the notice shall be served by certified mail. The notice shall include:

(1) A statement of the person's right to a hearing before an Administrative Law Judge with the Office of Administrative Hearings.

(2) A statement that if the person desires a hearing, the agency must be notified within the number of days provided by statute from the date of receiving the notice.

(3) A statement of the authority and jurisdiction under which the hearing is to be held.

(4) A reference to the particular sections of the statutes and rules involved.

(5) A short and plain statement of the matters asserted or charged as a violation.

(6) A statement of the amount of penalty that may be imposed.

(7) A statement that the person may be represented by counsel at the hearing.

(8) If the person is an agency, corporation or an unincorporated association, that such person must be represented by an attorney licensed in Oregon.

(9) If the person is a political committee subject to a civil penalty under ORS 260.995, that person may be represented by any officer identified in the most recent statement of organization filed with the filing officer. "Officer" means any person identified as a director on the most recent statement of organization for a political committee.

(10) A statement that the record of the proceeding to date, including the agency file or files on the subject of the contested case, automatically become part of the contested case record upon default for the purpose of proving a prima facie case.

(11) A statement that the person against whom a penalty may be assessed need not appear in person at a hearing held under ORS 260.232 or 260.995, but instead may submit written testimony and other evidence, sworn to before a notary public, to the Secretary of State for entry in the hearing record. Such documents must be received by the Secretary of State not later than three business days prior to the hearing as provided by ORS 260.232(6) and 260.995(5).

(12) A statement that unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

Stat. Auth.: ORS 183.090, 183.470 & 246.150  
Stats. Implemented: ORS 183.341, 183.470, 260.232 & 260.995  
Hist.: ELECT 15-1988(Temp), f. & cert. ef. 1-27-88; ELECT 26-1988, f. & cert. ef. 8-1-88; ELECT 27-1993, f. & cert. ef. 7-1-93; ELECT 9-1999, f. & cert. ef. 9-29-99; ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 19-2009, f. & cert. ef. 12-31-09; ELECT 7-2011, f. & cert. ef. 4-8-11; ELECT 10-2011, f. & cert. ef. 7-12-11; ELECT 1-2012, f. & cert. ef. 1-3-12

**165-001-0016  
Requesting a Hearing**

(1) If a party wishes to request an in-person or telephone hearing to contest the allegations in the charging document, they must submit to the Agency a signed Hearing Request Form and an "answer;" to the allegations in the charging document not later than the deadline to request a hearing stated in the charging document.

(a) The answer must include an admission or denial of each factual matter alleged in the charging document and a statement of each relevant defense to the allegations, including any relevant mitigating circumstance that may apply and indicate specifically what facts or transactions the mitigating circumstance applies to.

(b) A general denial is not sufficient to constitute an answer.

(c) The person must choose whether they want the hearing by telephone or in-person. If no choice is indicated on the form, the hearing will be held by telephone.

# ADMINISTRATIVE RULES

(d) Any evidence of a mitigating circumstance or other relevant evidence may be submitted with the answer as exhibits.

(2) An answer not including the information required by this rule may be disregarded and a notice of default may be issued in accordance with OAR 165-001-0025 as if no answer had been filed.

(3) Except for good cause shown to the administrative law judge, factual matters alleged in the charging document and not denied in the answer will be deemed admitted by the party.

(4) The failure of the party to raise a mitigating circumstance in the answer is a waiver of such mitigating circumstance.

(5) The party bears the burden of proof to show that all or part of the penalty should be mitigated based on a mitigating circumstance.

(6) Any new facts or defenses alleged in the answer will be deemed denied by the Agency.

(7) Evidence will not be taken at the contested case hearing on any factual or legal issue not raised in the charging document or the answer as filed.

(8) The Secretary of State hereby adopts by reference and designates the SEL 853 as the Hearing Request Form to be used to request an in-person or telephone hearing to contest campaign finance violations.

(9) The Secretary of State hereby adopts by reference and designates the SEL 852 as the Hearing Request Form to be used to request an in-person or telephone hearing to contest non-campaign finance violations.

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 260.232 & 260.995

Hist.: ELECT 7-2011, f. & cert. ef. 4-8-11; ELECT 1-2012, f. & cert. ef. 1-3-12

## 165-001-0025

### Orders When No Hearing Requested or Failure to Appear

(1) When a party has been given an opportunity to request a hearing and fails to request a hearing in writing within the specified time, or having requested a hearing fails to appear at the specified time and place, the agency shall, subject to section (2) of this rule, enter an order by default which supports the agency action.

(2) The time provided by statute to request a hearing under ORS 260.995 is calculated from the delivery date indicated on the certified letter's postal confirmation. If the certified letter is refused or left unclaimed at the post office, the time shall be calculated from the date the post office indicates it has given first notice of a certified letter. If the certified card is not returned to the Secretary of State by the United States Postal Service (USPS), the Secretary shall use the date recorded on the official USPS website utilizing the Track and Confirm delivery service.

(3) The time provided by statute to request a hearing under ORS 260.232 is 20 calendar days after the service date on the charging document.

(2) An order adverse to a party may be issued on default only if the agency record demonstrates a prima facie case justifying the order. The Administrative Law Judge will declare a party to be in default if the party which requested the hearing does not appear within 15 minutes of the time set for the hearing, unless the party gives notice of a reason for the inability to appear at the designated time and requests and receives a continuance. A continuance shall be granted only if the reason for the inability to appear is beyond the reasonable control of the party.

(3) The prima facie record upon default may be made at a scheduled hearing on the matter, or, if the notice of intended action states that the order will be issued or become effective upon the failure of the party to timely request a hearing, when the order is issued.

(4) The record may consist of oral (transcribed, recorded, or reported) or written evidence or a combination of oral and written evidence. When the record is made at the time the notice or order is issued, the agency file may be designated as the record. In all cases, the record must contain substantial evidence to support the findings of fact.

(5) When the Administrative Law Judge has set a specified time and place for a hearing and the party subsequently notifies the agency or the Administrative Law Judge assigned to the case that the party will not appear at such specified time and place, the agency may cancel the hearing and follow the procedure described in subsections (2), (3) and (4) of this rule.

(6) When a party requests a hearing after the time specified by the agency, but before entry of a final order by default, or, if a final order by default is entered, on or before 30 calendar days after entry of the order, the agency may accept the late request only if the cause for failure to timely request the hearing was beyond the reasonable control of the party. In determining whether to accept a late hearing request, the agency may require the request to be supported by an affidavit and may conduct such further

inquiry, including holding a hearing, that it deems appropriate. The agency shall enter an order granting or denying the request.

(7) When a party requests a hearing after entry of a default order, the party must file the request within a reasonable time. If the request is received more than 30 days after the agency mailed the default order to the party or the party's attorney (based on the service date of the order), it is presumed that the request is not timely. The request shall state why the party should be relieved of the default order. If the request is allowed by the agency, it shall enter an order granting the request and schedule the hearing in due course. If the request is denied, the agency shall enter an order setting forth its reasons for the denial.

(8) The agency shall notify a defaulting party of the entry of a default order by mailing a copy of the order as required by ORS 183.470.

(9) Notwithstanding the provisions of this rule relating to late requests for a hearing, no hearing may be held if the timing of the request would cause the agency to miss the statutory deadlines established for the conduct of hearings in ORS 260.232(4) or 260.995(6).

Stat. Auth.: ORS 183.090, 183.470, 246.150, 260.232 & 260.995

Stats. Implemented: ORS 183.470, 260.232 & 260.995

Hist.: ELECT 15-1988(Temp), f. & cert. ef. 1-27-88; ELECT 26-1988, f. & cert. ef. 8-1-88; ELECT 27-1993, f. & cert. ef. 7-1-93; ELECT 15-1994, f. & cert. ef. 7-26-94; ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 19-2009, f. & cert. ef. 12-31-09; ELECT 1-2012, f. & cert. ef. 1-3-12

## 165-001-0034

### Notarized Testimony in lieu of Hearing

(1) If a party wishes to contest the allegations in the charging document, but does not wish to request an in person or telephone hearing, the party may submit notarized testimony in lieu of a hearing.

(2) The notarized testimony must be filed with the Agency not later than the deadline to request a hearing stated in the charging document.

(3) The notarized testimony must:

(a) Include an admission or denial of each factual matter alleged in the charging document and a statement of each relevant defense to the allegations, including any relevant mitigating circumstance. A general denial is not sufficient. Notarized testimony not including the information required by this rule may be disregarded and a notice of default may be issued in accordance with OAR 165-001-0025 as if no notarized testimony had been filed.

(b) Include a signed and completed Hearing Request Form.

(c) Be notarized by a commissioned Notary Public.

(4) After the party submits notarized testimony, the Agency may submit notarized testimony and any exhibits to the Office of Administrative Hearings and to the individual who submitted notarized testimony. If the Agency submits notarized testimony, it will be transmitted via e-mail to the Office of Administrative Hearings and the party. The Agency may mail its notarized testimony to the party's last known address if the party's e-mail address is unknown or the e-mail is returned as undeliverable.

(5) The party may, but is not required to, respond to the Agency testimony by submitting rebuttal notarized testimony.

(a) Rebuttal notarized testimony is limited to issues raised in the original notarized testimony and the Agency's testimony.

(b) Rebuttal notarized testimony must be notarized by a commissioned Notary Public.

(c) The rebuttal notarized testimony must be received by the Agency not later than five business days from the date of service of the Agency's testimony (the date the testimony was e-mailed or mailed).

(d) The notarized testimony hearing record is deemed closed the day after the deadline for the person to submit rebuttal testimony.

(6) If a person submits notarized testimony in lieu of requesting an in person or telephone hearing, the person is waiving their right to an in person or telephone hearing.

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 260.232 & 260.995

Hist.: ELECT 7-2011, f. & cert. ef. 4-8-11; ELECT 1-2012, f. & cert. ef. 1-3-12

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**Rule Caption:** Amendment of Secret Ballot Waiver Form and Process to Allow for Receipt by Email.

**Adm. Order No.:** ELECT 2-2012

**Filed with Sec. of State:** 1-3-2012

**Certified to be Effective:** 1-3-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 165-007-0300

**Subject:** This rule is proposed for amendment to incorporate changes made by the 2011 Legislative Assembly that allow a long term absent elector who is serving in or has been discharged for not more than

# ADMINISTRATIVE RULES

30 days from the Armed Forces or the Merchant Marine to use to waive their right to a secret ballot when casting a ballot using electronic mail.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-007-0300

### Facsimile Vote Secret Ballot Waiver Form

(1) The Secretary of State designates form SEL 531, Email or Facsimile Vote Secret Ballot Waiver Form, as the form to be used by a long term absent elector who is serving in or has been discharged for not more than 30 days from the Armed Forces or the Merchant Marine when casting a ballot using electronic mail or a facsimile machine.

(2) The ballot will not be counted unless the completed SEL 531 is received in the office of the county clerk not later than 8 pm on the day of the election, accompanied by a return identification envelope, transmitted by electronic mail or facsimile, containing the signature of the elector and the signature is matched against the signature on the elector's most current voter registration card.

(3) County clerks shall incorporate into their Security Plan, required to be filed with the Secretary of State not later than January 31st of every year, methods for ensuring the secrecy of ballots cast using electronic mail or a facsimile machine to the greatest extent possible. Acceptable methods include but are not limited to:

- (a) Using a separate dedicated electronic mailbox or facsimile machine with limited staff access;
- (b) Assigning a dedicated employee to monitor the electronic mailbox or facsimile machine; or
- (c) Adjusting the facsimile machine settings to store items until a set time, rather than automatically printing.

Stat. Auth.: ORS 246.150

Stats. Implemented: OL 2009 Ch. 619 (HB 2511)

Hist.: ELECT 18-2009, f. & cert. ef. 12-4-09; ELECT 2-2012, f. & cert. ef. 1-3-12

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**Rule Caption:** Repeal of Rule Regarding Multiple Political Party Designations on General Election Ballot.

**Adm. Order No.:** ELECT 3-2012

**Filed with Sec. of State:** 1-3-2012

**Certified to be Effective:** 1-3-12

**Notice Publication Date:** 12-1-2011

**Rules Repealed:** 165-007-0320

**Subject:** This rule is being repealed because some of the specific circumstances that led to the rule's adoption have changed. Changes in voting systems have occurred in some counties in the state. Additionally, questions remain as to whether any county will be able to strictly comply with the cross-nomination law as written. The Secretary of State will be seeking legislative changes to the cross-nomination law during the 2012 legislative session.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

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**Rule Caption:** Updating Candidate and Minor Party Manuals and Procedures for Filling a Legislative Vacancy.

**Adm. Order No.:** ELECT 4-2012

**Filed with Sec. of State:** 1-3-2012

**Certified to be Effective:** 1-3-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 165-010-0005, 165-010-0060

**Rules Repealed:** 165-010-0085

**Subject:** OAR 165-010-0005 is proposed for amendment to designate the 2012 Candidate's Manual and associated forms as the procedures and forms used by candidates filing and running for elected office. In addition this rule designates the 2012 Minor Political Party Formation and Candidate Nomination Manual as the procedures and forms to be used to form a Minor Political Party and nominate candidates for elective office.

OAR 165-010-0060 is proposed for amendment to incorporate changes made to the forms that a nominee to fill a legislative vacancy would file indicating their willingness to serve if appointed.

OAR 165-010-0085 is proposed for repeal because it has been incorporated into OAR 165-010-0060.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-010-0005

### Designating the State Candidates Manuals, County Candidate's Manual and Forms

(1) The Secretary of State designates the 2012 Candidate's Manual and associated forms as the procedures and forms to be used by candidates filing and running for elective office.

(2) The Secretary of State designates the 2012 Minor Political Party Formation and Candidate Nomination and associated forms as the procedures and forms to be used to form a Minor Political Party and nominate candidates for elective office.

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

Stat. Auth.: ORS 246.120, 246.150 & 249.009

Stats. Implemented: ORS 246.120, 246.150 & 249.009

Hist.: SD 35-1980, f. & cert. ef. 3-6-80; SD 31-1983, f. & cert. ef. 12-20-83; SD 5-1986, f. & cert. ef. 2-26-86; ELECT 9-1992(Temp), f. & cert. ef. 4-9-92; ELECT 32-1992, f. & cert. ef. 10-8-92; ELECT 33-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 6-1998, f. & cert. ef. 5-8-98; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 18-2003, f. & cert. ef. 12-5-03; ELECT 2-2004(Temp), f. & cert. ef. 4-9-04 thru 10-6-04; Administrative correction 10-22-04; ELECT 9-2005, f. & cert. ef. 12-14-05; ELECT 11-2007, f. & cert. ef. 12-31-07; ELECT 25-2009, f. & cert. ef. 12-31-09; ELECT 1-2011, f. & cert. ef. 2-4-11; ELECT 16-2011(Temp), f. & cert. ef. 8-16-11 thru 12-31-11; ELECT 4-2012, f. & cert. ef. 1-3-12

## 165-010-0060

### Procedure for Conduct of Meeting to Fill Vacancy in Legislative Assembly

The following procedures govern the conduct of a meeting of a county court or board of commissioners (hereafter, county governing body(ies)) to fill a vacancy in the Legislative Assembly. These meeting procedures apply to appointments made under either ORS 171.060(1) (vacancy to be filled by nominee affiliated with a major political party) or ORS 171.060(2) (vacancy need not be filled by member of a particular major political party).

(1) A meeting of the members of the county governing body(ies) shall convene at the time designated by the Secretary of State. If the legislative district includes more than one county, the Secretary of State shall also name the temporary chairperson for the meeting and designate its location, which shall be within the legislative district. The Secretary of State shall also notify the county governing body(ies) of the nominees and of the number of votes apportioned to each member of the county governing body(ies) under ORS 171.062 and 171.064.

(2) The chairperson conducting the meeting shall open the meeting at the time designated by the Secretary of State. The chairperson shall announce that the purpose of the meeting is to appoint a person to fill the vacancy in the Legislative Assembly. If applicable, the appointment will be made from the list of nominees from the major political party as furnished by the Secretary of State.

(3) Members of the county governing body eligible to vote on the selection are those physically or electronically present at the meeting, who are currently holding office by election or appointment.

(4) The county governing body(ies), in making its determination, may allot time for interviewing nominees or applicants and for other pertinent deliberations prior to voting.

(5) The vote shall be taken in a manner specified by a majority of those present and eligible to vote on the selection. The person receiving the highest number of votes shall be the appointee. However, in any case, the vote of each member of the governing body(ies) shall be recorded and included in the written statement required by ORS 171.060(3).

(6) The Secretary of State hereby adopts form SEL 145, Statement of Nominee's Willingness to Serve, as the form to be used to accept a nomination to fill a legislative vacancy. The form shall contain:

- (a) Nominee's name;
- (b) Office and district number, if any, for which candidate would accept appointment;
- (c) Candidate's residence address;
- (d) Candidate's home and work telephone numbers;
- (e) Mailing address where all correspondence will be sent;
- (f) Statement that candidate will accept appointment; and
- (g) Candidate's signature and date signed.

Stat. Auth.: ORS 171.051, 171.060 & 249.200

Stats. Implemented: ORS 171.060(1)

Hist.: ELECT 7-1993, f. & cert. ef. 2-16-93; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 18-2003, f. & cert. ef. 12-5-03; ELECT 4-2012, f. & cert. ef. 1-3-12

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**Rule Caption:** Amends Rules Regarding Campaign Finance Regulation and Repeals Rule Regarding Slate Mailer Organizations.



# ADMINISTRATIVE RULES

**Adm. Order No.:** ELECT 5-2012  
**Filed with Sec. of State:** 1-3-2012  
**Certified to be Effective:** 1-3-12  
**Notice Publication Date:** 12-1-2011  
**Rules Amended:** 165-012-0005, 165-012-0240  
**Rules Repealed:** 165-012-0060

**Subject:** OAR 165-012-0005 is proposed rule amendment designates the 2012 Campaign Finance Manual and associated forms as the procedures and forms used for compliance with campaign finance regulations.

OAR 165-012-0240 is proposed for amendment to add reference to petition committees, as well as incorporate technical changes made by the 2011 Legislative Assembly to the process of administratively discontinuing a political committee.

OAR 165-012-0060 is proposed for repeal because the 2011 Legislative Assembly repealed ORS 260.735 and 260.737 requiring slate mailer organizations to file a statement of organization and the requirement of specific disclosures on a slate mailer.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-012-0005

### Designating the Campaign Finance Manual and Forms; Late Penalty Matrix

(1) Pursuant to ORS 260.156, the Secretary of State designates the 2012 Campaign Finance Manual and associated forms as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations.

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

Stat. Auth.: ORS 246.120, 246.150, 260.156 & 260.200  
Stats. Implemented: ORS 246.120, 246.150, 260.156 & 260.200  
Hist.: SD 101, f. & ef. 12-3-75; SD 120, f. & ef. 12-21-77; SD 34-1980, f. & ef. 3-6-80; SD 28-1983, f. & ef. 12-20-83; SD 3-1986, f. & ef. 2-26-86; ELECT 32-1988(Temp), f. & cert. ef. 8-26-88; ELECT 22-1989(Temp), f. & cert. ef. 11-9-89; ELECT 19-1990, f. & cert. ef. 6-4-90; ELECT 14-1992 (Temp), f. & cert. ef. 6-10-92; ELECT 37-1992, f. & cert. ef. 12-15-92; ELECT 34-1993, f. & cert. ef. 11-1-93; ELECT 1-1995(Temp), f. & cert. ef. 2-23-95; ELECT 15-1995, f. & cert. ef. 12-18-95; ELECT 9-1996, f. & cert. ef. 7-26-96; ELECT 5-1997, f. & cert. ef. 3-24-97; ELECT 6-1997(Temp), f. & cert. ef. 4-18-97; ELECT 15-1997, f. & cert. ef. 12-31-97; ELECT 5-1998, f. & cert. ef. 2-26-98; ELECT 8-1998, f. & cert. ef. 6-2-98; ELECT 9-1998, f. & cert. ef. 9-11-98; ELECT 13-1998(Temp), f. & cert. ef. 12-15-98 thru 6-13-99; ELECT 2-1999(Temp), f. & cert. ef. 1-15-99 thru 7-14-99; ELECT 3-1999, f. & cert. ef. 3-1-99; ELECT 1-2000, f. & cert. ef. 1-3-00; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 23-2003, f. & cert. ef. 12-12-03; ELECT 13-2005, f. & cert. ef. 12-30-05; ELECT 1-2007, f. & cert. ef. 1-5-07; ELECT 2-2007(Temp), f. & cert. ef. 5-2-07 thru 10-29-07; ELECT 4-2007(Temp), f. & cert. ef. 7-16-07 thru 12-31-07; ELECT 13-2007, f. & cert. ef. 12-31-07; ELECT 8-2009, f. & cert. ef. 5-4-09; ELECT 16-2009, f. & cert. ef. 7-30-09; ELECT 27-2009, f. & cert. ef. 12-31-09; ELECT 3-2010, f. & cert. ef. 4-22-10; ELECT 8-2011, f. & cert. ef. 4-8-11; ELECT 12-2011, f. & cert. ef. 7-12-11; ELECT 21-2011(Temp), f. & cert. ef. 9-30-11 thru 12-30-11; ELECT 5-2012, f. & cert. ef. 1-3-12

## 165-012-0240

### Administrative Discontinuation of a Political Committee

(1) The Elections Division may administratively discontinue a political or petition committee when:

(a) The committee has not filed any transactions under ORS 260.057 for one calendar year; and

(b) The committee's ending cash balance reflected in ORESTAR is not more than \$3000.

(2) Not later than 30 days before administratively discontinuing a committee under this section, the Elections Division shall attempt to notify the committee of the proposed discontinuation.

(a) For a candidate committee:

(A) By first class mail sent to the mailing address reported on the most recent Statement of Organization for the candidate and by first class mail to the most recent mailing address for the candidate reported in the Oregon Centralized Voter Registration System. If both addresses are the same, only one letter shall be sent; and

(B) By first class mail to the mailing address reported on the most recent Statement of Organization for the treasurer, if applicable.

(b) For a political committee notice will be sent by first class mail sent to the mailing address reported on the most recent Statement of Organization for the treasurer and by first class mail to the most recent mailing address for the treasurer reported in the Oregon Centralized Voter Registration System. If both addresses are the same, only one letter shall be sent.

(c) For a petition committee:

(A) By first class mail sent to the mailing address reported on the most recent Statement of Organization for the chief petitioner and by first class mail to the most recent address for the chief petitioner in the Oregon

Centralized Voter Registration System. If both addresses are the same, only one letter shall be sent; and

(B) By first class mail to the mailing address reported on the most recent Statement of Organization for the treasurer, if applicable.

(3) The notice shall inform the committee that it will be discontinued by the Elections Division unless the committee informs the Elections Division of reasons why the committee does not meet the criteria of this rule for administrative discontinuation. The committee must inform the Elections Division in writing of the reasons not later than 20 days after the service date of the letter. The written notice shall also include:

(a) Notification that the statement of organization will be administratively discontinued 30 days from the date of the letter; and

(b) The applicable reasons for discontinuation listed in subsection (1) of this section.

Stat. Auth.: ORS 246.150, 260.046

Stats. Implemented: ORS 260.046

Hist.: ELECT 14-2005, f. & cert. ef. 12-30-05; ELECT 6-2007, f. & cert. ef. 8-27-07; ELECT 29-2009, f. & cert. ef. 12-31-09; ELECT 5-2012, f. & cert. ef. 1-3-12

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**Rule Caption:** Amendment to Penalty Matrices for Non-Campaign Finance Violations and Other Campaign Finance Violations.

**Adm. Order No.:** ELECT 6-2012

**Filed with Sec. of State:** 1-3-2012

**Certified to be Effective:** 1-3-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 165-013-0010, 165-013-0020

**Subject:** OAR 165-013-0010 is proposed for amendment to remove from the Penalty Matrix for Campaign Finance Civil Penalty Election Law Violation the penalty for a slate mailer organization to file a statement of organization. This provision was repealed by the 2011 Legislative Assembly.

OAR 165-013-0020 is proposed for amendment to clarify the penalty for violating ORS 260.567 to \$250 for each occurrence.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-013-0010

### Penalty Matrix for Other Campaign Finance Violations

(1) This penalty matrix applies to civil penalties for campaign finance violations not covered by the penalty matrices in the Campaign Finance Manual.

(2)(a) Spot Check Review. The Secretary of State, Elections Division, will hold exempt from disclosure as a public record any bank account number(s), credit card number(s) or social security number(s) received as required documentation in response to a request for documentation necessary to perform a spot check review in accordance with ORS 260.215(3).

(b) If a committee fails to provide documentation or provides insufficient documentation in response to a request for documentation necessary to perform a spot check review, each omitted or insufficient item is a violation of ORS 260.055(3).

(c) If the committee fails to provide sufficient documentation for a transaction by the deadline stated in the first spot check review letter, the Elections Division shall send a second review letter notifying the committee which transaction(s) lack sufficient documentation. The second review letter shall provide the committee a deadline for response.

(d) Omitted or insufficient information submitted after the deadline provided in the second review letter, but prior to the deadline for a candidate or treasurer to request a hearing will result in a 50% per item reduction of the penalty. If a public hearing is requested, the omitted or insufficient documentation may be submitted up to the date of the hearing. In such an event, the candidate or treasurer will be entitled to a 50% per item reduction of the assessed penalty.

(e) The candidate or treasurer of record at the time the first spot check review letter is generated, along with the candidate if applicable, is responsible for submitting documentation for all transactions selected in the spot check review.

(f) For the purpose of imposing a civil penalty for a violation of ORS 260.055(3), the candidate of the principal campaign committee; and the treasurer of a political or petition committee are the parties responsible for the payment of any civil penalty.

(3) Mitigating Circumstances. Except as specifically provided in paragraph (2)(d), the only mitigating circumstances that will be considered in a campaign finance violation covered by this rule include:

(a) The violation is a direct result of a valid personal emergency of the candidate or treasurer. A valid personal emergency is an emergency, such as a serious personal illness or death in the immediate family of the candidate

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or treasurer which caused the violation to occur. Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;

(b) The violation is the direct result of an error by the elections filing officer;

(c) The violation is the direct result of clearly-established fraud, embezzlement, or other criminal activity against the committee, committee treasurer or candidate, as determined in a criminal or civil action in a court of law or independently corroborated by a report of a law enforcement agency or insurer or the sworn testimony or affidavit of an accountant or bookkeeper or the person who actually engaged in the criminal activity;

(d) The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, committee records. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight);

(e) The violation is the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider (this does not include delivery by fax); or

(f) The violation is the direct result of negligent record keeping by a former treasurer. Former treasurer refers to the person who was the treasurer of record at the time the transaction was filed or should have been filed.

(4)(a) Penalty Matrix. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by the elections filing officer, the violation is waived and no penalty is assessed.

(b) Omitted or insufficient information for a violation of ORS 260.039(4), 260.042(4) or 260.118(3) submitted prior to the deadline for a candidate or treasurer to request a hearing will result in a 50% reduction of the penalty. If a public hearing is requested, the omitted or insufficient information may be submitted up to the date of the hearing. In such an event, the candidate or treasurer will be entitled to a 50% reduction of the assessed penalty.

(c) For purposes of determining penalty amounts for violations of campaign finance violations covered by this rule Appendix A of this rule will apply. [Appendix not included. See ED. NOTE.]

[ED. NOTE: Appendix referenced is available from the agency.]

Stat. Auth.: ORS 246.150, 260.200

Stats. Implemented: ORS 260.200, 260.215, 260.232, 260.995

Hist.: ELECT 13-2000, f. 7-31-00, cert. ef. 8-4-00; ELECT 22-2003, f. & cert. ef. 12-5-03; ELECT 1-2004, f. & cert. ef. 2-13-04; ELECT 16-2005, f. & cert. ef. 12-30-05; ELECT 10-2006(Temp), f. & cert. ef. 7-6-06 thru 1-2-07; ELECT 17-2006, f. & cert. ef. 12-29-06; ELECT 14-2007, f. & cert. ef. 12-31-07; ELECT 30-2009, f. & cert. ef. 12-31-09; ELECT 9-2011, f. & cert. ef. 4-8-11; ELECT 6-2012, f. & cert. ef. 1-3-12

## 165-013-0020

### Penalty Matrix for Non-Campaign Finance Civil Penalty Election Law Violations

(1)(a) This penalty matrix applies to civil penalties for violations of election laws that are not covered by the penalty matrices in the Campaign Finance Manual (late and insufficient campaign finance reports and new transactions to campaign finance reports), or other campaign finance violations as outlined in 165-013-0010.

(b) The penalty amount will be calculated against the same person, candidate or entity as described below for a period of four years from the date the violation occurs, for any election law violation, other than campaign finance violations covered in the penalty matrices in the Campaign Finance Manual and other campaign finance violations as outlined in 165-013-0010. In determining whether the offense is to be considered against the same person, candidate or entity, the following factors are to be considered:

(A) A person is considered the same candidate, regardless of the office(s) for which the person runs within this state, or whether there is a lapse in time between candidacies.

(B) A political committee is considered the same, regardless of who the treasurer is, or if the political committee has changed names but is established by the same group of persons.

(C) The same individual.

(D) One occurrence is considered one violation.

(E) Notwithstanding (F) or (G), if a violation is the first on record for the person, and multiple occurrences of the same statutory provision are described in an election law complaint, the occurrences will be combined (to be considered as one violation) and considered a first violation of the statutory provision, except in such cases where specific circumstances warrant separating the occurrences to impose fines for each violation. This would be appropriate when different persons were affected by the election

law offense. Each subsequent occurrence of violation of the same statutory provision after the issuance of a notification letter or a determination of election law violation, within the four-year cycle, may be considered as separate violations.

(F) Violations of Article IV, Section 1(b) will be calculated by deeming each individual signature sheet that contains signatures that were collected in violation of Section 1(b) as a single occurrence with a minimum civil penalty of \$2,500.

(G) Violations of ORS 260.569, will be calculated by deeming each individual signature sheet that contains a signature a violation of ORS 260.569 or each signed voter registration card in violation of ORS 260.569 as a single occurrence with a minimum civil penalty of \$100.

(2) Mitigating Circumstances: The burden is on the person alleged to have committed the election law violation to show that a mitigating circumstance exists and caused the election law violation. The only mitigating circumstances which will be considered, if applicable to the specific situation, include:

(a) The violation is a direct result of a valid personal emergency of the involved person(s). A valid personal emergency is an emergency such as a serious personal illness or death in the immediate family of the involved person(s). Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;

(b) The violation is the direct result of an error by an elections officer;

(c) The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, any records required to be kept to document compliance with Oregon election law. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight);

(d) The violation of ORS 260.432 occurred after a publication produced and distributed by a governing body relating to a ballot measure was reviewed by the governing body's legal counsel before its distribution. The legal counsel must have advised the governing body in writing or by email that the draft publication was impartial information that the governing body could legally produce and distribute;

(e) The violation of ORS 260.432 occurred after a publication produced and distributed by a governing body relating to a ballot measure was reviewed by the Secretary of State's office, Elections Division. The Secretary of State must have advised the governing body in writing that the publication as drafted was impartial information that the governing body could legally produce and distribute or for which suggestions were provided towards the goal of assuring the publication was impartial information regarding the ballot measure. If the Secretary of State issued an advice letter with suggested changes, the governing body must have substantially followed the advice provided. However, this mitigating factor may be disallowed, even if such an advice letter was issued, if a complaint and investigation indicates sufficient evidence that the public body presented inaccurate or unbalanced information, not within the purview of this office to have knowledge of prior to the complaint, which has the effect of promoting or opposing the adoption of the measure;

(f) The violation of ORS 260.432(2) occurred, but the public employee had voiced their objection to the person who coerced, commanded or required the employee to perform the prohibited campaign activity during their work time. Despite the stated objection, the person was still required to perform the activity that violated ORS 260.432(2); or

(g) The violation of ORS 260.432(2) occurred when a supervisor asked the public employee to perform the prohibited campaign activity, consisting of clerical tasks, as a part of the public employee's job duties during work time. A "request" made by a supervisor is considered a command or requirement within the meaning of ORS 260.432(1). If the violation involves a written document, the public employee performed clerical tasks only and is not the author of the material.

(3)(a) Penalty Matrix. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by an elections officer, the violation is waived and no penalty is assessed.

(b) For purposes of determining penalty amounts for violations of non-campaign finance civil penalty election law violations, Appendix B of this rule will apply. [Appendix not included. See ED. NOTE.]

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 260.995

Hist.: ELECT 14-2000, f. 7-31-00, cert. ef. 8-4-00; ELECT 22-2003, f. & cert. ef. 12-5-03; ELECT 16-2005, f. & cert. ef. 12-30-05; ELECT 15-2007, f. cert. ef. 12-31-07; ELECT 9-2009, f. & cert. ef. 5-4-09; ELECT 31-2009, f. & cert. ef. 12-31-09; ELECT 6-2012, f. & cert. ef. 1-3-12

# ADMINISTRATIVE RULES

**Rule Caption:** Adopts the 2012 Initiative and Referendum Manuals, Recall Manual and Referral Manual.

**Adm. Order No.:** ELECT 7-2012

**Filed with Sec. of State:** 1-3-2012

**Certified to be Effective:** 1-3-12

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 165-014-0005

**Subject:** This proposed rule amendment designates the 2012 State Initiative and Referendum Manual; 2012 Recall Manual; and the 2012 County, City and District Initiative and Referendum Manual and associated forms as the procedures and forms used to be used or the initiative, referendum and recall processes. In addition, this proposed rule amendment designates the 2012 County, City and District Referral Manual to be used for the local referral process.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-014-0005

### Designating the Initiative, Referendum and Recall Manuals and Forms

(1) The Secretary of State designates the *2012 State Initiative and Referendum Manual* and associated forms as the procedures and forms to be used for the state initiative and referendum process.

(2) The Secretary of State designates the *2012 Recall Manual* and associated forms as the procedures and forms to be used for the recall process.

(3) The Secretary of State designates the *2012 County, City and District Initiative and Referendum Manual* and associated forms as the procedures, except where state law permits the procedure to be otherwise under local charter or ordinance, and forms to be used for the county initiative and referendum process.

(4) The Secretary of State designates the *2012 County, City and District Referral Manual* and associated forms as the procedures, except where state law permits the procedure to be otherwise under local charter or ordinance, and forms to be used for the local referral process.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 264.120, 246.150 & 250.015

Stats. Implemented: ORS 246.120, 246.150 & 250.015

Hist.: SD 120, f. & ef. 12-21-77; SD 7-1979(Temp), f. & ef. 11-5-79; SD 31-1980, f. & ef. 3-6-80; SD 10-1984, f. & ef. 6-19-84; SD 21-1984(Temp), f. & ef. 10-8-84; SD 4-1986, f. & ef. 2-26-86; ELECT 33-1988(Temp), f. & cert. ef. 8-26-88; ELECT 4-1989(Temp), f. & cert. ef. 8-11-89; ELECT 4-1991 (Temp), f. & cert. ef. 3-18-91; ELECT 10-1992(Temp), f. & cert. ef. 4-9-92; ELECT 19-1992(Temp), f. & cert. ef. 7-1-92; ELECT 39-1992, f. & cert. ef. 12-17-92; ELECT 3-1993 (Temp), f. & cert. ef. 1-22-93; ELECT 10-1993, f. & cert. ef. 3-25-93; ELECT 35-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; Elect 9-2002(Temp), f. & cert. ef. 12-5-02 thru 6-3-03; ELECT 4-2003, f. & cert. ef. 4-25-03; ELECT 20-2003, f. & cert. ef. 12-5-03; ELECT 10-2005, f. & cert. ef. 12-14-05; ELECT 3-2007(Temp), f. & cert. ef. 5-14-07 thru 11-10-07; Administrative correction 11-17-07; ELECT 16-2007, f. & cert. ef. 12-31-07; ELECT 32-2009, f. & cert. ef. 12-31-09; ELECT 7-2012, f. & cert. ef. 1-3-12

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**Rule Caption:** Revises Rule on Insufficient and Sufficient Circulator Certifications.

**Adm. Order No.:** ELECT 8-2012

**Filed with Sec. of State:** 1-3-2012

**Certified to be Effective:** 1-3-12

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 165-014-0270

**Subject:** This proposed rule amendment would update the list of sufficient circulator certification to allow a circulator who has crossed out their own signature and certification date to re-sign and re-date the circular certification.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-014-0270

### Circulator Certification

(1) The purpose of this rule is to incorporate into administrative law previously enforced standards on what constitutes a sufficient circulator certification on Initiative, Referendum, Recall, and Candidate Nominating petitions.

(2) A petition signature sheet will be rejected for insufficient circulator certification if:

(a) No signature whatsoever appears below the certification;

(b) No date appears next to circulator's signature or the date is crossed out;

(c) The date of the circulator certification is earlier than the date of the electors' signatures, unless the circulator and the only signer are the same person;

(d) Original date is crossed out, and a new date is provided, but the circulator failed to re-sign;

(e) Any part of the original date is overwritten with a different date;

(f) Date information is insufficient or ambiguous. Date must be provided in month, day, year order if written in all numeric characters;

(g) The original signature of a circulator has been crossed out, and a different circulator's signature is inserted;

(h) Two individuals sign and date as circulator, unless the only signers and the circulators are the same people;

(i) White out appears on the signature or date line;

(j) The circulator has signed using only initials, unless the circulator's use of initials as a signature is verified by exemplar under paragraph (5) of this rule;

(k) The circulator has signed using a signature stamp, unless use of a signature stamp has been approved under ORS 246.025;

(l) Circulator's signature is photocopied, carbon-copied, or otherwise appears on the face of the document to be a replicated and not original signature except as provided for in ORS 250.043;

(m) Signature, printed name, and address are all illegible;

(n) Signature alone is illegible, unless the circulator's use of the apparently illegible signature is verified by exemplar under paragraph (5) of this rule;

(o) Circulator's signature is in printed script rather than cursive script, unless the circulator's use of a printed signature is verified by exemplar under paragraph (5) of this rule;

(p) If for any other reason, from the face of the signature sheet, the circulator's identity cannot be determined or it otherwise cannot be determined that the circulator executed the certification after witnessing the electors' signatures.

(3) If a petition signature sheet contains elector signatures dated both on or before the date of the circulator's effective certification and after the date of the circulator's effective certification, the signature sheet will be accepted with regard to the elector signatures dated on or before the date of the certification, but elector signatures dated after the date of the certification will not be accepted.

(4) The following defects in the circulator certification will not result in rejection of the signature sheet:

(a) The circulator's signature appears on the printed name line instead of on the signature line;

(b) Signature consists of full last name and at least the first name initial;

(c) The circulator has signed and dated the certification, but has not provided an address or printed name; or

(d) The circulator has re-signed and re-dated the certification.

(5) If a preliminary determination is made under paragraph (2)(j), (n) or (o) of this rule that a certification is insufficient, the certification signature may be verified by exemplar in the following manner:

(a) If the circulator is required to be registered under ORS 250.048 Section 2 the Elections Division will compare the certification signature only to the circulator's signature supplied by the circulator on the circulator's SEL 308, Circulator Registration. If the certification signature matches the signature on the SEL 308 that was in effect at the time that the signature sheet was certified, the petition signature sheet will be accepted. If the certification signature does not match the signature on the SEL 308 that was in effect at the time that the signature sheet was certified, the petition signature sheet will be rejected for insufficient certification. A certification signature may consist of a minimum of a first name initial and full last name and still be accepted even if the signature on the circulator's most recent SEL 308 contains a full first name and full last name.

(b) For circulators not required to be registered under ORS 250.048, the Elections Division will compare the certification signature to the circulator's current Oregon voter registration card signature, if available. If the certification signature matches the voter registration signature, the petition signature sheet will be accepted. If the certification signature does not match the voter registration signature, the petition signature sheet will be rejected for insufficient certification.

(c) If the circulator is not required to be registered under ORS 250.048 and an Oregon voter registration card bearing the circulator's signature is not available as an exemplar, the Elections Division will compare the certification signature to an alternative exemplar filed with the Elections Division or retained on file by the Elections Division under section (6) of this rule. If the certification signature does not match the alternative exem-

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plar provided or retained under section (6) and (7) of this rule, the petition signature sheet will be rejected for insufficient certification.

(d) If the circulator is not required to be registered under ORS 250.048 and an Oregon voter registration card bearing the circulator's signature is not available as an exemplar, and an alternative exemplar has not been filed with or retained on file by the Elections Division under section (6) and (7) of this rule, the Elections Division will notify the chief petitioner or the chief petitioner's designee by telephone and electronic mail, if available, and provide the chief petitioner or designee an opportunity to submit an alternative exemplar of the circulator's signature.

(A) If an alternative exemplar is requested by the Elections Division not later than the 20th day after signatures are submitted for verification, the chief petitioners or the chief petitioner's designee must provide the alternative exemplar within 2 days of notification for the alternative exemplar to be considered.

(B) If an alternative exemplar is requested by the Elections Division after the 20th day after signatures are submitted for verification, the chief petitioners or the chief petitioner's designee must provide the alternative exemplar within 1 day of notification for the alternative exemplar to be considered.

(C) The alternative exemplar must be a signature on an official government-issued document such as a driver's license or passport, and must have been executed before the date of the attempted certification of the petition signature sheet. If the certification signature matches the alternative exemplar, the petition signature sheet will be accepted. If the certification signature does not match the alternative exemplar, the petition signature sheet will be rejected for insufficient certification.

(D) The alternative exemplar may be physically delivered to the Elections Division or may be delivered by facsimile transmission or electronic mail. If delivered by electronic mail, the document must be reproduced in .gif or .pdf format. The alternative exemplar must be received at the office of the Secretary of State not later than 5 p.m. of the day it is due.

(6) Chief petitioners may submit alternative exemplars of petition circulators' signatures at the same time they submit petition signature sheets

for signature verification. The alternative exemplar must comply with the requirements of paragraph (5)(c)(C) of this rule. When submitting alternative exemplars, chief petitioners must provide a list of circulators for whom they are submitting alternative exemplars. If no list accompanies the alternative exemplars submitted under this section, those alternative exemplars will not be accepted or used to compare the circulator's signature to the certification. If an alternative exemplar is omitted from the list, that alternative exemplar will not be accepted or used to compare the circulator's signature to the certification. Chief petitioners may still be offered the opportunity to submit alternative exemplars under paragraph (5)(c).

(7) Alternative exemplars received and accepted by the Elections Division under paragraphs (5) and (6) of this rule, will be retained on file for two years from the date of receipt.

Stat. Auth.: ORS 246.150, 249.008, 250.105, 250.215, 250.315 & 255.175

Stats. Implemented: ORS 249.008, 249.061, 249.740, 249.865, 249.875, 250.045, 250.105, 250.215, 250.315 & 255.175

Hist.: ELECT 4-2005, f. & cert. ef. 4-8-05; ELECT 23-2007, f. & cert. ef. 12-31-07; ELECT 8-2012, f. & cert. ef. 1-3-12

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**Rule Caption:** Repeals the City and District Elections Manuals.

**Adm. Order No.:** ELECT 9-2012

**Filed with Sec. of State:** 1-3-2012

**Certified to be Effective:** 1-3-12

**Notice Publication Date:** 12-1-2011

**Rules Repealed:** 165-020-0005

**Subject:** This rule is proposed for repeal because the contents of the City Elections Manual and the District Elections Manual as well as associated forms have been incorporated into either in the 2012 Candidates Manual or the 2012 County, City and District Initiative and Referendum Manual which are adopted under OAR 165-010-0005 and OAR 165-014-0005.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

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137-055-2160	1-3-2012	Amend	2-1-2012	161-030-0000	1-1-2012	Amend	1-1-2012
137-055-3220	1-3-2012	Amend	2-1-2012	161-500-0000	1-1-2012	Adopt(T)	2-1-2012
137-055-3430	1-3-2012	Amend	2-1-2012	161-510-0010	1-1-2012	Adopt(T)	2-1-2012
137-055-3640	1-3-2012	Amend	2-1-2012	161-510-0030	1-1-2012	Adopt(T)	2-1-2012
137-055-4130	1-3-2012	Amend	2-1-2012	161-520-0010	1-1-2012	Adopt(T)	2-1-2012
137-055-4440	1-3-2012	Amend	2-1-2012	161-520-0020	1-1-2012	Adopt(T)	2-1-2012
137-055-4520	1-3-2012	Amend	2-1-2012	161-520-0030	1-1-2012	Adopt(T)	2-1-2012
137-055-5400	1-3-2012	Amend	2-1-2012	161-520-0040	1-1-2012	Adopt(T)	2-1-2012
137-055-5420	1-3-2012	Amend	2-1-2012	161-530-0010	1-1-2012	Adopt(T)	2-1-2012
137-055-6021	1-3-2012	Amend	2-1-2012	161-530-0020	1-1-2012	Adopt(T)	2-1-2012
137-055-6100	1-3-2012	Repeal	2-1-2012	161-530-0030	1-1-2012	Adopt(T)	2-1-2012
137-055-6200	1-3-2012	Amend	2-1-2012	161-530-0040	1-1-2012	Adopt(T)	2-1-2012
137-055-6220	1-3-2012	Amend	2-1-2012	161-540-0010	1-1-2012	Adopt(T)	2-1-2012
137-055-6240	1-3-2012	Amend	2-1-2012	161-550-0010	1-1-2012	Adopt(T)	2-1-2012
137-055-6260	1-3-2012	Amend	2-1-2012	161-560-0010	1-1-2012	Adopt(T)	2-1-2012
141-110-0080	12-13-2011	Amend	1-1-2012	161-560-0020	1-1-2012	Adopt(T)	2-1-2012
150-18.385	1-1-2012	Amend	2-1-2012	161-570-0010	1-1-2012	Adopt(T)	2-1-2012
150-18.385(A)	1-1-2012	Amend	2-1-2012	165-001-0015	1-3-2012	Amend	2-1-2012
150-267.380(2)	1-1-2012	Amend	2-1-2012	165-001-0016	1-3-2012	Amend	2-1-2012
150-294.435(1)-(A)	1-1-2012	Amend	2-1-2012	165-001-0025	1-3-2012	Amend	2-1-2012
150-294.435(1)-(C)	1-1-2012	Amend	2-1-2012	165-001-0034	1-3-2012	Amend	2-1-2012
150-294.480	1-1-2012	Amend	2-1-2012	165-007-0300	1-3-2012	Amend	2-1-2012
150-294.525-(A)	1-1-2012	Amend	2-1-2012	165-007-0320	1-3-2012	Repeal	2-1-2012
150-307.250(1)(c)	1-1-2012	Am. & Ren.	2-1-2012	165-010-0005	1-3-2012	Amend	2-1-2012
150-308.290(4)(b)	1-1-2012	Am. & Ren.	2-1-2012	165-010-0060	1-3-2012	Amend	2-1-2012
150-311.216	1-1-2012	Amend	2-1-2012	165-010-0085	1-3-2012	Repeal	2-1-2012
150-314.280-(F)	1-1-2012	Amend	2-1-2012	165-012-0005	1-3-2012	Amend	2-1-2012
150-314.360	1-1-2012	Amend	2-1-2012	165-012-0060	1-3-2012	Repeal	2-1-2012
150-314.HB2071(A)	1-1-2012	Adopt	2-1-2012	165-012-0240	1-3-2012	Amend	2-1-2012
150-314.HB2071(B)	1-1-2012	Adopt	2-1-2012	165-013-0010	1-3-2012	Amend	2-1-2012
150-315.326	1-1-2012	Adopt	2-1-2012	165-013-0020	1-3-2012	Amend	2-1-2012
150-315.354	1-1-2012	Repeal	2-1-2012	165-014-0005	1-3-2012	Amend	2-1-2012
150-315.HB 3672	11-29-2011	Adopt(T)	1-1-2012	165-014-0270	1-3-2012	Amend	2-1-2012
150-315.HB 3672(T)	11-29-2011	Suspend	1-1-2012	165-020-0005	1-3-2012	Repeal	2-1-2012
150-315.HB3672	1-1-2012	Suspend	2-1-2012	177-052-0000	12-1-2011	Adopt	1-1-2012
150-317.710(5)(b)	1-1-2012	Amend	2-1-2012	177-052-0000(T)	12-1-2011	Repeal	1-1-2012
161-002-0000	11-17-2011	Amend	1-1-2012	177-052-0010	12-1-2011	Adopt	1-1-2012
161-002-0000	1-1-2012	Amend(T)	2-1-2012	177-052-0010(T)	12-1-2011	Repeal	1-1-2012
161-006-0000	11-17-2011	Amend	1-1-2012	177-052-0020	12-1-2011	Adopt	1-1-2012
161-006-0025	11-17-2011	Amend	1-1-2012	177-052-0020(T)	12-1-2011	Repeal	1-1-2012
161-006-0025(T)	11-17-2011	Repeal	1-1-2012	177-052-0030	12-1-2011	Adopt	1-1-2012
161-006-0160	11-17-2011	Amend	1-1-2012	177-052-0030(T)	12-1-2011	Repeal	1-1-2012
161-006-0175	11-17-2011	Amend	1-1-2012	177-052-0040	12-1-2011	Adopt	1-1-2012
161-008-0040	11-17-2011	Amend	1-1-2012	177-052-0040(T)	12-1-2011	Repeal	1-1-2012
161-010-0020	11-17-2011	Amend	1-1-2012	177-052-0050	12-1-2011	Adopt	1-1-2012
161-010-0025	11-17-2011	Amend	1-1-2012	177-052-0050(T)	12-1-2011	Repeal	1-1-2012
161-010-0035	11-17-2011	Amend	1-1-2012	177-052-0060	12-1-2011	Adopt	1-1-2012
161-010-0045	11-17-2011	Amend	1-1-2012	177-052-0060(T)	12-1-2011	Repeal	1-1-2012
161-010-0085	11-17-2011	Amend	1-1-2012	177-052-0070	12-1-2011	Adopt	1-1-2012
161-020-0015	11-17-2011	Amend	1-1-2012	177-052-0070(T)	12-1-2011	Repeal	1-1-2012
161-020-0045	11-17-2011	Amend	1-1-2012	177-085-0000	1-15-2012	Amend	2-1-2012
161-020-0055	11-17-2011	Amend	1-1-2012	177-085-0005	1-15-2012	Amend	2-1-2012
161-020-0140	11-17-2011	Amend	1-1-2012	177-085-0010	1-15-2012	Amend	2-1-2012
161-020-0150	11-17-2011	Amend	1-1-2012	177-085-0015	1-15-2012	Amend	2-1-2012
161-025-0060	11-17-2011	Amend	1-1-2012	177-085-0020	1-15-2012	Amend	2-1-2012

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177-085-0025	1-15-2012	Amend	2-1-2012	291-180-0165	12-7-2011	Repeal	1-1-2012
177-085-0025	1-15-2012	Amend(T)	2-1-2012	291-180-0175	12-7-2011	Repeal	1-1-2012
177-085-0030	1-15-2012	Amend	2-1-2012	291-180-0185	12-7-2011	Repeal	1-1-2012
177-085-0035	1-15-2012	Amend	2-1-2012	291-180-0195	12-7-2011	Repeal	1-1-2012
177-085-0065	1-15-2012	Amend	2-1-2012	291-180-0205	12-7-2011	Repeal	1-1-2012
177-085-0065	1-15-2012	Amend(T)	2-1-2012	291-180-0215	12-7-2011	Repeal	1-1-2012
177-098-0110	1-9-2012	Amend(T)	2-1-2012	291-180-0225	12-7-2011	Repeal	1-1-2012
177-200-0020	12-1-2011	Amend	1-1-2012	291-180-0235	12-7-2011	Repeal	1-1-2012
177-200-0020(T)	12-1-2011	Repeal	1-1-2012	291-180-0245	12-7-2011	Repeal	1-1-2012
177-200-0032	12-1-2011	Amend	1-1-2012	291-180-0252	12-7-2011	Adopt	1-1-2012
177-200-0032(T)	12-1-2011	Repeal	1-1-2012	291-180-0255	12-7-2011	Repeal	1-1-2012
213-003-0001	1-1-2012	Amend(T)	2-1-2012	291-180-0262	12-7-2011	Adopt	1-1-2012
213-017-0006	1-1-2012	Amend(T)	2-1-2012	291-180-0275	1-10-2012	Amend(T)	2-1-2012
213-003-0001(T)	1-1-2012	Suspend	2-1-2012	291-180-0285	12-7-2011	Repeal	1-1-2012
213-017-0006(T)	1-1-2012	Suspend	2-1-2012	291-180-0295	12-7-2011	Repeal	1-1-2012
250-010-0440	12-22-2011	Amend(T)	2-1-2012	291-180-0305	12-7-2011	Repeal	1-1-2012
250-010-0650	2-1-2012	Amend	2-1-2012	291-180-0315	12-7-2011	Repeal	1-1-2012
250-010-0650(T)	2-1-2012	Repeal	2-1-2012	291-180-0325	12-7-2011	Repeal	1-1-2012
250-010-0660	2-1-2012	Adopt	2-1-2012	291-180-0335	12-7-2011	Repeal	1-1-2012
250-010-0660(T)	2-1-2012	Repeal	2-1-2012	291-180-0345	12-7-2011	Repeal	1-1-2012
250-017-0000	2-1-2012	Amend	2-1-2012	291-180-0355	12-7-2011	Repeal	1-1-2012
250-017-0010	2-1-2012	Amend	2-1-2012	291-180-0365	12-7-2011	Repeal	1-1-2012
250-017-0020	2-1-2012	Amend	2-1-2012	291-180-0375	12-7-2011	Repeal	1-1-2012
250-017-0030	2-1-2012	Amend	2-1-2012	291-180-0385	12-7-2011	Repeal	1-1-2012
250-017-0040	2-1-2012	Amend	2-1-2012	291-180-0395	12-7-2011	Repeal	1-1-2012
250-020-0280	12-1-2011	Amend(T)	1-1-2012	291-180-0405	12-7-2011	Repeal	1-1-2012
250-020-0280	1-1-2012	Amend(T)	2-1-2012	291-180-0415	12-7-2011	Repeal	1-1-2012
250-020-0280(T)	1-1-2012	Suspend	2-1-2012	291-180-0425	12-7-2011	Repeal	1-1-2012
255-032-0035	11-30-2011	Amend	1-1-2012	291-180-0435	12-7-2011	Repeal	1-1-2012
255-032-0037	11-30-2011	Adopt	1-1-2012	291-180-0445	12-7-2011	Repeal	1-1-2012
257-010-0060	12-15-2011	Adopt(T)	1-1-2012	291-180-0455	12-7-2011	Repeal	1-1-2012
259-008-0060	12-23-2011	Amend	2-1-2012	291-180-0465	12-7-2011	Repeal	1-1-2012
259-008-0069	11-28-2011	Amend(T)	1-1-2012	291-180-0475	12-7-2011	Repeal	1-1-2012
259-020-0015	12-30-2011	Amend	2-1-2012	291-180-0485	12-7-2011	Repeal	1-1-2012
259-070-0010	12-28-2011	Amend	2-1-2012	291-180-0495	12-7-2011	Repeal	1-1-2012
291-024-0081	11-17-2011	Adopt(T)	1-1-2012	291-180-0505	12-7-2011	Repeal	1-1-2012
291-105-0005	12-7-2011	Amend	1-1-2012	291-180-0515	12-7-2011	Repeal	1-1-2012
291-105-0010	12-7-2011	Amend	1-1-2012	291-180-0525	12-7-2011	Repeal	1-1-2012
291-105-0013	12-7-2011	Amend	1-1-2012	291-180-0535	12-7-2011	Repeal	1-1-2012
291-105-0015	12-7-2011	Amend	1-1-2012	291-180-0545	12-7-2011	Repeal	1-1-2012
291-105-0021	12-7-2011	Amend	1-1-2012	291-180-0555	12-7-2011	Repeal	1-1-2012
291-105-0026	12-7-2011	Amend	1-1-2012	291-180-0565	12-7-2011	Repeal	1-1-2012
291-105-0028	12-7-2011	Amend	1-1-2012	291-180-0575	12-7-2011	Repeal	1-1-2012
291-105-0031	12-7-2011	Amend	1-1-2012	291-180-0585	12-7-2011	Repeal	1-1-2012
291-105-0036	12-7-2011	Amend	1-1-2012	291-180-0595	12-7-2011	Repeal	1-1-2012
291-105-0041	12-7-2011	Amend	1-1-2012	291-180-0605	12-7-2011	Repeal	1-1-2012
291-105-0046	12-7-2011	Amend	1-1-2012	291-180-0615	12-7-2011	Repeal	1-1-2012
291-105-0066	12-7-2011	Amend	1-1-2012	291-180-0625	12-7-2011	Repeal	1-1-2012
291-105-0069	12-7-2011	Amend	1-1-2012	291-180-0635	12-7-2011	Repeal	1-1-2012
291-105-0081	12-7-2011	Amend	1-1-2012	291-180-0645	12-7-2011	Repeal	1-1-2012
291-105-0100	12-7-2011	Amend	1-1-2012	291-180-0655	12-7-2011	Repeal	1-1-2012
291-180-0115	12-7-2011	Repeal	1-1-2012	291-180-0665	12-7-2011	Repeal	1-1-2012
291-180-0125	12-7-2011	Repeal	1-1-2012	309-016-0600	1-1-2012	Amend(T)	2-1-2012
291-180-0135	12-7-2011	Repeal	1-1-2012	309-016-0605	1-1-2012	Amend(T)	2-1-2012
291-180-0145	12-7-2011	Repeal	1-1-2012	309-016-0610	1-1-2012	Amend(T)	2-1-2012
291-180-0155	12-7-2011	Repeal	1-1-2012	309-016-0630	1-1-2012	Amend(T)	2-1-2012



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309-016-0685	1-1-2012	Amend(T)	2-1-2012	309-091-0015	1-1-2012	Adopt(T)	2-1-2012
309-016-0745	1-1-2012	Amend(T)	2-1-2012	309-091-0020	1-1-2012	Adopt(T)	2-1-2012
309-016-0750	1-1-2012	Amend(T)	2-1-2012	309-091-0025	1-1-2012	Adopt(T)	2-1-2012
309-031-0200	1-1-2012	Suspend	2-1-2012	309-091-0030	1-1-2012	Adopt(T)	2-1-2012
309-031-0205	1-1-2012	Suspend	2-1-2012	309-091-0035	1-1-2012	Adopt(T)	2-1-2012
309-031-0210	1-1-2012	Suspend	2-1-2012	309-091-0040	1-1-2012	Adopt(T)	2-1-2012
309-031-0215	1-1-2012	Suspend	2-1-2012	309-091-0045	1-1-2012	Adopt(T)	2-1-2012
309-031-0220	1-1-2012	Suspend	2-1-2012	309-091-0050	1-1-2012	Adopt(T)	2-1-2012
309-031-0250	1-1-2012	Suspend	2-1-2012	309-092-0000	1-1-2012	Adopt(T)	2-1-2012
309-031-0255	1-1-2012	Suspend	2-1-2012	309-092-0005	1-1-2012	Adopt(T)	2-1-2012
309-032-0175	11-22-2011	Suspend	1-1-2012	309-092-0010	1-1-2012	Adopt(T)	2-1-2012
309-032-0180	11-22-2011	Suspend	1-1-2012	309-092-0015	1-1-2012	Adopt(T)	2-1-2012
309-032-0185	11-22-2011	Suspend	1-1-2012	309-092-0020	1-1-2012	Adopt(T)	2-1-2012
309-032-0190	11-22-2011	Suspend	1-1-2012	309-092-0025	1-1-2012	Adopt(T)	2-1-2012
309-032-0195	11-22-2011	Suspend	1-1-2012	309-092-0030	1-1-2012	Adopt(T)	2-1-2012
309-032-0200	11-22-2011	Suspend	1-1-2012	309-092-0035	1-1-2012	Adopt(T)	2-1-2012
309-032-0205	11-22-2011	Suspend	1-1-2012	309-092-0040	1-1-2012	Adopt(T)	2-1-2012
309-032-0210	11-22-2011	Suspend	1-1-2012	309-092-0045	1-1-2012	Adopt(T)	2-1-2012
309-032-0301	11-22-2011	Adopt(T)	1-1-2012	309-092-0050	1-1-2012	Adopt(T)	2-1-2012
309-032-0311	11-22-2011	Adopt(T)	1-1-2012	309-092-0055	1-1-2012	Adopt(T)	2-1-2012
309-032-0321	11-22-2011	Adopt(T)	1-1-2012	309-092-0060	1-1-2012	Adopt(T)	2-1-2012
309-032-0331	11-22-2011	Adopt(T)	1-1-2012	309-092-0065	1-1-2012	Adopt(T)	2-1-2012
309-032-0341	11-22-2011	Adopt(T)	1-1-2012	309-092-0070	1-1-2012	Adopt(T)	2-1-2012
309-032-0351	11-22-2011	Adopt(T)	1-1-2012	309-092-0075	1-1-2012	Adopt(T)	2-1-2012
309-032-1500	1-1-2012	Amend(T)	2-1-2012	309-092-0080	1-1-2012	Adopt(T)	2-1-2012
309-032-1505	1-1-2012	Amend(T)	2-1-2012	309-092-0085	1-1-2012	Adopt(T)	2-1-2012
309-032-1510	1-1-2012	Amend(T)	2-1-2012	309-092-0090	1-1-2012	Adopt(T)	2-1-2012
309-032-1515	1-1-2012	Amend(T)	2-1-2012	309-092-0095	1-1-2012	Adopt(T)	2-1-2012
309-032-1520	1-1-2012	Amend(T)	2-1-2012	309-092-0100	1-1-2012	Adopt(T)	2-1-2012
309-032-1525	1-1-2012	Amend(T)	2-1-2012	309-092-0105	1-1-2012	Adopt(T)	2-1-2012
309-032-1530	1-1-2012	Amend(T)	2-1-2012	309-092-0110	1-1-2012	Adopt(T)	2-1-2012
309-032-1535	1-1-2012	Amend(T)	2-1-2012	309-092-0115	1-1-2012	Adopt(T)	2-1-2012
309-032-1540	1-1-2012	Amend(T)	2-1-2012	309-092-0120	1-1-2012	Adopt(T)	2-1-2012
309-032-1545	1-1-2012	Amend(T)	2-1-2012	309-092-0125	1-1-2012	Adopt(T)	2-1-2012
309-032-1550	1-1-2012	Amend(T)	2-1-2012	309-092-0130	1-1-2012	Adopt(T)	2-1-2012
309-032-1555	1-1-2012	Amend(T)	2-1-2012	309-092-0135	1-1-2012	Adopt(T)	2-1-2012
309-032-1560	1-1-2012	Amend(T)	2-1-2012	309-092-0140	1-1-2012	Adopt(T)	2-1-2012
309-032-1565	1-1-2012	Amend(T)	2-1-2012	309-092-0145	1-1-2012	Adopt(T)	2-1-2012
309-035-0100	12-5-2011	Amend(T)	1-1-2012	309-092-0150	1-1-2012	Adopt(T)	2-1-2012
309-035-0105	12-5-2011	Amend(T)	1-1-2012	309-092-0155	1-1-2012	Adopt(T)	2-1-2012
309-035-0250	12-5-2011	Amend(T)	1-1-2012	309-092-0160	1-1-2012	Adopt(T)	2-1-2012
309-035-0260	12-5-2011	Amend(T)	1-1-2012	309-092-0165	1-1-2012	Adopt(T)	2-1-2012
309-040-0300	12-5-2011	Amend(T)	1-1-2012	309-092-0170	1-1-2012	Adopt(T)	2-1-2012
309-040-0305	12-5-2011	Amend(T)	1-1-2012	309-092-0175	1-1-2012	Adopt(T)	2-1-2012
309-090-0000	1-1-2012	Adopt(T)	2-1-2012	309-092-0180	1-1-2012	Adopt(T)	2-1-2012
309-090-0005	1-1-2012	Adopt(T)	2-1-2012	309-092-0185	1-1-2012	Adopt(T)	2-1-2012
309-090-0010	1-1-2012	Adopt(T)	2-1-2012	309-092-0190	1-1-2012	Adopt(T)	2-1-2012
309-090-0015	1-1-2012	Adopt(T)	2-1-2012	309-092-0195	1-1-2012	Adopt(T)	2-1-2012
309-090-0020	1-1-2012	Adopt(T)	2-1-2012	309-092-0200	1-1-2012	Adopt(T)	2-1-2012
309-090-0025	1-1-2012	Adopt(T)	2-1-2012	309-092-0205	1-1-2012	Adopt(T)	2-1-2012
309-090-0030	1-1-2012	Adopt(T)	2-1-2012	309-092-0210	1-1-2012	Adopt(T)	2-1-2012
309-090-0035	1-1-2012	Adopt(T)	2-1-2012	309-092-0215	1-1-2012	Adopt(T)	2-1-2012
309-090-0040	1-1-2012	Adopt(T)	2-1-2012	309-092-0220	1-1-2012	Adopt(T)	2-1-2012
309-091-0000	1-1-2012	Adopt(T)	2-1-2012	309-092-0225	1-1-2012	Adopt(T)	2-1-2012
309-091-0005	1-1-2012	Adopt(T)	2-1-2012	309-092-0230	1-1-2012	Adopt(T)	2-1-2012

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309-092-0235	1-1-2012	Adopt(T)	2-1-2012	331-205-0020	1-1-2012	Repeal	2-1-2012
309-092-0240	1-1-2012	Adopt(T)	2-1-2012	331-205-0030	1-1-2012	Repeal	2-1-2012
330-070-0013	1-1-2012	Amend	2-1-2012	331-210-0000	1-1-2012	Repeal	2-1-2012
330-070-0014	1-1-2012	Amend	2-1-2012	331-210-0010	1-1-2012	Repeal	2-1-2012
330-070-0019	1-1-2012	Amend	2-1-2012	331-210-0020	1-1-2012	Repeal	2-1-2012
330-070-0020	1-1-2012	Amend	2-1-2012	331-210-0021	1-1-2012	Repeal	2-1-2012
330-070-0021	1-1-2012	Amend	2-1-2012	331-215-0000	1-1-2012	Repeal	2-1-2012
330-070-0022	1-1-2012	Amend	2-1-2012	331-215-0010	1-1-2012	Repeal	2-1-2012
330-070-0024	1-1-2012	Amend	2-1-2012	331-215-0020	1-1-2012	Repeal	2-1-2012
330-070-0025	1-1-2012	Amend	2-1-2012	331-215-0030	1-1-2012	Repeal	2-1-2012
330-070-0026	1-1-2012	Amend	2-1-2012	331-215-0040	1-1-2012	Repeal	2-1-2012
330-070-0027	1-1-2012	Amend	2-1-2012	331-220-0000	1-1-2012	Repeal	2-1-2012
330-070-0029	1-1-2012	Adopt	2-1-2012	331-220-0010	1-1-2012	Repeal	2-1-2012
330-070-0045	1-1-2012	Amend	2-1-2012	331-220-0020	1-1-2012	Repeal	2-1-2012
330-070-0048	1-1-2012	Amend	2-1-2012	331-220-0030	1-1-2012	Repeal	2-1-2012
330-070-0060	1-1-2012	Amend	2-1-2012	331-220-0040	1-1-2012	Repeal	2-1-2012
330-070-0064	1-1-2012	Amend	2-1-2012	331-220-0050	1-1-2012	Repeal	2-1-2012
330-070-0070	1-1-2012	Amend	2-1-2012	331-220-0060	1-1-2012	Repeal	2-1-2012
330-070-0073	1-1-2012	Amend	2-1-2012	331-220-0080	1-1-2012	Repeal	2-1-2012
330-070-0089	1-1-2012	Amend	2-1-2012	331-225-0000	1-1-2012	Repeal	2-1-2012
330-070-0091	1-1-2012	Amend	2-1-2012	331-225-0020	1-1-2012	Repeal	2-1-2012
330-070-0097	1-1-2012	Amend	2-1-2012	331-225-0030	1-1-2012	Repeal	2-1-2012
330-090-0130	1-13-2012	Amend(T)	2-1-2012	331-225-0040	1-1-2012	Repeal	2-1-2012
330-090-0133	11-30-2011	Amend	1-1-2012	331-225-0050	1-1-2012	Repeal	2-1-2012
330-090-0160	11-30-2011	Adopt	1-1-2012	331-225-0060	1-1-2012	Repeal	2-1-2012
330-180-0010	11-22-2011	Adopt	1-1-2012	331-225-0070	1-1-2012	Repeal	2-1-2012
330-180-0020	11-22-2011	Adopt	1-1-2012	331-225-0080	1-1-2012	Repeal	2-1-2012
330-180-0030	11-22-2011	Adopt	1-1-2012	331-225-0090	1-1-2012	Repeal	2-1-2012
330-180-0040	11-22-2011	Adopt	1-1-2012	331-225-0100	1-1-2012	Repeal	2-1-2012
330-180-0050	11-22-2011	Adopt	1-1-2012	331-225-0110	1-1-2012	Repeal	2-1-2012
330-180-0060	11-22-2011	Adopt	1-1-2012	331-225-0120	1-1-2012	Repeal	2-1-2012
330-180-0070	11-22-2011	Adopt	1-1-2012	331-225-0130	1-1-2012	Repeal	2-1-2012
330-210-0000	12-23-2011	Adopt(T)	2-1-2012	331-225-0140	1-1-2012	Repeal	2-1-2012
330-210-0010	12-23-2011	Adopt(T)	2-1-2012	331-225-0150	1-1-2012	Repeal	2-1-2012
330-210-0020	12-23-2011	Adopt(T)	2-1-2012	331-225-0160	1-1-2012	Repeal	2-1-2012
330-210-0030	12-23-2011	Adopt(T)	2-1-2012	331-505-0000	1-1-2012	Repeal	2-1-2012
330-210-0040	12-23-2011	Adopt(T)	2-1-2012	331-505-0010	1-1-2012	Repeal	2-1-2012
330-210-0045	12-23-2011	Adopt(T)	2-1-2012	331-510-0000	1-1-2012	Repeal	2-1-2012
330-210-0050	12-23-2011	Adopt(T)	2-1-2012	331-515-0000	1-1-2012	Repeal	2-1-2012
330-210-0060	12-23-2011	Adopt(T)	2-1-2012	331-515-0010	1-1-2012	Repeal	2-1-2012
330-210-0070	12-23-2011	Adopt(T)	2-1-2012	331-515-0020	1-1-2012	Repeal	2-1-2012
330-210-0080	12-23-2011	Adopt(T)	2-1-2012	331-515-0030	1-1-2012	Repeal	2-1-2012
330-210-0090	12-23-2011	Adopt(T)	2-1-2012	331-520-0000	1-1-2012	Repeal	2-1-2012
330-210-0100	12-23-2011	Adopt(T)	2-1-2012	331-520-0010	1-1-2012	Repeal	2-1-2012
330-210-0150	12-23-2011	Adopt(T)	2-1-2012	331-520-0030	1-1-2012	Repeal	2-1-2012
330-230-0000	12-23-2011	Adopt(T)	2-1-2012	331-520-0040	1-1-2012	Repeal	2-1-2012
330-230-0010	12-23-2011	Adopt(T)	2-1-2012	331-520-0070	1-1-2012	Repeal	2-1-2012
330-230-0020	12-23-2011	Adopt(T)	2-1-2012	331-525-0000	1-1-2012	Repeal	2-1-2012
330-230-0030	12-23-2011	Adopt(T)	2-1-2012	331-525-0020	1-1-2012	Repeal	2-1-2012
330-230-0040	12-23-2011	Adopt(T)	2-1-2012	331-525-0035	1-1-2012	Repeal	2-1-2012
330-230-0050	12-23-2011	Adopt(T)	2-1-2012	331-525-0038	1-1-2012	Repeal	2-1-2012
330-230-0060	12-23-2011	Adopt(T)	2-1-2012	331-525-0040	1-1-2012	Repeal	2-1-2012
330-230-0110	12-23-2011	Adopt(T)	2-1-2012	331-525-0055	1-1-2012	Repeal	2-1-2012
330-230-0120	12-23-2011	Adopt(T)	2-1-2012	331-525-0060	1-1-2012	Repeal	2-1-2012
330-230-0130	12-23-2011	Adopt(T)	2-1-2012	331-525-0065	1-1-2012	Repeal	2-1-2012
330-230-0140	12-23-2011	Adopt(T)	2-1-2012	331-530-0000	1-1-2012	Repeal	2-1-2012

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331-530-0020	1-1-2012	Repeal	2-1-2012	331-705-0050	1-1-2012	Amend	2-1-2012
331-535-0000	1-1-2012	Repeal	2-1-2012	331-705-0060	1-1-2012	Repeal	2-1-2012
331-535-0010	1-1-2012	Repeal	2-1-2012	331-705-0072	11-22-2011	Adopt(T)	1-1-2012
331-535-0020	1-1-2012	Repeal	2-1-2012	331-705-0072	1-1-2012	Adopt	2-1-2012
331-535-0030	1-1-2012	Repeal	2-1-2012	331-705-0072(T)	1-1-2012	Repeal	2-1-2012
331-535-0040	1-1-2012	Repeal	2-1-2012	331-705-0080	1-1-2012	Adopt	2-1-2012
331-535-0050	1-1-2012	Repeal	2-1-2012	331-710-0005	1-1-2012	Adopt	2-1-2012
331-535-0060	1-1-2012	Repeal	2-1-2012	331-710-0010	1-1-2012	Amend	2-1-2012
331-535-0070	1-1-2012	Repeal	2-1-2012	331-710-0015	1-1-2012	Adopt	2-1-2012
331-535-0080	1-1-2012	Repeal	2-1-2012	331-710-0020	1-1-2012	Amend	2-1-2012
331-540-0000	1-1-2012	Repeal	2-1-2012	331-710-0030	1-1-2012	Repeal	2-1-2012
331-540-0010	1-1-2012	Repeal	2-1-2012	331-710-0040	1-1-2012	Adopt	2-1-2012
331-540-0020	1-1-2012	Repeal	2-1-2012	331-710-0045	1-1-2012	Adopt	2-1-2012
331-540-0030	1-1-2012	Repeal	2-1-2012	331-710-0050	1-1-2012	Adopt	2-1-2012
331-545-0000	1-1-2012	Repeal	2-1-2012	331-712-0000	1-1-2012	Adopt	2-1-2012
331-545-0020	1-1-2012	Repeal	2-1-2012	331-712-0010	1-1-2012	Adopt	2-1-2012
331-550-0000	1-1-2012	Repeal	2-1-2012	331-712-0020	1-1-2012	Adopt	2-1-2012
331-555-0010	1-1-2012	Repeal	2-1-2012	331-715-0010	1-1-2012	Amend	2-1-2012
331-555-0030	1-1-2012	Repeal	2-1-2012	331-715-0030	1-1-2012	Repeal	2-1-2012
331-555-0040	1-1-2012	Repeal	2-1-2012	331-715-0045	1-1-2012	Repeal	2-1-2012
331-560-0000	1-1-2012	Repeal	2-1-2012	331-718-0000	1-1-2012	Adopt	2-1-2012
331-560-0010	1-1-2012	Repeal	2-1-2012	331-718-0010	1-1-2012	Adopt	2-1-2012
331-560-0020	1-1-2012	Repeal	2-1-2012	331-718-0020	1-1-2012	Adopt	2-1-2012
331-560-0030	1-1-2012	Repeal	2-1-2012	331-720-0010	1-1-2012	Amend	2-1-2012
331-560-0040	1-1-2012	Repeal	2-1-2012	331-720-0015	1-1-2012	Adopt	2-1-2012
331-560-0060	1-1-2012	Repeal	2-1-2012	331-725-0020	1-1-2012	Repeal	2-1-2012
331-565-0000	1-1-2012	Repeal	2-1-2012	331-740-0000	1-1-2012	Adopt	2-1-2012
331-565-0020	1-1-2012	Repeal	2-1-2012	331-900-0000	1-1-2012	Adopt	2-1-2012
331-565-0025	1-1-2012	Repeal	2-1-2012	331-900-0005	1-1-2012	Adopt	2-1-2012
331-565-0030	1-1-2012	Repeal	2-1-2012	331-900-0010	1-1-2012	Adopt	2-1-2012
331-565-0040	1-1-2012	Repeal	2-1-2012	331-900-0015	1-1-2012	Adopt	2-1-2012
331-565-0050	1-1-2012	Repeal	2-1-2012	331-900-0020	1-1-2012	Adopt	2-1-2012
331-565-0060	1-1-2012	Repeal	2-1-2012	331-900-0025	1-1-2012	Adopt	2-1-2012
331-565-0080	1-1-2012	Repeal	2-1-2012	331-900-0030	1-1-2012	Adopt	2-1-2012
331-565-0085	1-1-2012	Repeal	2-1-2012	331-900-0035	1-1-2012	Adopt	2-1-2012
331-565-0090	1-1-2012	Repeal	2-1-2012	331-900-0040	1-1-2012	Adopt	2-1-2012
331-565-0095	1-1-2012	Repeal	2-1-2012	331-900-0045	1-1-2012	Adopt	2-1-2012
331-570-0000	1-1-2012	Repeal	2-1-2012	331-900-0050	1-1-2012	Adopt	2-1-2012
331-570-0020	1-1-2012	Repeal	2-1-2012	331-900-0055	1-1-2012	Adopt	2-1-2012
331-575-0000	1-1-2012	Repeal	2-1-2012	331-900-0060	1-1-2012	Adopt	2-1-2012
331-575-0010	1-1-2012	Repeal	2-1-2012	331-900-0065	1-1-2012	Adopt	2-1-2012
331-575-0020	1-1-2012	Repeal	2-1-2012	331-900-0070	1-1-2012	Adopt	2-1-2012
331-575-0030	1-1-2012	Repeal	2-1-2012	331-900-0075	1-1-2012	Adopt	2-1-2012
331-575-0040	1-1-2012	Repeal	2-1-2012	331-900-0080	1-1-2012	Adopt	2-1-2012
331-575-0050	1-1-2012	Repeal	2-1-2012	331-900-0085	1-1-2012	Adopt	2-1-2012
331-580-0000	1-1-2012	Repeal	2-1-2012	331-900-0090	1-1-2012	Adopt	2-1-2012
331-580-0010	1-1-2012	Repeal	2-1-2012	331-900-0095	1-1-2012	Adopt	2-1-2012
331-580-0020	1-1-2012	Repeal	2-1-2012	331-900-0100	1-1-2012	Adopt	2-1-2012
331-580-0030	1-1-2012	Repeal	2-1-2012	331-900-0105	1-1-2012	Adopt	2-1-2012
331-585-0000	1-1-2012	Repeal	2-1-2012	331-900-0110	1-1-2012	Adopt	2-1-2012
331-585-0010	1-1-2012	Repeal	2-1-2012	331-905-0000	1-1-2012	Adopt(T)	2-1-2012
331-585-0020	1-1-2012	Repeal	2-1-2012	331-905-0005	1-1-2012	Adopt(T)	2-1-2012
331-585-0030	1-1-2012	Repeal	2-1-2012	331-905-0010	1-1-2012	Adopt(T)	2-1-2012
331-585-0040	1-1-2012	Repeal	2-1-2012	331-905-0015	1-1-2012	Adopt(T)	2-1-2012
331-590-0000	1-1-2012	Repeal	2-1-2012	331-905-0020	1-1-2012	Adopt(T)	2-1-2012
331-590-0020	1-1-2012	Repeal	2-1-2012	331-905-0025	1-1-2012	Adopt(T)	2-1-2012

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331-905-0035	1-1-2012	Adopt(T)	2-1-2012	331-950-0020	1-1-2012	Adopt	2-1-2012
331-905-0040	1-1-2012	Adopt(T)	2-1-2012	331-950-0030	1-1-2012	Adopt	2-1-2012
331-905-0045	1-1-2012	Adopt(T)	2-1-2012	331-950-0040	1-1-2012	Adopt	2-1-2012
331-905-0050	1-1-2012	Adopt(T)	2-1-2012	331-950-0050	1-1-2012	Adopt	2-1-2012
331-905-0055	1-1-2012	Adopt(T)	2-1-2012	331-950-0060	1-1-2012	Adopt	2-1-2012
331-905-0060	1-1-2012	Adopt(T)	2-1-2012	331-950-0070	1-1-2012	Adopt	2-1-2012
331-905-0065	1-1-2012	Adopt(T)	2-1-2012	332-040-0000	1-1-2012	Amend(T)	2-1-2012
331-910-0000	1-1-2012	Adopt	2-1-2012	333-010-0000	1-1-2012	Amend	2-1-2012
331-910-0005	1-1-2012	Adopt	2-1-2012	333-010-0010	1-1-2012	Amend	2-1-2012
331-910-0010	1-1-2012	Adopt	2-1-2012	333-010-0020	1-1-2012	Amend	2-1-2012
331-910-0015	1-1-2012	Adopt	2-1-2012	333-010-0030	1-1-2012	Amend	2-1-2012
331-910-0020	1-1-2012	Adopt	2-1-2012	333-010-0032	1-1-2012	Adopt	2-1-2012
331-910-0025	1-1-2012	Adopt	2-1-2012	333-010-0035	1-1-2012	Amend	2-1-2012
331-910-0030	1-1-2012	Adopt	2-1-2012	333-010-0040	1-1-2012	Amend	2-1-2012
331-910-0035	1-1-2012	Adopt	2-1-2012	333-010-0050	1-1-2012	Amend	2-1-2012
331-910-0040	1-1-2012	Adopt	2-1-2012	333-010-0055	1-1-2012	Amend	2-1-2012
331-910-0045	1-1-2012	Adopt	2-1-2012	333-010-0060	1-1-2012	Amend	2-1-2012
331-910-0050	1-1-2012	Adopt	2-1-2012	333-010-0070	1-1-2012	Amend	2-1-2012
331-910-0055	1-1-2012	Adopt	2-1-2012	333-010-0080	1-1-2012	Amend	2-1-2012
331-910-0060	1-1-2012	Adopt	2-1-2012	333-011-0006	1-1-2012	Amend	2-1-2012
331-910-0065	1-1-2012	Adopt	2-1-2012	333-011-0016	1-1-2012	Amend	2-1-2012
331-915-0000	1-1-2012	Adopt	2-1-2012	333-011-0061	1-1-2012	Amend	2-1-2012
331-915-0005	1-1-2012	Adopt	2-1-2012	333-011-0101	1-1-2012	Amend	2-1-2012
331-915-0010	1-1-2012	Adopt	2-1-2012	333-019-0041	12-14-2011	Amend	1-1-2012
331-915-0015	1-1-2012	Adopt	2-1-2012	333-019-0042	12-14-2011	Adopt	1-1-2012
331-915-0020	1-1-2012	Adopt	2-1-2012	333-047-0010	1-1-2012	Adopt	2-1-2012
331-915-0025	1-1-2012	Adopt	2-1-2012	333-047-0030	1-1-2012	Adopt	2-1-2012
331-915-0030	1-1-2012	Adopt	2-1-2012	333-047-0040	1-1-2012	Adopt	2-1-2012
331-915-0035	1-1-2012	Adopt	2-1-2012	333-047-0050	1-1-2012	Adopt	2-1-2012
331-915-0040	1-1-2012	Adopt	2-1-2012	333-049-0010	1-1-2012	Amend	2-1-2012
331-915-0045	1-1-2012	Adopt	2-1-2012	333-049-0040	1-1-2012	Amend	2-1-2012
331-915-0050	1-1-2012	Adopt	2-1-2012	333-049-0050	1-1-2012	Amend	2-1-2012
331-915-0055	1-1-2012	Adopt	2-1-2012	333-049-0065	1-1-2012	Amend	2-1-2012
331-915-0060	1-1-2012	Adopt	2-1-2012	333-049-0070	1-1-2012	Amend	2-1-2012
331-915-0065	1-1-2012	Adopt	2-1-2012	333-049-0090	1-1-2012	Amend	2-1-2012
331-920-0000	1-1-2012	Adopt	2-1-2012	333-265-0000	1-1-2012	Amend	2-1-2012
331-920-0005	1-1-2012	Adopt	2-1-2012	333-265-0010	1-1-2012	Amend	2-1-2012
331-925-0000	1-1-2012	Adopt	2-1-2012	333-265-0012	1-1-2012	Amend	2-1-2012
331-925-0005	1-1-2012	Adopt	2-1-2012	333-265-0014	1-1-2012	Amend	2-1-2012
331-925-0010	1-1-2012	Adopt	2-1-2012	333-265-0015	1-1-2012	Amend	2-1-2012
331-925-0015	1-1-2012	Adopt	2-1-2012	333-265-0016	1-1-2012	Amend	2-1-2012
331-925-0020	1-1-2012	Adopt	2-1-2012	333-265-0018	1-1-2012	Amend	2-1-2012
331-925-0025	1-1-2012	Adopt	2-1-2012	333-265-0020	1-1-2012	Amend	2-1-2012
331-925-0030	1-1-2012	Adopt	2-1-2012	333-265-0022	1-1-2012	Amend	2-1-2012
331-925-0035	1-1-2012	Adopt	2-1-2012	333-265-0023	1-1-2012	Amend	2-1-2012
331-925-0040	1-1-2012	Adopt	2-1-2012	333-265-0025	1-1-2012	Amend	2-1-2012
331-925-0045	1-1-2012	Adopt	2-1-2012	333-265-0030	1-1-2012	Amend	2-1-2012
331-930-0000	1-1-2012	Adopt	2-1-2012	333-265-0040	1-1-2012	Amend	2-1-2012
331-930-0005	1-1-2012	Adopt	2-1-2012	333-265-0050	1-1-2012	Amend	2-1-2012
331-930-0010	1-1-2012	Adopt	2-1-2012	333-265-0060	1-1-2012	Amend	2-1-2012
331-930-0015	1-1-2012	Adopt	2-1-2012	333-265-0070	1-1-2012	Amend	2-1-2012
331-930-0020	1-1-2012	Adopt	2-1-2012	333-265-0080	1-1-2012	Amend	2-1-2012
331-930-0025	1-1-2012	Adopt	2-1-2012	333-265-0083	1-1-2012	Amend	2-1-2012
331-930-0030	1-1-2012	Adopt	2-1-2012	333-265-0085	1-1-2012	Amend	2-1-2012
331-940-0000	1-1-2012	Adopt	2-1-2012	333-265-0087	1-1-2012	Amend	2-1-2012

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333-265-0100	1-1-2012	Amend	2-1-2012	407-043-0020	12-27-2011	Adopt	2-1-2012
333-265-0105	1-1-2012	Amend	2-1-2012	407-043-0020(T)	12-27-2011	Repeal	2-1-2012
333-265-0110	1-1-2012	Amend	2-1-2012	407-045-0250	12-5-2011	Amend	1-1-2012
333-265-0140	1-1-2012	Amend	2-1-2012	407-045-0260	12-5-2011	Amend	1-1-2012
333-265-0150	1-1-2012	Amend	2-1-2012	407-045-0280	12-5-2011	Amend	1-1-2012
333-265-0160	1-1-2012	Amend	2-1-2012	407-045-0290	12-5-2011	Amend	1-1-2012
333-265-0170	1-1-2012	Amend	2-1-2012	407-045-0320	12-5-2011	Amend	1-1-2012
334-001-0000	1-1-2012	Amend	1-1-2012	407-045-0400	12-1-2011	Amend	1-1-2012
334-001-0005	1-1-2012	Amend	1-1-2012	407-045-0400(T)	12-1-2011	Repeal	1-1-2012
334-001-0020	1-1-2012	Amend	1-1-2012	407-045-0410	12-1-2011	Repeal	1-1-2012
334-001-0025	1-1-2012	Adopt	1-1-2012	407-045-0420	12-1-2011	Repeal	1-1-2012
334-001-0028	1-1-2012	Adopt	1-1-2012	407-045-0430	12-1-2011	Repeal	1-1-2012
334-001-0032	1-1-2012	Adopt	1-1-2012	407-045-0440	12-1-2011	Repeal	1-1-2012
334-001-0035	1-1-2012	Repeal	1-1-2012	407-045-0450	12-1-2011	Repeal	1-1-2012
334-001-0036	1-1-2012	Adopt	1-1-2012	407-045-0460	12-1-2011	Repeal	1-1-2012
334-001-0060	1-1-2012	Amend	1-1-2012	407-045-0470	12-1-2011	Repeal	1-1-2012
334-010-0005	1-1-2012	Amend	1-1-2012	407-045-0480	12-1-2011	Repeal	1-1-2012
334-010-0008	1-1-2012	Amend	1-1-2012	407-045-0490	12-1-2011	Repeal	1-1-2012
334-010-0009	1-1-2012	Adopt	1-1-2012	407-045-0500	12-1-2011	Repeal	1-1-2012
334-010-0010	1-1-2012	Amend	1-1-2012	407-045-0510	12-1-2011	Repeal	1-1-2012
334-010-0012	1-1-2012	Amend	1-1-2012	407-045-0520	12-1-2011	Repeal	1-1-2012
334-010-0015	1-1-2012	Amend	1-1-2012	407-120-0100	12-27-2011	Amend	2-1-2012
334-010-0017	1-1-2012	Amend	1-1-2012	407-120-0100(T)	12-27-2011	Repeal	2-1-2012
334-010-0018	1-1-2012	Adopt	1-1-2012	407-120-0112	12-27-2011	Amend	2-1-2012
334-010-0025	1-1-2012	Amend	1-1-2012	407-120-0112(T)	12-27-2011	Repeal	2-1-2012
334-010-0027	1-1-2012	Adopt	1-1-2012	407-120-0114	12-27-2011	Amend	2-1-2012
334-010-0033	1-1-2012	Amend	1-1-2012	407-120-0114(T)	12-27-2011	Repeal	2-1-2012
334-010-0046	1-1-2012	Amend	1-1-2012	407-120-0150	12-27-2011	Amend	2-1-2012
334-010-0050	1-1-2012	Amend	1-1-2012	407-120-0150(T)	12-27-2011	Repeal	2-1-2012
334-020-0015	1-1-2012	Amend	1-1-2012	407-120-0200	12-27-2011	Amend	2-1-2012
334-030-0001	1-1-2012	Amend	1-1-2012	407-120-0200(T)	12-27-2011	Repeal	2-1-2012
334-030-0005	1-1-2012	Amend	1-1-2012	409-045-0000	1-11-2012	Adopt(T)	2-1-2012
334-040-0001	1-1-2012	Amend	1-1-2012	409-050-0110	12-1-2011	Amend	1-1-2012
334-040-0010	1-1-2012	Amend	1-1-2012	409-050-0110(T)	12-1-2011	Repeal	1-1-2012
337-010-0030	1-12-2012	Amend	2-1-2012	409-050-0120	12-1-2011	Amend	1-1-2012
340-045-0100	11-18-2011	Amend	1-1-2012	409-050-0120(T)	12-1-2011	Repeal	1-1-2012
340-200-0040	12-21-2011	Amend	2-1-2012	409-050-0130	12-22-2011	Amend	2-1-2012
340-204-0010	12-21-2011	Amend	2-1-2012	409-050-0130(T)	12-22-2011	Repeal	2-1-2012
340-204-0030	12-21-2011	Amend	2-1-2012	410-050-0861	1-1-2012	Amend(T)	2-1-2012
340-204-0040	12-21-2011	Amend	2-1-2012	410-120-0000	1-1-2012	Amend	1-1-2012
407-014-0000	12-16-2011	Amend	2-1-2012	410-120-0006	1-1-2012	Amend	1-1-2012
407-014-0000(T)	12-16-2011	Repeal	2-1-2012	410-120-0006	1-13-2012	Amend(T)	2-1-2012
407-014-0015	12-16-2011	Adopt	2-1-2012	410-120-0006(T)	1-1-2012	Repeal	1-1-2012
407-014-0015(T)	12-16-2011	Repeal	2-1-2012	410-120-1160	1-1-2012	Amend	1-1-2012
407-014-0020	12-16-2011	Amend	2-1-2012	410-120-1200	1-1-2012	Amend	1-1-2012
407-014-0020(T)	12-16-2011	Repeal	2-1-2012	410-120-1210	1-1-2012	Amend	1-1-2012
407-014-0030	12-16-2011	Amend	2-1-2012	410-120-1340	1-1-2012	Amend	1-1-2012
407-014-0030(T)	12-16-2011	Repeal	2-1-2012	410-120-1340(T)	1-1-2012	Repeal	1-1-2012
407-014-0040	12-16-2011	Amend	2-1-2012	410-120-1510	1-1-2012	Amend	1-1-2012
407-014-0040(T)	12-16-2011	Repeal	2-1-2012	410-120-1920	1-1-2012	Amend	1-1-2012
407-014-0050	12-16-2011	Amend	2-1-2012	410-120-1960	1-1-2012	Amend	1-1-2012
407-014-0050(T)	12-16-2011	Repeal	2-1-2012	410-121-0000	1-1-2012	Amend	2-1-2012
407-014-0060	12-16-2011	Amend	2-1-2012	410-121-0030	1-1-2012	Amend	2-1-2012
407-014-0060(T)	12-16-2011	Repeal	2-1-2012	410-121-0032	1-1-2012	Amend	2-1-2012
407-014-0070	12-16-2011	Amend	2-1-2012	410-121-0040	1-1-2012	Amend	2-1-2012

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410-121-0061	1-1-2012	Amend	2-1-2012	410-141-0520	12-23-2011	Amend	2-1-2012
410-121-0146	1-1-2012	Amend	2-1-2012	410-141-0520	1-1-2012	Amend(T)	2-1-2012
410-121-0147	1-1-2012	Amend	2-1-2012	410-141-0520(T)	12-23-2011	Repeal	2-1-2012
410-121-0160	1-1-2012	Amend	2-1-2012	410-142-0020	1-1-2012	Amend	1-1-2012
410-121-0160(T)	1-1-2012	Repeal	2-1-2012	410-142-0040	1-1-2012	Amend	1-1-2012
410-121-0185	1-1-2012	Amend	2-1-2012	410-148-0060	1-1-2012	Amend	1-1-2012
410-121-0190	1-1-2012	Amend	2-1-2012	411-040-0000	12-20-2011	Amend(T)	2-1-2012
410-122-0186	1-1-2012	Amend	2-1-2012	411-320-0020	1-1-2012	Amend	2-1-2012
410-122-0186(T)	1-1-2012	Repeal	2-1-2012	411-320-0080	1-1-2012	Amend	2-1-2012
410-122-0188	1-1-2012	Adopt	2-1-2012	411-320-0090	12-28-2011	Amend	2-1-2012
410-122-0520	1-1-2012	Amend	2-1-2012	411-320-0090(T)	12-28-2011	Repeal	2-1-2012
410-122-0630	1-1-2012	Amend	2-1-2012	411-320-0110	12-28-2011	Amend	2-1-2012
410-122-0630(T)	1-1-2012	Repeal	2-1-2012	411-320-0110(T)	12-28-2011	Repeal	2-1-2012
410-123-1000	1-1-2012	Amend	2-1-2012	411-320-0175	1-1-2012	Amend(T)	2-1-2012
410-123-1060	1-1-2012	Amend	2-1-2012	411-320-0190	1-1-2012	Amend	2-1-2012
410-123-1060	1-1-2012	Amend	2-1-2012	411-323-0010	1-6-2012	Amend	2-1-2012
410-123-1220	1-1-2012	Amend	2-1-2012	411-323-0010(T)	1-6-2012	Repeal	2-1-2012
410-123-1220	1-1-2012	Amend	2-1-2012	411-323-0020	1-6-2012	Amend	2-1-2012
410-123-1260	1-1-2012	Amend	2-1-2012	411-323-0020(T)	1-6-2012	Repeal	2-1-2012
410-123-1260	1-1-2012	Amend	2-1-2012	411-323-0030	1-6-2012	Amend	2-1-2012
410-123-1490	1-1-2012	Amend	2-1-2012	411-323-0030(T)	1-6-2012	Repeal	2-1-2012
410-123-1490	1-1-2012	Amend	2-1-2012	411-323-0035	1-6-2012	Adopt	2-1-2012
410-125-0045	1-1-2012	Amend	1-1-2012	411-323-0035(T)	1-6-2012	Repeal	2-1-2012
410-125-0047	1-1-2012	Amend	1-1-2012	411-323-0040	1-6-2012	Amend	2-1-2012
410-125-0080	1-1-2012	Amend	1-1-2012	411-323-0040(T)	1-6-2012	Repeal	2-1-2012
410-125-0085	1-1-2012	Amend	1-1-2012	411-323-0050	1-6-2012	Amend	2-1-2012
410-125-0140	1-1-2012	Amend	1-1-2012	411-323-0050(T)	1-6-2012	Repeal	2-1-2012
410-125-0195	1-1-2012	Amend(T)	2-1-2012	411-323-0060	1-6-2012	Amend	2-1-2012
410-125-0220	1-1-2012	Amend	1-1-2012	411-323-0060(T)	1-6-2012	Repeal	2-1-2012
410-125-0450	1-1-2012	Amend(T)	2-1-2012	411-323-0070	1-6-2012	Amend	2-1-2012
410-127-0060	1-1-2012	Amend	1-1-2012	411-323-0070(T)	1-6-2012	Repeal	2-1-2012
410-130-0000	1-1-2012	Amend	2-1-2012	411-325-0020	1-6-2012	Amend	2-1-2012
410-130-0200	1-1-2012	Amend	2-1-2012	411-325-0020(T)	1-6-2012	Repeal	2-1-2012
410-130-0220	1-1-2012	Amend	2-1-2012	411-325-0025	1-6-2012	Adopt	2-1-2012
410-130-0255	1-1-2012	Amend	2-1-2012	411-325-0025(T)	1-6-2012	Repeal	2-1-2012
410-130-0368	1-1-2012	Amend	2-1-2012	411-325-0060	1-6-2012	Amend	2-1-2012
410-130-0595	1-1-2012	Amend	2-1-2012	411-325-0060(T)	1-6-2012	Repeal	2-1-2012
410-130-0595(T)	1-1-2012	Repeal	2-1-2012	411-325-0080	1-6-2012	Repeal	2-1-2012
410-131-0040	1-1-2012	Amend	1-1-2012	411-325-0100	1-6-2012	Repeal	2-1-2012
410-131-0060	1-1-2012	Repeal	1-1-2012	411-325-0110	1-6-2012	Amend	2-1-2012
410-131-0080	1-1-2012	Amend	1-1-2012	411-325-0150	1-6-2012	Amend	2-1-2012
410-131-0100	1-1-2012	Amend	1-1-2012	411-325-0160	1-6-2012	Repeal	2-1-2012
410-131-0120	1-1-2012	Amend	1-1-2012	411-325-0210	1-6-2012	Repeal	2-1-2012
410-131-0140	1-1-2012	Repeal	1-1-2012	411-325-0310	1-6-2012	Repeal	2-1-2012
410-131-0160	1-1-2012	Amend	1-1-2012	411-325-0320	1-6-2012	Amend	2-1-2012
410-131-0180	1-1-2012	Repeal	1-1-2012	411-325-0320(T)	1-6-2012	Repeal	2-1-2012
410-131-0200	1-1-2012	Repeal	1-1-2012	411-325-0430	1-6-2012	Amend	2-1-2012
410-131-0270	1-1-2012	Repeal	1-1-2012	411-325-0450	1-6-2012	Repeal	2-1-2012
410-131-0275	1-1-2012	Repeal	1-1-2012	411-325-0460	1-6-2012	Amend	2-1-2012
410-131-0280	1-1-2012	Repeal	1-1-2012	411-325-0460(T)	1-6-2012	Repeal	2-1-2012
410-140-0080	12-6-2011	Amend	1-1-2012	411-328-0560	1-6-2012	Amend	2-1-2012
410-140-0260	12-6-2011	Amend	1-1-2012	411-328-0560(T)	1-6-2012	Repeal	2-1-2012
410-140-0400	12-6-2011	Amend	1-1-2012	411-328-0570	1-6-2012	Amend	2-1-2012
410-141-0070	11-21-2011	Amend(T)	1-1-2012	411-328-0570(T)	1-6-2012	Repeal	2-1-2012
410-141-0080	1-1-2012	Amend(T)	1-1-2012	411-328-0580	1-6-2012	Repeal	2-1-2012
410-141-0420	1-1-2012	Amend(T)	2-1-2012	411-328-0590	1-6-2012	Repeal	2-1-2012

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411-328-0610	1-6-2012	Repeal	2-1-2012	411-345-0100(T)	1-6-2012	Repeal	2-1-2012
411-328-0620	1-6-2012	Amend	2-1-2012	411-345-0110	1-6-2012	Amend	2-1-2012
411-328-0630	1-6-2012	Amend	2-1-2012	411-345-0110(T)	1-6-2012	Repeal	2-1-2012
411-328-0630(T)	1-6-2012	Repeal	2-1-2012	411-345-0130	1-6-2012	Amend	2-1-2012
411-328-0670	1-6-2012	Repeal	2-1-2012	411-345-0130(T)	1-6-2012	Repeal	2-1-2012
411-328-0730	1-6-2012	Repeal	2-1-2012	411-345-0190	1-6-2012	Amend	2-1-2012
411-328-0740	1-6-2012	Amend	2-1-2012	411-345-0190(T)	1-6-2012	Repeal	2-1-2012
411-328-0740(T)	1-6-2012	Repeal	2-1-2012	411-360-0130	12-1-2011	Amend(T)	1-1-2012
411-328-0805	1-6-2012	Repeal	2-1-2012	411-360-0170	12-1-2011	Amend(T)	1-1-2012
411-328-0810	1-6-2012	Repeal	2-1-2012	411-360-0170	12-30-2011	Amend(T)	2-1-2012
411-328-0820	1-6-2012	Repeal	2-1-2012	411-360-0170(T)	12-30-2011	Suspend	2-1-2012
411-328-0830	1-6-2012	Repeal	2-1-2012	411-360-0190	12-1-2011	Amend(T)	1-1-2012
411-335-0010	1-6-2012	Amend	2-1-2012	411-360-0190	12-30-2011	Amend(T)	2-1-2012
411-335-0010(T)	1-6-2012	Repeal	2-1-2012	411-360-0190(T)	12-30-2011	Suspend	2-1-2012
411-335-0020	1-6-2012	Amend	2-1-2012	413-020-0200	12-28-2011	Amend	2-1-2012
411-335-0020(T)	1-6-2012	Repeal	2-1-2012	413-020-0210	12-28-2011	Amend	2-1-2012
411-335-0030	1-6-2012	Amend	2-1-2012	413-020-0230	12-28-2011	Amend	2-1-2012
411-335-0030(T)	1-6-2012	Repeal	2-1-2012	413-020-0233	12-28-2011	Amend	2-1-2012
411-335-0050	1-6-2012	Repeal	2-1-2012	413-020-0236	12-28-2011	Amend	2-1-2012
411-335-0060	1-6-2012	Amend	2-1-2012	413-020-0240	12-28-2011	Amend	2-1-2012
411-335-0060(T)	1-6-2012	Repeal	2-1-2012	413-020-0245	12-28-2011	Amend	2-1-2012
411-335-0070	1-6-2012	Repeal	2-1-2012	413-020-0255	12-28-2011	Amend	2-1-2012
411-335-0080	1-6-2012	Repeal	2-1-2012	413-070-0063	12-28-2011	Amend	2-1-2012
411-335-0090	1-6-2012	Repeal	2-1-2012	413-070-0900	12-28-2011	Amend	2-1-2012
411-335-0100	1-6-2012	Repeal	2-1-2012	413-070-0905	12-28-2011	Amend	2-1-2012
411-335-0110	1-6-2012	Repeal	2-1-2012	413-070-0909	12-28-2011	Amend	2-1-2012
411-335-0120	1-6-2012	Amend	2-1-2012	413-070-0917	12-28-2011	Amend	2-1-2012
411-335-0140	1-6-2012	Repeal	2-1-2012	413-070-0919	12-28-2011	Amend	2-1-2012
411-335-0230	1-6-2012	Amend	2-1-2012	413-070-0925	12-28-2011	Amend	2-1-2012
411-335-0300	1-6-2012	Repeal	2-1-2012	413-070-0929	12-28-2011	Repeal	2-1-2012
411-335-0310	1-6-2012	Amend	2-1-2012	413-070-0934	12-28-2011	Amend	2-1-2012
411-335-0310(T)	1-6-2012	Repeal	2-1-2012	413-070-0939	12-28-2011	Amend	2-1-2012
411-335-0370	1-6-2012	Repeal	2-1-2012	413-070-0944	12-28-2011	Amend	2-1-2012
411-335-0380	1-6-2012	Repeal	2-1-2012	413-070-0949	12-28-2011	Amend	2-1-2012
411-335-0390	1-6-2012	Repeal	2-1-2012	413-070-0959	12-28-2011	Amend	2-1-2012
411-340-0020	12-28-2011	Amend	2-1-2012	413-070-0964	12-28-2011	Amend	2-1-2012
411-340-0100	12-28-2011	Amend	2-1-2012	413-070-0969	12-28-2011	Amend	2-1-2012
411-340-0100(T)	12-28-2011	Repeal	2-1-2012	413-070-0970	12-28-2011	Amend	2-1-2012
411-340-0110	12-28-2011	Amend	2-1-2012	413-070-0974	12-28-2011	Amend	2-1-2012
411-340-0110(T)	12-28-2011	Repeal	2-1-2012	413-070-0979	12-28-2011	Repeal	2-1-2012
411-340-0120	12-28-2011	Amend	2-1-2012	413-100-0135	12-28-2011	Amend	2-1-2012
411-340-0125	12-28-2011	Adopt	2-1-2012	413-100-0150	12-28-2011	Amend	2-1-2012
411-340-0130	12-28-2011	Amend	2-1-2012	413-100-0900	12-28-2011	Amend	2-1-2012
411-340-0140	12-28-2011	Amend	2-1-2012	413-100-0905	12-28-2011	Amend	2-1-2012
411-340-0150	12-28-2011	Amend	2-1-2012	413-100-0910	12-28-2011	Amend	2-1-2012
411-345-0010	1-6-2012	Amend	2-1-2012	413-100-0915	12-28-2011	Amend	2-1-2012
411-345-0010(T)	1-6-2012	Repeal	2-1-2012	413-100-0920	12-28-2011	Amend	2-1-2012
411-345-0020	1-6-2012	Amend	2-1-2012	413-100-0925	12-28-2011	Amend	2-1-2012
411-345-0020(T)	1-6-2012	Repeal	2-1-2012	413-100-0930	12-28-2011	Amend	2-1-2012
411-345-0030	1-6-2012	Amend	2-1-2012	413-100-0940	12-28-2011	Amend	2-1-2012
411-345-0030(T)	1-6-2012	Repeal	2-1-2012	413-120-0420	12-28-2011	Amend(T)	2-1-2012
411-345-0050	1-6-2012	Amend	2-1-2012	413-120-0460	12-28-2011	Amend(T)	2-1-2012
411-345-0050(T)	1-6-2012	Repeal	2-1-2012	413-120-0470	12-28-2011	Suspend	2-1-2012
411-345-0080	1-6-2012	Repeal	2-1-2012	413-130-0000	12-28-2011	Amend	2-1-2012
411-345-0090	1-6-2012	Amend	2-1-2012	413-130-0010	12-28-2011	Amend	2-1-2012

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413-130-0020	12-28-2011	Amend	2-1-2012	413-200-0414(T)	1-3-2012	Repeal	2-1-2012
413-130-0030	12-28-2011	Am. & Ren.	2-1-2012	413-200-0419	1-3-2012	Amend	2-1-2012
413-130-0040	12-28-2011	Amend	2-1-2012	413-200-0419(T)	1-3-2012	Repeal	2-1-2012
413-130-0045	12-28-2011	Repeal	2-1-2012	413-200-0424	1-3-2012	Amend	2-1-2012
413-130-0050	12-28-2011	Amend	2-1-2012	413-200-0424(T)	1-3-2012	Repeal	2-1-2012
413-130-0055	12-28-2011	Adopt	2-1-2012	416-115-0000	12-14-2011	Repeal	1-1-2012
413-130-0060	12-28-2011	Repeal	2-1-2012	416-115-0010	12-14-2011	Amend	1-1-2012
413-130-0070	12-28-2011	Amend	2-1-2012	416-115-0020	12-14-2011	Amend	1-1-2012
413-130-0075	12-28-2011	Amend	2-1-2012	416-115-0025	12-14-2011	Adopt	1-1-2012
413-130-0080	12-28-2011	Amend	2-1-2012	416-115-0030	12-14-2011	Amend	1-1-2012
413-130-0090	12-28-2011	Amend	2-1-2012	416-115-0040	12-14-2011	Repeal	1-1-2012
413-130-0100	12-28-2011	Amend	2-1-2012	416-115-0050	12-14-2011	Repeal	1-1-2012
413-130-0110	12-28-2011	Amend	2-1-2012	416-115-0060	12-14-2011	Repeal	1-1-2012
413-130-0115	12-28-2011	Repeal	2-1-2012	416-115-0070	12-14-2011	Repeal	1-1-2012
413-130-0125	12-28-2011	Amend	2-1-2012	416-115-0080	12-14-2011	Repeal	1-1-2012
413-130-0130	12-28-2011	Amend	2-1-2012	416-115-0090	12-14-2011	Repeal	1-1-2012
413-200-0270	12-28-2011	Amend	2-1-2012	416-115-0100	12-14-2011	Repeal	1-1-2012
413-200-0272	12-28-2011	Amend	2-1-2012	416-115-0110	12-14-2011	Repeal	1-1-2012
413-200-0274	12-28-2011	Amend	2-1-2012	416-115-0120	12-14-2011	Repeal	1-1-2012
413-200-0276	12-28-2011	Amend	2-1-2012	416-115-0130	12-14-2011	Repeal	1-1-2012
413-200-0278	12-28-2011	Amend	2-1-2012	416-115-0140	12-14-2011	Repeal	1-1-2012
413-200-0281	12-28-2011	Amend	2-1-2012	416-115-0150	12-14-2011	Repeal	1-1-2012
413-200-0283	12-28-2011	Amend	2-1-2012	416-115-0160	12-14-2011	Repeal	1-1-2012
413-200-0285	12-28-2011	Amend	2-1-2012	416-115-0170	12-14-2011	Repeal	1-1-2012
413-200-0287	12-28-2011	Amend	2-1-2012	416-115-0180	12-14-2011	Repeal	1-1-2012
413-200-0289	12-28-2011	Amend	2-1-2012	416-115-0190	12-14-2011	Repeal	1-1-2012
413-200-0292	12-28-2011	Amend	2-1-2012	416-115-0200	12-14-2011	Repeal	1-1-2012
413-200-0294	12-28-2011	Amend	2-1-2012	416-115-0210	12-14-2011	Repeal	1-1-2012
413-200-0296	12-28-2011	Amend	2-1-2012	416-115-0220	12-14-2011	Repeal	1-1-2012
413-200-0301	12-28-2011	Amend	2-1-2012	416-115-0230	12-14-2011	Repeal	1-1-2012
413-200-0305	12-28-2011	Amend	2-1-2012	416-115-0240	12-14-2011	Repeal	1-1-2012
413-200-0306	12-28-2011	Amend	2-1-2012	416-115-0250	12-14-2011	Repeal	1-1-2012
413-200-0308	12-28-2011	Amend	2-1-2012	416-115-0260	12-14-2011	Repeal	1-1-2012
413-200-0314	12-28-2011	Amend	2-1-2012	416-115-0270	12-14-2011	Repeal	1-1-2012
413-200-0335	12-28-2011	Amend	2-1-2012	416-115-0280	12-14-2011	Repeal	1-1-2012
413-200-0348	12-28-2011	Amend	2-1-2012	436-009-0080	1-1-2012	Amend	1-1-2012
413-200-0352	12-28-2011	Amend	2-1-2012	436-010-0210	1-1-2012	Amend	1-1-2012
413-200-0354	12-28-2011	Amend	2-1-2012	436-010-0230	1-1-2012	Amend	1-1-2012
413-200-0358	12-28-2011	Amend	2-1-2012	436-010-0280	1-1-2012	Amend	1-1-2012
413-200-0362	12-28-2011	Amend	2-1-2012	436-015-0008	1-1-2012	Amend	1-1-2012
413-200-0371	12-28-2011	Amend	2-1-2012	436-030-0003	1-1-2012	Amend	1-1-2012
413-200-0377	12-28-2011	Amend	2-1-2012	436-030-0036	1-1-2012	Amend	1-1-2012
413-200-0379	12-28-2011	Amend	2-1-2012	436-030-0145	1-1-2012	Amend	1-1-2012
413-200-0383	12-28-2011	Amend	2-1-2012	436-030-0165	1-1-2012	Amend	1-1-2012
413-200-0386	12-28-2011	Amend	2-1-2012	437-002-0005	12-8-2011	Amend	1-1-2012
413-200-0388	12-28-2011	Amend	2-1-2012	437-002-0120	12-8-2011	Amend	1-1-2012
413-200-0390	12-28-2011	Amend	2-1-2012	437-002-0123	12-8-2011	Repeal	1-1-2012
413-200-0393	12-28-2011	Amend	2-1-2012	437-002-0125	12-8-2011	Repeal	1-1-2012
413-200-0394	12-28-2011	Amend	2-1-2012	437-002-0127	12-8-2011	Repeal	1-1-2012
413-200-0395	12-28-2011	Amend	2-1-2012	437-002-0128	12-8-2011	Repeal	1-1-2012
413-200-0396	12-28-2011	Amend	2-1-2012	437-002-0130	12-8-2011	Repeal	1-1-2012
413-200-0404	1-3-2012	Amend	2-1-2012	437-002-0134	12-8-2011	Adopt	1-1-2012
413-200-0404(T)	1-3-2012	Repeal	2-1-2012	437-002-0135	12-8-2011	Repeal	1-1-2012
413-200-0409	1-3-2012	Amend	2-1-2012	437-002-0136	12-8-2011	Repeal	1-1-2012
413-200-0409(T)	1-3-2012	Repeal	2-1-2012	437-002-0137	12-8-2011	Repeal	1-1-2012



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437-002-0220	12-8-2011	Amend	1-1-2012	441-850-0042	12-15-2011	Amend(T)	1-1-2012
437-002-0340	12-8-2011	Amend	1-1-2012	441-880-0005	11-23-2011	Adopt	1-1-2012
437-002-0360	12-8-2011	Amend	1-1-2012	441-880-0006	11-23-2011	Adopt	1-1-2012
437-002-0360	7-1-2012	Amend	1-1-2012	441-880-0007	11-23-2011	Adopt	1-1-2012
437-002-0364	12-8-2011	Amend	1-1-2012	441-880-0008	11-23-2011	Adopt	1-1-2012
437-002-1001	7-1-2012	Adopt	1-1-2012	441-910-0000	1-1-2012	Amend	1-1-2012
437-002-1017	7-1-2012	Adopt	1-1-2012	441-910-0092	1-1-2012	Repeal	1-1-2012
437-002-1018	7-1-2012	Adopt	1-1-2012	442-005-0020	1-13-2012	Amend	2-1-2012
437-002-1025	7-1-2012	Adopt	1-1-2012	442-005-0030	1-13-2012	Amend	2-1-2012
437-002-1027	7-1-2012	Adopt	1-1-2012	442-005-0050	1-13-2012	Amend	2-1-2012
437-002-1028	7-1-2012	Adopt	1-1-2012	442-005-0070	1-13-2012	Amend	2-1-2012
437-002-1029	7-1-2012	Adopt	1-1-2012	442-010-0020	12-22-2011	Amend	2-1-2012
437-002-1043	7-1-2012	Adopt	1-1-2012	442-010-0020(T)	12-22-2011	Repeal	2-1-2012
437-002-1044	7-1-2012	Adopt	1-1-2012	442-010-0030	12-22-2011	Amend	2-1-2012
437-002-1045	7-1-2012	Adopt	1-1-2012	442-010-0040	12-22-2011	Amend	2-1-2012
437-002-1047	7-1-2012	Adopt	1-1-2012	442-010-0055	12-22-2011	Amend	2-1-2012
437-002-1048	7-1-2012	Adopt	1-1-2012	442-010-0060	12-22-2011	Amend	2-1-2012
437-002-1050	7-1-2012	Adopt	1-1-2012	442-010-0060(T)	12-22-2011	Repeal	2-1-2012
437-002-1051	7-1-2012	Adopt	1-1-2012	442-010-0065	12-22-2011	Repeal	2-1-2012
437-002-1052	7-1-2012	Adopt	1-1-2012	442-010-0070	12-22-2011	Amend	2-1-2012
437-003-0001	12-8-2011	Amend	1-1-2012	442-010-0075	12-22-2011	Amend	2-1-2012
437-003-0001	7-1-2012	Amend	1-1-2012	442-010-0075(T)	12-22-2011	Repeal	2-1-2012
437-003-0015	12-8-2011	Amend	1-1-2012	442-010-0080	12-22-2011	Amend	2-1-2012
437-003-0062	7-1-2012	Adopt	1-1-2012	442-010-0085	12-22-2011	Amend	2-1-2012
437-003-0096	12-8-2011	Amend	1-1-2012	442-010-0090	12-22-2011	Amend	2-1-2012
437-003-1101	7-1-2012	Adopt	1-1-2012	442-010-0100	12-22-2011	Amend	2-1-2012
437-003-1127	7-1-2012	Adopt	1-1-2012	442-010-0110	12-22-2011	Amend	2-1-2012
437-003-3060	7-1-2012	Adopt	1-1-2012	442-010-0120	12-22-2011	Amend	2-1-2012
437-004-1110	12-8-2011	Amend	1-1-2012	442-010-0160	12-22-2011	Amend	2-1-2012
437-005-0001	12-8-2011	Amend	1-1-2012	442-010-0170	12-22-2011	Amend	2-1-2012
437-005-0002	12-8-2011	Amend	1-1-2012	442-010-0180	12-22-2011	Amend	2-1-2012
437-005-0003	12-8-2011	Amend	1-1-2012	442-010-0190	12-22-2011	Amend	2-1-2012
441-505-3046	12-15-2011	Amend(T)	1-1-2012	442-010-0200	12-22-2011	Repeal	2-1-2012
441-674-0005	1-1-2012	Repeal	2-1-2012	442-010-0210	12-22-2011	Amend	2-1-2012
441-674-0100	1-1-2012	Repeal	2-1-2012	442-010-0215	12-22-2011	Amend	2-1-2012
441-674-0120	1-1-2012	Repeal	2-1-2012	442-010-0220	12-22-2011	Amend	2-1-2012
441-674-0130	1-1-2012	Repeal	2-1-2012	442-010-0230	12-22-2011	Amend	2-1-2012
441-674-0140	1-1-2012	Repeal	2-1-2012	442-010-0240	12-22-2011	Amend	2-1-2012
441-674-0210	1-1-2012	Repeal	2-1-2012	442-010-0250	12-22-2011	Repeal	2-1-2012
441-674-0220	1-1-2012	Repeal	2-1-2012	442-010-0260	12-22-2011	Amend	2-1-2012
441-674-0230	1-1-2012	Repeal	2-1-2012	459-005-0620	11-22-2011	Adopt(T)	1-1-2012
441-674-0240	1-1-2012	Repeal	2-1-2012	459-010-0005	11-23-2011	Repeal	1-1-2012
441-674-0250	1-1-2012	Repeal	2-1-2012	459-015-0005	11-23-2011	Amend	1-1-2012
441-674-0310	1-1-2012	Repeal	2-1-2012	459-060-0020	11-23-2011	Amend	1-1-2012
441-674-0510	1-1-2012	Repeal	2-1-2012	459-076-0005	11-23-2011	Amend	1-1-2012
441-674-0520	1-1-2012	Repeal	2-1-2012	461-001-0025	12-29-2011	Amend	2-1-2012
441-674-0910	1-1-2012	Repeal	2-1-2012	461-115-0016	1-1-2012	Adopt	2-1-2012
441-674-0915	1-1-2012	Repeal	2-1-2012	461-115-0016(T)	1-1-2012	Repeal	2-1-2012
441-674-0920	1-1-2012	Repeal	2-1-2012	461-115-0030	1-1-2012	Amend	2-1-2012
441-710-0540	12-15-2011	Amend(T)	1-1-2012	461-115-0030(T)	1-1-2012	Repeal	2-1-2012
441-730-0246	12-15-2011	Amend(T)	1-1-2012	461-115-0050	1-1-2012	Amend	2-1-2012
441-830-0010	11-23-2011	Repeal	1-1-2012	461-115-0050(T)	1-1-2012	Repeal	2-1-2012
441-830-0015	11-23-2011	Repeal	1-1-2012	461-115-0230	1-1-2012	Amend	2-1-2012
441-830-0020	11-23-2011	Repeal	1-1-2012	461-115-0230(T)	1-1-2012	Repeal	2-1-2012
441-830-0030	11-23-2011	Repeal	1-1-2012	461-115-0690	1-1-2012	Amend	2-1-2012

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461-115-0705	1-1-2012	Amend(T)	2-1-2012	576-010-0000	12-27-2011	Amend	2-1-2012
461-130-0327	12-29-2011	Amend	2-1-2012	576-040-0010	12-27-2011	Amend	2-1-2012
461-130-0330	1-1-2012	Amend	2-1-2012	576-040-0012	12-27-2011	Amend	2-1-2012
461-130-0330(T)	1-1-2012	Repeal	2-1-2012	576-040-0015	12-27-2011	Amend	2-1-2012
461-130-0335	1-1-2012	Amend	2-1-2012	576-040-0025	12-27-2011	Repeal	2-1-2012
461-130-0335(T)	1-1-2012	Repeal	2-1-2012	576-040-0030	12-27-2011	Repeal	2-1-2012
461-135-0010	1-13-2012	Amend(T)	2-1-2012	576-040-0035	12-27-2011	Repeal	2-1-2012
461-135-0089	1-1-2012	Amend	2-1-2012	579-020-0006	12-1-2011	Amend(T)	1-1-2012
461-135-0089(T)	1-1-2012	Repeal	2-1-2012	580-020-0005	1-12-2012	Amend	2-1-2012
461-135-0475	12-29-2011	Amend	2-1-2012	580-040-0035	1-12-2012	Amend	2-1-2012
461-135-0485	1-1-2012	Adopt	2-1-2012	581-015-2570	12-15-2011	Amend	1-1-2012
461-135-0485(T)	1-1-2012	Repeal	2-1-2012	581-015-2571	12-15-2011	Amend	1-1-2012
461-135-0780	1-1-2012	Amend	2-1-2012	581-015-2572	12-15-2011	Amend	1-1-2012
461-135-0832	1-1-2012	Amend	2-1-2012	581-015-2573	12-15-2011	Amend	1-1-2012
461-135-0845	1-1-2012	Amend	2-1-2012	581-015-2574	12-15-2011	Amend	1-1-2012
461-135-0950	1-1-2012	Amend	2-1-2012	581-020-0334	12-15-2011	Amend	1-1-2012
461-135-0950(T)	1-1-2012	Repeal	2-1-2012	581-020-0336	1-1-2012	Amend	1-1-2012
461-135-0960	1-1-2012	Repeal	2-1-2012	581-020-0339	12-15-2011	Repeal	1-1-2012
461-135-0990	1-1-2012	Amend	2-1-2012	581-020-0342	12-15-2011	Adopt	1-1-2012
461-135-1100	1-1-2012	Amend(T)	2-1-2012	581-020-0342(T)	12-15-2011	Repeal	1-1-2012
461-135-1110	1-1-2012	Suspend	2-1-2012	581-020-0343	12-15-2011	Adopt	1-1-2012
461-135-1195	1-1-2012	Amend	2-1-2012	581-020-0343(T)	12-15-2011	Repeal	1-1-2012
461-135-1195(T)	1-1-2012	Repeal	2-1-2012	581-021-00032	1-1-2012	Repeal	1-1-2012
461-145-0130	1-1-2012	Amend	2-1-2012	581-021-0034	1-1-2012	Repeal	1-1-2012
461-145-0220	1-1-2012	Amend	2-1-2012	581-021-0035	1-1-2012	Repeal	1-1-2012
461-145-0410	1-1-2012	Amend	2-1-2012	581-021-0042	1-1-2012	Repeal	1-1-2012
461-145-0410	1-1-2012	Amend(T)	2-1-2012	581-021-0044	1-1-2012	Repeal	1-1-2012
461-145-0410(T)	1-1-2012	Repeal	2-1-2012	581-021-0255	1-1-2012	Amend	1-1-2012
461-155-0150	1-1-2012	Amend	2-1-2012	581-022-1060	1-1-2012	Amend	1-1-2012
461-155-0250	1-1-2012	Amend	2-1-2012	581-022-1330	12-15-2011	Amend	1-1-2012
461-155-0270	1-1-2012	Amend	2-1-2012	581-022-1369	1-1-2012	Repeal	1-1-2012
461-155-0300	1-1-2012	Amend	2-1-2012	581-022-1680	1-1-2012	Repeal	1-1-2012
461-155-0320	1-1-2012	Amend	2-1-2012	581-022-1720	12-15-2011	Amend	1-1-2012
461-155-0320(T)	1-1-2012	Repeal	2-1-2012	581-022-1723	12-15-2011	Adopt	1-1-2012
461-155-0360	1-1-2012	Amend	2-1-2012	581-022-1724	12-15-2011	Adopt	1-1-2012
461-155-0528	1-1-2012	Repeal	2-1-2012	581-022-1725	12-15-2011	Adopt	1-1-2012
461-155-0575	12-1-2011	Amend(T)	1-1-2012	581-023-0012	1-1-2012	Repeal	1-1-2012
461-155-0575(T)	12-1-2011	Suspend	1-1-2012	581-023-0040	12-15-2011	Amend	1-1-2012
461-155-0693	1-1-2012	Repeal	2-1-2012	581-023-0110	1-1-2012	Repeal	1-1-2012
461-160-0015	1-1-2012	Amend	2-1-2012	581-023-0112	1-1-2012	Amend	1-1-2012
461-160-0015(T)	1-1-2012	Repeal	2-1-2012	581-040-0000	12-15-2011	Repeal	1-1-2012
461-160-0580	1-1-2012	Amend	2-1-2012	581-044-0080	12-15-2011	Repeal	1-1-2012
461-160-0620	1-1-2012	Amend	2-1-2012	581-044-0090	12-15-2011	Repeal	1-1-2012
461-175-0210	1-1-2012	Amend(T)	2-1-2012	581-044-0100	12-15-2011	Repeal	1-1-2012
461-175-0290	1-1-2012	Amend	2-1-2012	581-044-0110	12-15-2011	Repeal	1-1-2012
461-180-0050	1-1-2012	Amend	2-1-2012	581-044-0120	12-15-2011	Repeal	1-1-2012
461-180-0050(T)	1-1-2012	Repeal	2-1-2012	581-044-0130	12-15-2011	Repeal	1-1-2012
461-180-0070	1-1-2012	Amend	2-1-2012	581-044-0140	12-15-2011	Repeal	1-1-2012
461-180-0070(T)	1-1-2012	Repeal	2-1-2012	581-044-0200	12-15-2011	Repeal	1-1-2012
461-180-0085	1-1-2012	Amend	2-1-2012	581-060-0005	12-15-2011	Repeal	1-1-2012
461-180-0130	12-27-2011	Amend	2-1-2012	581-060-0010	12-15-2011	Repeal	1-1-2012
461-180-0130	12-27-2011	Amend(T)	2-1-2012	581-060-0015	12-15-2011	Repeal	1-1-2012
471-030-0053	12-5-2011	Amend	1-1-2012	581-060-0020	12-15-2011	Repeal	1-1-2012
471-030-0053(T)	12-5-2011	Repeal	1-1-2012	581-070-0000	12-15-2011	Repeal	1-1-2012
471-030-0230	1-1-2012	Adopt(T)	2-1-2012	581-070-0010	12-15-2011	Repeal	1-1-2012

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581-070-0030	12-15-2011	Repeal	1-1-2012	603-095-0200	1-12-2012	Repeal	2-1-2012
581-070-0040	12-15-2011	Repeal	1-1-2012	603-095-0220	1-12-2012	Repeal	2-1-2012
581-070-0050	12-15-2011	Repeal	1-1-2012	603-095-0240	1-12-2012	Repeal	2-1-2012
581-070-0060	12-15-2011	Repeal	1-1-2012	603-095-0260	1-12-2012	Repeal	2-1-2012
581-070-0070	12-15-2011	Repeal	1-1-2012	603-095-0280	1-12-2012	Repeal	2-1-2012
581-070-0080	12-15-2011	Repeal	1-1-2012	603-095-1400	1-12-2012	Amend	2-1-2012
581-070-0090	12-15-2011	Repeal	1-1-2012	603-095-1420	1-12-2012	Amend	2-1-2012
581-070-0110	12-15-2011	Repeal	1-1-2012	603-095-1440	1-12-2012	Amend	2-1-2012
581-070-0130	12-15-2011	Repeal	1-1-2012	603-095-1460	1-12-2012	Adopt	2-1-2012
581-070-0140	12-15-2011	Repeal	1-1-2012	629-035-0105	1-1-2012	Amend	1-1-2012
581-070-0150	12-15-2011	Repeal	1-1-2012	632-001-0020	12-14-2011	Adopt	1-1-2012
581-070-0170	12-15-2011	Repeal	1-1-2012	635-004-0018	1-1-2012	Amend	2-1-2012
581-070-0180	12-15-2011	Repeal	1-1-2012	635-004-0019	1-1-2012	Amend	2-1-2012
581-070-0190	12-15-2011	Repeal	1-1-2012	635-004-0027	1-9-2012	Amend(T)	2-1-2012
581-070-0200	12-15-2011	Repeal	1-1-2012	635-004-0033	1-1-2012	Amend	2-1-2012
581-070-0210	12-15-2011	Repeal	1-1-2012	635-005-0045	12-1-2011	Amend(T)	1-1-2012
581-070-0220	12-15-2011	Repeal	1-1-2012	635-005-0045	12-15-2011	Amend(T)	1-1-2012
581-070-0230	12-15-2011	Repeal	1-1-2012	635-005-0045(T)	12-15-2011	Suspend	1-1-2012
581-070-0240	12-15-2011	Repeal	1-1-2012	635-005-0055	12-1-2011	Amend(T)	1-1-2012
581-070-0250	12-15-2011	Repeal	1-1-2012	635-006-0210	1-1-2012	Amend	2-1-2012
581-070-0380	12-15-2011	Repeal	1-1-2012	635-006-0211	1-1-2012	Amend	2-1-2012
581-070-0390	12-15-2011	Repeal	1-1-2012	635-006-0215	1-1-2012	Amend	2-1-2012
581-070-0400	12-15-2011	Repeal	1-1-2012	635-006-0232	1-1-2012	Amend(T)	2-1-2012
581-070-0410	12-15-2011	Repeal	1-1-2012	635-006-1010	12-1-2011	Amend(T)	1-1-2012
581-070-0420	12-15-2011	Repeal	1-1-2012	635-006-1015	12-1-2011	Amend(T)	1-1-2012
581-070-0500	12-15-2011	Repeal	1-1-2012	635-006-1065	12-1-2011	Amend(T)	1-1-2012
581-070-0510	12-15-2011	Repeal	1-1-2012	635-008-0123	1-1-2012	Amend	1-1-2012
581-071-0005	12-15-2011	Repeal	1-1-2012	635-008-0135	1-1-2012	Amend	1-1-2012
581-071-0010	12-15-2011	Repeal	1-1-2012	635-008-0155	1-1-2012	Amend	1-1-2012
584-060-0250	1-15-2012	Adopt	1-1-2012	635-011-0100	1-1-2012	Amend	2-1-2012
589-007-0700	12-9-2011	Amend	1-1-2012	635-012-0020	12-25-2011	Amend(T)	1-1-2012
589-007-0800	12-9-2011	Adopt	1-1-2012	635-012-0020(T)	12-25-2011	Suspend	1-1-2012
603-018-0001	12-28-2011	Adopt(T)	2-1-2012	635-012-0030	12-25-2011	Suspend	1-1-2012
603-018-0003	12-28-2011	Adopt(T)	2-1-2012	635-012-0040	12-25-2011	Suspend	1-1-2012
603-018-0007	12-28-2011	Adopt(T)	2-1-2012	635-012-0050	12-25-2011	Suspend	1-1-2012
603-018-0009	12-28-2011	Adopt(T)	2-1-2012	635-012-0060	12-25-2011	Suspend	1-1-2012
603-018-0011	12-28-2011	Adopt(T)	2-1-2012	635-013-0003	1-1-2012	Amend	2-1-2012
603-018-0013	12-28-2011	Adopt(T)	2-1-2012	635-013-0004	1-1-2012	Amend	2-1-2012
603-019-0001	12-28-2011	Adopt	2-1-2012	635-014-0080	1-1-2012	Amend	2-1-2012
603-019-0005	12-28-2011	Adopt	2-1-2012	635-014-0090	1-1-2012	Amend	2-1-2012
603-019-0010	12-28-2011	Adopt	2-1-2012	635-016-0080	1-1-2012	Amend	2-1-2012
603-019-0015	12-28-2011	Adopt	2-1-2012	635-016-0090	1-1-2012	Amend	2-1-2012
603-019-0020	12-28-2011	Adopt	2-1-2012	635-017-0080	1-1-2012	Amend	2-1-2012
603-019-0025	12-28-2011	Adopt	2-1-2012	635-017-0090	1-1-2012	Amend	2-1-2012
603-019-0030	12-28-2011	Adopt	2-1-2012	635-017-0090	1-1-2012	Amend(T)	1-1-2012
603-019-0035	12-28-2011	Adopt	2-1-2012	635-017-0095	1-1-2012	Amend	2-1-2012
603-019-0040	12-28-2011	Adopt	2-1-2012	635-018-0080	1-1-2012	Amend	2-1-2012
603-027-0410	12-14-2011	Amend	1-1-2012	635-018-0090	1-1-2012	Amend	2-1-2012
603-027-0420	12-14-2011	Amend	1-1-2012	635-018-0090	1-1-2012	Amend(T)	2-1-2012
603-027-0430	12-14-2011	Amend	1-1-2012	635-019-0080	1-1-2012	Amend	2-1-2012
603-027-0440	12-14-2011	Amend	1-1-2012	635-019-0090	1-1-2012	Amend	2-1-2012
603-027-0490	12-14-2011	Amend	1-1-2012	635-021-0080	1-1-2012	Amend	2-1-2012
603-057-0001	1-1-2013	Amend	2-1-2012	635-021-0090	1-1-2012	Amend	2-1-2012
603-057-0100	1-1-2013	Amend	2-1-2012	635-023-0080	1-1-2012	Amend	2-1-2012
603-057-0127	1-1-2013	Amend	2-1-2012	635-023-0090	1-1-2012	Amend	2-1-2012

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635-023-0095	1-5-2012	Amend(T)	2-1-2012	731-146-0060	1-1-2012	Amend	2-1-2012
635-023-0125	1-1-2012	Amend	2-1-2012	731-147-0010	1-1-2012	Amend	2-1-2012
635-023-0128	1-1-2012	Amend	2-1-2012	731-147-0040	1-1-2012	Amend	2-1-2012
635-023-0130	1-1-2012	Amend	2-1-2012	731-147-0060	1-1-2012	Repeal	2-1-2012
635-023-0134	1-1-2012	Amend	2-1-2012	731-148-0010	1-1-2012	Amend	2-1-2012
635-039-0080	1-1-2012	Amend	2-1-2012	731-148-0020	1-1-2012	Repeal	2-1-2012
635-039-0090	12-1-2011	Amend(T)	1-1-2012	731-149-0010	1-1-2012	Amend	2-1-2012
635-039-0090	12-15-2011	Amend(T)	1-1-2012	734-005-0005	1-1-2012	Adopt	2-1-2012
635-039-0090	1-1-2012	Amend	2-1-2012	734-005-0010	1-1-2012	Adopt	2-1-2012
635-039-0090(T)	12-1-2011	Suspend	1-1-2012	734-005-0015	1-1-2012	Adopt	2-1-2012
635-039-0090(T)	12-15-2011	Suspend	1-1-2012	734-020-0005	12-22-2011	Amend	2-1-2012
635-043-0051	12-30-2011	Amend(T)	2-1-2012	734-020-0055	12-22-2011	Repeal	2-1-2012
635-053-0035	12-21-2011	Amend(T)	2-1-2012	734-026-0010	1-1-2012	Adopt	2-1-2012
635-065-0001	1-1-2012	Amend	1-1-2012	734-026-0020	1-1-2012	Adopt	2-1-2012
635-065-0015	1-1-2012	Amend	1-1-2012	734-026-0030	1-1-2012	Adopt	2-1-2012
635-065-0090	1-1-2012	Amend	1-1-2012	734-026-0040	1-1-2012	Adopt	2-1-2012
635-065-0401	1-1-2012	Amend	1-1-2012	734-026-0045	1-1-2012	Adopt	2-1-2012
635-065-0625	1-1-2012	Amend	1-1-2012	734-051-0010	1-1-2012	Suspend	2-1-2012
635-065-0635	1-1-2012	Amend	1-1-2012	734-051-0020	1-1-2012	Suspend	2-1-2012
635-065-0733	1-1-2012	Amend	1-1-2012	734-051-0035	1-1-2012	Suspend	2-1-2012
635-065-0740	1-1-2012	Amend	1-1-2012	734-051-0040	1-1-2012	Suspend	2-1-2012
635-065-0760	1-1-2012	Amend	1-1-2012	734-051-0045	1-1-2012	Suspend	2-1-2012
635-066-0000	1-1-2012	Amend	1-1-2012	734-051-0070	1-1-2012	Suspend	2-1-2012
635-066-0010	1-1-2012	Amend	1-1-2012	734-051-0080	1-1-2012	Suspend	2-1-2012
635-067-0000	1-1-2012	Amend	1-1-2012	734-051-0085	1-1-2012	Suspend	2-1-2012
635-067-0004	1-1-2012	Amend	1-1-2012	734-051-0095	1-1-2012	Suspend	2-1-2012
635-067-0030	1-1-2012	Amend	1-1-2012	734-051-0105	1-1-2012	Suspend	2-1-2012
635-067-0040	1-1-2012	Amend	1-1-2012	734-051-0115	1-1-2012	Suspend	2-1-2012
635-069-0000	2-1-2012	Amend	2-1-2012	734-051-0125	1-1-2012	Suspend	2-1-2012
635-072-0000	1-1-2012	Amend	1-1-2012	734-051-0135	1-1-2012	Suspend	2-1-2012
635-073-0000	2-1-2012	Amend	2-1-2012	734-051-0145	1-1-2012	Suspend	2-1-2012
635-073-0065	2-1-2012	Amend	2-1-2012	734-051-0155	1-1-2012	Suspend	2-1-2012
635-073-0070	2-1-2012	Amend	2-1-2012	734-051-0165	1-1-2012	Suspend	2-1-2012
656-010-0000	11-30-2011	Amend	1-1-2012	734-051-0175	1-1-2012	Suspend	2-1-2012
656-010-0010	11-30-2011	Amend	1-1-2012	734-051-0185	1-1-2012	Suspend	2-1-2012
660-012-0005	1-1-2012	Amend	2-1-2012	734-051-0195	1-1-2012	Suspend	2-1-2012
660-012-0060	1-1-2012	Amend	2-1-2012	734-051-0205	1-1-2012	Suspend	2-1-2012
660-018-0020	1-1-2012	Amend(T)	2-1-2012	734-051-0215	1-1-2012	Suspend	2-1-2012
660-018-0021	1-1-2012	Amend(T)	2-1-2012	734-051-0225	1-1-2012	Suspend	2-1-2012
660-018-0022	1-1-2012	Amend(T)	2-1-2012	734-051-0245	1-1-2012	Suspend	2-1-2012
660-018-0040	1-1-2012	Amend(T)	2-1-2012	734-051-0255	1-1-2012	Suspend	2-1-2012
660-033-0030	12-20-2011	Amend	2-1-2012	734-051-0265	1-1-2012	Suspend	2-1-2012
660-033-0120	11-23-2011	Amend	1-1-2012	734-051-0275	1-1-2012	Suspend	2-1-2012
660-033-0130	11-23-2011	Amend	1-1-2012	734-051-0285	1-1-2012	Suspend	2-1-2012
731-035-0020	12-22-2011	Amend	2-1-2012	734-051-0295	1-1-2012	Suspend	2-1-2012
731-035-0040	12-22-2011	Amend	2-1-2012	734-051-0305	1-1-2012	Suspend	2-1-2012
731-035-0050	12-22-2011	Amend	2-1-2012	734-051-0315	1-1-2012	Suspend	2-1-2012
731-035-0060	12-22-2011	Amend	2-1-2012	734-051-0325	1-1-2012	Suspend	2-1-2012
731-035-0070	12-22-2011	Amend	2-1-2012	734-051-0335	1-1-2012	Suspend	2-1-2012
731-035-0080	12-22-2011	Amend	2-1-2012	734-051-0345	1-1-2012	Suspend	2-1-2012
731-146-0010	1-1-2012	Amend	2-1-2012	734-051-0355	1-1-2012	Suspend	2-1-2012
731-146-0015	1-1-2012	Amend	2-1-2012	734-051-0500	1-1-2012	Suspend	2-1-2012
731-146-0020	1-1-2012	Amend	2-1-2012	734-051-0510	1-1-2012	Suspend	2-1-2012
731-146-0025	1-1-2012	Amend	2-1-2012	734-051-0520	1-1-2012	Suspend	2-1-2012
731-146-0030	1-1-2012	Amend	2-1-2012	734-051-0530	1-1-2012	Suspend	2-1-2012

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734-051-0550	1-1-2012	Suspend	2-1-2012	735-062-0032	1-1-2012	Amend	2-1-2012
734-051-0560	1-1-2012	Suspend	2-1-2012	735-062-0033	1-1-2012	Amend	2-1-2012
734-051-1010	1-1-2012	Adopt(T)	2-1-2012	735-062-0120	1-1-2012	Amend	2-1-2012
734-051-1020	1-1-2012	Adopt(T)	2-1-2012	735-062-0125	1-1-2012	Amend	2-1-2012
734-051-1030	1-1-2012	Adopt(T)	2-1-2012	735-062-0135	1-1-2012	Amend	2-1-2012
734-051-1050	1-1-2012	Adopt(T)	2-1-2012	735-064-0085	12-22-2011	Repeal	2-1-2012
734-051-1060	1-1-2012	Adopt(T)	2-1-2012	735-064-0220	1-1-2012	Amend	2-1-2012
734-051-1070	1-1-2012	Adopt(T)	2-1-2012	735-070-0004	11-23-2011	Amend	1-1-2012
734-051-2010	1-1-2012	Adopt(T)	2-1-2012	735-070-0010	1-1-2012	Amend	2-1-2012
734-051-2020	1-1-2012	Adopt(T)	2-1-2012	735-070-0054	11-23-2011	Amend	1-1-2012
734-051-2030	1-1-2012	Adopt(T)	2-1-2012	735-072-0035	1-1-2012	Amend	2-1-2012
734-051-3010	1-1-2012	Adopt(T)	2-1-2012	735-074-0140	1-1-2012	Amend	2-1-2012
734-051-3020	1-1-2012	Adopt(T)	2-1-2012	735-076-0020	1-1-2012	Amend	2-1-2012
734-051-3030	1-1-2012	Adopt(T)	2-1-2012	735-152-0000	1-1-2012	Amend	2-1-2012
734-051-3040	1-1-2012	Adopt(T)	2-1-2012	735-152-0005	1-1-2012	Amend	2-1-2012
734-051-3050	1-1-2012	Adopt(T)	2-1-2012	735-152-0020	1-1-2012	Amend	2-1-2012
734-051-3060	1-1-2012	Adopt(T)	2-1-2012	735-152-0040	1-1-2012	Amend	2-1-2012
734-051-3070	1-1-2012	Adopt(T)	2-1-2012	735-152-0050	1-1-2012	Amend	2-1-2012
734-051-3080	1-1-2012	Adopt(T)	2-1-2012	735-152-0060	1-1-2012	Amend	2-1-2012
734-051-3090	1-1-2012	Adopt(T)	2-1-2012	736-015-0010	11-28-2011	Amend	1-1-2012
734-051-3100	1-1-2012	Adopt(T)	2-1-2012	736-015-0020	11-28-2011	Amend	1-1-2012
734-051-3110	1-1-2012	Adopt(T)	2-1-2012	736-015-0026	11-28-2011	Amend	1-1-2012
734-051-4010	1-1-2012	Adopt(T)	2-1-2012	736-015-0030	11-28-2011	Amend	1-1-2012
734-051-4020	1-1-2012	Adopt(T)	2-1-2012	740-055-0010	12-22-2011	Amend	2-1-2012
734-051-4030	1-1-2012	Adopt(T)	2-1-2012	740-055-0100	11-23-2011	Amend	1-1-2012
734-051-4040	1-1-2012	Adopt(T)	2-1-2012	740-100-0100	1-1-2012	Amend	2-1-2012
734-051-4050	1-1-2012	Adopt(T)	2-1-2012	740-300-0010	11-23-2011	Amend	1-1-2012
734-051-5010	1-1-2012	Adopt(T)	2-1-2012	801-001-0035	1-1-2012	Amend	2-1-2012
734-051-5020	1-1-2012	Adopt(T)	2-1-2012	801-001-0045	1-1-2012	Adopt	2-1-2012
734-051-5030	1-1-2012	Adopt(T)	2-1-2012	801-005-0010	1-1-2012	Amend	2-1-2012
734-051-5040	1-1-2012	Adopt(T)	2-1-2012	801-005-0300	1-1-2012	Amend	2-1-2012
734-051-5050	1-1-2012	Adopt(T)	2-1-2012	801-010-0010	1-1-2012	Amend	2-1-2012
734-051-5060	1-1-2012	Adopt(T)	2-1-2012	801-010-0040	1-1-2012	Amend	2-1-2012
734-051-5070	1-1-2012	Adopt(T)	2-1-2012	801-010-0050	1-1-2012	Amend	2-1-2012
734-051-5080	1-1-2012	Adopt(T)	2-1-2012	801-010-0065	1-1-2012	Amend	2-1-2012
734-051-5090	1-1-2012	Adopt(T)	2-1-2012	801-010-0073	1-1-2012	Amend	2-1-2012
734-051-5100	1-1-2012	Adopt(T)	2-1-2012	801-010-0075	1-1-2012	Amend	2-1-2012
734-051-5110	1-1-2012	Adopt(T)	2-1-2012	801-010-0079	1-1-2012	Amend	2-1-2012
734-051-5120	1-1-2012	Adopt(T)	2-1-2012	801-010-0080	1-1-2012	Amend	2-1-2012
734-051-6010	1-1-2012	Adopt(T)	2-1-2012	801-010-0085	1-1-2012	Amend	2-1-2012
734-051-6020	1-1-2012	Adopt(T)	2-1-2012	801-010-0110	1-1-2012	Amend	2-1-2012
734-051-6030	1-1-2012	Adopt(T)	2-1-2012	801-010-0115	1-1-2012	Amend	2-1-2012
734-051-6040	1-1-2012	Adopt(T)	2-1-2012	801-010-0120	1-1-2012	Amend	2-1-2012
734-051-6050	1-1-2012	Adopt(T)	2-1-2012	801-010-0125	1-1-2012	Amend	2-1-2012
734-051-6060	1-1-2012	Adopt(T)	2-1-2012	801-010-0130	1-1-2012	Amend	2-1-2012
734-051-6070	1-1-2012	Adopt(T)	2-1-2012	801-010-0190	1-1-2012	Am. & Ren.	2-1-2012
734-051-7010	1-1-2012	Adopt(T)	2-1-2012	801-010-0340	1-1-2012	Amend	2-1-2012
735-001-0030	12-22-2011	Repeal	2-1-2012	801-010-0345	1-1-2012	Amend	2-1-2012
735-016-0080	12-22-2011	Repeal	2-1-2012	801-040-0010	1-1-2012	Amend	2-1-2012
735-030-0330	1-1-2012	Amend	2-1-2012	801-040-0020	1-1-2012	Amend	2-1-2012
735-040-0030	1-1-2012	Amend	2-1-2012	801-040-0090	1-1-2012	Amend	2-1-2012
735-050-0090	12-22-2011	Repeal	2-1-2012	801-040-0100	1-1-2012	Amend	2-1-2012
735-062-0005	1-1-2012	Amend	2-1-2012	801-040-0160	1-1-2012	Amend	2-1-2012
735-062-0010	1-1-2012	Amend	2-1-2012	801-050-0010	1-1-2012	Amend	2-1-2012
735-062-0015	1-1-2012	Amend	2-1-2012	801-050-0020	1-1-2012	Amend	2-1-2012

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806-010-0045	1-4-2012	Amend	2-1-2012	836-071-0500	1-1-2012	Amend	2-1-2012
808-002-0020	1-1-2012	Amend	2-1-2012	836-071-0501	1-1-2012	Adopt	2-1-2012
808-002-0390	1-1-2012	Adopt	2-1-2012	836-071-0550	1-1-2012	Adopt	2-1-2012
808-002-0625	1-1-2012	Amend	2-1-2012	836-071-0560	1-1-2012	Adopt	2-1-2012
808-003-0015	1-1-2012	Amend	2-1-2012	836-071-0565	1-1-2012	Adopt	2-1-2012
808-003-0025	1-1-2012	Amend	2-1-2012	836-071-0570	1-1-2012	Adopt	2-1-2012
808-003-0030	1-1-2012	Amend	2-1-2012	836-200-0250	1-1-2012	Adopt	1-1-2012
808-003-0040	1-1-2012	Amend	2-1-2012	836-200-0255	1-1-2012	Adopt	1-1-2012
808-003-0065	1-1-2012	Amend	2-1-2012	836-200-0300	1-1-2012	Adopt	1-1-2012
808-003-0090	1-1-2012	Amend	2-1-2012	836-200-0305	1-1-2012	Adopt	1-1-2012
808-003-0126	1-1-2012	Adopt	2-1-2012	836-200-0310	1-1-2012	Adopt	1-1-2012
808-003-0130	1-1-2012	Amend	2-1-2012	836-200-0315	1-1-2012	Adopt	1-1-2012
808-003-0620	1-1-2012	Adopt	2-1-2012	839-001-0300	1-1-2012	Adopt	2-1-2012
808-004-0320	1-1-2012	Amend	2-1-2012	839-001-0560	1-1-2012	Amend	2-1-2012
808-005-0020	1-1-2012	Amend	2-1-2012	839-002-0001	1-1-2012	Amend	2-1-2012
808-040-0020	1-1-2012	Amend	2-1-2012	839-002-0002	1-1-2012	Amend	2-1-2012
808-040-0080	1-1-2012	Amend	2-1-2012	839-002-0005	1-1-2012	Amend	2-1-2012
812-002-0260	1-1-2012	Amend	1-1-2012	839-002-0015	1-1-2012	Amend	2-1-2012
812-005-0800	1-1-2012	Amend	1-1-2012	839-002-0020	1-1-2012	Amend	2-1-2012
812-008-0000	1-1-2012	Amend	1-1-2012	839-002-0025	1-1-2012	Amend	2-1-2012
812-008-0020	1-1-2012	Amend	1-1-2012	839-002-0030	1-1-2012	Amend	2-1-2012
812-008-0030	1-1-2012	Amend	1-1-2012	839-002-0035	1-1-2012	Amend	2-1-2012
812-021-0005	1-13-2012	Amend(T)	2-1-2012	839-002-0040	1-1-2012	Amend	2-1-2012
812-021-0015	11-18-2011	Amend(T)	1-1-2012	839-002-0045	1-1-2012	Amend	2-1-2012
833-120-0011	12-15-2011	Amend	1-1-2012	839-002-0050	1-1-2012	Amend	2-1-2012
833-120-0021	12-15-2011	Amend	1-1-2012	839-002-0055	1-1-2012	Amend	2-1-2012
833-120-0031	12-15-2011	Amend	1-1-2012	839-002-0060	1-1-2012	Amend	2-1-2012
833-120-0041	12-15-2011	Amend	1-1-2012	839-002-0065	1-1-2012	Amend	2-1-2012
836-010-0000	1-1-2012	Amend	2-1-2012	839-002-0070	1-1-2012	Amend	2-1-2012
836-010-0011	1-1-2012	Amend	2-1-2012	839-002-0075	1-1-2012	Amend	2-1-2012
836-010-0012	1-1-2012	Repeal	2-1-2012	839-002-0080	1-1-2012	Amend	2-1-2012
836-052-0900	1-13-2012	Suspend	2-1-2012	839-005-0033	1-1-2012	Renumber	2-1-2012
836-053-0410	12-19-2011	Amend	2-1-2012	839-005-0075	1-1-2012	Adopt	2-1-2012
836-053-0415	12-19-2011	Adopt	2-1-2012	839-005-0130	1-1-2012	Adopt	2-1-2012
836-053-0825	12-19-2011	Adopt	2-1-2012	839-005-0135	1-1-2012	Adopt	2-1-2012
836-053-0830	12-19-2011	Adopt	2-1-2012	839-005-0160	1-1-2012	Amend	2-1-2012
836-053-0851	12-19-2011	Amend	2-1-2012	839-005-0170	1-1-2012	Amend	2-1-2012
836-053-0856	12-19-2011	Repeal	2-1-2012	839-006-0440	1-1-2012	Amend	2-1-2012
836-053-0857	12-19-2011	Adopt	2-1-2012	839-006-0450	1-1-2012	Amend	2-1-2012
836-053-0861	12-19-2011	Repeal	2-1-2012	839-006-0455	1-1-2012	Amend	2-1-2012
836-053-0862	12-19-2011	Adopt	2-1-2012	839-006-0470	1-1-2012	Amend	2-1-2012
836-053-0866	12-19-2011	Repeal	2-1-2012	839-006-0480	1-1-2012	Amend	2-1-2012
836-053-1000	12-19-2011	Amend	2-1-2012	839-009-0325	1-1-2012	Amend	2-1-2012
836-053-1030	12-19-2011	Amend	2-1-2012	839-009-0330	1-1-2012	Amend	2-1-2012
836-053-1033	12-19-2011	Adopt	2-1-2012	839-009-0340	1-1-2012	Amend	2-1-2012
836-053-1035	12-19-2011	Adopt	2-1-2012	839-009-0345	1-1-2012	Amend	2-1-2012
836-053-1060	12-19-2011	Amend	2-1-2012	839-009-0355	1-1-2012	Amend	2-1-2012
836-053-1070	12-19-2011	Amend	2-1-2012	839-009-0360	1-1-2012	Amend	2-1-2012
836-053-1080	12-19-2011	Amend	2-1-2012	839-009-0362	1-1-2012	Amend	2-1-2012
836-053-1100	12-19-2011	Amend	2-1-2012	839-009-0365	1-1-2012	Amend	2-1-2012
836-053-1110	12-19-2011	Amend	2-1-2012	839-011-0020	1-3-2012	Amend	2-1-2012
836-053-1140	12-19-2011	Amend	2-1-2012	839-011-0050	1-3-2012	Amend	2-1-2012
836-053-1310	12-19-2011	Amend	2-1-2012	839-011-0051	1-3-2012	Amend	2-1-2012
836-053-1340	12-19-2011	Amend	2-1-2012	839-011-0060	1-3-2012	Amend	2-1-2012
836-053-1342	12-19-2011	Amend	2-1-2012	839-011-0070	1-3-2012	Amend	2-1-2012

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839-011-0074	1-3-2012	Amend	2-1-2012	851-002-0000	11-22-2011	Amend	1-1-2012
839-011-0082	1-3-2012	Amend	2-1-2012	853-001-0000	1-1-2012	Repeal	1-1-2012
839-011-0084	1-3-2012	Amend	2-1-2012	853-001-0005	1-1-2012	Repeal	1-1-2012
839-011-0088	1-3-2012	Amend	2-1-2012	853-001-0020	1-1-2012	Repeal	1-1-2012
839-011-0090	1-3-2012	Amend	2-1-2012	853-001-0025	1-1-2012	Repeal	1-1-2012
839-011-0140	1-3-2012	Amend	2-1-2012	853-001-0030	1-1-2012	Repeal	1-1-2012
839-011-0141	1-3-2012	Amend	2-1-2012	853-010-0010	1-1-2012	Repeal	1-1-2012
839-011-0142	1-3-2012	Amend	2-1-2012	853-010-0015	1-1-2012	Repeal	1-1-2012
839-011-0143	1-3-2012	Amend	2-1-2012	853-010-0017	1-1-2012	Repeal	1-1-2012
839-011-0145	1-3-2012	Amend	2-1-2012	853-010-0020	1-1-2012	Repeal	1-1-2012
839-011-0162	1-3-2012	Amend	2-1-2012	853-010-0025	1-1-2012	Repeal	1-1-2012
839-011-0175	1-3-2012	Amend	2-1-2012	853-010-0035	1-1-2012	Repeal	1-1-2012
839-011-0265	1-3-2012	Amend	2-1-2012	853-010-0040	1-1-2012	Repeal	1-1-2012
839-011-0270	1-3-2012	Amend	2-1-2012	853-010-0045	1-1-2012	Repeal	1-1-2012
839-011-0290	1-3-2012	Amend	2-1-2012	853-010-0050	1-1-2012	Repeal	1-1-2012
839-011-0310	1-3-2012	Amend	2-1-2012	853-010-0055	1-1-2012	Repeal	1-1-2012
839-011-0320	1-3-2012	Amend	2-1-2012	853-010-0060	1-1-2012	Repeal	1-1-2012
839-011-0334	1-3-2012	Amend	2-1-2012	853-010-0065	1-1-2012	Repeal	1-1-2012
839-025-0700	1-1-2012	Amend	2-1-2012	853-010-0070	1-1-2012	Repeal	1-1-2012
839-050-0040	1-1-2012	Amend	2-1-2012	853-010-0074	1-1-2012	Repeal	1-1-2012
839-050-0310	1-1-2012	Amend	2-1-2012	853-010-0075	1-1-2012	Repeal	1-1-2012
839-050-0340	1-1-2012	Amend	2-1-2012	853-010-0076	1-1-2012	Repeal	1-1-2012
845-005-0425	1-1-2012	Amend	1-1-2012	853-010-0077	1-1-2012	Repeal	1-1-2012
845-009-0135	1-1-2012	Amend	1-1-2012	853-010-0078	1-1-2012	Repeal	1-1-2012
845-015-0101	1-1-2012	Amend	1-1-2012	853-010-0079	1-1-2012	Repeal	1-1-2012
845-015-0120	1-1-2012	Amend	1-1-2012	853-010-0080	1-1-2012	Repeal	1-1-2012
845-015-0185	1-1-2012	Amend	1-1-2012	853-020-0000	1-1-2012	Adopt	1-1-2012
845-015-0190	1-1-2012	Amend	1-1-2012	853-030-0000	1-1-2012	Adopt	1-1-2012
845-015-0196	1-1-2012	Amend	1-1-2012	853-030-0010	1-1-2012	Adopt	1-1-2012
845-015-0210	1-1-2012	Adopt	1-1-2012	853-030-0020	1-1-2012	Adopt	1-1-2012
847-005-0005	1-1-2012	Amend(T)	2-1-2012	853-030-0030	1-1-2012	Adopt	1-1-2012
847-008-0040	1-1-2012	Amend(T)	1-1-2012	853-030-0040	1-1-2012	Adopt	1-1-2012
847-050-0005	1-1-2012	Amend(T)	1-1-2012	853-030-0050	1-1-2012	Adopt	1-1-2012
847-050-0010	1-1-2012	Amend(T)	1-1-2012	853-030-0060	1-1-2012	Adopt	1-1-2012
847-050-0015	1-1-2012	Amend(T)	1-1-2012	853-030-0070	1-1-2012	Adopt	1-1-2012
847-050-0020	1-1-2012	Amend(T)	1-1-2012	853-040-0000	1-1-2012	Adopt	1-1-2012
847-050-0023	1-1-2012	Amend(T)	1-1-2012	853-050-0000	1-1-2012	Adopt	1-1-2012
847-050-0025	1-1-2012	Amend(T)	1-1-2012	853-050-0010	1-1-2012	Adopt	1-1-2012
847-050-0026	1-1-2012	Amend(T)	1-1-2012	853-060-0000	1-1-2012	Adopt	1-1-2012
847-050-0027	1-1-2012	Amend(T)	1-1-2012	853-060-0010	1-1-2012	Adopt	1-1-2012
847-050-0029	1-1-2012	Amend(T)	1-1-2012	855-019-0260	1-1-2012	Amend	2-1-2012
847-050-0035	1-1-2012	Amend(T)	1-1-2012	855-019-0280	1-1-2012	Amend	2-1-2012
847-050-0037	1-1-2012	Amend(T)	1-1-2012	855-019-0290	1-1-2012	Amend	2-1-2012
847-050-0038	1-1-2012	Amend(T)	1-1-2012	855-031-0010	1-1-2012	Amend	2-1-2012
847-050-0040	1-1-2012	Amend(T)	1-1-2012	855-031-0020	1-1-2012	Amend	2-1-2012
847-050-0041	1-1-2012	Amend(T)	1-1-2012	855-031-0026	1-1-2012	Adopt	2-1-2012
847-050-0042	1-1-2012	Amend(T)	1-1-2012	855-031-0045	1-1-2012	Amend	2-1-2012
847-050-0043	1-1-2012	Amend(T)	1-1-2012	855-041-0095	1-1-2012	Amend	2-1-2012
847-050-0046	1-1-2012	Amend(T)	1-1-2012	855-060-0004	1-1-2012	Adopt	2-1-2012
847-050-0050	1-1-2012	Amend(T)	1-1-2012	855-080-0100	12-15-2011	Amend(T)	1-1-2012
847-050-0055	1-1-2012	Amend(T)	1-1-2012	855-080-0100(T)	12-15-2011	Suspend	1-1-2012
847-050-0060	1-1-2012	Amend(T)	1-1-2012	855-080-0103(T)	12-15-2011	Suspend	1-1-2012
847-050-0063	1-1-2012	Amend(T)	1-1-2012	855-110-0005	12-15-2011	Amend	1-1-2012
847-050-0065	1-1-2012	Amend(T)	1-1-2012	855-110-0007	12-15-2011	Amend	1-1-2012
850-050-0120	12-23-2011	Amend	1-1-2012	855-110-0010	12-15-2011	Amend	1-1-2012

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856-010-0027	12-30-2011	Adopt	2-1-2012	877-020-0016	12-29-2011	Amend	2-1-2012
859-200-0001	12-22-2011	Adopt(T)	2-1-2012	877-020-0036	12-29-2011	Amend	2-1-2012
859-300-0050	12-13-2011	Amend	1-1-2012	877-025-0006	12-29-2011	Amend	2-1-2012
859-300-0050(T)	12-13-2011	Repeal	1-1-2012	877-025-0011	12-29-2011	Amend	2-1-2012
860-023-0080	1-1-2012	Repeal	1-1-2012	877-040-0050	12-29-2011	Amend	2-1-2012
860-023-0090	1-1-2012	Repeal	1-1-2012	918-098-1000	1-1-2012	Amend	2-1-2012
860-023-0100	1-1-2012	Repeal	1-1-2012	918-098-1620	1-1-2012	Amend	2-1-2012
860-023-0110	1-1-2012	Repeal	1-1-2012	918-225-0240	1-1-2012	Amend	2-1-2012
860-023-0120	1-1-2012	Repeal	1-1-2012	918-225-0430	1-1-2012	Amend	2-1-2012
860-023-0130	1-1-2012	Repeal	1-1-2012	918-225-0435	1-1-2012	Amend	2-1-2012
860-023-0140	1-1-2012	Repeal	1-1-2012	918-225-0570	1-1-2012	Amend	2-1-2012
860-023-0150	1-1-2012	Repeal	1-1-2012	918-225-0600	1-1-2012	Amend	2-1-2012
860-023-0160	1-1-2012	Repeal	1-1-2012	918-225-0600	1-1-2012	Amend	2-1-2012
860-036-0001	1-1-2012	Amend	2-1-2012	918-225-0606	1-1-2012	Adopt	2-1-2012
860-036-0010	1-1-2012	Amend	2-1-2012	918-225-0609	1-1-2012	Adopt	2-1-2012
860-036-0015	1-1-2012	Amend	2-1-2012	918-225-0612	1-1-2012	Adopt	2-1-2012
860-036-0030	1-1-2012	Amend	2-1-2012	918-225-0615	1-1-2012	Adopt	2-1-2012
860-036-0040	1-1-2012	Amend	2-1-2012	918-225-0618	1-1-2012	Adopt	2-1-2012
860-036-0050	1-1-2012	Amend	2-1-2012	918-225-0620	1-1-2012	Amend	2-1-2012
860-036-0060	1-1-2012	Amend	2-1-2012	918-400-0455	1-1-2012	Amend	2-1-2012
860-036-0065	1-1-2012	Amend	2-1-2012	918-400-0458	1-1-2012	Amend	2-1-2012
860-036-0097	1-1-2012	Amend	2-1-2012	918-440-0012	1-1-2012	Amend	2-1-2012
860-036-0130	1-1-2012	Amend	2-1-2012	918-460-0015	1-1-2012	Amend	2-1-2012
860-036-0405	1-1-2012	Amend	2-1-2012	918-460-0510	1-1-2012	Amend	2-1-2012
860-036-0407	1-1-2012	Repeal	2-1-2012	943-014-0300	12-1-2011	Adopt	1-1-2012
860-036-0425	1-1-2012	Adopt	2-1-2012	943-014-0300(T)	12-1-2011	Repeal	1-1-2012
860-036-0505	1-1-2012	Amend	2-1-2012	943-014-0305	12-1-2011	Adopt	1-1-2012
860-036-0605	1-1-2012	Amend	2-1-2012	943-014-0305(T)	12-1-2011	Repeal	1-1-2012
860-036-0610	1-1-2012	Amend	2-1-2012	943-014-0310	12-1-2011	Adopt	1-1-2012
860-036-0615	1-1-2012	Amend	2-1-2012	943-014-0310(T)	12-1-2011	Repeal	1-1-2012
860-036-0625	1-1-2012	Am. & Ren.	2-1-2012	943-014-0315	12-1-2011	Adopt	1-1-2012
860-036-0640	1-1-2012	Amend	2-1-2012	943-014-0315(T)	12-1-2011	Repeal	1-1-2012
860-036-0705	1-1-2012	Amend	2-1-2012	943-014-0320	12-1-2011	Adopt	1-1-2012
860-036-0708	1-1-2012	Adopt	2-1-2012	943-014-0320(T)	12-1-2011	Repeal	1-1-2012
860-036-0710	1-1-2012	Amend	2-1-2012	943-045-0000	12-4-2011	Adopt	1-1-2012
860-036-0715	1-1-2012	Amend	2-1-2012	943-045-0000(T)	12-4-2011	Repeal	1-1-2012
860-036-0737	1-1-2012	Amend	2-1-2012	943-045-0250	12-5-2011	Adopt	1-1-2012
860-036-0739	1-1-2012	Amend	2-1-2012	943-045-0250(T)	12-5-2011	Repeal	1-1-2012
860-036-0740	1-1-2012	Amend	2-1-2012	943-045-0260	12-5-2011	Adopt	1-1-2012
860-036-0745	1-1-2012	Amend	2-1-2012	943-045-0260(T)	12-5-2011	Repeal	1-1-2012
860-036-0750	1-1-2012	Amend	2-1-2012	943-045-0280	12-5-2011	Adopt	1-1-2012
860-036-0756	1-1-2012	Amend	2-1-2012	943-045-0280(T)	12-5-2011	Repeal	1-1-2012
860-036-0757	1-1-2012	Amend	2-1-2012	943-045-0290	12-5-2011	Adopt	1-1-2012
860-036-0815	1-1-2012	Amend	2-1-2012	943-045-0290(T)	12-5-2011	Repeal	1-1-2012
860-036-0816	1-1-2012	Adopt	2-1-2012	943-045-0300	12-5-2011	Adopt	1-1-2012
875-005-0005	12-12-2011	Amend(T)	1-1-2012	943-045-0300(T)	12-5-2011	Repeal	1-1-2012
875-040-0005	12-12-2011	Adopt(T)	1-1-2012	943-045-0310	12-5-2011	Adopt	1-1-2012
877-001-0020	12-29-2011	Amend	2-1-2012	943-045-0310(T)	12-5-2011	Repeal	1-1-2012
877-010-0015	12-29-2011	Amend	2-1-2012	943-045-0320	12-5-2011	Adopt	1-1-2012
877-010-0020	12-29-2011	Amend	2-1-2012	943-045-0320(T)	12-5-2011	Repeal	1-1-2012
877-015-0105	12-29-2011	Amend	2-1-2012	943-045-0330	12-5-2011	Adopt	1-1-2012
877-015-0108	12-29-2011	Amend	2-1-2012	943-045-0330(T)	12-5-2011	Repeal	1-1-2012
877-015-0136	12-29-2011	Amend	2-1-2012	943-045-0340	12-5-2011	Adopt	1-1-2012
877-020-0005	12-29-2011	Amend	2-1-2012	943-045-0340(T)	12-5-2011	Repeal	1-1-2012
877-020-0008	12-29-2011	Amend	2-1-2012	943-045-0350	12-5-2011	Adopt	1-1-2012



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943-045-0360	12-5-2011	Adopt	1-1-2012	943-045-0460(T)	12-23-2011	Repeal	2-1-2012
943-045-0360(T)	12-5-2011	Repeal	1-1-2012	943-045-0470	12-23-2011	Adopt	2-1-2012
943-045-0370	12-5-2011	Adopt	1-1-2012	943-045-0470(T)	12-23-2011	Repeal	2-1-2012
943-045-0370(T)	12-5-2011	Repeal	1-1-2012	943-045-0480	12-23-2011	Adopt	2-1-2012
943-045-0400	12-23-2011	Adopt	2-1-2012	943-045-0480(T)	12-23-2011	Repeal	2-1-2012
943-045-0400(T)	12-23-2011	Repeal	2-1-2012	943-045-0490	12-23-2011	Adopt	2-1-2012
943-045-0410	12-23-2011	Adopt	2-1-2012	943-045-0490(T)	12-23-2011	Repeal	2-1-2012
943-045-0410(T)	12-23-2011	Repeal	2-1-2012	943-045-0500	12-23-2011	Adopt	2-1-2012
943-045-0420	12-23-2011	Adopt	2-1-2012	943-045-0500(T)	12-23-2011	Repeal	2-1-2012
943-045-0420(T)	12-23-2011	Repeal	2-1-2012	943-045-0510	12-23-2011	Adopt	2-1-2012
943-045-0430	12-23-2011	Adopt	2-1-2012	943-045-0510(T)	12-23-2011	Repeal	2-1-2012
943-045-0430(T)	12-23-2011	Repeal	2-1-2012	943-045-0520	12-23-2011	Adopt	2-1-2012
943-045-0440	12-23-2011	Adopt	2-1-2012	943-045-0520(T)	12-23-2011	Repeal	2-1-2012
943-045-0440(T)	12-23-2011	Repeal	2-1-2012	951-004-0003	1-1-2012	Amend	1-1-2012
943-045-0450	12-23-2011	Adopt	2-1-2012	951-004-0004	1-1-2012	Amend	1-1-2012
943-045-0450(T)	12-23-2011	Repeal	2-1-2012				