

# OREGON BULLETIN

Supplements the 2012 *Oregon Administrative Rules Compilation*

**Volume 51, No. 1**  
**January 1, 2012**

For November 16, 2011–December 15, 2011



Published by  
**KATE BROWN**  
Secretary of State  
Copyright 2012 Oregon Secretary of State

# 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.

© January 1, 2012 Oregon Secretary of State. All rights reserved. Reproduction in whole or in part without written permission is prohibited.

# TABLE OF CONTENTS

	<i>Page</i>
<b>Information and Publication Schedule</b> .....	2
<b>Table of Contents</b> .....	3
<b>Other Notices</b> .....	4
<b>Notices of Proposed Rulemaking Hearings/Notices</b>	
The citations and statements required by ORS 183.335(2)(b)(A)–(D) have been filed with and are available from the Secretary of State.	
Board of Examiners for Speech-Language Pathology and Audiology, Chapter 335 .....	5
Board of Licensed Professional Counselors and Therapists, Chapter 833 .....	5
Department of Administrative Services, Budget and Management Division, Chapter 122 .....	5
Department of Agriculture, Chapter 603 .....	6
Department of Consumer and Business Services, Building Codes Division, Chapter 918 .....	6, 7
Insurance Division, Chapter 836 .....	7
Workers' Compensation Division, Chapter 436 .....	7
Department of Corrections, Chapter 291 .....	8
Department of Fish and Wildlife, Chapter 635 .....	8
Department of Human Services, Administrative Services Division and Director's Office, Chapter 407 .....	8, 9
Department of Justice, Chapter 137 .....	9
Department of Public Safety Standards and Training, Chapter 259 .....	9
Department of Transportation, Driver and Motor Vehicle Services Division, Chapter 735 .....	9
Motor Carrier Transportation Division, Chapter 740 .....	9, 10
Employment Department, Chapter 471 .....	10
Land Conservation and Development Department, Chapter 660 .....	10, 11
Oregon Board of Naturopathic Medicine, Chapter 850 .....	11
Oregon Department of Education, Chapter 581 .....	11–13
Oregon Health Authority, Addictions and Mental Health Division: Addiction Services, Chapter 415 .....	13
Mental Health Services, Chapter 309 .....	13
Oregon Medical Insurance Pool, Chapter 443 .....	13
Public Health Division, Chapter 333 .....	13, 14
Oregon Public Employees Retirement System, Chapter 459 .....	15
Oregon University System, Western Oregon University, Chapter 574 .....	15
Oregon Youth Authority, Chapter 416 .....	15
Parks and Recreation Department, Chapter 736 .....	15, 16
Physical Therapist Licensing Board, Chapter 848 .....	16, 17
Public Utility Commission, Chapter 860 .....	17
Secretary of State, Audits Division, Chapter 162 .....	17
Teacher Standards and Practices Commission, Chapter 584 .....	17, 18
<b>Administrative Rules</b>	
The citations and statements required by ORS 183.335(2)(b)(A)–(D) have been filed with and are available from the Secretary of State.	
Appraiser Certification and Licensure Board, Chapter 161 .....	19–26
Board of Licensed Professional Counselors and Therapists, Chapter 833 .....	26, 27
Board of Massage Therapists, Chapter 334 .....	27–36
Board of Nursing, Chapter 851 .....	36
Board of Parole and Post-Prison Supervision, Chapter 255 .....	36, 37
Board of Pharmacy, Chapter 855 .....	37, 38
Construction Contractors Board, Chapter 812 .....	38–43
Department of Agriculture, Chapter 603 .....	43–51
Department of Agriculture, Oregon Trawl Commission, Chapter 656 .....	51, 52
Department of Community Colleges and Workforce Development, Chapter 589 .....	52, 53
Department of Consumer and Business Services, Division of Finance and Corporate Securities, Chapter 441 .....	53–56
Insurance Division, Chapter 836 .....	56–58
Oregon Occupational Safety and Health Division, Chapter 437 .....	58–80
Workers' Compensation Division, Chapter 436 .....	80–86
Department of Corrections, Chapter 291 .....	86–96
Department of Energy, Chapter 330 .....	96–99
Department of Environmental Quality, Chapter 340 .....	100
Department of Fish and Wildlife, Chapter 635 .....	100–117
Department of Forestry, Chapter 629 .....	117
Department of Geology and Mineral Industries, Chapter 632 .....	117
Department of Human Services, Administrative Services Division and Director's Office, Chapter 407 .....	117–120
Children, Adults and Families Division: Self-Sufficiency Programs, Chapter 461 .....	120, 121
Seniors and People with Disabilities Division, Chapter 411 .....	121–126
Department of Justice, Chapter 137 .....	126–147
Department of Oregon State Police, Chapter 257 .....	147–149
Department of Public Safety Standards and Training, Chapter 259 .....	149
Department of Revenue, Chapter 150 .....	149, 150
Department of State Lands, Chapter 141 .....	150
Department of Transportation, Driver and Motor Vehicle Services Division, Chapter 735 .....	150–152
Motor Carrier Transportation Division, Chapter 740 .....	152
Employment Department, Chapter 471 .....	153
Land Conservation and Development Department, Chapter 660 .....	153–161
Oregon Board of Naturopathic Medicine, Chapter 850 .....	161
Oregon Business Development Dept., Chapter 123 .....	161–166
Oregon Department of Education, Chapter 581 .....	166–176
Oregon Film and Video Office, Chapter 951 .....	176, 177
Oregon Health Authority, Chapter 943 .....	177–182
Oregon Health Authority, Addictions and Mental Health Division: Mental Health Services, Chapter 309 .....	182–192
Division of Medical Assistance Programs, Chapter 410 .....	192–217
Office for Oregon Health Policy and Research, Chapter 409 .....	217
Oregon Educators Benefit Board, Chapter 111 .....	217–222
Public Health Division, Chapter 333 .....	222, 223
Oregon Health Licensing Agency, Chapter 331 .....	223, 224
Oregon Health Licensing Agency, Nursing Home Administrators Board, Chapter 853 .....	224–227
Oregon Liquor Control Commission, Chapter 845 .....	227–231
Oregon Medical Board, Chapter 847 .....	231–237
Oregon Public Employees Retirement System, Chapter 459 .....	237, 238
Oregon State Lottery, Chapter 177 .....	239–241
Oregon State Marine Board, Chapter 250 .....	241, 242
Oregon University System, Eastern Oregon University, Chapter 579 .....	242, 243
Oregon Youth Authority, Chapter 416 .....	243
Parks and Recreation Department, Chapter 736 .....	243–245
Psychiatric Security Review Board, Chapter 859 .....	245, 246
Public Utility Commission, Chapter 860 .....	246
Teacher Standards and Practices Commission, Chapter 584 .....	246, 247
Veterinary Medical Examining Board, Chapter 875 .....	247, 248
<b>OAR Revision Cumulative Index</b> .....	249–255

## OTHER NOTICES

### REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION DECISION FOR KLAMATH FALLS RESIDENTIAL PROPERTY

**COMMENTS DUE:** Jan. 1 through Jan. 30, 2012

**PROJECT LOCATION:** 1808 Summers Lane, Klamath Falls

**PROPOSAL:** The Department of Environmental Quality proposes to issue a no further action decision regarding cleanup activities at the above referenced site. DEQ reviewed and approved work done to investigate pollution at the site and accepts the findings of risk-based cleanup report resulting from that investigation. DEQ issues a no further action decision when a cleanup project has met regulatory standards.

**HIGHLIGHTS:** Heating oil was spilled from an above ground storage tank onto the ground at the residence at 1808 Summers Lane in 2011. A site investigation confirmed the presence of petroleum in soil and groundwater, and found that the groundwater contaminant plume is stable and does not migrate off of the property. Residual contamination occurs below structural portions of the residence and through a risk-based evaluation, is considered to be protective of human health, welfare, and the environment.

**HOW TO COMMENT:** Send comments by 5 p.m., Jan. 30, 2012, to DEQ Project Manager Joe Klemz at 475 NE Bellevue Drive, Suite 110, Bend, OR 97701, klemz.joe@deq.state.or.us or fax to 541-388-8283.

To review the project file, call Joe Klemz, 541-633-2015 for a file review appointment.

To access site summary information and other documents in DEQ's Environmental Cleanup Site Information database, go to [www.deq.state.or.us/lq/ECESI/ecsi.htm](http://www.deq.state.or.us/lq/ECESI/ecsi.htm), then enter # 3414 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled # 3414 in the Site ID/Info column.

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

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.

People with hearing impairments may call 711.

### DEQ PROPOSES NO FURTHER ACTION AT LITHIA HEADQUARTERS PROPERTY MEDFORD, OREGON

**COMMENTS DUE:** January 31, 2011

**PROJECT LOCATION:** NW Block of 6th and Riverside, Medford

**PROPOSAL:** DEQ proposes to approve the cleanup conducted at the Lithia Headquarters property in downtown Medford. DEQ requests public comment on its recommendation that no further investigation or cleanup action is required for petroleum-contaminated soil on this property.

**BACKGROUND:** For detailed project information please see a copy of the Lithia Motors Inc. September 2011 report on DEQ's website at: <http://www.deq.state.or.us/wdr/?p=37338>

DEQ's proposed NFA determination applies to current Tax Lots #8200, 8100, and the northern portions of Tax Lots 7500 and 7700 within a city block bounded by Riverside Avenue (east), 6th Street (south), Bartlett Avenue (west), and 5th Street (north). Other tax lots within this city block (i.e., # 7600, 7800, 7900, and portions of 7700 and 8000; see attached figures) are NOT addressed by this NFA determination.

Several environmental site assessments previously documented environmental concerns including contamination of soil and shallow groundwater from petroleum hydrocarbons. The sources of these hydrocarbons were attributed to a nearby leaking underground storage tank, several auto hoists, a former fuel station, an oil-water separator release, a dry cleaners business, and automotive service stations.

Lithia Motors Inc. chose to incorporate additional site characterization and contaminated soil removal into their mid-2011 site preparation work before new building construction occurs in 2012. The site

preparation included demolition of three vacant buildings, removal of concrete footings and relic utilities, and elimination of asphalt pavements used for parking lots. In consultation with DEQ, Lithia Motors sampled soil and shallow groundwater at locations where contamination was suspected from previous environmental investigations, and where it was observed in soils exposed during site demolition. Contaminated soils were excavated and disposed at an approved landfill.

Based on the available data, the site is considered safe for commercial or industrial uses. DEQ has concluded that there is no threat to human health and the environment for current and future site uses.

**HOW TO COMMENT:** Written comments must be received by January 31, 2010. Comments should be submitted to DEQ's Eugene office, 165 East 7th Street, Eugene, OR 97401 or by e-mail at [aitken.greg@deq.state.or.us](mailto:aitken.greg@deq.state.or.us). Questions may also be directed to Greg Aitken at the Eugene address or by calling him at 1-800-844-8467 ext 7361.

**THE NEXT STEP:** DEQ will consider all public comments before taking final action on this matter. A public meeting will be held to receive verbal comments on the proposed cleanup action upon written request by ten or more persons, or by a group with ten or more members.

### A CHANCE TO COMMENT ON A PROPOSED PARTIAL NO FURTHER ACTION FOR PONDS 2, 3, AND 4 OF THE GEORGIA-PACIFIC RESINS - WHITE CITY PROPERTY, LOCATED AT 1405 ANTELOPE ROAD, WHITE CITY, OREGON

Oregon Department of Environmental Quality (DEQ) invites public comment on a proposed partial no further action (PNFA) for a cleanup of soil contamination at the Georgia-Pacific Resins - White City property located at 1405 Antelope Road, White City, Oregon.

DEQ has reviewed the remedial action performed to close the former Ponds 2, 3, and 4 at the former Georgia-Pacific Resins - White City facility. The facility is located in a commercial/industrial zone in White City.

While operating, the plant produced formaldehyde, urea formaldehyde concentrate, and several resins. The facility formerly consisted of a processing plant, storage tanks, office and warehouse buildings, sludge drying ponds. The former Pond 2, 3, and 4 area is a part (4.1 acres) of the 8.5 acre Georgia-Pacific Resins - White City facility property. The partial No Further Action recommendation proposes closure for the 4.1 acre area enclosing former Ponds 2, 3, and 4 only.

Contamination in soil at the Site resulted from releases of formaldehyde and related compounds from past resin production operations. Small amounts of formaldehyde were likely present in wastewater and sludge that was treated in the ponds. However, the clay liners likely prevented significant transport of contaminants outside the footprints of former Ponds 2, 3, and 4. Georgia-Pacific LLC has completed soil cleanup at the Site by removing 4,910 cubic yards of soil from Ponds 2, 3, and 4. The soils were taken to Dry Creek Landfill, and the ponds were then backfilled with clean material.

Land use at the site is General Industrial, and the Georgia-Pacific Resins - White City property is part of the White City industrial area. Residual levels of formaldehyde and barium in the liners of the former Ponds 2, 3, and 4 are within the acceptable risk levels for industrial workers, construction workers, and excavation workers.

DEQ is recommending a partial no further action (soils only) for the former Ponds 2, 3, and 4 since contaminated soils have been removed and properly disposed. Low residual levels of contamination are present in the soils at the former Ponds 2, 3, and 4. However, the residual levels are safe for industrial workers, excavation workers, or construction crews that could be exposed to sub-surface soils.

Project documents are available for public review at DEQ's Eugene office, 165 E. 7th Avenue, Suite 100, Eugene 97401. Contact the file specialist at (541) 686-7838 or 1-800-844-8467 (toll-free in Oregon) for an appointment. Please send written comments to Norman Read at the listed above address or via email at [read.norm@deq.state.or.us](mailto:read.norm@deq.state.or.us). DEQ must receive written comments by 5 p.m., January 31, 2012.



# NOTICES OF PROPOSED RULEMAKING

## Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

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

**Rule Caption:** Reverts speech-language pathology and audiology fees to Legislatively-approved levels; updates required test scores for licensure.

Date:	Time:	Location:
1-30-12	10 a.m.	800 NE Oregon St., Conference Rm. 445 Portland, OR 97232

**Hearing Officer:** Sandy Leybold

**Stat. Auth.:** ORS 681.340, 681.360, 681.420, 681.460, 681.260, 681.264 & 681.290

**Other Auth.:** OL Ch. 620 Sec. 5 (2011)

**Stats. Implemented:** ORS 681.340(1), 681.360(2)(b) & (3)(b), 681.260(1)(e), 681.264(3) & 682.290(2)

**Proposed Amendments:** 335-060-0006, 335-060-0007, 335-060-0010

**Last Date for Comment:** 1-31-12

**Summary:** • Lowers the application fee to \$40.

- Lowers delinquent fee to \$50.
- Lowers active SLP and Audiologist license fee to \$160.
- Lowers conditional SLP and Audiologist license fee to \$50.
- Lowers active Speech-language Pathology Assistant license fee to \$50.

Removes specific test scores required for licensure in favor of stating that a passing score is required.

**Rules Coordinator:** Sandy Leybold

**Address:** Board of Examiners for Speech-Language Pathology and Audiology, 800 NE Oregon St., Suite 407, Portland, OR 97232

**Telephone:** (971) 673-0220

.....  
**Board of Licensed Professional Counselors and Therapists  
Chapter 833**

**Rule Caption:** Proposed addition of license application method for counselor-educators

**Stat. Auth.:** ORS 675.785

**Stats. Implemented:** ORS 675.715–675.720

**Proposed Adoptions:** 833-020-0075

**Proposed Amendments:** 833-020-0021

**Last Date for Comment:** 2-8-12, 5 p.m.

**Summary:** Adds a license application method that would allow counselor-educators to use their graduate teaching experience as a substitute for some coursework required for licensure.

Establishes requirements for applications through the counselor educator method.

**Rules Coordinator:** Becky Eklund

**Address:** Board of Licensed Professional Counselors and Therapists, 3218 Pringle Rd. SE, Suite 250, Salem, OR 97302

**Telephone:** (503) 378-5499, ext. 3

.....  
**Department of Administrative Services,  
Budget and Management Division  
Chapter 122**

**Rule Caption:** Adopt and Repeal State of Oregon Financing Agreements and State Borrowing Administered by DAS.

Date:	Time:	Location:
1-17-12	1:30 p.m.	155 Cottage St. NE 2nd Floor Conf. Rm. A Salem, OR 97301

**Hearing Officer:** Carol Ann Kirby

**Stat. Auth.:** ORS 184.340

**Other Auth.:** 2003 OL Ch. 11 & 2001 OL Ch. 921

**Stats. Implemented:** ORS 283.085–283.092, 286A.045, 286A.560–286A.585, 286A.710–286A.792 & 353.550–353.563

**Proposed Adoptions:** 122-070-0100, 122-070-0110, 122-070-0120, 122-070-0130, 122-070-0140, 122-070-0150, 122-070-0160, 122-075-0100, 122-075-0110, 122-075-0120, 122-075-0150, 122-075-0160

**Proposed Repeals:** 122-070-0000, 122-070-0010, 122-070-0020, 122-070-0030, 122-070-0040, 122-070-0050, 122-070-0060, 122-070-0065, 122-070-0070, 122-070-0080

**Last Date for Comment:** 1-17-12, 5 p.m.

**Summary:** The new rules better organize the administrative rules over financing agreements and state borrowings administered by the Capital Investment Section. The prior administrative rule on State of Oregon financing agreements was repealed.

Adopts rules 122-070-0100 through 122-070-0160 defining a financing agreement under ORS 283.085–283.092 and defining the fees that the Capital Investment Section may charge for initiating certain agreements. Financing agreements under this rule include such items as Certificates of Participation; promissory notes; capital leases; or any other agreements for the acquisition of real or personal property through installment payments over multiple biennia.

Adopts rules 122-075-0100 through 122-075-0160 defining certain state borrowing programs under ORS 286A.045; ORS 286A.560 to 286A.585; ORS 286A.710 to 286A.792; and ORS 353.550 to 353.563 for the benefit of State Agencies administered by the Department. Defines the fees that the Capital Investment Section may charge for initiating and administering state borrowing programs. State borrowing programs under this rule include such items as Lottery bonds; credit agreements, notes, warrants, short-term promissory notes, commercial paper or other obligations in anticipation of taxes, grants or other revenues; general obligation bonds for the Oregon Opportunity Program; Oregon Appropriation Bonds; and general obligation bonds for water power, pension liabilities, and seismic rehabilitation projects.

**Rules Coordinator:** Janet Chambers

**Address:** Department of Administrative Services, Budget and Management Division, 155 Cottage St. NE, Salem, OR 97301

**Telephone:** (503) 378-5522

# NOTICES OF PROPOSED RULEMAKING

## Department of Agriculture Chapter 603

**Rule Caption:** Expands Sudden Oak Death Quarantine and Allows Use of Tanoak From Disease-Free Areas.

**Date:** 1-24-12  
**Time:** 7 p.m.  
**Location:** Event Center  
28798 Hwy 101  
Gold Beach, OR

**Hearing Officer:** Stephanie Page

**Stat. Auth.:** ORS 561.190 & 561.510

**Other Auth.:** ORS 570.305

**Stats. Implemented:** ORS 561.510

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

**Last Date for Comment:** 1-31-12

**Summary:** *Phytophthora ramorum* (sudden oak death) has been found north of the current quarantine boundary near Cape Sebastian in Curry Co. The proposed amendment would expand the quarantine northward to include the new site and a buffer area of approximately three miles. With the expansion of the quarantine, it is proposed to define disease-free and generally-infested areas within the quarantine. Provisions are proposed that would allow use of tanoak logs and firewood from disease-free areas. Encouraging use of tanoak should help slow the spread of the disease and lessen the impact on residents.

**Rules Coordinator:** Sue Gooch

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

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

.....

**Rule Caption:** Exempts Agricultural producers selling specified products from state licensing as produce dealer or food establishment.

**Date:** 1-27-12  
**Time:** 11 a.m.  
**Location:** Dept. of Agriculture  
635 Capitol St. NE  
Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 516.190, 616.700, 616.835 & HB 2336

**Stats. Implemented:** ORS 616.230, 616.700, 616.835 & HB 2336

**Proposed Adoptions:** 603-025-0225 – 603-025-0275

**Last Date for Comment:** 1-27-12, 5 p.m.

**Summary:** Exempts agricultural producers selling specific agricultural products directly to general public (farm direct marketer) from state laws regulating produce dealers and food establishment. Establishes which food direct marketers can sell and eligibility restrictions. Establishes consignment sales standards for agricultural producers. Establishes requirements regarding product labels, farm direct marketer record keeping and registration procedure, and department enforcement.

**Rules Coordinator:** Sue Gooch

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

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

.....

**Rule Caption:** Repeal Obsolete Rules Related to Diseases of Orchard, Mint, and Barberry.

**Stat. Auth.:** ORS 561 & 570

**Other Auth.:** ORS 561.190

**Stats. Implemented:** ORS 561.510 & 570.405

**Proposed Repeals:** 603-052-0117, 603-052-0201, 603-052-0206, 603-052-0207, 603-052-0208, 603-052-0209, 603-052-0334, 603-052-0800

**Last Date for Comment:** 1-31-12

**Summary:** Oregon Department of Agriculture proposes to repeal four regulations: 603-052-0117 Quarantine Against Peach Latent Mosaic Viroid; 603-052-0201 to 0209 Umatilla County Control Area; 603-052-0334 Union County Mint Control Area and Procedures; 603-052-0800 Rust-Resistant Varieties of Barberry, Mahonia,

and Mahoberberis. The Peach Latent Mosaic quarantine was adopted in 1974. This viroid is now widespread in U.S. orchards including in the Pacific Northwest. The Umatilla County Orchard Pest Control Area was also adopted in 1941. The complicated boundaries make it impossible to enforce and a local ordinance makes it redundant. Verticillium wilt has been found in Union County since 2005. The quarantine is no longer scientifically valid. Oregon Barberry rust statute was repealed in 2009. Federal regulations remain in place.

**Rules Coordinator:** Sue Gooch

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

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

.....

**Rule Caption:** Housekeeping Updates to Six Plant Pest and Disease Quarantines, e.g. scientific names, pest distributions, treatments.

**Stat. Auth.:** ORS 561 & 570

**Stats. Implemented:** ORS 561.510

**Proposed Amendments:** 603-052-0115, 603-052-0116, 603-052-0118, 603-052-0126, 603-052-0150, 603-052-1025

**Last Date for Comment:** 1-31-12

**Summary:** The Department of Agriculture proposes to update six rules as follows: Blueberry Maggot Quarantine, clarify that fumigation with a labeled product is an acceptable option without a Director's exemption; Peach Yellows Phytoplasma, remove Alabama and West Virginia, add Ontario (Canada), update host list; Peach Rosette Phytoplasma, update host list; European Corn Borer, replace out-of-date prescriptive fumigation instructions with requirement to fumigate according to the label instructions; Cherry Fruit Fly, correct title; Small Broomrape, correct host list.

**Rules Coordinator:** Sue Gooch

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

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

.....

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

**Rule Caption:** Updates adult foster home requirements in the 2010 Oregon Structural Specialty Code.

**Date:** 1-17-12  
**Time:** 9:30 a.m.  
**Location:** 1535 Edgewater St. NW  
Salem, OR 97304

**Hearing Officer:** Steve Judson

**Stat. Auth.:** ORS 455.030, 455.110, 455.112

**Stats. Implemented:** ORS 455.110 & 455.112

**Proposed Amendments:** 918-460-0015

**Last Date for Comment:** 1-20-12, 5 p.m.

**Summary:** This proposed rule amends the construction standards for single-family residences that are used for adult foster care. This amendment aligns the 2010 Oregon Structural Specialty Code with the Department of Human Services statute, by deleting the requirement in the code that certain adult foster care residences meet the construction standards for a SR occupancy.

**Rules Coordinator:** Stephanie Snyder

**Address:** Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309

**Telephone:** (503) 373-7438

.....

**Rule Caption:** Establishes a Class 3A Limited Building Service Mechanic License.

**Date:** 1-17-12  
**Time:** 10 a.m.  
**Location:** 1535 Edgewater St. NW  
Salem, OR 97304

**Hearing Officer:** Michael Schopf

**Stat. Auth.:** ORS 480.545, 480.630 & 183.335

**Stats. Implemented:** ORS 480.630 & 183.335

**Proposed Adoptions:** Rules in 918-225

# NOTICES OF PROPOSED RULEMAKING

**Proposed Amendments:** Rules in 918-225

**Proposed Repeals:** 918-225

**Last Date for Comment:** 1-20-12, 5 p.m.

**Summary:** The proposed rule establishes a Class 3A Limited Building Service Mechanic license. Under the proposed rule, a boiler contractor may establish a training program that defines the scope of work to be performed by Class 3A licensees and describes the training each licensee would receive. The Board of Boiler rules may approve the training program if it determined that the Class 3A scope of work was narrowly limited to particular equipment or tasks and the contractor's training program would provide adequate training for that work. A Class 3A license may be issued to employees of the contractor who have successfully completed the contractor's training program and who have passed Class 3 Building Service Mechanic examination. Each Class 3A license is conditioned on the employee's continued employment with the contractor and authorizes only those tasks described in the contractor's scope of work.

**Rules Coordinator:** Stephanie Snyder

**Address:** Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309

**Telephone:** (503) 373-7438

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

**Rule Caption:** Annual update of rule relating to health insurance coverage of prosthetic and orthotic devices.

**Stat. Auth.:** ORS 731.244 & 743A.144

**Stats. Implemented:** ORS 743A.144

**Proposed Amendments:** 836-052-1000

**Last Date for Comment:** 2-1-12, 5 p.m.

**Summary:** This rulemaking adopts the annual update to the Insurance Division rule listing the prosthetic and orthotic devices that must be covered by group and individual health insurance policies. The rulemaking implements ORS 743A.144, which requires all such policies that provide coverage for hospital, medical or surgical expenses to include coverage for prosthetic and orthotic devices. The statute also requires the director of the Department of Consumer and Business Services to annually update the list.

**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

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

**Rule Caption:** Rule changes affecting workers' compensation medical fees, medical services, and managed care organizations.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
1-23-12	9 a.m.*	Labor & Industries Bldg. 350 Winter St. NE Rm. 260 (2nd Flr.) Salem, OR

**Hearing Officer:** Fred Bruyns

**Stat. Auth.:** ORS 656.726(4), 656.248 & 656.260

**Stats. Implemented:** ORS 656, 656.248 & 656.260

**Proposed Adoptions:** 436-009-0177, 436-015-0075

**Proposed Amendments:** Rules in 436-009, 436-010-0330, Rules in 436-015

**Proposed Repeals:** 436-009-0022, 436-009-0150, 436-009-0250, 436-009-0280, 436-015-0020

**Last Date for Comment:** 1-26-12

**Summary:** \*NOTE: The hearing will begin at 9 a.m. and end when all present who wish to testify have done so. Written testimony will be accepted through Jan. 26, 2012.

The agency proposes to amend these rules to improve organization, clarity, and consistency, and to eliminate redundancy. More specifically:

**The agency proposes to amend OAR chapter 436, division 009, "Oregon Medical Fee and Payment Rules." These proposed rules:**

- Adopt new and update existing medical fee schedules and resources for the payment of health care providers.
- Increase payment for ambulance and dental services. (Please refer to the Statement of Need and Fiscal Impact.)
- Increase payment for chiropractic manipulation codes 98940 – 98943. (Please refer to the Statement of Need and Fiscal Impact.)
- Clarify that an insurer must *initiate* a dispute before the director if it is challenging the reasonableness of a provider's billing.
- Eliminate multiple-surgery discounts for add-on codes that already have built-in discounts.
- Establish Oregon specific (billing) codes for closing examinations and for closing reports, and set payment criteria.
- Specify that injectable drugs are prescription medications subject to the maximum payment fee schedule under these rules.
- Describe the compensability limitation for physician dispensing of medications (not a new requirement, but repeating the provision in OAR 436-010-0230(6)).
- Increase interpreter mileage reimbursement by reducing the minimum round trip mileage. (Please refer to the Statement of Need and Fiscal Impact.)
- Update the requirements for interpreter invoices.
- Amend explanation-of-benefits and related communication requirements applicable to interpreters.
- Specify what an ambulatory surgery center's surgical procedure fee does not include.
- Clarify billing time frames for ambulatory surgery centers.
- Clarify payment requirements when an ambulatory surgery center performs multiple procedures.
- Require that implantable devices be paid separately to an ambulatory surgery center and not packaged with the surgery charge.
- Describe billing and payment requirements affecting ambulatory surgery centers for durable medical equipment, prosthetic services, orthotic services, and medical supplies.

**The agency proposes to amend OAR chapter 436, division 010, "Medical Services." The proposed rule 0330:**

- Includes amended citations to a renumbered rule in OAR 436-009.

**The agency proposes to amend OAR chapter 436, division 015, Managed Care Organizations (MCOs). These proposed rules:**

- Modify the MCO certification and plan development process by:
  - Eliminating the requirement for prospective MCOs to "qualify" before applying for certification.
  - Incorporating some of the "qualifying" steps into a single application process.
  - Removing the requirement to show that workers can receive treatment by an MCO physician in cases requiring emergency inpatient hospitalization.
  - Eliminating the requirement that an MCO send to the director a copy of every provider agreement; the MCO may send a standard provider agreement and identify variations.
  - Requiring MCOs to regularly update their MCO panel provider lists.
- Require that if the MCO schedules a medical exam for the worker, the appointment letter must inform the worker if a psychological evaluation is part of the exam and to state the reason for the psychological evaluation.
- Require the MCO to provide written notice and appeal rights when the MCO approves a service (in addition to denials of service).

**Rules Coordinator:** Fred Bruyns

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

**Telephone:** (503) 947-7717



# NOTICES OF PROPOSED RULEMAKING

## Department of Corrections Chapter 291

**Rule Caption:** Suspension/Restriction of Visits/Removal From Inmate Visiting List.

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

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

**Proposed Amendments:** 291-127-0320

**Last Date for Comment:** 2-17-12, Close of Business

**Summary:** OAR 291-127-0320, by its terms, requires that a superintendent or designee issue a final decision on a recommended action to suspend, restrict, or remove a visitor from an inmate's approved visiting list within 45 days of receipt of a review request. The department has determined that this timeframe for review and issuing a final decision is inadequate in instances in which the circumstances giving rise to the suspension, restriction or removal action are part of a pending administrative or criminal investigation, or in other extraordinary circumstances.

These amendments are necessary for the department to establish a flexible, extended timeframe for a superintendent or designee to issue a final order on review of a recommended action to suspend, restrict, or remove a visitor from an inmate's approved visiting list beyond 45 days when the circumstances giving rise to the suspension, restriction, or removal action are part of a pending administrative or criminal investigation, or in other extraordinary circumstances, which in the sole judgment of the superintendent or designee requires or warrants additional time.

These amendments are also needed to clarify in the rule that if a visitor does not timely submit a written review request, the recommended action contained in the notification and written report shall be accepted by the superintendent/designee and serve as the superintendent's/designee's decision without further action.

**Rules Coordinator:** Janet R. Worley

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

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

.....

**Rule Caption:** Evidence-Based Programs in Community Corrections.

**Stat. Auth.:** ORS 179.040, 182.515, 182.525, 423.020, 423.030, & 423.075

**Stats. Implemented:** ORS 179.040, 182.515, 182.525, 423.020, 423.030, & 423.075

**Proposed Adoptions:** 291-031-0300, 291-031-0310, 291-031-0320, 291-031-0330, 291-031-0340, 291-031-0350, 291-031-0360

**Last Date for Comment:** 2-17-12, Close of Business

**Summary:** These rules establish a process for the department to determine if community-based programs, which the agency expends state funds, meet the principles of evidence-based programs.

**Rules Coordinator:** Janet R. Worley

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

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

.....

## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Adopt new rules for the Oregon Habitat Conservation Stamp.

Date:	Time:	Location:
2-3-12	8 a.m.	Holiday Inn Astoria 204 W Marine Dr. Astoria, OR 97103

**Hearing Officer:** Fish & Wildlife Commission

**Stat. Auth.:** ORS 496.012, 496.138 & 2011 OL Ch. 50 (HB 2127)

**Stats. Implemented:** ORS 496 & 2011 OL Ch. 50 (HB 2127)

**Proposed Adoptions:** Rules in 635-095

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

**Summary:** Adopt new rules for the Habitat Conservation Stamp which was authorized by the 2011 Oregon State Legislature and will benefit conservation of Oregon's native species and habitats.

**Rules Coordinator:** Therese Kucera

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

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

.....

**Rule Caption:** Establish Average Market Values of Food Fish for Determining Damages Related to Commercial Fishing Violations.

Date:	Time:	Location:
2-3-12	8 a.m.	Holiday Inn Express Hotel & Suites 204 West Marine Dr. Astoria, OR 97103

**Hearing Officer:** Fish & Wildlife Commission

**Stat. Auth.:** ORS 506.119

**Stats. Implemented:** ORS 506.109 & 506.720

**Proposed Amendments:** 635-006-0232

**Last Date for Comment:** 2-3-12, Close of Hearing

**Summary:** Amend rule to establish the average market value of food fish species used to determine damages for commercial fishing violations. Housekeeping and technical corrections 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:** 2012 Recreational White Sturgeon Fishing Regulations for Columbia River.

Date:	Time:	Location:
2-3-12	8 a.m.	Holiday Inn Express Hotel & Suites 204 West Marine Dr. Astoria, OR 97103

**Hearing Officer:** Fish & Wildlife Commission

**Stat. Auth.:** ORS 183.325, 506.109 & 506.119

**Stats. Implemented:** ORS 506.129 & 507.030

**Proposed Adoptions:** Rules in 635-023

**Proposed Amendments:** Rules in 635-023

**Proposed Repeals:** Rules in 635-023

**Last Date for Comment:** 2-3-12, Close of Hearing

**Summary:** Rules proposed for amendment are related to recreational white sturgeon fishing in the Columbia River mainstem. 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

.....

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

**Rule Caption:** Amendments to Information Assets Access Control Rules.

**Stat. Auth.:** ORS 409.050

**Other Auth.:** HB 2009 (2009 OL Ch. 595, Sec. 19-25)

**Stats. Implemented:** ORS 182.122

**Proposed Amendments:** 407-014-0300, 407-014-0305, 407-014-0310, 407-014-0315, 407-014-0320

**Proposed Repeals:** 407-014-0300(T), 407-014-0305(T), 407-014-0310(T), 407-014-0315(T), 407-014-0320(T)

**Last Date for Comment:** 1-23-12, 5 p.m.

**Summary:** These rules apply to anyone who seeks to access the Department of Human Services' (Department) information assets, systems and networks. They establish access controls for all organ-



## NOTICES OF PROPOSED RULEMAKING

izations and users and require organizations to establish a risk management plan addressing common safeguards and HIPAA compliance. These rules allow for audits of organizations handling Department information assets, address privilege changes and establish requirements for reporting incidents and resolutions. These rules are being amended for clarity and defining "user" and "organization." These rules are being filed in conjunction with similar rules for the Oregon Health Authority, OAR 943-014-0300 to 943-014-0320. Adoption of these rules will repeal the temporary rules currently in effect since August 9, 2011.

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

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

**Rules Coordinator:** Jennifer Bittel

**Address:** Department of Human Services, Administrative Services Division and Director's Office, 500 Summer St. NE, Salem, OR 97301

**Telephone:** (503) 947-5250

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

**Rule Caption:** Batterer intervention Program rules revisions to better serve programs, program participants and victims.

Date:	Time:	Location:
1-18-12	1:30 p.m.	4035 12th St. SE Salem, OR 97302

**Hearing Officer:** Cynthia Stinson

**Stat. Auth.:** ORS 180.700 & 2001 OL Ch. 634 (SB 81)

**Other Auth.:** ORS 183.405

**Stats. Implemented:** ORS 180.700 & 2001 OL Ch. 634 (SB 81)

**Proposed Amendments:** 137-087-0000, 137-087-0005, 137-087-0015, 137-087-0020, 137-087-0025, 137-087-0030, 137-087-0050, 137-087-0060, 137-087-0065, 137-087-0070, 137-087-0080, 137-087-0085, 137-087-0090, 137-087-0095

**Last Date for Comment:** 1-18-12

**Summary:** The proposed rulemaking revises current statewide standards for batterer intervention programs for services provided to batterers as defined in the proposed rules.

**Rules Coordinator:** Carol Riches

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

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

.....  
**Rule Caption:** Amends Notice of Garnishment Model Forms to Respond to Changes in Oregon Law.

**Stat. Auth.:** ORS 18.854(8)

**Stats. Implemented:** ORS 18.600-18.857

**Proposed Amendments:** 137-060-0130, 137-060-0150, 137-060-0160, 137-060-0230, 137-060-0250, 137-060-0330, 137-060-0350, 137-060-0360, 137-060-0430, 137-060-0450

**Last Date for Comment:** 1-24-12

**Summary:** Amends existing model garnishment forms for notices of garnishment issued by state agencies and county tax collectors.

**Rules Coordinator:** Carol Riches

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

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

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

**Rule Caption:** Implements the regulation of tribal law enforcement units and the certification of tribal police officers.

**Stat. Auth.:** ORS 2011 Chapter 644

**Stats. Implemented:** ORS 2011 Chapter 644

**Proposed Adoptions:** 259-008-0069

**Proposed Repeals:** 259-008-0069(T)

**Last Date for Comment:** 1-23-12, Close of Business

**Summary:** SB 412 was enacted during the 2011 Legislative Session and relates to the regulation of tribal law enforcement units and the certification of tribal police officers. This rule implements the basic requirements of the Act that pertain to DPSST.

**Rules Coordinator:** Linsay Hale

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

**Telephone:** (503) 378-2431

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

**Rule Caption:** Updates requirements for possessory lien foreclosure forms and the perfection of a security interest.

**Stat. Auth.:** ORS 184.616, 184.619, 802.010, 803.045, 803.094 & 803.097

**Stats. Implemented:** ORS 87.152, 87.162, 87.166, 87.172, 87.176-87.206, 90.425, 98.805, 98.810, 98.812, 98.818, 98.830, 98.835, 803.045, 803.094, 803.097, 803.205, 809.720, 811.555, 811.570, 819.110, 819.120, 819.160 & 819.230

**Proposed Amendments:** 735-020-0010, 735-020-0012

**Last Date for Comment:** 1-23-12, Close of Business

**Summary:** OAR 735-020-0012 designates the forms and procedures to be used when evidence of a possessory lien foreclosure is submitted to DMV in support of an application for vehicle title. Specifically, evidence of a possessory lien foreclosure submitted in support of an application for title must be submitted on a DMV certificate of possessory lien foreclosure form.

The amendment of OAR 735-020-0010 clarifies which primary ownership documents constitute proof of ownership for purposes of ORS 803.205(2). The amendment of OAR 735-0020-0012 is needed to specify the information required to be on a DMV certificate of possessory lien foreclosure form and the effect of the lien claimant's signature on the form. To reflect relevant law changes that became effective since the forms were last revised, lien forms submitted to DMV must have a revision date of January 2008 or later. Other, non-substantive changes simplify rule language to improve readability.

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,**  
**Motor Carrier Transportation Division**  
**Chapter 740**

**Rule Caption:** Amendment of federal safety and hazardous materials transportation regulations affecting motor carriers.

**Stat. Auth.:** ORS 184.616, 184.619, 823.011, 825.232, 825.252 & 825.258

**Stats. Implemented:** ORS 823.061, 825.210, 825.250, 825.252 & 825.258

**Proposed Amendments:** 740-100-0010, 740-100-0065, 740-100-0070, 740-100-0080, 740-100-0085, 740-100-0090, 740-110-0010

**Last Date for Comment:** 1-23-12, Close of Business

**Summary:** These rules cover the annual adoption of federal motor carrier safety and hazardous materials transportation regulations, and the adoption of international standards related to driver, vehicle and hazardous materials out-of-service violations. The changes are necessary to ensure Oregon's motor carrier safety; hazardous materials; and driver, vehicle and hazardous materials out-of-service requirements are current with national and international standards. Failure to adopt these rules could result in a major negative economic impact to state agencies by jeopardizing Oregon's continued receipt of \$2.6

# NOTICES OF PROPOSED RULEMAKING

million in MCSAP funds per year if it fails to amend and maintain compatible rules.

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

\*\*\*\*\*

**Rule Caption:** Annual readoption of HVUT and IFTA regulations.

**Stat. Auth.:** ORS 184.616, 184.619, 823.011 & 826.003

**Stats. Implemented:** ORS 803.370(5), 825.490, 825.494, 825.555 & 826.007

**Proposed Amendments:** 740-200-0020, 740-200-0040

**Last Date for Comment:** 1-23-12, Close of Business

**Summary:** Title 26 Code of Federal Regulations Part 41 (HVUT) requires the State to confirm proof of payment of the tax, and require proof of payment by the State as a condition of issuing a registration for a highway motor vehicle. The amendment of OAR 740-200-0020 adopts HVUT and amendments with the effective date of January 1, 2012, and ensures Oregon remains current with national commercial motor vehicle registration standards. International Fuel Tax Agreement (IFTA) and associated material are applicable to Oregon-based motor carriers who participate in IFTA as a way to report and pay fuel tax to other jurisdictions. The revision to OAR 740-200-0040 adopts the most recent version of IFTA and associated material as the procedures and guidelines for Oregon-based IFTA participants with the effective date of January 1, 2012 to ensure Oregon remains current with the international IFTA standards.

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

**Rules Coordinator:** Lauri Kunze

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

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

\*\*\*\*\*

## Employment Department Chapter 471

**Rule Caption:** Clarify definition of "good cause" for late and reopened appeals.

**Stat. Auth.:** ORS 657.610

**Stats. Implemented:** ORS 657

**Proposed Amendments:** 471-040-0010, 471-040-0040, 471-040-0041

**Last Date for Comment:** 1-24-12, Close of Business

**Summary:** Clarify what constitutes "good cause" for late hearing requests, requests to reopen hearings, and late requests to reopen hearings. This change impacts lower appeals hearings with the Office of Administrative Hearings.

**Rules Coordinator:** Courtney Brooks

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

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

\*\*\*\*\*

## Land Conservation and Development Department Chapter 660

**Rule Caption:** Amendments to conform agency rules to new laws.

Date:	Time:	Location:
1-26-12	8:30 a.m.	DLCD, 635 Capitol St., Basement Hearing Rm. Salem, OR 97301

**Hearing Officer:** Land Conservation & Development Commission

**Stat. Auth.:** ORS 197.140, 195.145, 195, 197.215 & 227

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

**Stats. Implemented:** ORS 195, 197, 215, 227, 2010 HB 3647, 2011 HB 2131, 2132, 2154, 3225 & 3290

**Proposed Adoptions:** 660-033-0045

**Proposed Amendments:** Rules in 660-007, 660-008, 660-027-0070, rules in 660-028, 660-033-0030, 660-033-0100, 660-033-0130, 660-033-0135

**Last Date for Comment:** 1-26-12, 8:30 a.m.

**Summary:** The proposed rule amendments are necessary to implement laws enacted by the 2010 and 2011 legislatures. The proposed amendments will revise existing rules as necessary to conform rule wording to new and revised state laws, and to ensure consistency between rules and statute. The proposed new rule at OAR 660-033-0045, regarding Soils Assessments by Professional Soil Classifiers, will renumber portions of an existing rule as a new rule without amending current content of the rule. The Commission may consider other minor or technical corrections to these divisions.

**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

\*\*\*\*\*

**Rule Caption:** Amendments to implement new laws regarding changes to comprehensive plans and land use regulations.

Date:	Time:	Location:
1-26-12	8:30 a.m.	DLCD, 635 Capitol St. Basement Hearing Rm. Salem, OR 97301

**Hearing Officer:** LCDC

**Stat. Auth.:** ORS 197.040

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

**Stats. Implemented:** ORS 197.610–197.625 & 2011 OL Ch. 280

**Proposed Amendments:** Rules in 660-018

**Proposed Repeals:** 660-018-0030, 660-018-0140

**Last Date for Comment:** 1-26-12, Close of Hearing

**Summary:** The proposed amendments would modify rules pertaining to notice of changes to acknowledged comprehensive plans and land use regulations and related topics. The proposed amendments, including the repeal of two rules, are needed in order to implement new laws (Oregon Laws 2011, chapter 280) regarding changes to comprehensive plans and land use regulations and are needed in order to conform existing rules to these new laws.

The Commission may consider other minor amendments based on testimony and comments received during the public comment period, and may adopt minor clarifications or technical corrections and amendments that may be proposed during the public comment period.

**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

\*\*\*\*\*

**Rule Caption:** Amendments to existing rules in order to implement new laws regarding periodic review.

Date:	Time:	Location:
1-26-12	8:30 a.m.	DLCD, 635 Capitol St., Basement Hearing Rm. Salem, OR 97301

**Hearing Officer:** LCDC

**Stat. Auth.:** ORS 197.040

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

**Stats. Implemented:** ORS 197.626–197.646; 2011 OL Ch. 469 (HB 2130)

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

**Last Date for Comment:** 1-26-12, Close of Hearing

**Summary:** The proposed amendments would modify rules pertaining to periodic review and related topics. The proposed amendments are needed in order to implement new laws (Oregon Laws 2011, chapter 469) regarding periodic review, and are needed in order to conform existing rules to these new laws.

The Commission may consider other minor amendments based on testimony and comments received during the public comment period.

# NOTICES OF PROPOSED RULEMAKING

od, and may adopt minor clarifications or technical corrections and amendments that may be proposed during the public comment period.

**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 Board of Naturopathic Medicine**  
**Chapter 850**

**Rule Caption:** Necessary fee increase approved with 2011–2013 Legislature, effective after July 1, 2011.

**Stat. Auth.:** ORS 685.125

**Stats. Implemented:** ORS 685.100

**Proposed Amendments:** 850-030-0035

**Last Date for Comment:** 1-21-12

**Summary:** Fees are listed in OAR 850-030-0035: Fees for an active license renewal will be increased by \$25 annually; Inactive license renewal will be increased \$15 annually; the late fee will be increased by \$25; the initial license fee will become pro-rated effective January 1, 2012 forward (\$300 annually).

**Rules Coordinator:** Anne Walsh

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

**Telephone:** (971) 673-0193

.....  
**Oregon Department of Education**  
**Chapter 581**

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

Date:	Time:	Location:
1-25-12	1 p.m.	251A, 255 Capitol St. NE Salem, OR

**Hearing Officer:** Cindy Hunt

**Stat. Auth.:** ORS 326.051

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

**Proposed Adoptions:** 581-021-0550, 581-021-553, 581-023-0556, 581-021-0559, 581-021-0563, 581-021-0566

**Last Date for Comment:** 1-31-12, 5 p.m.

**Summary:** 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

.....  
**Rule Caption:** State Board of Education Notice of Proposed Rule.

Date:	Time:	Location:
1-25-12	1 p.m.	251A, 255 Capitol St. NE Salem, OR

**Hearing Officer:** Cindy Hunt

**Stat. Auth.:** ORS 183.335 & 183.341

**Stats. Implemented:** ORS 183.335

**Proposed Amendments:** 581-001-0000

**Last Date for Comment:** 2-8-12, 5 p.m.

**Summary:** Updates method of notice of proposed rule to include electronic mailing.

Specifies notice procedure for rules relating to the implementation of the federal IDEA to ensure that Oregon is in compliance with federal law.

**Rules Coordinator:** Cindy Hunt

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

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

.....  
**Rule Caption:** Specifies rulemaking relating to children with disabilities is done pursuant to federal IDEA.

Date:	Time:	Location:
1-25-12	1 p.m.	251A, 255 Capitol St. NE Salem, OR

**Hearing Officer:** Cindy Hunt

**Stat. Auth.:** ORS 343.041

**Stats. Implemented:** ORS 183.341 & 343.041

**Proposed Amendments:** 581-001-0005

**Last Date for Comment:** 2-8-12, 5 p.m.

**Summary:** Specifies that rulemaking relating to children with disabilities is done in accordance with federal IDEA. Updates federal law references.

**Rules Coordinator:** Cindy Hunt

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

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

.....  
**Rule Caption:** Implements federal Individuals with Disabilities Act (IDEA) part B and C.

Date:	Time:	Location:
1-25-12	1 p.m.	251A, 255 Capitol St. NE Salem, OR

**Hearing Officer:** Cindy Hunt

**Stat. Auth.:** ORS 343.041

**Other Auth.:** Federal Individuals with Disabilities Act

**Stats. Implemented:** ORS 343

**Proposed Adoptions:** 581-021-2712, 581-021-2713, 581-021-2714, 581-021-2771, 581-021-2774, 581-021-2863

**Proposed Amendments:** 581-015-2000, 581-015-2080, 581-015-2700, 581-015-2730, 581-015-2775, 581-015-2780, 581-015-2790, 581-015-2805, 581-015-2810, 581-015-2815, 581-015-2825, 581-015-2830, 581-015-2835, 581-015-2840, 581-015-2870, 581-015-2885, 581-015-2890, 581-021-0220, 581-021-0270

**Last Date for Comment:** 2-8-12, 5 p.m.

**Summary:** **581-015-2700 Definitions - EI/ECSE Program.** This rule was revised to reflect changes to IDEA Part C, which were printed in the federal register on September 28, 2011, effective October 28, 2011. New definitions were added, and outdated terms were adjusted or deleted as needed to comply with federal IDEA laws. Fiscal Impact: none.

**581-015-2730 Parent Consent for EI.** Per the fall 2011 revised regulations, Due Process hearings are no longer allowed as a means to dispute parents not providing consent for evaluations. This rule was accordingly adjusted to reflect 34 CFR 303.420(c). Fiscal Impact: beneficial for ODE if less Due Process hearings, there are less administrative fees paid to OAH.

**581-015-2775 EI Evaluation.** The term “separate discipline” (ie two or more separate disciplines needed on the team) was added to EI Evaluation requirements in the federal regulations which is reflected in the change. Also, the new requirements state the public agency must refer the child no more than 7 days after identification which is reflected here. Additionally, the new federal regulations provide for exceptions to IFSP meetings in cases where parents do not give consent. The native language of the child is also stressed for evaluations and assessments to align with federal standards. All of these substantive changes are included. Fiscal Impact: none.

**581-015-2780 EI Eligibility.** Revised to reflect new federal standards for teams consisting of two or more individuals from separate disciplines or professions. Fiscal Impact: This could create a fiscal impact for LEAs if they must hire an additional professional for EI Eligibility meetings.

**581-015-2790 ECSE Evaluation.** Intellectual disability replaces “mental retardation” per Rose’s law. Native language requirements



## NOTICES OF PROPOSED RULEMAKING

were also modified to match new federal standards. Fiscal Impact: Could create fees associated with translations or interpretation for LEAs.

**581-015-2810 IFSP Meeting Procedures and Timelines.** Changes reflect federal laws which now state that the lead agency must notify the LEA and SEA for the area in which the toddler resides that the toddler on his third birthday will reach the age of eligibility for services under Part B of the Act as determined in accordance with State law. Fiscal Impact: none.

**581-015-2825 Participants for IFSP Team Meetings and Reviews.** Changes reflect new EI standards for two or more individuals from separate disciplines or professions to be on an IFSP team, one of these individuals must be the service coordinator. The law also expressly provides for “multidisciplinary teams” to comply with federal standards. Finally, the revisions mirror federal law for instances when certain parties are unable to attend the meeting. Fiscal Impact: Could create more charges for LEAs who would need to hire an extra professional from a separate discipline for the IFSP meeting or review.

**581-015-2830 Implementation of the IFSP.** Change uses the new federal language of “as soon as possible and at no cost to the parents” and also details the availability of copies of the IFSP per IDEA. Fiscal Impact: May have minimal charge for the LEAs when making copies of IFSP plans for parents at no cost.

**581-015- 2835 Natural Environments in EI.** Revised to include federal standards, and clarify the need of “outcome based” determinations. Fiscal Impact: None.

**581-015-2840 Service Coordination.** Adding necessary language to meet federal requirements (ie “active ongoing”) and matched federal language for service coordinator duties. Fiscal Impact: none.

**581-015-2870 Due Process Hearings.** Revised to match Part B Due Process hearing OAR 581-015-2340 as we have adopted the Part B system of dispute resolution. Fiscal Impact: none.

**581-015-2885 Infants and Toddlers with Disabilities Covered by Public Insurance.** Clarified population served by EI/ECSE in the title and revised the rule substantially in order to meet new federal requirements including new prohibitions on certain times when public insurance may not be used for Part C services. Fiscal Impact: LEA or SEA may incur new expenses if public benefits cannot be used.

**581-015-2890 Infants and Toddlers with Disabilities Covered by Private Insurance.** Changed title to reflect the population served and adjusted rule substantially to meet new federal requirements which limit the use of private insurance for Part C services in certain instances. Fiscal Impact: Could create new charges for LEA or SEA if private insurance cannot be used for Part C services.

**581-021-0220 Definitions.** Revisions reflect the new IDEA Part C definition of “Personally Identifiable Information” and those set forth in OAR 581-015-2700 and FERPA. Fiscal Impact: none.

**581-021-0270 Rights of Inspection and Review of Education Records.** Revised to reflect new IDEA Part C requirements for rights to inspect records. These are now “no more than 10 days” after receipt of the request as opposed to the 45 days listed in our existing OAR. Reference 303.405(a). Fiscal Impact: Could create new staffing requirements or fiscal impact for LEAs.

**581-015-2815 IFSP Content.** Revised pursuant to 303.344, IFSP evaluation requirements reworded to match federal language. Fiscal Impact: none.

**581-015-2805 EI and ECSE Transition.** Added language to reflect the new federal timeline requirements of “no fewer than 90 days “before a child’s third birthday for transition purposes and also the new requirements for notification to BOTH the LEA and the SEA if eligibility of transition services or programs is determined. This could create new fiscal and staffing obligations for ODE if data must be collected and stored internally for SEA transition notification purposes.

**New OAR 581-015-2712 Availability of Early Intervention Services.** Drafted to reflect 34 CFR 303.112 which describes the federal requirements to offer EI services to Indian infants and toddlers

with disabilities who live on reservation and homeless infants and toddlers with disabilities. Fiscal Impact: none.

**New OAR 581-015-2713 Central Directory.** Written to detail the SEA’s responsibility to create a central directory of information available to the public pursuant to the new Part C federal regulations. Fiscal Impact: This could create a fiscal impact on ODE based on staff needed to create and manage a central directory or online tools.

**New OAR 581-015-2714 Role of the State Interagency Coordinating Council (SICC).** Written to comply with federal standards and to clarify outdated ORS 303.499 for IDEA Part C compliance purposes. Fiscal Impact: none.

**New OAR 581-015-2863 Procedures for EI/ECSE Complaints as required by IDEA Regulations.** Written to state the State’s acceptance of Part B Dispute resolution methods for EI/ECSE IDEA complaints pursuant to OAR 581-015-2030. Similar OARs exist for Due Process and Mediation methods but not state complaints, so adding this OAR will be consistent and clarify the gap in existing administrative rules. Fiscal Impact: none.

**NEW OAR 581-021-2774 Referral Procedures.** Written to reflect changes in federal law at 34 CFR 303.303. This OAR outlines when a child must be referred to a lead agency, and includes the “no more than seven days after identification” key under federal laws. Fiscal Impact: none.

**Rules Coordinator:** Cindy Hunt

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

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

\*\*\*\*\*

**Rule Caption:** Career and Technical Education Revitalization Grant Program – implementation of HB 3362 (2011).

**Stat. Auth.:** 2011 OL Ch. 638 Sec. 7

**Stats. Implemented:** 2011 OL Ch. 638 Sec. 7

**Proposed Adoptions:** 581-044-0210, 581-044-0220, 581-044-0230, 581-044-0240, 581-044-0250, 581-044-0260

**Last Date for Comment:** 1-31-12, 5 p.m.

**Summary:** The CTE Revitalization Grant was created and funded during the 2011 Regular Session of the Oregon Legislature as part of HB 3362. The legislation requires that the Oregon Department of Education (ODE) administer the grant program in collaboration with the Bureau of Labor and Industries (BOLI). Funds in the amount of \$2,000,000.00 were allocated for the 2011–2013 biennium. The funds are designated for competitive grants to public schools, school districts, education service districts, charter schools, or any combination of those institutions. The purpose of the grant is to:

(1) Develop or enhance career and technical education programs of study.

(2) Expand professional growth of and career opportunities for students through CTE programs.

(3) Assess the ability of CTE programs to meet workforce needs and give students skills required for jobs in Oregon that provide high wages and are in high demand.

(4) Support the achievement of the high school diploma requirements.

**Rules Coordinator:** Cindy Hunt

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

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

\*\*\*\*\*

**Rule Caption:** Calculation of Extended ADMw for Charter Schools for purposes of state school funding.

**Stat. Auth.:** ORS 327.125 & 338.025

**Stats. Implemented:** ORS 327.013, 327.077 & 338.155

**Proposed Adoptions:** 581-023-0106

**Last Date for Comment:** 1-31-12, 5 p.m.

**Summary:** The average daily membership weighted (ADMw) of a public charter school is used to calculate the amount state funding a charter school receives. The 2011 Legislature enacted multiple bills that impacted the calculation of ADMw for both public charter

# NOTICES OF PROPOSED RULEMAKING

schools and school districts. Specifically, the rule addresses the following areas that were the subject of this legislation:

(1) The calculation of extended ADMw for both charter schools and school districts.

(2) The weight that is to be added to a charter school's ADM for students with disabilities, pregnant and parenting programs, English as a Second Language programs, poverty and small schools.

The rule also specifies that it first applies to the 2011–2012 fiscal year which is consistent with applicability of the legislation.

**Rules Coordinator:** Cindy Hunt

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

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

.....  
**Oregon Health Authority,  
Addictions and Mental Health Division:  
Addiction Services  
Chapter 415**

**Rule Caption:** Substance Abuse and Problem Gambling Prevention Programs.

Date:	Time:	Location:
1-26-11	10 a.m.	500 Summer St. NE, Rm. 137D Salem, OR 97301

**Hearing Officer:** Nola Russell

**Stat. Auth.:** ORS 413.042

**Stats. Implemented:** ORS 430.240–430.415

**Proposed Adoptions:** 415-056-0030, 415-056-0035, 415-056-0040, 415-056-0045, 415-056-0050

**Proposed Repeals:** 415-056-0000, 415-056-0005, 415-056-0010, 415-056-0015, 415-056-0020, 415-056-0025

**Last Date for Comment:** 1-30-12

**Summary:** These rules prescribe standards for operating substance abuse and gambling prevention agencies approved by the Addictions and Mental Health Division, and provide that a full continuum of prevention services be available to Oregonians.

**Rules Coordinator:** Nola Russell

**Address:** Oregon Health Authority, Addictions and Mental Health Division: Addiction Services, 500 Summer St. NE, E86, Salem, OR 97301-1118

**Telephone:** (503) 945-7652

.....  
**Oregon Health Authority,  
Addictions and Mental Health Division:  
Mental Health Services  
Chapter 309**

**Rule Caption:** Handling Patient Mail in State Institutions.

Date:	Time:	Location:
1-27-12	10 a.m.	500 Summer St. NE, Rm. #160 Salem, OR

**Hearing Officer:** Nola Russell

**Stat. Auth.:** ORS 179.040 & 413.042

**Stats. Implemented:** ORS 179.360 & 426.385

**Proposed Amendments:** 309-102-0100, 309-102-0110, 309-102-0120, 309-102-0130, 309-102-0140, 309-102-0150

**Last Date for Comment:** 1-31-12

**Summary:** These rules prescribe the standards for handling mail belonging to patients in state institutions, including mail arriving for patients and mail patients are sending from the state institution.

**Rules Coordinator:** Nola Russell

**Address:** Oregon Health Authority, Addictions and Mental Health Division: Mental Health Services, 500 Summer St. NE, E86, Salem, OR 97301-1118

**Telephone:** (503) 945-7652

**Oregon Health Authority,  
Oregon Medical Insurance Pool  
Chapter 443**

**Rule Caption:** Updates rule to be consistent to the current year's benefits and benefit provisions.

**Stat. Auth.:** ORS 735.600, 735.610(6), 735.615 & 735.625

**Other Auth.:** OMIP Board

**Stats. Implemented:** ORS 735.600, 735.610(6) & 735.625

**Proposed Amendments:** 443-002-0070

**Last Date for Comment:** 1-16-11

**Summary:** Updates this administrative rule to be consistent with the 2011 benefits, benefit limitations, benefit exclusion, and claims administration, based on the terms of the OMIP enrollee contract, Member Handbook, Application, and Benefit and Rate instructions.

**Rules Coordinator:** Linnea Saris

**Address:** Oregon Health Authority, Oregon Medical Insurance Pool, 250 Church St. SE, Suite 200, Salem, OR 97301

**Telephone:** (503) 378-5672

.....  
**Rule Caption:** Updates language to mirror enrollee's contract/policy and align with current processing procedures and administration.

**Stat. Auth.:** ORS 735.600 & 735.610(6)

**Other Auth.:** OMIP Board

**Stats. Implemented:** ORS 735.610(6)

**Proposed Amendments:** 443-002-0190

**Last Date for Comment:** 1-16-11

**Summary:** This rule filing updates language to mirror current contract language and administration. The current language uses the terms "member", "enrolled dependent", which OMIP does not define. OMIP is replacing all of these terms with the term "enrollee". Furthermore, in 2009 OMIP updated the number of days by which an enrollee has to file for an appeal in the benefit contacts with the enrollee. The purpose of this rule filing, updates this rule which inadvertently when updated was not filed in a timely manner with the legislative Council.

**Rules Coordinator:** Linnea Saris

**Address:** Oregon Health Authority, Oregon Medical Insurance Pool, 250 Church St. SE, Suite 200, Salem, OR 97301

**Telephone:** (503) 378-5672

.....  
**Oregon Health Authority,  
Public Health Division  
Chapter 333**

**Rule Caption:** Implementing changes to the Oregon Indoor Clean Air Act.

Date:	Time:	Location:
1-17-12	1 p.m.	Portland State Office Bldg. 800 NE Oregon St. Rm. 1A Portland, OR 97232

**Hearing Officer:** Jana Fussell

**Stat. Auth.:** ORS 433.855

**Other Auth.:** House Bill 2726 (2011 OL Ch. 601)

**Stats. Implemented:** ORS 433.835–433.875 & 433.990(5)

**Proposed Amendments:** 333-015-0025, 333-015-0030, 333-015-0035, 333-015-0040, 333-015-0045, 333-015-0064, 333-015-0066, 333-015-0068, 333-015-0069, 333-015-0070, 333-015-0075, 333-015-0080, 333-015-0082, 333-015-0085

**Proposed Repeals:** 333-015-0090

**Last Date for Comment:** 1-22-12, 5 p.m.

**Summary:** The Oregon Health Authority, Public Health Division, is proposing permanent amendments to chapter 333, division 15, pertaining to the Oregon Indoor Clean Air Act (ICAA). The proposed rulemaking:

(1) Amends and adds definitions to bring the rules into line with the amended ICAA, better effect the purpose of the statute, and/or add clarity to the rules;

(2) Strikes sections of the rules deemed unnecessary;

## NOTICES OF PROPOSED RULEMAKING

(3) Clarifies that the 10-foot rule applies consistently to accessibility ramps;

(4) Revises procedures relating to cigar-bar and smoke-shop certification;

(5) Closes gaps in complaint-response procedures; and

(6) Brings the maximum penalty amount in line with the ICAA, as amended by HB 2726, passed in 2011.

**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:** Amendment and adoption of rules related to Outpatient Renal Dialysis Facilities (ESRD facilities).

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
1-26-12	1:30 p.m.	Portland State Office Bldg. 800 NE Oregon St. Rm. 1D Portland, OR 97232

**Hearing Officer:** Jana Fussell

**Stat. Auth.:** ORS 441.015, 441.025, 441.060 & 442.015

**Other Auth.:** SB 158 (2009 OL Ch. 792)

**Stats. Implemented:** ORS 183.413–183.500, 441.015, 441.020, 441.022, 441.025, 441.030, 441.037, 441.055, 441.057, 441.060, 441.990, 442.015 & 442.025

**Proposed Adoptions:** 333-700-0004, 333-700-0017, 333-700-0018, 333-700-0019, 333-700-0053, 333-700-0057, 333-700-0061, 333-700-0062, 333-700-0063, 333-700-0064, 333-700-0072, 333-700-0073

**Proposed Amendments:** 333-700-0000, 333-700-0005, 333-700-0010, 333-700-0015, 333-700-0020, 333-700-0025, 333-700-0030, 333-700-0035, 333-700-0040, 333-700-0045, 333-700-0050, 333-700-0060, 333-700-0065, 333-700-0075, 333-700-0080, 333-700-0085, 333-700-0090, 333-700-0095, 333-700-0100, 333-700-0105, 333-700-0110, 333-700-0115, 333-700-0120, 333-700-0125, 333-700-0130

**Proposed Repeals:** 333-700-0055, 333-700-0070

**Last Date for Comment:** 1-27-12, 5 p.m.

**Summary:** The Oregon Health Authority, Public Health Division is proposing to permanently adopt and amend Oregon Administrative Rules in chapter 333, division 700 relating to Outpatient Renal Dialysis Facilities (ESRD facilities) in response to legislation passed in 2009 (SB 158) and federal rule alignment. The proposed changes will: update the rules to be consistent with Centers for Medicare and Medicaid regulations; provide better organization for the rules; provide clearer wording; provide clearer processes for licensing, handling complaints, investigations, surveys, and discipline; add a mobile dialysis section; add staffing ratio requirements and make housekeeping changes.

**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:** Changes to Home Health Agency licensing rules in response to 2009 and 2011 legislation.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-1-12	10:30 a.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 1E Portland, OR 97232

**Hearing Officer:** Jana Fussell

**Stat. Auth.:** ORS 443.085

**Other Auth.:** SB 158 (2009 OL Ch. 792), HB 2650 (2011 OL Ch. 608)

**Stats. Implemented:** ORS 443.004, 443.005 – 443.090 & 443.355

**Proposed Adoptions:** 333-027-0017, 333-027-0018, 333-027-0029, 333-027-0033, 333-027-0036, 333-027-0037, 333-027-0038, 333-027-0064, 333-027-0175, 333-027-0180, 333-027-0185, 333-027-0190

**Proposed Amendments:** 333-027-0000, 333-027-0005, 333-027-0010, 333-027-0015, 333-027-0020, 333-027-0025, 333-027-0040, 333-027-0050, 333-027-0060, 333-027-0080, 333-027-0090, 333-027-0100, 333-027-0110, 333-027-0120, 333-027-0130, 333-027-0140, 333-027-0150, 333-027-0170

**Proposed Repeals:** 333-027-0030, 333-027-0035

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

**Summary:** The Oregon Health Authority, Public Health Division is proposing to permanently adopt and amend Oregon Administrative Rules relating to home health agencies in response to legislation passed in 2009 (SB 158) and 2011 (HB 2650). These rules update and clarify the process for licensure, OHA oversight and enforcement, establish requirements for criminal background checks, and make the rules consistent with certain federal requirements. SB 158 attempts to correct inadequate oversight due to gaps in law, inadequate resources, and clarifies statutes governing the roles and responsibilities of many facilities and agencies providing care to patients or clients. SB 158 also requires on-site surveys of all licensed health care facilities and agencies at a minimum of every three years. HB 2650 repeals provisions passed in 2009 requiring the Department of Human Services to conduct criminal background checks for home health and in-home care agencies. Home health and in-home care agencies may use private vendors to conduct criminal background checks but must comply with the provisions of ORS 443.004(3). The Public Health Division is required to prescribe the process for home health and in-home care agencies conducting background checks.

The Healthcare Regulation and Quality Improvement program ensures that a safe and healthy environment is provided by over 500 health related facilities and agencies. Regulatory oversight of home health agencies is an important component for promoting patient safety and quality care. This can be accomplished with clearly defined and updated responsibilities. Home health agency rules were last revised in 2002.

**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:** Amendments to Special Health Care Facilities, ambulatory surgical center physical environment rules.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
1-26-12	3 p.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 1D Portland, OR 97232

**Hearing Officer:** Jana Fussell

**Stat. Auth.:** ORS 441.025 & 441.060

**Stats. Implemented:** ORS 441.025 & 441.060

**Proposed Adoptions:** 333-076-0001

**Proposed Amendments:** 333-076-0185

**Last Date for Comment:** 1-27-12, 5 p.m.

**Summary:** The Oregon Health Authority, Public Health Division, Facilities Planning and Safety program is proposing to permanently amend Oregon Administrative Rules in chapter 333, division 76 pertaining to the physical environment of ambulatory surgical centers. Due to technological advances in surgery procedures and changes in the types of services provided in outpatient settings the current rules have become antiquated and require updating. The changes proposed will align the rules under which Oregon's ambulatory surgical centers are licensed by, with national healthcare design and construction industry standards. Tables referenced in OAR 333-076-0185 are also being permanently amended and adopted.

**Rules Coordinator:** Brittany Sande

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

**Telephone:** (971) 673-1291



# NOTICES OF PROPOSED RULEMAKING

## Oregon Public Employees Retirement System Chapter 459

**Rule Caption:** Adopt new rule to set a minimum amount of \$5 for issuing a retroactive payment.

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

**Hearing Officer:** Daniel Rivas

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

**Stats. Implemented:** ORS 238.601

**Proposed Adoptions:** 459-005-0615

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

**Summary:** PERS may make an adjustment to a payee's monthly benefit and lump sum distributions for a variety of reasons which include but are not limited to: a contested case hearing; court decision; law changes; notice of dispute; settlement agreement; cost of living adjustments, annual variable annuity adjustment and to correct errors whether they are made by the member, alternate payee, beneficiary, a participating employer or PERS. These adjustments often result in a one time retroactive payment to the payee. Currently PERS does not have a minimum amount for issuing a retroactive payment so checks are generated for any amount. PERS often receives complaints from the payee who express their displeasure at having to spend their time and money to cash a check for small amounts such as \$.35 or \$2.85.

Setting a minimum amount for a retroactive payment would not affect the plan qualification. As trustee of the Public Employees Retirement fund, the PERS Board is charged with maintaining a stable and viable system which includes the full funding for the benefits provided in the system giving equal consideration to the interests of the public employers and the employee to the extent that treatment does not violate the fiduciary duties of the board. In weighing the interests of public employers and retirees and their beneficiaries, PERS believes that setting a minimum amount of a retroactive payment is both a reasonable and prudent administration of the fund.

**Rules Coordinator:** Daniel Rivas

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

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

\*\*\*\*\*

**Rule Caption:** Update Social Security annual compensation limits and clarify ORS 238.082 military leave provisions.

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

**Hearing Officer:** Daniel Rivas

**Stat. Auth.:** ORS 238.650

**Stats. Implemented:** ORS 238.078, 238.082, 238.092, 399.075, 2007 OL Ch. 499 & 774 & 2009 OL Ch. 390 & 868

**Proposed Amendments:** 459-017-0060

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

**Summary:** Update rule to reflect the increased Social Security annual compensation limits, effective January 1, 2012. Also clarify ORS 238.082(6) – replacing an employee called to active military service means taking the position of the absent employee and performing duties appropriate for that position.

**Rules Coordinator:** Daniel Rivas

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

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

\*\*\*\*\*

**Rule Caption:** Clarify rate to determine crediting of an installment payment in the year of distribution.

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

**Hearing Officer:** Daniel Rivas

**Stat. Auth.:** ORS 238.305 & 238.650

**Stats. Implemented:** ORS 238.260, 238.300, 238.305 & 238.315

**Proposed Amendments:** 459-007-0090, 459-007-0270

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

**Summary:** OAR 459-007-0090 and 459-007-0270 currently provide for proration of the annual rate to determine the crediting of an installment payment in the year of distribution. "Annual rate" is incorrect and that it should be the latest year to date calculation as of the date of distribution.

**Rules Coordinator:** Daniel Rivas

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

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

\*\*\*\*\*

## Oregon University System, Western Oregon University Chapter 574

**Rule Caption:** Revisions to special course fees and general services fees.

**Stat. Auth.:** ORS 351.070 & 351.072

**Stats. Implemented:** ORS 351.070 & 351.072

**Proposed Amendments:** 574-050-0005

**Last Date for Comment:** 1-21-12

**Summary:** Amendments will allow for increases, additions, and revisions of special course fees and general services fees.

**Rules Coordinator:** Debra L. Charlton

**Address:** Oregon University System, Western Oregon University, 345 N Monmouth Ave., Monmouth, OR 97361

**Telephone:** (503) 838-8597

\*\*\*\*\*

## Oregon Youth Authority Chapter 416

**Rule Caption:** OYA has established a Research Committee to review research proposals and recommend approval or denial.

**Stat. Auth.:** ORS 420A.025

**Stats. Implemented:** ORS 420A.010

**Proposed Amendments:** 416-170-0000, 416-170-0005, 416-170-0010, 416-170-0020, 416-170-0030

**Last Date for Comment:** 1-31-12, 5 p.m.

**Summary:** OYA has established a Research Committee to review research proposals and recommend approval or denial to OYA executive staff. OYA requires all proposals be approved by a human subjects review committee (e.g., institutional review board). These rules establish general project review and approval standards for OYA.

**Rules Coordinator:** Winifred Skinner

**Address:** Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301-3765

**Telephone:** (503) 373-7570

\*\*\*\*\*

## Parks and Recreation Department Chapter 736

**Rule Caption:** Local Government Grant Program Rule Changes as Required by Senate Bill 342.

Date:	Time:	Location:
1-17-12	6 p.m.	North Mall Office Bldg. 725 Summer St. NE, Rm 124A Salem, OR 97301
1-18-12	6 p.m.	Crossings at the Riverhouse 3075 N Business 97 (Deschutes Rm. B) Bend, OR 97701
1-19-12	6 p.m.	Santo Community Center 701 N Columbus Ave, Rm. 18 Medford, OR 97501

**Hearing Officer:** Michele Scalise

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

# NOTICES OF PROPOSED RULEMAKING

**Stats. Implemented:** ORS 390.180 & Oregon Laws 2011, chapter 643

**Proposed Adoptions:** Rules in 736-006

**Proposed Amendments:** Rules in 736-006

**Proposed Repeals:** Rules in 736-006

**Last Date for Comment:** 2-15-12, 4 p.m.

**Summary:** The proposed rules will codify procedures necessary to implement Senate Bill 342 from the 76th Legislative Assembly – 2011 Regular Session, which sets 12% of the State Parks and Recreation Department Fund for grants to regional and local governments to acquire, develop or improve public parks, natural areas or outdoor recreation areas. In addition, we have had conversations with different stakeholders who have expressed interest in reviewing the administrative rules to help address local needs that have emerged since the rules were last updated. Some local governments have expressed concerns about their struggle to come up with cash for their required match portion, some have indicated a desire for assistance with backlogged maintenance and repairs.

Public hearing meetings are scheduled for 2 hours from 6:00 to 8:00 pm.

**Rules Coordinator:** Vanessa DeMoe

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

**Telephone:** (503) 986-0719

\*\*\*\*\*

**Rule Caption:** Amendment of OAR 736-018-0045 to Adopt the Cottonwood Canyon State Park Comprehensive Plan.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
1-24-12	6 p.m.	City of Condon Memorial Hall 128 S. Main St. Condon, OR 97823

**Hearing Officer:** Mark Davison

**Stat. Auth.:** ORS 390.180

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

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

**Last Date for Comment:** 2-23-12, 4 p.m.

**Summary:** ORS 390.180(1) authorizes the Director of the Oregon Parks and Recreation Department (OPRD) to adopt administrative rules that establish a plan for each state park. Accordingly, OPRD is adopting a plan for Cottonwood Canyon State Park, a new state park on the John Day River. Plans for state parks are adopted as state rules under OAR 736-018-0045. The purpose of amending OAR 736-018-0045 is to adopt the new plan for Cottonwood Canyon as a state rule.

The plan for the park responds to the most current information on park resource conditions and public recreation needs as they pertain to this park setting. The plan was formulated through OPRD's mandated planning process involving meetings with the general public, an advisory committee, recreation user groups, environmental advocacy groups, affiliated Tribes, affected state and federal agencies and local governments, local land owners and the local Chamber of Commerce

Those wishing to make public comment at the 1/24/2012 meeting should register with the hearings officer between 6:00 pm and 6:45 pm on the day of the meeting.

**Rules Coordinator:** Vanessa DeMoe

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

**Telephone:** (503) 986-0719

\*\*\*\*\*

**Rule Caption:** Amend OAR 736-021 General Ocean Shore State Recreation Area rules.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
1-26-12	3 p.m.	North Bend Library 1800 Sherman Ave. North Bend, OR 97459
1-27-12	3 p.m.	Gold Beach City Hall 29592 Ellensburg Ave. Gold Beach, OR 97444

1-30-12	7 p.m.	Newport Recreation Center 225 Avery St., Rm. 105 Newport, OR 97365
1-31-12	7 p.m.	Cannon Beach City Hall 163 E. Gower St., (Council Chambers) Cannon Beach, OR 97110
1-24-12	3:30 p.m.	North Mall Office Bldg. 725 Summer St. NE, Rm. 124B Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS. 390

**Stats. Implemented:** ORS. 390

**Proposed Adoptions:** 736-021-0065

**Proposed Amendments:** Rules in 736-021

**Proposed Repeals:** 736-021-0110

**Last Date for Comment:** 2-6-12, 4 p.m.

**Summary:** Rule change allows certain department officials and peace officers the authority to order rule violators to leave or to exclude them from the ocean shore area for a period of time; establishes an appeal process for exclusions; requires domestic animal handlers to maintain control and be responsible for animal behavior; establishes specific standards for natural product removal for personal use; prohibits seasonal collection and prospecting in Western Snowy Plover areas; prohibits altering the natural environment or disturbing natural resources; prohibits or regulates certain activities to ensure safety, preservation and access for all; clarifies rules for items of value found on the ocean shore; etc.

Those wishing to make public comment during a public hearing must register with the hearings officer in the first 45 minutes of the meeting.

**Rules Coordinator:** Vanessa DeMoe

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

**Telephone:** (503) 986-0719

\*\*\*\*\*

## Physical Therapist Licensing Board Chapter 848

**Rule Caption:** Amend temporary permits, exam scores, lapsed fee, continuing education, board sanctions and initiation standards rules.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
1-20-12	8:30 a.m.	PSOB 800 NE Oregon St., Rm. 445 Portland, OR 97232

**Hearing Officer:** James D. Heider

**Stat. Auth.:** ORS 688.160(6)(c)

**Stats. Implemented:** ORS 688.040, 688.100, 688.110, 688.140, 688.160(6)(b), 688.160(6)(g) & 688.160(i)

**Proposed Amendments:** 848-010-0015, 848-010-0020, 848-010-0026, 848-010-0035, 848-035-0030, 848-035-0040, 848-040-0125, 848-045-0010

**Last Date for Comment:** 1-20-12, 8:30 a.m.

**Summary:** Review and amend current rules to extend temporary permit for first time test takers from 60 days to 90 days to accommodate the new national examination fixed date testing; amend multiple passing score criteria for pre-1996 test takers to simply passing an exam approved by the board; change the late charge for a lapsed license fee to a single charge instead of a late charge for each year lapsed; broaden approved CE to include credit for other activities such as performing as a Clinical Instructor or for writing an published article; publish the Board's adopted sanction matrix into rule for practicing with a lapsed license and non-compliance with CE regulations; and clarify the need for performing an initial evaluation in the standards to initiate physical therapy; and other housekeeping items.

**Rules Coordinator:** James Heider

# NOTICES OF PROPOSED RULEMAKING

**Address:** Physical Therapist Licensing Board, 800 NE Oregon St, Suite 407, Portland, OR 97232  
**Telephone:** (971) 673-0203

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

**Rule Caption:** In the Matter of Rule Changes Related to Utility Tax Information (SB-967) and Confidential Information.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-8-12	9:30 a.m.	Public Utility Commission 550 Capitol St. NE, 1st Floor Salem, OR 97301

**Hearing Officer:** Lisa Hardie

**Stat. Auth.:** ORS Ch. 183, 756, 757, 759 & 756.040 & 756.060

**Other Auth.:** Senate Bill 967, 2011 legislative session, codified as Oregon Laws 2011, Chapter 137

**Stats. Implemented:** ORCP(36), ORS 183.425, 183.450, 756.040, 756.055, 756.060, 756.105, 756.500–756.575, 756.990; 757.205, 757.511 & 759.175

**Proposed Amendments:** 860-001-0080, 860-001-0500, 860-022-0019, and 860-027-0200

**Proposed Repeals:** 860-022-0041

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

**Summary:** The rulemaking is needed to implement Senate Bill 967 (2011 legislative session) and to clarify procedures for handling confidential information. SB 967 relates to rates of public utilities; created new provisions; amended ORS 757.210 and 757.511; and repealed ORS 757.267 and 757.268.

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 553 on comments and file them by e-mail to the Commission's Filing Center at PUC.FilingCenter@state.or.us and also send a signed hard copy to the Filing Center at PO Box 2148, Salem, Oregon 97308-2418. For more information about the Commission's Filing Center, please see <http://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=16875>

Participants wishing to monitor the hearing by telephone (listen only) must contact Diane Davis at [diane.davis@state.or.us](mailto:diane.davis@state.or.us) or (503) 378-4372 by close of business February 3, 2012, to request a dial-in number. To present oral comment at the hearing, participants must attend in person.

**Rules Coordinator:** Diane Davis

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

**Telephone:** (503) 378-4372

.....

**Rule Caption:** In the Matter of Corrections to OAR 860-039-0005.

**Stat. Auth.:** ORS Ch. 183, 756 & 757

**Stats. Implemented:** ORS 756.040 & 757.300

**Proposed Amendments:** 860-039-0005

**Last Date for Comment:** 1-23-12, Close of Business

**Summary:** The Commission adopted changes to the definitions found in OAR 860-039-0005 by Order No. 11-338 (Docket AR 548). The rule changes adopted in AR 548 were filed with the Secretary of State and became effective on September 7, 2011. On September 8, 2011, the Commission adopted general waiver provisions to nearly all divisions of its rules by Order No. 11-346 (Docket AR 554). When the proposed rules for AR 554 were drafted, the changes to OAR 860-039-0005 had not yet been adopted and were not reflected in the proposed rules. When the Commission adopted the AR 554 changes, due to a scrivener error, it failed to capture in the adopted rule language the definition changes adopted on the previous day. This rulemaking proposes to reinstate the changes to the definitions that were previously adopted by the Commission but inadvertently removed by the subsequent adoption of changes in AR 554.

The Commission encourages participants to file written comments as early as practicable in the proceeding so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 562 on comments and file them by e-mail to the Commission's Filing Center at PUC.FilingCenter@state.or.us and also send a signed hard copy to the Filing Center at PO Box 2148, Salem, Oregon 97308-2418. For more information about the Commission's Filing Center, please see <http://apps.puc.state.or.us/edockets/center.htm>. Interested persons may review all filings online by querying AR 562 the Commission's eDockets search page at <http://apps.puc.state.or.us/edockets/search.asp>.

**Rules Coordinator:** Diane Davis

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

**Telephone:** (503) 378-4372

.....

**Secretary of State,**  
**Audits Division**  
**Chapter 162**

**Rule Caption:** Update Minimum Standards for Review of Oregon Municipal Corporations for change in professional standards.

**Stat. Auth.:** ORS 297

**Stats. Implemented:** ORS 297.465

**Proposed Adoptions:** 162-040-0096

**Proposed Amendments:** 162-040-0001, 162-040-0002, 162-040-0005, 162-040-0010, 162-040-0020, 162-040-0050, 162-040-0054, 162-040-0055, 162-040-0060, 162-040-0065, 162-040-0070, 162-040-0075, 162-040-0095, 162-040-0155

**Proposed Repeals:** 162-040-0015, 162-040-0090, 162-040-0110, 162-040-0115, 162-040-0120, 162-040-0125, 162-040-0130, 162-040-0135, 162-040-0136, 162-040-0140, 162-040-0146, 162-040-0148

**Last Date for Comment:** 1-28-12, Close of Business

**Summary:** (1) Amend rules for outdated and clarifying language to bring rules up to date.

(2) Repeal OAR 162-040-0015 – Duplicates standards already prescribed for reviews by the AICPA.

Repeal OAR 162-040-0090, 162-040-0110, 162-040-0115, 162-040-0120, 162-040-0125, 162-040-00130, 162-040-0135, 162-040-00136, 162-040-0140, 162-040-0146, 162-040-0148 – Removes required procedures and report by auditor for municipality's compliance with laws, rules and regulations.

(4) Adopt OAR 162-040-0096 – Requires report of municipality acknowledging its responsibilities for compliance with Oregon laws, rules, and regulations.

**Rules Coordinator:** Julie A. Sparks

**Address:** Secretary of State, Audits Division, 255 Capitol St. NE, Suite 500, Salem, OR 97310

**Telephone:** (503) 986-2255

.....

**Teacher Standards and Practices Commission**  
**Chapter 584**

**Rule Caption:** Adopts new licensure rules for CPD, Restricted and Emergency Social Workers, amends Fee rule and rule 584-036-0015 to remove building limitations except for Specialty Endorsements.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
1-23-12	1 p.m.	TSPC Office 250 Division St. NE Salem, OR 97301

**Hearing Officer:** Lynn Beaton

**Stat. Auth.:** ORS 342

**Stats. Implemented:** ORS 342.120–342.430, 342.455–342.495 & 342.553

**Proposed Adoptions:** 584-036-0057, 584-090-0100, 584-090-0105, 584-090-0110, 584-090-0115, 584-090-0120, 584-070-0441, 584-070-0451



## NOTICES OF PROPOSED RULEMAKING

---

**Proposed Amendments:** 584-036-0055, 584-036-0015(T)

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

**Summary:** ADOPT: 584-036-0057, *Late Fee Waiver*: Allows educators who are unable to find employment during the life of a license to waive late fees upon reinstatement of their license issued by TSPC.

584-090-0100, *Professional Development General*: Requires professional development for all educators including charter schools and school nurses.

584-090-0105, *Professional Development Objectives*: Adopts objectives that align with the national standards adopted by Learning Forward.

584-090-0110, *Standards for Professional Learning*: Clarifies the professional development standards are aligned with the national standards developed and adopted by Learning Forward in 2011.

584-090-0115, *Continuing Professional Development Requirement*: Clarifies requirements for CPD.

584-090-0120, *Approval of Continuing Professional Development*: Requires educators who are employed and not employed must supply evidence their CPD was completed at the time of renewal.

584-070-0441, *Restricted Transitional School Social Worker*: Creates new license for situations when districts may wish to license

persons who are either attempting to complete a school social worker programs, or who are planning to enroll in a school social worker program.

584-070-0451, *Emergency School Social Worker License*: Adopts new license for districts to hire an emergency Social Worker. The license allows for an “extension” without issuing an “informal” extension to a license.

AMEND: 584-036-0055, *Fees*: Amends rule to state: (c) If the educator is eligible for fee waiver under OAR 584-036-0057; the Executive Director may waive late fees.

584-036-0015(T), *Basic and Standard Teaching Licenses with Authorizations and Endorsement*: Aligns Basic and Standard licenses with Initial and Continuing Licenses. Removes reference to “building limitations” except in Specialty Endorsements. Filed Temporary until May 11, 201

**Rules Coordinator:** Lynn Beaton

**Address:** Teacher Standards and Practices Commission, 250 Division St. NE, Salem, OR 97301

**Telephone:** (503) 373-0981

# ADMINISTRATIVE RULES

## Appraiser Certification and Licensure Board Chapter 161

**Rule Caption:** Amends rules related to criminal background checks.

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

**Filed with Sec. of State:** 11-17-2011

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

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 161-030-0000

**Subject:** Amends Oregon Administrative Rule 161, division 30, rule 0000 regarding criminal background checks.

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

### 161-030-0000

#### Criminal Background

(1) For the purposes of this section, "Subject Individual" means:

(a) Any licensee as defined in OAR 161-002-0000(22).

(b) Any applicant for a certificate, or registration under ORS Chapter 674 or any applicant for renewal of a license, certificate, or registration under ORS Chapter 674.

(c) Any Board employee, volunteer, or any other person the Board may require fingerprints for the purpose of conducting a state or nationwide criminal records check as identified in ORS 674.105.

(2) The purpose of this section is to provide for the reasonable screening of subject individuals in order to determine if they have a history of criminal behavior such that they are unfit to hold a license, certificate or registration, or work, volunteer or contract with the Board.

(3) The Board may request the Department of State Police conduct a criminal records check on a subject individual. The Board may request that the Department of State Police conduct the check, including fingerprint identification, through the Federal Bureau of Investigation.

(4) The Board may conduct criminal records checks on subject individuals through the Law Enforcement Data System maintained by the Department of State Police in accordance with rules adopted, and procedures established, by the Department of State Police.

(5) Each subject individual shall submit a background check application. The application shall include, but is not limited to, the following information:

(a) The name, residence address and telephone number for the subject individual;

(b) The date and place of birth of the subject individual;

(c) The Social Security Number of the subject individual;

(d) Whether the subject individual has ever been convicted of or is under arrest, investigation or indictment for a felony or misdemeanor; and

(e) Whether the subject individual has ever been refused a real estate appraisal license or any other occupational or professional license in any other state or country, or whether any real estate appraisal license or other occupational or professional license held by the subject individual has ever been revoked or suspended or the licensee fined or reprimanded; and

(f) Any other information considered necessary by the Board to evaluate the subject individual's trustworthiness and competency to engage in professional real estate appraisal activity in a manner that protects the public interest.

(6) As part of any application submitted under section (5) of this rule, the subject individual shall submit one completed fingerprint card on the form prescribed by the Oregon State Police and FBI and a fee sufficient to recover the costs of processing the subject individual's fingerprint information and securing any criminal offender information pertaining to the subject individual.

(7) The background check application, fingerprint card and processing fee shall be submitted to the Board prior to issuance of any license under ORS Chapter 674 and these rules.

(8) As provided in ORS 181.534(15), all fingerprint cards, photographs, records, reports and criminal offender information obtained or compiled by the Board are confidential and exempt from public inspection. The Board shall keep such information segregated from other information on any subject individual and maintain such information in a secure place.

(9) If the information developed by the Board indicates that additional information should be obtained from the subject individual, it will be the duty of the subject individual, upon notice and request by the Board, to provide the requested information in order to complete the background check. Failure to comply may result in a determination that the background check is incomplete which will result in an unfit determination by the Board.

(10) 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 the criminal background check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the background check.

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

(12) The Board shall inform the subject individual who has been determined unfit on the basis of a criminal background check, via courier, or registered or certified mail to the most current address provided by the subject individual of the disqualification. Responsibility for furnishing a current address remains with the subject individual.

(13) A disqualification determination is a final order of the Board unless the affected subject individual requests a contested case hearing under ORS Chapter 183 within 20 days of the mailing of the determination.

Stat. Auth.: ORS 674.170, 674.305(8) & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 1-2010(Temp), f. 1-29-10, cert. ef. 2-1-10 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 2-2011, f. 11-17-11, cert. ef. 1-1-12

\*\*\*\*\*

**Rule Caption:** Adopt 2011–2013 budget, and miscellaneous amendments, including qualifying criteria for licensing.

**Adm. Order No.:** ACLB 3-2011

**Filed with Sec. of State:** 11-17-2011

**Certified to be Effective:** 11-17-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 161-002-0000, 161-006-0000, 161-006-0025, 161-006-0160, 161-006-0175, 161-008-0040, 161-010-0020, 161-010-0025, 161-010-0035, 161-010-0045, 161-010-0085, 161-020-0015, 161-020-0045, 161-020-0055, 161-020-0140, 161-020-0150, 161-025-0060

**Rules Repealed:** 161-006-0025(T)

**Subject:** Repeals temporary Oregon administrative rule 161, division 06, rule 0025 regarding the Board's budget. Amends Oregon Administrative Rule 161, division 02, rule 0000 regarding definitions; division 6, rules 0000, 0025, 0160 and 0175 regarding budget, and complaints and enforcement; division 8, rules 0040 regarding fees and miscellaneous charges; division 10, rules 0020, 0025, 0035, 0045, and 0085 regarding licensure and certification requirements; division 20, rules 0015, 0045, 0055, 0140, and 0150 regarding educational requirements; and division 25, rule 0060 regarding appraisal standards and USPAP.

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

### 161-002-0000

#### Definitions

As used in OAR 161-001-005 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, or by an accrediting agency that is recognized by the U.S. Department of Education.

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

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

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

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

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

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

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

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

# ADMINISTRATIVE RULES

(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:

(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, 2010.

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

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

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

## 161-006-0000

### The Agency and Its Purpose

The Appraiser Certification and Licensure Board was created by the 1991 Oregon Legislative Assembly to implement Title XI of the Federal Act in Oregon.

(1) Its purpose is to represent the broad public interest while it implements its functions to license, supervise and regulate appraisers in Oregon, and to develop and establish appraisal education and experience standards.

(2) The Appraiser Certification and Licensure Board is a regulatory agency and Board members shall avoid conflicts of interest in implementing appraiser certification and supervision functions. The Board is to pro-



# ADMINISTRATIVE RULES

vide adequate safeguards to ensure that the appraisal regulatory function is insulated from the influence of any industry or organization whose members have a direct or indirect financial interest in the outcome of the Board's decisions. The regulatory functions of the Board are independent of other realty related regulatory agencies.

(3) In accordance with subsection (1)(c) of Section 49 of Chapter 5, Oregon Laws 1991, the Appraiser Certification and Licensure Board implemented Chapter 5, Oregon Laws 1991 and Title XI of the Federal Act on December 31, 1991.

Stat. Auth.: ORS 674.010, 674.305(8) & 674.310

Stats. Implemented: ORS 674.305

Hist.: ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-2011, f. & cert. ef. 11-17-11

## 161-006-0025

### Budget

The Board hereby adopts by reference the Board's 2011-2013 Biennium Budget of \$1,725,041 covering the real estate appraiser program for the period July 1, 2011 through June 30, 2013, and the appraisal management program for the period January 1, 2012 through June 30, 2013. The Board will amend budgeted accounts as necessary within the approved budget of \$1,725,041 for the effective operation of the Board. The Board will not exceed the approved 2011-2013 Biennium Budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required by ORS Chapter 182.462(1)(2). Copies of the budget are available from the Board's office.

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

Stats. Implemented: ORS 674

Hist.: ACLB 4-2001(Temp), f. & cert. ef. 9-12-01 thru 3-1-02; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 1-2003(Temp), f. & cert. ef. 1-14-03 thru 7-11-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 4-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03; ACLB 5-2003, f. & cert. ef. 11-10-03; ACLB 2-2005(Temp), f. 6-16-05, cert. ef. 7-1-05 thru 12-28-05; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 2-2007(Temp), f. 6-6-07, cert. ef. 7-1-07 thru 11-30-07; BOC 1-2007, f. 10-31-07, cert. ef. 11-1-07; ACLB 3-2009(Temp), f. 5-15-09, cert. ef. 7-1-09 thru 11-30-09; ACLB 4-2009, f. & cert. ef. 10-27-09; ACLB 1-2011(Temp), f. 5-2-11, cert. ef. 7-1-11 thru 11-30-11; ACLB 3-2011, f. & cert. ef. 11-17-11

## 161-006-0160

### Complaints, Investigations and Audits

(1) All complaints must be in writing and submitted to the Board's office.

(2) Any person may file a complaint.

(3) A member of the Board or the Administrator may also initiate a complaint or request an investigation.

(4) The Board will accept anonymous complaints.

(5) The Board will take no action on frivolous complaints. The Board will evaluate the content of each complaint. Factors such as, but not limited to, the following may cause a complaint to be classified as "frivolous":

(a) A complaint alleging that the appraised value is too high or too low that does not include supporting documentation to substantiate the allegation;

(b) A complaint that appears to be filed to gain a competitive advantage over or in retaliation against another appraiser; or

(c) A complaint filed by a person with a history of filing complaints that have no merit.

(6) A Notice of Complaint, together with a true copy of the complaint as submitted to the Board's office, including all supporting documentation, shall be promptly sent by certified mail, return receipt requested, to the last known address of the person against whom the complaint is filed. The Notice of Complaint shall require, and the Respondent must produce:

(a) True copies of records within a specific time period to which no extension will be granted; and

(b) A written response to the allegations set forth in the complaint within a specified time period.

(A) A respondent may request an extension to file a response to a notice of complaint. An extension of up to 30 days will be approved provided that the extension request:

(i) Substantiates that good cause exists to grant such an extension and that circumstances beyond the reasonable control of the respondent prevent a response within 30 days;

(ii) Is submitted to the Board Administrator in writing on or before the response due date; and

(iii) Does not ask for an extension of time in excess of 30 days.

(B) The Administrator may grant one additional extension of no more than 30 days only upon showing of good cause.

(7) The Administrator shall ensure that each non-frivolous complaint is investigated to determine if violations of ORS Chapter 674 and/or OAR

Chapter 161 have occurred. The investigation may include all inquiries deemed appropriate to ensure that each complaint is processed in accordance with ORS Chapter 183.

(8) The Board may initiate an audit or other type of inquiry or investigation to verify an individual's compliance with ORS 674 and OAR 161.

(9) Every licensed or certified appraiser or registered appraiser assistant 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 license, certificate or registration, imposition of a civil penalty, or denial of a license, certificate, or registration, or any combination thereof.

Stat. Auth.: ORS 674.170, 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1993(Temp), f. & cert. ef. 3-3-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 6-2003, f. & cert. ef. 11-24-03; ACLB 3-2005, f. & cert. ef. 7-22-05; ACLB 3-2011, f. & cert. ef. 11-17-11

## 161-006-0175

### Enforcement Guidelines

The primary objective of the enforcement guidelines is to fairly and consistently apply appropriate sanctions for violations of Oregon Revised Statutes and Oregon Administrative Rules governing real estate appraisal activity.

(1) Sanction Guidelines Grid: [Grid not included. See ED. NOTE.]

(2) A notice of proposed disciplinary action shall propose the presumptive sanction(s) provided by the guidelines in OAR 161-006-0175(1) unless there are substantial and compelling reason(s) to propose a departure. If the Notice departs from the presumptive sanctions, the Notice shall state the substantial and compelling reason(s) for the departure.

(3) The Administrator or the Administrator's designee shall have the authority to negotiate and approve a stipulated settlement at any time prior to issuance of a Final Order by the Board. If the parties stipulate to depart from the guidelines, the Administrator or the Administrator's designee shall consider the purpose and principles of the guidelines and may agree to sanctions that are proportionate to the seriousness of the violations.

(4) Departure from the guidelines shall also be allowed in issuance of a Proposed Order by an Administrative Law Judge and/or a Final Order by the Board upon a showing of substantial and compelling reason(s) for said departure. Substantial and compelling reason(s) shall be stated in the Proposed Order and/or Final Order.

(5) In the event of second or subsequent violations of ORS 674.140(2) and/or 674.140(7), the Administrator shall not consider a prior Final Order that was issued more than five (5) years preceding the date of the second or subsequent notice of proposed sanctions.

[ED NOTE: Grid referenced is available from the agency.]

Stat. Auth.: ORS 674.140 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2002, f. & cert. ef. 5-30-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 3-2011, f. & cert. ef. 11-17-11

## 161-008-0040

### Fees and Miscellaneous Charges

(1) The Board establishes the following fees for producing copies of records:

(a) For copying and certification of documents containing five pages or less, a charge of \$5, and \$5 for certification, plus an hourly rate of \$25 for staff time to copy the documents;

(b) For copying each page of a certified document in excess of five pages, a charge of \$0.25 per page, plus an hourly rate of \$25 for staff time to copy the documents;

(c) Copies of each page of an uncertified document made on a standard office copy machine, a charge of \$0.25 per page;

(d) If the estimated cost to provide a copy of the requested records is greater than \$25, the Board will provide written notification of the estimated amount of the fee. The Board will provide the requested copies only if the requester confirms that the agency should proceed with the records request. The Board must receive payment for said copies from the requestor prior to dissemination.

(2) The Administrator shall charge the actual cost for other materials and staff time not specifically identified in this rule.

Stat. Auth.: ORS 674.305 & 674.310

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 674

Hist.: ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 3-2011, f. & cert. ef. 11-17-11

## 161-010-0020

### Qualifying Appraiser Experience for Certification

(1) Areas of acceptable appraisal experience, as described in OAR 161-010-0025, may include but are not limited to the following:

(a) Fee Appraisal prepared by a state licensed or certified appraiser in conformance with USPAP;

(b) Staff Appraisal prepared in conformance with USPAP;

(c) Review Appraisal prepared in conformance with USPAP;

(d) Real Property Appraisal Consulting prepared in conformance with USPAP;

(e) Highest and Best Use Analysis prepared in conformance with USPAP;

(f) Assistance in preparation of appraisals as a Board registered appraiser assistant performing tasks as provided in OAR 161-025-0030.

(2) All experience must have been obtained after January 30, 1989.

(3) Experience being claimed as set forth in paragraphs (1)(c), (d) and (e) above, individually or combined, may not exceed more than 25 percent of the total required experience hours.

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

Stats. Implemented: ORS 674

Hist.: ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 1-2007, f. & cert. ef. 2-9-07; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 1-2010(Temp), f. 1-29-10, cert. ef. 2-1-10 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 3-2011, f. & cert. ef. 11-17-11

## 161-010-0025

### Requirements for Acceptable Appraisal Experience

As a prerequisite to taking the applicable appraisal examination, the applicant shall present evidence of satisfactory completion of acceptable appraisal experience. An hour of experience is defined as verifiable time spent performing tasks in accordance with acceptable appraisal experience, as defined in OAR 161-010-0020, and does not include travel time. Education cannot be substituted for experience. Acceptable appraisal experience must meet the following criteria:

(1) Review appraisals shall be awarded experience credit when the appraiser performs review(s) in accordance with USPAP.

(2) An appraiser who signs a real property appraisal report prepared by another, even under the label of "review appraiser", must accept full responsibility for the contents of the report. This will appropriately be considered as appraisal experience.

(3) Maximum allowable experience hours: [Table not included. See ED. NOTE.]

[ED NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1996, 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 4-1999, f. 11-8-99, cert. ef. 1-1-00; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 1-2007, f. & cert. ef. 2-9-07; ACLB 3-2008, f. & cert. ef. 8-13-08

## 161-010-0035

### Prerequisite Experience and Education Requirements for State Certified General Appraisers

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

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

(2) Successfully completed not less than 300 class hours of acceptable appraisal courses as set forth in OAR 161-020-0110(2)(c), with the following exceptions as noted in paragraphs (2)(a), (2)(b) or (2)(c) below. Each applicant shall have successfully completed the 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, within four (4) years preceding the date of application and have successfully passed an examination thereon.

(a) Applicants holding a valid Oregon Appraiser Assistant registration may satisfy the educational requirements for the State Certified General Appraiser credential by completing the following additional education hours:

(A) Course(s) on General Appraiser Market Analysis and Highest and Best Use (30 hours in not less than 15 hour increments);

(B) Course(s) on Statistics, Modeling and Finance (15 hours);

(C) Course(s) on General Appraiser Sales Comparison Approach (30 hours in not less than 15 hour increments);

(D) Course(s) on General Appraiser Site Valuation and Cost Approach (30 hours in not less than 15 hour increments);

(E) Course(s) on General Appraiser Income Approach (60 hours in not less than 15 hour increments);

(F) Course(s) on General Appraiser Report Writing and Case Studies (30 hours in not less than 15 hour increments);

(G) Electives (30 hours in not less than 15 hour increments).

(b) Applicants holding a valid Oregon State Licensed Appraiser credential may satisfy the educational requirements for the State Certified General Appraiser credential by completing the following additional education hours:

(A) Course(s) on General Appraiser Market Analysis and Highest and Best Use (15 hours);

(B) Statistics, Modeling and Finance (15 hours);

(C) Course(s) on General Appraiser Sales Comparison Approach (15 hours);

(D) Course(s) on General Appraiser Site Valuation and Cost Approach (15 hours);

(E) Course(s) on General Appraiser Income Approach (45 hours in not less than 15 hour increments);

(F) Course(s) on General Appraiser Report Writing and Case Studies (15 hours).

(G) Electives (30 hours in not less than 15 hour increments).

(c) Applicants holding a valid Oregon State Certified Residential Appraiser credential may satisfy the educational requirements for the State Certified General Appraiser credential by completing the following additional education hours:

(A) Course(s) on General Appraiser Market Analysis and Highest and Best Use (15 hours);

(B) Course(s) on General Appraiser Sales Comparison Approach (15 hours);

(C) Course(s) on General Appraiser Site Valuation and Cost Approach (15 hours);

(D) Course(s) on General Appraiser Income Approach (45 hours in not less than 15 hour increments);

(E) Course(s) on General Appraiser Report Writing and Case Studies (15 hours);

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

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

(a) English Composition;

(b) Micro Economics;

(c) Macro Economics;

(d) Finance;

(e) Algebra, Geometry, or higher mathematics;

(f) Statistics;

(g) Computer Science;

(h) Business or Real Estate Law; and

(i) Two elective courses in accounting, geography, agricultural economics, business management, or real estate. Total hours of equivalent college courses in lieu of a Bachelors degree: 30 semester credit hours or its equivalent for the state certified general appraiser. Any applicant using the in-lieu-of degree courses, must complete a minimum of 3 semester (4.5 quarter) credit hours in each collegiate level subject matter course noted above. If an accredited college or university accepts the College-Level Examination Program (CLEP) examination(s) and issues a transcript for the exam, showing its approval, it will be considered as credit for the college course.

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

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-010-0030 & 161-010-0040; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 2-2009(Temp), f. 1-28-09, cert. ef. 1-30-09 thru 7-28-09; Administrative correction 8-21-09; ACLB 4-2009, f. & cert. ef. 10-27-09; ACLB 3-2011, f. & cert. ef. 11-17-11

# ADMINISTRATIVE RULES

## 161-010-0045

### Prerequisite Experience and Education Requirements for State Certified Residential Appraisers

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

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

(2) Successfully completed not less than 200 class hours of acceptable appraisal courses as set forth in OAR 161-020-0110(2)(b), with the following exceptions as noted in paragraphs (2)(a) or (2)(b) below. Each applicant shall have successfully completed the 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, within four (4) years preceding the date of application and have successfully passed an examination thereon.

(a) Applicants holding a valid Oregon Appraiser Assistant registration may satisfy the educational requirements for the State Certified Residential Appraiser credential by completing the following additional education hours:

(A) Course(s) on Residential Market Analysis and Highest and Best Use (15 hours);

(B) Course(s) on Residential Appraiser Site Valuation and Cost Approach (15 hours);

(C) Course(s) on Residential Sales Comparison and Income Approaches (30 hours in no less than 15 hour increments);

(D) Course(s) on Residential Report Writing and Case Studies (15 hours);

(E) Course(s) on Statistics, Modeling and Finance (15 hours);

(F) Course(s) on Advanced Residential Applications and Case Studies (15 hours);

(G) Electives (20 hours).

(b) Applicants holding a valid Oregon State Licensed Appraiser credential may satisfy the educational requirements for the State Certified Residential Appraiser credential by completing the following additional education hours:

(A) Course(s) on Statistics, Modeling and Finance (15 hours);

(B) Course(s) on Advanced Residential Applications and Case Studies (15 hours);

(C) Electives (20 hours).

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

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

(a) English Composition;

(b) Principles of Economics (Micro or Macro);

(c) Finance;

(d) Algebra, Geometry, or higher mathematics;

(e) Statistics;

(f) Computer Science; and

(g) Business or Real Estate Law. Total hours of equivalent college courses in lieu of an Associate degree: 21 semester credit hours or its equivalent for the state certified residential appraiser. Any applicant using the in-lieu-of degree courses, must complete a minimum of 3 semester (4.5 quarter) credit hours in each collegiate level subject matter course noted above. If an accredited college or university accepts the College-Level Examination Program (CLEP) examination(s) and issues a transcript for the exam, showing its approval, it will be considered as credit for the college course.

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

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 3-2005, f. & cert. ef. 7-22-05; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 2-2009(Temp), f. 1-28-09, cert. ef. 1-30-09 thru 7-28-09; Administrative correction 8-21-09; ACLB 4-2009, f. & cert. ef. 10-27-09; ACLB 3-2011, f. & cert. ef. 11-17-11

## 161-010-0085

### Pre-Requisite Experience and Education for Supervising Appraiser

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

(1) In order to receive a Supervising Appraiser Endorsement, the applicant must:

(a) be certified for a minimum of 24 months, be in good standing, and not be otherwise prohibited from supervising appraiser assistants.

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

(c) submit a completed Supervising Appraiser Endorsement application that includes the following:

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

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

(d) successfully pass a Board assessment of appraisal work product.

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

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

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

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

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

Hist.: ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 1-2007, f. & cert. ef. 2-9-07; ACLB 4-2007, f. 11-1-07, cert. ef. 1-1-08; ACLB 2-2008(Temp), f. & cert. ef. 8-6-08 thru 2-1-09; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09; ACLB 1-2010(Temp), f. 1-29-10, cert. ef. 2-1-10 thru 7-27-10; ACLB 3-2011, f. & cert. ef. 11-17-11

## 161-020-0015

### Course Approval

(1) Courses shall be reviewed and approved under these rules as either Qualifying Education or Continuing Education. A course approved for Qualifying Education may also be used for continuing Education if the course meets the requirements of this section. An appraiser does not need to take or pass an examination for Continuing Education credit.

(a) A Qualifying Education Course must include an examination, provide at least 15 classroom hours of instruction, and be consistent, in terms of content, with the qualifying education course content guidelines in these rules;

(b) A Continuing Education Course must include a minimum of 2 hours of instruction and be consistent, in terms of content, with the Continuing Education course content guidelines in these rules.

(2) Course approval commences on the date initial approval is granted by the Administrator:

(a) Course approval by the Administrator is not retroactive (applicable prior to the date approval is initially granted) because previous offerings of an approved course have not been reviewed under these rules.

(b) Previous offerings of a Board approved course may be approved at the discretion of the Administrator.

(3) Each approved course shall be assigned to one specific category as outlined in 161-020-0110(2)(a-o) and 161-020-0110(3).

(4) Each approved course shall be assigned a maximum number of classroom hours of instruction (including examination time if applicable).

(5) Each approved course shall have an index number assigned to indicate approval.

(6) Upon receipt of course approval, the course owner/affiliated entity (such as a state or local chapter of a national organization that owns a course) may represent in any advertising or other materials that the course is a Board approved course, provided that the number of classroom hours credit awarded by the Administrator is also clearly indicated when the number of credit hours awarded is less than the actual number of scheduled classroom hours.

(7) Course approval granted to a course owner shall apply to any affiliated entity subject to the following conditions:

(a) The course owner requires the affiliated entity to conduct the course:

(A) Utilizing the owner's course materials (including textbook and examinations, if any); and

(B) Allowing the same number of classroom hours as the course owner;

(C) In accordance with the course owner's policies relating to instructor qualifications, student attendance, course scheduling and course prerequisites (if applicable).



# ADMINISTRATIVE RULES

(b) The course owner assumes full responsibility in the event the affiliated entity violates any of the provisions of these rules.

(8) The Administrator reserves the right to conduct a full review of any approved course for any reason in connection with any course approval or at any other time. Further, the Administrator may establish a system of periodic course review.

(9) Unless course content changes significantly, course renewal is not required, with the exception of distance education courses as outlined in OAR 161-020-0140(1). Course approval for distance education courses offered online via the internet shall expire the same date as IDECC and/or AQB approval, whichever occurs first, and can be renewed by the course provider submitting a written request for course renewal to the Board prior to course expiration, along with copies of current IDECC and/or AQB approval letters.

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

Stats. Implemented: ORS 674.310

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 3-2011, f. & cert. ef. 11-17-11

## 161-020-0045

### Criteria for Approval of Course as Qualifying Education

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

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

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

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

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

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

- (a) Are appropriate for a qualifying education course;
- (b) Clearly state the specific knowledge and/or skills students are expected to acquire by completing the course;
- (c) Are consistent with the course description;
- (d) Are consistent with the textbook and/or other instructional materials; and
- (e) Are reasonably achievable within the number of classroom hours allotted for the course.

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

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

- (a) Cover the subject matter in sufficient depth to achieve the stated course learning objectives;
- (b) Provide appropriately balanced coverage of the subject matter in view of the stated course learning objectives;
- (c) Reflect current knowledge and practice;
- (d) Contain no significant errors;
- (e) Reflect correct grammatical usage and spelling;
- (f) Effectively communicate and explain the information presented;
- (g) Be suitable in layout and format; and
- (h) Be suitably bound/packaged and be produced in a quality manner.

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

- (a) The examination(s) contains a sufficient number of questions to adequately test the subject matter covered in the course;
- (b) The amount of time devoted to the examination(s) is appropriate for the course;
- (c) The examination questions, individually and collectively, test at a difficulty level appropriate to measure student achievement of the stated course learning objectives;
- (d) The subject matter tested by examination questions is adequately addressed in the course instructional materials;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stats. Implemented: ORS 674.310

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 3-1991(Temp), f. & cert. ef. 8-29-91; ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 2-1993(Temp), f. & cert. ef. 4-28-93; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-020-0010 & 161-020-0040; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-2000; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 4-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03; ACLB 6-2003, f. & cert. ef. 11-24-03; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09; ACLB 3-2011, f. & cert. ef. 11-17-11

## 161-020-0055

### Criteria for Approval of Course as Continuing Education

In order to be approved as continuing education, the course must satisfy all criteria described in this rule.

# ADMINISTRATIVE RULES

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

(2) Course Length and Content – The course shall involve a minimum of two classroom hours with the “Continuing Education Course Content Guidelines” in these rules.

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

(4) Summary Outline – If more than one major topic is to be covered in the course, the course materials or syllabus shall include a summary outline of major topics to be covered and the number of classroom hours devoted to each major topic.

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

- (a) Are appropriate for a continuing education course;
- (b) Clearly state the specific knowledge and/or skills students are expected to acquire by completing the course;
- (c) Are consistent with the course description;
- (d) Are consistent with the instructional materials; and
- (e) Are reasonably achievable within the number of classroom hours allotted for the course.

(6) Instructional Materials – Instructional materials for students shall be provided unless the applicant demonstrates to the satisfaction of the Administrator that such materials are not needed to accomplish the stated course learning objectives. Any such instructional materials shall:

- (a) Be appropriate in view of the stated course learning objectives;
- (b) Reflect current knowledge and practice;
- (c) Contain no significant errors;
- (d) Reflect correct grammatical usage and spelling;
- (e) Effectively communicate and explain the information presented;
- (f) Be suitable in layout and format; and
- (g) Be suitably bound or packaged, and be produced in a quality manner.

(7) Instructor Qualification – Course provider shall keep written records documenting that their instructors meet the Board qualifications as set forth below:

(a) Three years of experience directly related to the subject matter to be taught; or

(b) A baccalaureate or higher degree in a field directly related to the subject matter to be taught; or

(c) Three years of experience teaching the subject matter to be taught; or

(d) A combination of education and experience equivalent to (a), (b) or (c) of this section

(e) For those instructing the Appraisal Foundation’s National USPAP Course, and/or the seven-hour Appraisal Foundation’s National USPAP Update Course:

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

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

(f) For those instructing courses equivalent to either the Appraisal Foundation’s National USPAP Course or the seven-hour Appraisal Foundation’s National USPAP Update course:

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

(g) For those instructing the Supervising Appraiser/Appraiser Assistant Course:

(A) The instructor must be a certified residential or certified general appraiser; and

(B) The instructor must have completed a Board sponsored Supervising Appraiser/Appraiser Assistant Course and passed the final exam.

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

- (a) Stipulate as to a percentage of attendance required by the student;
- (b) Include on the attendance records form the Instructor(s) name and the criteria under which they qualified;

(c) Provide that non-members of the association or organization may apply for the course without membership in the association;

(d) Provide for retention of attendance records for a minimum of five years.

(9) Course Scheduling Policy – If the course involves more than eight classroom hours, the course owner/affiliated entity shall have an established policy on course scheduling that provides for a maximum of eight (8) classroom hours of instruction in any given day and for appropriate breaks during each class session.

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

(11) Audit Policy – The course owner/affiliated entity shall permit the Administrator or the Administrator’s representative to audit the course and course materials at no cost to the Administrator or the Administrator’s representative in order to evaluate the instruction. The course owner/affiliated entity shall permit the Administrator or the Administrator’s representative to review their records appropriate to selected course offerings.

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

Stats. Implemented: ORS 674.310

Hist.: ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 3-1992(Temp), f. & cert. ef. 11-25-92; ACLB 4-1992(Temp), f. & cert. ef. 12-2-92; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-020-0020 and 161-020-0060; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 4-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03; ACLB 6-2003, f. & cert. ef. 11-24-03; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 3-2011, f. & cert. ef. 11-17-11

## 161-020-0140

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

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

(1) Distance education courses offered on-line via the internet must be pre-approved by the International Distance Education Certification Center (IDECC), with the exception of courses offered by an accredited college or university. A copy of IDECC’s approval must be included with each course application. In addition:

(a) Qualifying education courses must be pre-approved by the Appraiser Qualifications Board (AQB), with the exception of courses offered by an accredited college or university. A copy of the AQB course approval must be included with each course application.

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

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

(2) Distance education courses offered via CD:

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

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

(3) Correspondence courses:

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

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

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

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

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

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

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 3-2005, f. & cert. ef. 7-22-05; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09; ACLB 3-2011, f. & cert. ef. 11-17-11

# ADMINISTRATIVE RULES

## 161-020-0150

### Time Requirements for Qualifying Education and Continuing Education

#### (1) Qualifying Education:

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

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

(A) For applicants applying for certification, the 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, must be obtained within four (4) years preceding the date of application; and

(B) For applicants applying to be a registered appraiser assistant, the 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, must be obtained within two (2) years preceding the date of application. All other qualifying education for applicants applying to be a registered appraiser assistant must be obtained within five (5) years preceding the date of application, with the exception of licensed or certified appraisers registering as an appraiser assistant to upgrade their license.

#### (2) Continuing Education:

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

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

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

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

#### (e) USPAP:

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

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

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

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

Stat. Auth.: ORS 674.305 & 674.310  
Stats. Implemented: ORS 674

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ACLB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 3-2005, f. & cert. ef. 7-22-05; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09; ACLB 1-2010(Temp), f. 1-29-10, cert. ef. 2-1-10 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 3-2011, f. & cert. ef. 11-17-11

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

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) The "Uniform Standards of Professional Appraisal Practice", 2010-2011 Edition, approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, dated April 27, 1987, as amended on January 1, 2010, 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.

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

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

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

(a) Board member;

(b) Employee; or

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

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

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

Stats. Implemented: ORS 674

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

\*\*\*\*\*

### Board of Licensed Professional Counselors and Therapists Chapter 833

**Rule Caption:** Changes to Criminal History Check Procedures.

**Adm. Order No.:** BLPCT 3-2011

**Filed with Sec. of State:** 12-13-2011

**Certified to be Effective:** 12-15-11

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

**Rules Amended:** 833-120-0011, 833-120-0021, 833-120-0031, 833-120-0041

**Subject:** Simplifies and clarifies history check process for applications for license or internship and for license and intern renewals to ease the criminal background check process.

Allows license applicants with fingerprint based criminal history checks provided by another public agency within one year prior to submitting a license application to submit a verification form instead of a new fingerprint based history check.

Adds registered interns to requirements section.

Adds that misleading statements or intended omissions as part of criminal background check may result in discipline.

Adds that criminal history checks will be conducted on each licensee or intern for every 5 years.

Changes the cost of criminal history checks from the board's actual cost to \$47.25 for each check.

**Rules Coordinator:** Becky Eklund—(503) 378-5499, ext. 3



# ADMINISTRATIVE RULES

## 833-120-0011

### Purpose and Scope

(1) The purpose of these rules, OAR 833-120-0011 to 833-120-0041, is to provide for the screening under ORS 181.534 of licensees, registered interns, and applicants for licensure with the Oregon Board of Licensed Professional Counselors and Therapists to determine if they have a history of criminal behavior such that they would be unable to, or should not be allowed to, perform the services of a Licensed Professional Counselor or Licensed Marriage and Family Therapist.

(2) A criminal history check of each licensee and registered intern will be conducted at least once every five years as part of the license or internship renewal process.

(3) The following persons must take the steps necessary to complete a nationwide criminal history check under ORS 181.534:

(a) A person who, on or after January 1, 2010, submits an application for licensure to the Board in accordance with OAR 833 Division 20;

(b) A licensee or registered intern who, on or after January 1, 2010, submits an application for renewal of their license or status, and who has not satisfied the Board's criminal history check requirements within the past five years; and

(c) A licensee or registered intern who is the subject of inquiry or investigation by the board.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 2-2011(Temp), f. 5-13-11, cert. ef. 5-15-11 thru 11-10-11; Administrative correction 11-18-11; BLPCT 3-2011, f. 12-3-11, cert. ef. 12-15-11

## 833-120-0021

### Requirements

(1) To complete a criminal history check, the Board will require each person to:

(a) Provide fingerprints on a standard Federal Bureau of Investigations (FBI) fingerprint card (additional fingerprints may be required if the initial fingerprint card is rejected by State Police or the FBI);

(A) Fingerprints must have been taken not more than 60 days prior to submission to the Board.

(B) Licensees and registered interns must submit fingerprints by their renewal date.

(b) Provide personal information necessary to obtain the criminal history check; and

(c) Pay \$47.25 to the board for costs charged by the Oregon State Police (OSP) and the FBI.

(2) The Board may also request, and the applicant, licensee, or registered intern will provide the following information:

(a) Responses to a criminal history questionnaire; and

(b) Written response to questions by the Board regarding the person's criminal history.

(3) Exceptions. In lieu of completing a new criminal history check, a licensee, registered intern, or applicant may submit verification of a fingerprint-based, national criminal history check conducted within one year of the person's application or renewal date by a Board approved agency.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 2-2011(Temp), f. 5-13-11, cert. ef. 5-15-11 thru 11-10-11; Administrative correction 11-18-11; BLPCT 3-2011, f. 12-3-11, cert. ef. 12-15-11

## 833-120-0031

### Information Considered

(1) In reviewing the information obtained from a criminal history check, the Board will consider the following circumstances related to any criminal conviction, indictment, or pending indictment, arrest, and related information:

(a) The nature of the crime of which the person has been convicted, indicted, or arrested;

(b) The facts that support the conviction, indictment, or arrest;

(c) The relevancy to the specific requirements of the person's position as a licensee or applicant;

(d) The passage of time since the commission of the crime;

(e) The age of the person at the time of the crime;

(f) The likelihood of a repetition of an offense or of the commission of another crime;

(g) Whether the person accepts responsibility for past actions;

(h) The commission of other relevant crimes;

(i) Whether the conviction was set aside and the legal effect of setting aside the conviction;

(j) A recommendation from an employer who employed the person after the conviction;

(k) Charges, arrests, and other behavior involving contact with law enforcement;

(l) Periods of incarceration;

(m) Compliance with parole, post-prison supervision, or probation;

(n) Drug or alcohol issues related to criminal activity including history of use, manufacturing, delivery, treatment, rehabilitation, and relapse;

(o) Other treatment or rehabilitation related to criminal activity includes assessments, evaluations, and risk assessments conducted before, after, or during treatment or rehabilitation;

(p) Protective services investigations or abuse and neglect reports;

(q) Local or national healthcare practitioner databases; and

(r) Previous complaints and investigations on file with the Board or any other licensing or professional oversight authority.

(2) False or misleading statements, or omissions made for the purpose of misleading the Board are grounds for denial of an application for licensure, refusal to renew a license or registered internship, or disciplinary action authorized under ORS 675.785.

(3) A refusal to submit or consent to a criminal records check including fingerprint identification will result in disciplinary action as mandated by ORS 181.534. In the case of such a refusal by an applicant, the Board will consider the application incomplete and the application will be denied.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 2-2011(Temp), f. 5-13-11, cert. ef. 5-15-11 thru 11-10-11; Administrative correction 11-18-11; BLPCT 3-2011, f. 12-3-11, cert. ef. 12-15-11

## 833-120-0041

### Record Keeping and Confidentiality

(1) Information obtained by the board in carrying out its responsibilities under this rule is considered part of an investigation and is confidential under ORS 676.175.

(2) Information obtained directly from the Law Enforcement Data System will be managed by the Board in accordance with applicable OSP requirements.

(3) Fingerprint cards, if returned to the Board by OSP or the FBI will be destroyed. No copies, facsimiles, or other materials from which the fingerprints could be reproduced will be maintained by the Board.

(4) Criminal history information will not be disseminated by the Board, with the following exceptions:

(a) The subject of a fingerprint-based criminal history check may be provided a copy of the results, if requested in writing prior to the completion of the criminal history check process; and

(b) Criminal history information may be used as exhibits during a contested case hearing process.

(c) The Board may disclose criminal history information that reasonably relates to the regulatory or enforcement function of another public entity as authorized under ORS 676.177.

(5) Challenges to the accuracy or completeness of criminal background information must be made to the reporting agency and not to the Board.

(6) A person against whom disciplinary action is taken by the board on the basis of information obtained as the result of a criminal records check conducted pursuant to this rule is entitled to notice and hearing in accordance with the provisions for contested cases in ORS Chapter 183.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 2-2011(Temp), f. 5-13-11, cert. ef. 5-15-11 thru 11-10-11; Administrative correction 11-18-11; BLPCT 3-2011, f. 12-3-11, cert. ef. 12-15-11

.....  
**Board of Massage Therapists  
Chapter 334**

**Rule Caption:** Address changes required by the 2011 Legislative action, create contracting rules, standardize language.

**Adm. Order No.:** BMT 4-2011

**Filed with Sec. of State:** 12-1-2011

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

**Notice Publication Date:** 10-1-2011

**Rules Adopted:** 334-001-0025, 334-001-0028, 334-001-0032, 334-001-0036, 334-010-0009, 334-010-0018, 334-010-0027

**Rules Amended:** 334-001-0000, 334-001-0005, 334-001-0020, 334-001-0060, 334-010-0005, 334-010-0008, 334-010-0010, 334-010-0012, 334-010-0015, 334-010-0017, 334-010-0025, 334-010-0033,

# ADMINISTRATIVE RULES

334-010-0046, 334-010-0050, 334-020-0015, 334-030-0001, 334-030-0005, 334-040-0001, 334-040-0010

## **Rules Repealed:** 334-001-0035

**Subject:** Following the 2011 legislative session, the Board is required to create rules reflective of statutory changes. The OBMT has written contracting rules that are more suited to the operations of a small state agency. The OMBT has amended verbiage to comply with current standards.

**Rules Coordinator:** Diana Nott—(503) 365-8657, ext. 1

## **334-001-0000**

### **Notice to Interested Persons**

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

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

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

- (a) Associated Press and United Press International;
- (b) Oregon Massage Therapists Association;
- (c) American Massage Therapy Association – Oregon chapter; and
- (d) Certified Massage Schools in Oregon.

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

Stat. Auth.: ORS 183

Stats. Implemented: ORS 687.011, 687.086 & 687.121

Hist.: MTB 1-1978, f. & ef. 7-28-78; MTB 2-1982, f. & ef. 7-21-82; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## **334-001-0005**

### **Model Rules of Procedure**

The most current Model Rules of Procedure as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act are by this reference adopted as the rules and procedures of the Board of Massage Therapists and must be controlling except as otherwise required by statutes or rules.

Stat. Auth.: ORS 183

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

Hist.: MTB 1-1978, f. & ef. 7-28-78; MTB 1-1980, f. & ef. 2-26-80; MTB 1-1982, f. & ef. 2-4-82; MTB 1-1985, f. & ef. 1-8-85; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## **334-001-0020**

### **Contracting and Procurement**

(1) It is the policy of the Board to conduct its procurement efforts to ensure a process that promotes fairness, integrity, security, and honesty to maximize revenue and achieve the best value for the Board.

(2) These rules are used to simplify, clarify and modernize the public contracting of the Board.

Stat. Auth.: SB 1127

Stats. Implemented: Section 5(4)

Hist.: MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 3-1999(Temp), f. & cert. ef. 9-17-99 thru 3-15-00; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## **334-001-0025**

### **Application of the Board's Procurement Rules; Exceptions**

(1) General: It is the policy of the Board to maximize the net revenues of the Board and to conduct its contracting affairs in an open, competitive manner.

(2) Exceptions: The Board may enter into the following classifications of Contracts without a competitive process:

(a) Contracts between the Board and a state agency or local government of this state or another state, with the United States or a United States governmental agency, with an American Indian tribe or an agency of an American Indian tribe, or with a nation or a public agency in any nation other than the United States as permitted in ORS Chapter 190;

(b) Emergency Procurements;

(c) Contracts for books, memberships, or subscriptions;

(d) Price regulated items where the rate or price is established by federal, state or local regulatory authority; and

(e) Purchase of used personal property.

(3) Reservation of Rights: Although the Board is exempt from ORS Chapter 279A and 279B, which govern public contracts and procurement, the Board reserves the right to use, as guidelines to govern its procurement

actions, relevant provisions of ORS Chapter 279A, and 279B, the Attorney General's Model Public Contract Rules (OAR chapter 137, divisions 46 and 47) and the Public Contracting Rules established by the Oregon Department of Administrative Services (OAR chapter 125, divisions 246 and 247). However, the procedures set forth in these statutes and administrative rules must be guidance only and must not obligate the Board to follow the procedures set forth in these statutes and administrative rules.

Stat. Auth.: ORS 183, 687

Stats. Implemented: ORS 182.456 - 182.472, 687.011, 687.051, 687.057, 687.061, 687.086, 687.121

Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## **334-001-0028**

### **Procurement Authority**

(1) General: The Executive Director is authorized to initiate procurements and enter into Contracts and Contract amendments for Goods and Services that are used in the normal day to day operations of the Oregon Board of Massage Therapists and in carrying out the vision of the Board.

(2) Board Approved Contracts: Notwithstanding the provisions of section (1) of this rule, the Board must approve contracts over \$50,000 and insure a competitive procurement process is used. The Board having once approved a Contract or Contract amendment authorizes the Executive Director to execute the Contract or Contract amendment, make all disbursements and payments as provided in the Contract or Contract amendment, without further action by the Board.

(3) Emergency Procurements: Notwithstanding the provisions of section (1) of this rule, the Executive Director is authorized to enter into a Contract awarded as an Emergency procurement.

(4) Rule or Statutory Authorization: If a contract action is authorized by statute or rule, the Executive Director is authorized to execute the Contract or any Contract amendment, and make all disbursements and payments as required by the Contract terms or the terms of the Contract amendment.

(5) Price Reduction: The Executive Director is authorized, without further, specific approval action by the Board, to execute any Contract amendment that results in a reduction of the price paid by the Board.

(6) Delegation by Executive Director: The Executive Director may delegate, in writing, to any of the current Oregon Board of Massage Therapists employees the exercise or discharge of any of the powers, duties or functions of the Executive Director in these Division 1 rules.

(7) Legal Sufficiency Review: For all contracts, including amendments, in excess of \$150,000 the Board must seek an Attorney General legal sufficiency review and approval, as per OAR 137-045-0015.

Stat. Auth.: ORS 183, 687

Stats. Implemented: ORS 182.456 - 182.472, 687.011, 687.051, 687.057, 687.061, 687.086, 687.121

Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## **334-001-0032**

### **Source Selection**

(1) General: Either the Board or the Executive Director must Award Contracts for Goods or Services by one of the source selection methods in this rule. Except as provided in section (2), (5) and (6) of this rule, the Board will generally conduct a competitive process for Goods or Services by issuing a Solicitation Document.

(2) Small Procurements: Any procurement of Goods or Services not exceeding \$15,000 may be awarded without a competitive process. The Board may Award a Contract in any manner deemed practical or convenient by the Board, including by direct selection or Award. A procurement may not be artificially divided or fragmented so as to constitute a small procurement under this rule.

(3) Intermediate Procurements: Any procurement of Goods or Services exceeding \$15,000 but not exceeding \$150,000 may be awarded after seeking three competitive price quotes or Offers. Either the Board or the Executive Director must keep a written record of the sources of the Offers received. If three Offers are not reasonably available, fewer will suffice, but either the Board or the Executive Director must make a written record of the effort made to obtain the Offers. If a Contract is awarded, either the Board or the Executive Director must Award the Contract to the Offeror whose Offer will best serve the interests of the Board. A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this rule.

(4) Large Procurements: Any procurement of Goods or Services exceeding \$150,000 may be awarded after seeking three solicited competitive Offers. The Board must keep a written record of the sources of the Offers received. If three Offers are not reasonably available, fewer will suffice, but the Board must make a written record of the effort made to obtain

# ADMINISTRATIVE RULES

the Offers. If a Contract is awarded, the Board must Award the Contract to the Offeror whose Offer will best serve the interests of the Board.

(5) Sole Source Procurements: Either the Board or the Executive Director may Award a Contract for Goods or Services without a competitive process when the Executive Director, or a person designated in Writing by the Board, determines in Writing, based on findings of current market research, that the Goods or Services are available from only one seller or source.

(6) Emergency Procurements:

(a) General: The Executive Director may conduct an Emergency procurement and enter into Contracts Awarded as Emergency procurements in an Emergency. The Executive Director may conduct an Emergency procurement and enter into Contracts Awarded as Emergency procurements regardless of the dollar amount of the Contract without the Board's approval. The Board may, in its discretion, enter into a contract without a competitive solicitation if an emergency exists. Regardless of the dollar value of the contract, the Board entering into an Emergency Contract must encourage competition that is reasonable and appropriate under the Emergency circumstances.

(b) Large Procurements:

(A) Notwithstanding subsection 6(a) of this rule, the Executive Director may conduct an Emergency procurement or enter into an Emergency Contract for a Large Procurement only upon the approval of the Board.

(B) The Executive Director may establish an extension of an Emergency Contract for a Large Procurement without the approval of the Board, where the original Contract specifically provides for the extension, the extension does not result in any change in the terms and conditions of the Contract other than an extension in its term.

(C) The Executive Director must make reasonable efforts to report to the Board in Writing, within five days of the Contract Award, or by the next scheduled Board meeting following the Contract Award date, whichever is later, any Emergency Contracts entered into by the Executive Director. However, the Executive Director's inability or failure to report to the Board within this time must not affect the validity of any Emergency Contract.

(7) Alternative Procurement Methods:

(a) The Board reserves the right to use an alternative procurement method if that method will be more likely to:

(A) Maximize the Board's net revenue;

(B) Achieve the specific business objective or business objectives of the procurement; or

(C) Aid the Executive Director in fulfilling the statutory mandate to operate and administer the Board.

(b) Alternative procurement methods may include, but are not limited to, multistep bids, quotes or Proposals, single Proposer negotiations, competitive negotiations between two or more Proposers, brand name solicitations, and cooperative procurements.

Stat. Auth.: ORS 183, 687

Stats. Implemented: ORS 182.456 - 182.472, 687.011, 687.051, 687.057, 687.061, 687.086, 687.121

Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-001-0036

### Contract Amendments

(1) Additional Goods or Services: The Board may amend a Contract without additional competition to add additional Goods or Services within the Scope of the Solicitation Document, or if no Solicitation Document, the Contract, subject to the following conditions:

(a) The additional Goods or Services are required by reason of existing or new laws, rules, regulations, or ordinances that affect the performance of the original Contract; or

(b) The prices for the Goods or Services are modified only as follows:

(A) When prices for the Goods or Services are based on unit prices, unit prices that establish the cost basis for the additional Goods or Services were provided in the Offer or original Contract and those prices do not increase except as permitted by an escalation clause in the Contract; or

(B) When prices for the Goods or Services are not based on unit prices, options that establish the cost basis for the additional Goods or Services were provided in the Solicitation Document, Offer, or original Contract.

(2) Renegotiated Contract: The Board may renegotiate the terms and conditions, including the Contract Price, of a Contract without additional competition and amend a Contract if it is Advantageous to the Board subject to the following conditions:

(a) The amended Contract is within the Scope of the Solicitation Document, or if no Solicitation Document, within the Scope the Contract;

(b) The Board must determine that, with all things considered, the renegotiated Contract is at least as favorable to the Board as the original Contract; and

(c) The renegotiated Contract will not have a total term greater than allowed in the original Solicitation Document or Contract after combining the initial and extended terms.

(d) If a Contractor offers a lower price in exchange for a term or condition that was expressly rejected in the original solicitation, the amended Contract may be structured with this changed term as an optional, but not as a mandatory Contract term.

(3) Small or Intermediate Contract: The Executive Director may amend a contract awarded as a small or intermediate procurement pursuant to sections (1) or (2) of this rule, but the cumulative amendments must not increase the total Contract Price to a sum that is greater than twenty-five percent of the original Contract Price, unless the amendment increasing the original Contract Price to more than twenty-five percent of the original Contract Price is approved in writing by the Board prior to execution of the amendment.

(4) Emergency Contract: The Board may amend a Contract Awarded as an Emergency procurement if the Emergency justification for entering into the Contract still exists, and the amendment is necessary to address the continuing Emergency.

Stat. Auth.: SB 1127

Stats. Implemented: Section 5(4)

Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-001-0060

### Definitions

(1) "Advantageous" means in the Board's best interests, as assessed according to the judgment of the Board.

(2) "Award" means either the act or occurrence of the Board's identification of the Person with whom the Board will enter into a Contract.

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

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

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

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

(b) Appliances, tools or devices;

(c) Topical preparations; or

(d) Hot and cold applications.

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

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

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

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

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

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

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

(10) "Client" means any individual, group of individuals, or organization to whom an LMT provides massage

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

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

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

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

(15) "Contract" means an agreement for purchase, lease, rental or other acquisition or sale or other disposal by the Board of Goods or Services.

(16) "Contract Price" means, as the context requires;

(a) The maximum payments that the Board will make under a Contract if the Contractor fully performs under the Contract;



# ADMINISTRATIVE RULES

(b) The maximum not-to-exceed amount of payments specified in the Contract; or

(c) The unit prices for Goods and Services set forth in the Contract.

(17) "Contractor" means the Person with whom the Board enters into a Contract.

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

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

(b) Assessment and understanding of a situation.

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

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

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

(21) "Emergency" means circumstances that:

(a) Could not have been reasonably foreseen;

(b) Require prompt execution of a Contract to remedy the condition; and

(c) The circumstances create a substantial risk of loss or revenue, damage or interruption of services or substantial threat to property, public health, welfare or safety when the circumstances could not have been reasonably foreseen;

(22) Equivalent Credit Hours: are those credit hours as determined by the respective educational institution or its certified classes or programs

(23) "Goods and Services" or "Goods or Services" means supplies, equipment, materials and services including Personal Services and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that the Board is authorized by law to procure.

(24) "Indorsement" means:

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

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

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

(26) "Licensee" means any person holding a license, permit, or certificate issued by this Board; an LMT

(27) "LMT" means a Licensed Massage Therapist.

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

(29) "Offer" means a response to a request for price quote or response to a Solicitation Document.

(30) "Offeror" means a Person who submits an Offer.

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

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

(33) "Practical Work Experience" means experience gained while employed or self-employed providing legal massage/bodywork to the public within the last five (5) years, in another state or jurisdiction.

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

(35) "Professional authority" means the power inherent in the professional role and which is derived from a combination of an LMT's specialized or expert knowledge, societal expectations, stated and unstated client expectations, and an LMT's personal power.

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

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

(38) "Scope" means the range and attributes of the Goods or Services described in the applicable Solicitation Document, or if no Solicitation Document, in the Contract.

(39) "Solicitation Document" means an Invitation to Bid, Request for Proposal or other document issued to invite Offers from prospective Contractors.

(40) "Specification" means any description of the physical or functional characteristics or of the nature of Goods or Services, including any requirement for inspecting, testing or preparing Goods or Services for delivery and the quantities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained.

(41) "Written" or "Writing" means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

Stat. Auth.: ORS 687.011 & 687.121

Stats. Implemented: ORS 687.011

Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 2-2011, f. 6-29-11, cert. ef. 7-1-11; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-010-0005

### Applications

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

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

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

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

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

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

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

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

(d) A current photograph of the applicant;

(e) All new applicants must submit a completed fingerprint card for a criminal background check. All lapsed and inactive licensees applying for reactivation must submit a completed fingerprint card for a criminal background check.

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

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

(b) A minimum of 300 hours of Massage Theory and Practical Application, Clinical Practice, Business Development, Communication and Ethics, and Sanitation. Hydrotherapy may be included as part of the 300 hours.

(c) Hours can be calculated in clock hours or equivalent credit hours from an institution that substantially complies with the definition of credit hours in 34 CFR 600.2.

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

(a) Applicants who are or have legally practiced massage and/or bodywork outside of the State of Oregon may be eligible to apply for the Credentialing Review Process.

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

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

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

# ADMINISTRATIVE RULES

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

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

(8) If the applicant discontinues the application process or fails to cooperate with the criminal history check process, then the application is considered incomplete.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472  
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0002; MTB 1-1979, f. & ef. 5-22-79; MTB 2-1985, f. & ef. 1-23-85; MB 3-1985(Temp), f. & ef. 9-20-85; MTB 1-1986, f. & ef. 1-29-86; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92, Section (7)(d) Renumbered from 334-010-0036; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 3-2011(Temp), f. & cert. ef. 8-10-11 thru 2-6-12; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-010-0008

### Indorsement

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

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

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472  
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 3-2002, f. 5-8-02, cert. ef. 1-1-03; Renumbered from 334-010-0041 by BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-010-0009

### Credentialing Review

The Board may grant a license to applicants who are or have legally practiced massage and/or bodywork outside of the State of Oregon after successful completion of the practical and jurisprudence examinations, the written examination and upon a credentialing review.

(1) Credentialing review must be submitted on the approved Board of Massage forms (Credentialing Review), submitted with official transcripts and/or certificates as proof of completion.

(a) Of the 200 Anatomy & Physiology, Pathology and Kinesiology hours required, 120 hours minimum must be from certified class instruction. Of the 200 hours required, up to 80 contact hours of prior continuing education in subject areas may apply.

(b) Official Transcripts or Certificates of Completion must be documented on the approved Board of Massage form: Credentialing Review.

(c) Of the 300 Massage Theory and Practical Application, Clinical Practice, Business Development, Communication and Ethics, and Sanitation hours required, 140 hours minimum must be from certified class instruction. Of the 300 hours required up to 120 contact hours of prior continuing education in subject areas may apply. Of the 300 hours required, up to 40 hours of practical work experience may apply.

(d) Practical Work Experience must be documented on the approved Board of Massage forms: Credentialing Review and Work Experience Verification Worksheet.

(2) Credentialing Review applications must be accompanied by:

- (a) Current Credentialing Review fee and
- (b) Any additional documentation required by the Board.

Stat. Auth.: ORS 687  
Stats. Implemented: ORS 687.031  
Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-010-0010

### Examination

(1) The LMT examination must be held at least twice annually.

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

(3) Applicants who have a documented and verifiable emergency may request to have their exam fee apply to a subsequent examination so long

as the applicant sits for the examination within a one year of the original date of examination. Only one extension shall be permitted.

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

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

(6) Failure to Pass: An applicant must pass the practical examination within 24 months of the initial date of application. The Board may require an applicant with 3 or more examination failures to undertake and satisfactorily complete a Board approved remediation plan prior to reapplying for the examination.

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

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

(b) Failure to follow written or oral instructions relative to conducting the examination, including termination times and procedures;

(c) Endangering the life or health of others present

(d) Introducing unauthorized materials during any portion of the examination;

(e) Attempting to remove examination materials or notations from the testing site; or

(f) Violating the credentialing process such as falsifying or misrepresenting educational credentials or other information required for admission to the examination, impersonating an examinee, or having an impersonator take the licensing examination on one's behalf.

(8) Test questions, scoring keys, and other examination data used to administer the qualifying examination are exempt from disclosure under ORS 192.410 to 192.505 as amended.

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

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

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

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

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

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472  
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0004; MTB 1-1979, f. & ef. 5-22-79; MTB 2-1982, f. & ef. 7-21-82; MTB 2-1985, f. & ef. 1-23-85; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98, Renumbered from 334-010-0021 [Hist.: MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92, Sections (6) - (20)(h) Renumbered from 334-030-0020]; BMT 1-1999(Temp), f. 6-14-99, cert. ef. 7-4-99 thru 12-31-99; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2002(Temp), f. & cert. ef. 1-9-02 thru 7-5-02; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 4-2005(Temp), f. & cert. ef. 9-19-05 thru 3-12-06; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 2-2007, f. & cert. ef. 6-29-07; BMT 1-2007, f. & cert. ef. 6-29-07; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-010-0012

### Examination Appeal

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

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

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

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

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

# ADMINISTRATIVE RULES

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

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

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

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

(3) An appeal may result in:

(a) No action;

(b) Reversal of a failing score; or

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

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

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-010-0015

### Licensure

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Current licensing fee;

(b) Any applicable late fees;

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

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

(e) Any additional documentation required by the Board.

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

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

(9) A person licensed by the Board may move to an inactive status by completing the form provided by the Board. Upon payment of the appropriate fee, the applicant will be issued an inactive license. During the peri-

od of inactive status, the licensee may not practice massage for compensation in the State of Oregon.

(10) An application to reactivate an inactive license:

(a) must be accompanied by:

(A) Current licensing fee;

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

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

(D) Completed fingerprint card for criminal background check.

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

Stat. Auth.: ORS 687.121 & 687.051

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0006; MTB 1-1979, f. & cert. ef. 5-22-79; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 2-2006(Temp), f. & cert. ef. 2-16-06 thru 8-7-06; Administrative correction 8-22-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-010-0017

### Lapsed License

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

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

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

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

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

(c) Late fee payment;

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

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

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

(g) Applicants must submit a completed fingerprint card for criminal background check.

(4) All information required for restoring a lapsed license must be received within 3 years of the date of lapsing. Thereafter, one must apply as a new applicant.

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

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-010-0018

### Criminal Background Checks, Fitness Determinations

(1) The Board requires a criminal background check of all applicants for a massage therapist license to determine the professional fitness of an applicant. These must be provided on prescribed forms provided by the Board. Fingerprints may be obtained at a law enforcement office or at a private service acceptable to the Board. The Board must submit fingerprints to the Oregon Department of State Police for checks against state law enforcement data systems and national data sources. Any original fingerprint cards must subsequently be destroyed by the Oregon Department of State Police.

(a) The Board requires a criminal background check of all applicants for an initial license; licensees applying to reinstate a lapsed license or licensees applying to reactivate an inactive license; and licensees under investigation to determine the professional fitness of an applicant or licensee.

(2) These rules are to be applied when evaluating the criminal background of all licensees and applicants for a massage therapist license and conducting professional fitness determinations based upon such history. The fact that the applicant has cleared the criminal background check does not guarantee the granting of a license.

(3) The Board may require fingerprints of any Oregon licensed massage therapist who is the subject of a complaint or investigation for the purpose of requesting a state or nationwide criminal background check.

(4) All criminal background checks must include, but not be limited to, all available state law enforcement data systems and national data sources, unless obtaining one or the other is an acceptable alternative.



# ADMINISTRATIVE RULES

(5) Additional information required. In order to conduct the Oregon and National Criminal Background Check and professional fitness determination, the Board may require additional information from the licensee/applicant as necessary, including but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial or other background information.

(6) Criminal offender information is confidential. Dissemination of information received under ORS 181.534 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to ORS 676.175(1).

(7) The Board must determine whether an individual is professionally fit to be granted a license. If an individual is determined to be unfit, then the individual may not be granted a license. The Board may make professional fitness determinations conditional upon applicant's acceptance of probation, conditions, limitations, or other restrictions upon licensure. Except as otherwise provided in section (1), in making the professional fitness determination the Board must consider:

(a) Criminal background check;

(b) The nature of the crime;

(c) The facts that support the conviction or pending indictment or that indicates the making of any false statement;

(d) The relevancy, if any, of the crime or the false statement to the specific requirements of applicant's or licensee's present or proposed license, services, employment, position, or permit;

(e) Any refusal to submit or consent to a criminal background check including, but not limited to, fingerprint identification;

(f) Any other pertinent information requested or obtained as a part of an investigation;

(g) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, or permit. Intervening circumstances include but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the subject individual at the time of the crime;

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

(D) The subsequent commission of another relevant crime;

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(F) A recommendation of an employer.

(8) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and in compliance with ORS 670.280. The Board may also consider any arrests, court records, Department of Motor Vehicle records, or other information that may be indicative of a person's inability to perform as a licensee with care and safety to the public.

(9) If an applicant or licensee is determined not to be professionally fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.413-470. Challenges to the accuracy of completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183. If an individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the FBI or other reporting agency, the Board must conduct a new criminal background check upon submission of a new request.

(10) If the applicant discontinues the application process or fails to cooperate with the criminal background check process, the application is considered incomplete.

Stat. Auth.: ORS 687, 676

Stats. Implemented: ORS 181, 183, 687.041, 687.051, 687.081, 670.280

Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-010-0025

### Practice of Massage

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

(a) Client intake and assessment;

(b) Practice of massage or bodywork;

(c) Post massage assessment and recommendation; and

(d) Documentation.

(2) Massage treatment does not include:

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

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

(c) Making a medical diagnosis.

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

(a) Safe and functional coverage/draping means:

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

(B) Client gives informed consent;

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

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

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

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

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

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

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

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

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

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

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

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

Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0010; MTB 1-1979, f. & ef. 5-22-79;

MTB 2-1985, f. & ef. 1-23-85; MTB 3-1985(Temp), f. & ef. 9-20-85; MTB 1-1986, f. & ef.

1-29-86; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-

1998, f. & cert. ef. 7-22-98; BMT 3-2002, f. 5-8-02, cert. ef. 1-1-03; BMT 1-2003, f. & cert.

ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09;

BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-010-0027

### Exempt Practices

(1) Practitioners exempt from the Oregon Board of Massage Therapists licensing authority are defined as practitioners who:

(a) Do not claim expressly or implicitly to be massage therapists and who limit their work to the practice of:

(A) Using touch, words and directed movement to deepen awareness of existing patterns of movement and suggest new possibilities of movement, as defined per 687.031(1)(j)(i). Examples include the Feldenkrais Method of Somatic Education as defined on May 16, 2011, by the Feldenkrais Guild® of North America and The Trager® Approach as defined on May 16, 2011, by the United States Trager® Association; or

(B) Using minimal touch over specific points on the body to facilitate balance in the nervous system, as defined per 687.031(1)(j)(ii). An example includes Bowenwork® and/ or the Bowen Technique as defined on May 16, 2011 by the Bowenwork Academy USA; or

(C) Using touch to affect the energy systems or channels of energy of the body, as defined per 687.031(1)(j)(iii). An example includes Polarity Therapy as defined on May 16, 2011 by the American Polarity Therapy Association; and

(b) Hold an active certification from a National or International professional organization or credentialing agency that:

(A) Requires a minimum level of training specific to their discipline, demonstration of competence and adherence to an approved scope of practice and ethical standards;

(B) Maintains disciplinary procedures to ensure adherence to the requirements of the organization or agency; and

(c) Provide contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.

(2) It is the exempt practitioner's responsibility to insure they meet the criteria for being exempt and only practice within their exempt scope of practice. Practitioners may be subject to discipline by the Board if they:

(a) Refer to themselves or imply they are a massage therapist;

# ADMINISTRATIVE RULES

- (b) Practice outside of the exempt scope of practice;
- (c) Practice without an active certification from a National or International professional organization or credentialing agency; or
- (d) Fail to provide contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.

(3) The State Board of Massage Therapists has the authority to verify a practitioners claimed exemption from licensure of ORS 687 under subsection (1)(j) of section 687.031. Verification may include, but is not limited to, consultation with the practitioners certifying organization or agency.

(4) Practitioners, Disciplines and/or Organizations seeking to be named in the exemption shall contact the Board of Massage Therapists to request a review.

Stat. Auth.: ORS 687, SB 454  
Stats. Implemented: ORS 687.031  
Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-010-0033

### Fees

- (1) The fees are:
  - (a) \$100 per biennial renewal for initial license;
  - (b) \$150 per biennial renewal for active license;
  - (c) \$50 per biennial renewal for inactive license;
  - (d) \$25 per week, up to a maximum of \$250, for any late renewal;
  - (e) \$50 for exam/endorsement application processing;
  - (f) \$150 for each practical examination;
  - (g) \$100 for mailing list;
  - (h) \$10 for license reprint;
  - (i) \$10 for license verification;
  - (j) \$250 Credentialing Review;
  - (k) Current Oregon State Police Criminal Background Check Fee;

and

- (1) Other administrative fees as allowed by law.
- (2) Application and licensure fees are not refundable
- (3) Examination fees are refunded only when requested in writing and

either:

- (a) The applicant is unqualified by Oregon statutes, or
- (b) Applicant requests refund postmarked at least 7 days prior to the exam.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472  
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1989(Temp), f. & cert. ef. 7-27-89; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 4-2004, f. 10-22-04, cert. ef. 1-1-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 3-2010, f. 12-22-10, cert. ef. 1-1-11; BMT 1-2011, f. & cert. ef. 4-21-11; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-010-0046

### Class Certification

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

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

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

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

(d) Approved by the Board.

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

- (a) A completed Board application;
- (b) Verification of content meeting the Model Curriculum;
- (c) Course descriptions and syllabi;
- (d) The institution's Code of Ethics and fraternization policy;
- (e) The method of evaluation to determine the student's successful completion of a class;
- (f) The attendance requirements for students to successfully complete each class;
- (g) Minimum qualifications for selecting instructors.

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

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

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

(6) Denial or revocation of a class or program certification by the Board, if otherwise not resolved, must be heard by the Board

Stat. Auth.: ORS 687.121  
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1990, f. & cert. ef. 4-20-90; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-010-0050

### Continuing Education

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

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

- (a) At least 12 hours must be contact hours.
- (b) The remaining 13 hours may be contact hours or in areas as defined on the Board supplied CE form.

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

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

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

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

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

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

Stat. Auth.: ORS 687.081, 687.121 & 687.122  
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: BMT 1-1998(Temp), f. & cert. ef. 2-3-98 thru 7-31-98; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 2-2004(Temp), f. & cert. ef. 3-16-04 thru 9-7-04; Administrative correction, 9-28-04; BMT 3-2004(Temp), f. & cert. ef. 10-22-04 thru 4-19-05; BMT 1-2005, f. & cert. ef. 2-23-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-020-0015

### Equipment

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

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

(b) Be maintained on a regular basis; and

(c) Be cleaned between each use.

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

(3) Topical preparations must be:

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

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

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

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

Stat. Auth.: ORS 687.121  
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0016; MTB 1-1979, f. & ef. 5-22-79; MTB 1-1986, f. & ef. 1-29-86; Renumbered from 334-010-0040; MTB 1-1992, f. & cert. ef.

# ADMINISTRATIVE RULES

7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-030-0001

### Preamble and Fundamental Canon

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

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

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

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

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

Stat. Auth.: ORS 687.011 & 687.081

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-030-0005

### Standards and Objectives of Professional Conduct

(1) Standard I: Responsibility – the relationship between the LMT and the profession. The LMT must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 687.081 & 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-040-0001

### Complaints

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 687.081 & 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## 334-040-0010

### Discipline

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

(1) Practicing massage or representing one's self as a massage therapist without a current active license issued by the Board;

(2) Knowingly or recklessly making any false statement to the Board;

(3) Suspension or revocation of a license to practice massage in another jurisdiction based upon acts by the licensee similar to acts described in this section;

(4) Conviction of a crime in this state, or jurisdiction;

(5) The use of false, deceptive, or misleading advertising, which includes but is not limited to, advertising massage using the term "massage" or any other term that implies a massage technique or method in any private or public communication or publication by a person licensed or not licensed by the Board as a massage therapist;

(6) Allowing the use of a license by an unlicensed person;

(7) Presenting as one's own license, the license of another;

(8) Practicing massage under a false or assumed name without notification to the Board;

(9) Impersonating another massage therapist;

(10) Assisting, employing, or permitting an unlicensed person to practice massage;



# ADMINISTRATIVE RULES

(11) Practicing or purporting to practice massage when the license has been revoked or suspended, lapsed or inactive;

(12) Practicing or offering to practice massage beyond the scope permitted by law;

(13) The use of intoxicants, drugs, controlled substances, or mind altering substances to such an extent as to impair or potentially impair the licensee's abilities to perform professional duties in a safe manner;

(14) Practicing massage with a physical or mental impairment that renders the therapist unable or potentially unable to safely conduct the practice of massage;

(15) Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition as required by rules of the Board;

(16) Refusing to permit the Board or its representatives to inspect the business premises of the licensee during regular business hours;

(17) Failing to cooperate with the Board in any licensing action or disciplinary proceeding, including but not limited to:

(a) Failure to furnish any requested papers or documents,

(b) Failure to provide in writing a full and complete explanation covering the matter contained in the complaint filed with the Board,

(c) Failure to respond to subpoenas issued by the Board whether or not the recipient is accused in the proceeding;

(18) Failing to comply with an order issued by the Board;

(19) Unprofessional or dishonorable conduct which includes but is not limited to:

(a) Any conduct involving inappropriate physical contact or sexual misconduct which includes:

(A) Sexual abuse which is conduct which constitutes a violation of any provision of ORS 163.305 through 163.465;

(B) Sexual violation which is sex between the LMT and the client, whether initiated by the client or not, engaging in any conduct with a client that is sexual, or may be reasonably interpreted as sexual, including, but not limited to:

(i) Sexual intercourse;

(ii) Genital to genital contact;

(iii) Oral to genital contact; oral to anal contact;

(iv) Oral to oral contact except cardiopulmonary resuscitation; touching breasts or genitals or any sexualized body part for any purpose other than appropriate examination or treatment or where the client has refused or withdrawn consent; or

(v) Encouraging the client to masturbate in the presence of the LMT or masturbation by the LMT while the client is present.

(C) Sexual impropriety which is any behavior, gestures, or expressions that are seductive or sexually demeaning to a client; inappropriate procedures, including, but not limited to,

(i) Disrobing or draping practices that reflect a lack of respect for the client's privacy, deliberately watching a client dress or undress for self gratification instead of providing privacy for disrobing;

(ii) Subjecting a client to an examination in the presence of students, assistants, or other parties without the explicit consent of the client or when consent has been withdrawn;

(iii) An examination or touching of genitals;

(iv) Inappropriate comments about or to the client, including but not limited to, making sexual comments about a client's body or clothing, making sexualized or sexually-demeaning comments to a client, comments on the client's or LMT's sexual orientation and making a request to date;

(v) Initiation by the LMT of conversation regarding the sexual problems, preferences or fantasies of the LMT; or

(vi) Kissing of a sexual nature.

(b) Violating the client's rights of privacy, and confidentiality.

(c) Failure to disclose or release information about a client if required by law or on written consent of client.

(d) Intentionally harassing, abusing, or intimidating a client either physically or verbally.

(e) Any conduct or practice which could endanger the health or safety of a client or the public.

(f) Any conduct or practice which impairs the massage therapist's ability to safely and skillfully practice massage.

(g) Exercising undue influence on a client, including promotion or sale of services, goods, or appliances in such a manner as to exploit the client for the financial gain or self-gratification of the massage therapist.

(h) Routinely practicing in an incompetent manner.

(i) Conduct which would also constitute a violation of the Oregon Unlawful Trade Practices Act.

(j) Practicing a modality or technique without adequate training or licensure.

Stat. Auth.: ORS 687.081 & 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; Sections (6) - (20)(h) Renumbered from 334-030-0020; BMT 2-1998, f. & cert. ef. 7-22-98; Renumbered from 334-030-0025 by BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

## Board of Nursing Chapter 851

**Rule Caption:** Eliminate renewal fees to persons on active duty with the Uniformed Services of the United States.

**Adm. Order No.:** BN 5-2011

**Filed with Sec. of State:** 11-22-2011

**Certified to be Effective:** 11-22-11

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

**Rules Amended:** 851-002-0000

**Subject:** These rules would eliminate renewal fees assessed while any person holding a license to certificate with the Board is on active duty with the uniformed Services of the United States.

**Rules Coordinator:** Peggy A. Lightfoot—(971) 673-0638

### 851-002-0000

#### Fees

The fees paid to the Oregon State Board of Nursing are not refundable. The licensing/certification fee pays for processing the application, and the license/certificate is valid until the expiration date printed on the license/certificate. As required by ORS 408.450, no fees will be assessed while any person holding a license or certificate with the board is on active duty with the Uniformed Services of the United States. Written notification to the Board is required within 60 days of the date of honorable discharge in order to change the license to its former status without fee or penalty. All other renewal requirements must be met.

Stat. Auth.: ORS 678.150 & 678.410

Stats. Implemented: ORS 678.410

Hist.: NER 26(Temp), f. & ef. 12-11-75; NER 32, f. & ef. 5-4-76; NER 5-1981, f. & ef. 11-24-81; NER 2-1982, f. & ef. 8-25-82; NER 5-1983, f. 12-9-83, ef. 1-1-84; NER 5-1985, f. 7-30-85, ef. 10-1-85; NER 6-1986, f. & ef. 12-3-86; NB 5-1987, f. & ef. 7-1-87; NB 7-1987, f. & ef. 10-5-87; NB 1-1988, f. & cert. ef. 4-18-88; NB 2-1989, f. 6-22-89, cert. ef. 7-1-89; NB 2-1991, f. 6-14-91, cert. ef. 7-1-91; NB 3-1991, f. & cert. ef. 8-25-91; NB 5-1993, f. 6-15-93, cert. ef. 7-1-93; NB 7-1993, f. & cert. ef. 7-1-93; NB 13-1993, f. & cert. ef. 12-20-93; NB 5-1994, f. & cert. ef. 9-15-94; Renumbered from 851-020-0295; NB 8-1994, f. & cert. ef. 12-7-94; NB 7-1995(Temp), f. & cert. ef. 6-23-95; NB 2-1996, f. & cert. ef. 3-12-96; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 6-1998(Temp), f. & cert. ef. 7-15-98 thru 12-31-98; Administrative correction 8-5-98; BN 10-1998, f. & cert. ef. 8-7-98; BN 11-1998, f. & cert. ef. 9-22-98; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-031-0200; BN 5-2011, f. & cert. ef. 11-22-11

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

**Rule Caption:** Amend rule to comply with ORS 163.105(4) and ORS 144.285.

**Adm. Order No.:** PAR 6-2011

**Filed with Sec. of State:** 11-30-2011

**Certified to be Effective:** 11-30-11

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

**Rules Amended:** 255-032-0035

**Subject:** 2009 OL Ch. 660 amended ORS 163.105(4) specifying the interval of time that must pass before an inmate convicted of aggravated murder is allowed to petition for a change in the terms of confinement. These administrative rules bring the Board's rules into compliance with the statute(s), stating that the Board may not grant a subsequent hearing that is less than two years, or more than 10 years, from the date the petition is denied. The amendments provide the procedures for implementing the statutory changes.

**Rules Coordinator:** Michelle Mooney—(503) 945-0914

### 255-032-0035

#### Effect of Denying Relief Request

If the Board finds that the inmate is not capable of rehabilitation, the Board shall deny the relief sought in the inmate petition. The Board may not grant a subsequent hearing that is less than two years, or more than 10 years, from the date the petition is denied.

(1) The Board may not grant a hearing that is more than two years from the date a petition is denied unless the board finds that it is not reasonable to expect that the prisoner would be granted a change in the terms of confinement before the date of the subsequent hearing.

# ADMINISTRATIVE RULES

(2) A decision to grant a hearing that is more than two years from the date a petition is denied requires a unanimous vote of the Board members participating in the hearing; the length of the deferral shall be determined by a majority vote.

(3) Factors to be considered in establishing a deferral period of longer than two years include those listed in OAR 255-062-0016.

(4) The inmate may request an interim exit interview hearing pursuant to OAR 255-062-0021.

(5) If the Board finds, based upon the request for an interim hearing, that there is reasonable cause to believe that the inmate may be granted a change in the terms of confinement, the Board shall conduct a hearing as soon as is reasonably convenient. An interim hearing may be granted by a majority of the Board.

(6) If the Board denies a petition for an interim hearing, it shall issue a final order accompanied by findings of fact and conclusions of law, pursuant to ORS144.285(3) (2009). A finding by the Board under (e) above does not bind the Board to any specific finding at the interim murder review hearing.

Stat. Auth.: ORS 163.105, 144.285  
Stats. Implemented: ORS 144, 163.105  
Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 4-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 6-2011, f. & cert. ef. 11-30-11

\*\*\*\*\*

**Rule Caption:** Prison Term Hearings for Inmates Found Likely to be Rehabilitated.

**Adm. Order No.:** PAR 7-2011

**Filed with Sec. of State:** 11-30-2011

**Certified to be Effective:** 11-30-11

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

**Rules Adopted:** 255-032-0037

**Subject:** The Oregon Supreme Court (*Janowski/Fleming v. Board of Parole*, 349 Or 432 (2010); *Sevey/Wilson v. Board of Parole*, 349 Or 461 (2010)) has found that for each inmate who has been convicted of aggravated murder and subsequently been found likely to be rehabilitated within a reasonable period of time under ORS 163.105, the Board must hold a hearing, using the procedures it deems appropriate, to set the inmate's parole release date according to the matrix in effect when he committed his crime. This rule establishes the procedure and rules to be applied under the court ruling.

**Rules Coordinator:** Michelle Mooney—(503) 945-0914

**255-032-0037**

**Prison Term Hearings for Inmates Found Likely to be Rehabilitated**

(1) The Board shall hold a prison term hearing for an adult inmate convicted of murder as defined in ORS 163.115 or Aggravated Murder as defined in ORS 163.095 committed on or before October 22, 1999, whose sentence has been converted to life with the possibility of parole based on the Board's determination that the inmate is likely to be rehabilitated within a reasonable period of time.

(2) The Board will conduct the hearing under the provisions of Division 030 of the Board's rules in place at the time the hearing is conducted, and will establish the prison term or take other action authorized under the law and administrative rules in place at the time the inmate committed the crime.

Stat. Auth.: ORS 144.120; Other Auth.: OAR 255-030-0012(1982), 255-032-0005(1)(1985), 255-032-0005(1)(1982)(1985), Janowski/Fleming v. Board of Parole, 349 OR 432(2010), Sevey/Wilson v. Board of Parole, 349 OR 461(2010)  
Stats. Implemented: ORS 144.120,  
Hist.: PAR 7-2011, f. & cert. ef. 11-30-11

\*\*\*\*\*

## Board of Pharmacy Chapter 855

**Rule Caption:** Amends and suspends Controlled Substance Rules relating to animal euthanasia.

**Adm. Order No.:** BP 7-2011(Temp)

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 12-15-11 thru 4-27-12

**Notice Publication Date:**

**Rules Amended:** 855-080-0100

**Rules Suspended:** 855-080-0100(T), 855-080-0103(T)

**Subject:** Changes to OAR 855-080-0100 through 855-080-0103 are required to accommodate revisions that were made to the Veterinary

Medical Examining Board's rules relating to the registration of Certified Euthanasia Technicians that expired on October 31, 2011.

December 9, 2011, the Veterinary Medical Examining Board adopted temporary rules to reinstate licensure requirements for Certified Euthanasia Technicians that were previously removed. Without the Board of Pharmacy temporary rule, new Animal Euthanasia Drug Outlet registrations cannot be issued and existing registered Animal Euthanasia Drug Outlets will not be able to renew. Animal Euthanasia Drug Registrations with the Oregon Board of Pharmacy expire December 31, 2011.

The Board amends 855-080-0100 to incorporate a reference to Division 110 where 2011 legislatively approved fee increase which were adopted by Temporary Rule in June and effective July 1, 2011 were implemented. The Board suspends temporary rules

855-080-0100(T) and 855-080-0103(T).

**Rules Coordinator:** Karen MacLean—(971) 673-0001

**855-080-0100**

**Animal Euthanasia**

(1) The following requirements shall be met in order for a humane society or animal control agency to be registered or registration renewed to allow the purchase, possession and administration of sodium pentobarbital for euthanizing injured, sick, homeless or unwanted domestic pets and other animals:

(a) Storage. All supplies of sodium pentobarbital shall be kept in a locked cabinet. An assigned person designated in writing shall be responsible for the security of the sodium pentobarbital. Such designated person shall allow withdrawal of the drug only to a person certified by the Oregon State Veterinary Medical Examining Board to administer sodium pentobarbital;

(b) Records. The following records shall be made at the time of the occurrence and shall be maintained for a minimum of three years, available for inspection by the Board of Pharmacy and its agents:

(A) A record of the withdrawal of sodium pentobarbital, signed by the person who takes possession of the sodium pentobarbital for administration;

(B) A record of the weight, species of animal and dosage administered for euthanasia signed by the person who administers the drug and by the designated person responsible for security;

(C) A record of all wastage signed by the person administering the drug and the designated person responsible for security; and

(D) A weekly record of verification of the stock on hand, minus the amounts withdrawn for administration, signed by the designated person responsible for security;

(E) A record of disposal of any expired or unwanted sodium pentobarbital. Disposal shall be in a conformance with **21 CFR 1307.21**.

(c) Audits. The registrant shall submit to random audits of records and analysis of prepared solutions by the State Board of Pharmacy or its agents.

(2) The fee for registration shall be paid as specified in Division 110 of this chapter of rules.

(3) The Board will suspend or revoke the registration of any humane society or animal control agency which allows a person to administer sodium pentobarbital who is not certified by the Oregon State Veterinary Medical Examining Board to administer such drug.

Stat. Auth.: ORS 475 & 689.205

Stats. Implemented: ORS 689.151 & 689.155

Hist.: IPB 2-1984, f. & ef. 3-7-84; PB 9-1990, f. & cert. ef. 12-5-90; PB 5-1991, f. & cert. ef. 9-19-91; BP 6-2011(Temp), f. 10-20-11, cert. ef. 10-31-11 thru 4-27-12; BP 7-2011(Temp), f. & cert. ef. 12-15-11 thru 4-27-12

**855-080-0103**

**Training**

(1) The individual who will be allowed to administer controlled substances for animal euthanasia shall document completion of a minimum of 8 hours of training in the use of sodium pentobarbital as selected by the designated licensed veterinarian.

(2) Training for individuals who will be allowed to administer controlled substances for animal euthanasia shall be provided by a Doctor of Veterinary Medicine currently licensed in this state; and

(a) May include both lecture and self-study instruction and clinical experience; and

(b) Provide that, at a minimum, the individual demonstrates competency to:

(A) Give inter-cardial, intraperitoneal, and intravenous injections;

(B) Make a positive determination of death;

# ADMINISTRATIVE RULES

- (C) Handle animals properly in order to ease trauma and stress; and
- (D) Accurately document all information required for record keeping.
- (3) Proficiency may be shown by completion of a self-assessment program. The designated veterinarian shall endorse the proficiency of trainees.
- (4) Documentation of training must be retained at any site practicing euthanasia on animals and must be made available to the Board upon request

Stat. Auth.: ORS 475 & 689.205  
Stats. Implemented: ORS 689.151 & 689.155  
Hist.: BP 6-2011(Temp), f. 10-20-11, cert. ef. 10-31-11 thru 4-27-12; Suspended by BP 7-2011(Temp), f. & cert. ef. 12-15-11 thru 4-27-12

\*\*\*\*\*

**Rule Caption:** Amends licensing fees for registration and renewal of individuals and certain drug outlets.

**Adm. Order No.:** BP 8-2011

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 12-15-11

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

**Rules Amended:** 855-110-0005, 855-110-0007, 855-110-0010

**Subject:** The Board's 2011-2013 budget as approved, is dependent on fee increases that became effective 7/1/11. The budget was signed into law by Governor Kitzhaber on 6/2/11. These increases amend licensing fees for the registration and renewal for individuals and certain drug outlets. The permanent rule fully adopts the temporary rule that went into effect 7/1/2011.

A copy of the fee schedule may be obtained from the Board's web site, [www.pharmacy.state.or.us](http://www.pharmacy.state.or.us).

**Rules Coordinator:** Karen MacLean—(971) 673-0001

## 855-110-0005

### Licensing Fees

(1) Pharmacist license examination (NAPLEX) and re-examination fee – \$50.

(2) Pharmacist jurisprudence (MPJE) re-examination fee – \$25.

(3) Pharmacist licensing by reciprocity fee – \$300.

(4) Pharmacist licensing by score transfer fee – \$300.

(5) Intern license fee. Expires November 30 every two years – \$50.

(6) Pharmacist:

(a) License fee. Expires June 30 annually – \$200. Delinquent renewal fee, (postmarked after May 31) – \$50.

(b) Electronic Prescription Monitoring Fund fee. Due by June 30 annually – \$25. (This is a mandatory fee, required by ORS 431.972 that must be paid with the pharmacist license renewal fee).

(c) Workforce Data Collection fee. Due by June 30 biennially – \$5. (This is a mandatory fee, it may be charged annually at \$2.50 per year as required by OAR 409-026-0130 that must be paid with the pharmacist license renewal fee).

(7) Certification of approved provider of continuing education course fee, none at this time.

(8) Pharmacy Technician license fee. (This is a one year non-renewable license unless under the age of 19) – \$50.

(a) Under 19 years of age expires September 30 annually – \$50. Delinquent renewal fee, (postmarked after August 31) – \$20.

(9) Certified Pharmacy Technician:

(a) License fee. Expires September 30 annually – \$50. Delinquent renewal fee, (postmarked after August 31) – \$20.

(b) Workforce Data Collection fee. Due by June 30 biennially – \$5. (This is a mandatory fee, it may be charged annually at \$2.50 per year as required by OAR 409-026-0130 that must be paid with the Certified Pharmacy Technician license renewal fee).

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135, ORS 431.972, ORS 676.410

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1980, f. 5-3-80, ef. 5-3-80 & 7-1-80; 1PB 2-1982, f. 3-8-82, ef. 4-1-82; 1PB 1-1984, f. & ef. 2-16-84; 1PB 3-1985, f. & ef. 12-2-85; 1PB 3-1988, f. & cert. ef. 5-23-88; 1PB 7-1989, f. & cert. ef. 5-1-89; 1PB 15-1989, f. & cert. ef. 12-26-89; 1PB 10-1990, f. & cert. ef. 12-5-90; 1PB 3-1991, f. & cert. ef. 9-19-91; 1PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); 1PB 4-1992, f. & cert. ef. 8-25-92; 1PB 1-1994, f. & cert. ef. 2-2-94; 1PB 1-1996, f. & cert. ef. 4-5-96; 1PB 2-1997(Temp), f. 10-2-97, cert. ef. 10-4-97; 1PB 2-1998, f. & cert. ef. 3-23-98; 1PB 1-2001, f. & cert. ef. 3-5-01; 1PB 2-2001(Temp), f. & cert. ef. 7-26-01 thru 1-22-02; 1PB 1-2002, f. & cert. ef. 1-8-02; 1PB 1-2003, f. & cert. ef. 1-14-03; 1PB 1-2006, f. & cert. ef. 6-9-06; 1PB 5-2006(Temp), f. & cert. ef. 8-25-06 thru 1-20-07; 1PB 9-2006, f. & cert. ef. 12-19-06; 1PB 5-2009, f. & cert. ef. 12-24-09; 1PB 5-2010(Temp), f. 5-3-10, cert. ef. 5-4-10 thru 10-30-10; 1PB 6-2010, f. & cert. ef. 6-29-10; 1PB 5-2011(Temp), f. 6-24-11, cert. ef. 7-1-11 thru 12-27-11; 1PB 8-2011, f. & cert. ef. 12-15-11

## 855-110-0007

### Fees for Registration, Renewal, and Reinspection of Drug Outlets

(1) County Health Clinic (including family planning clinics). Expires March 31 annually – \$100. Delinquent renewal fee (postmarked after February 28) – \$25.

(2) Drug Distribution Agent. Expires September 30 annually – \$400. Delinquent renewal fee (postmarked after August 31) – \$100.

(3) Drug Room (including correctional facility). Expires March 31 annually – \$100. Delinquent renewal fee (postmarked after February 28) – \$75.

(4) Manufacturer. Expires September 30 annually – \$400. Delinquent renewal fee (postmarked after August 31) – \$100.

(5) Medical Device, Equipment & Gas Class C. Expires January 31 annually – \$50. Delinquent renewal fee (postmarked after December 31) – \$25.

(6) Nonprescription Class A. Expires January 31 annually – \$50. Delinquent renewal fee (postmarked after December 31) – \$25.

(7) Nonprescription Class B. Expires January 31 annually – \$50. Delinquent renewal fee (postmarked after December 31) – \$25.

(8) Nonprescription Class D. Expires January 31 annually – \$100. Delinquent renewal fee (postmarked after December 31) – \$25.

(9) Prophylactic and/or Contraceptive Wholesaler and/or Manufacturer – \$100. Expires December 31 annually.

(10) Re-inspection fee – \$100. Applies to any re-inspection of a drug outlet occasioned to verify corrections of violations found in an initial inspection.

(11) Retail or Institutional Drug Outlet. Expires March 31 annually – \$300. Delinquent renewal fee (postmarked after February 28) – \$75.

(12) Wholesaler Class I, Expires September 30 annually – \$400. Delinquent renewal fee (postmarked after August 31) – \$100.

(13) Wholesaler Class II. Expires September 30 annually – \$400. Delinquent renewal fee (postmarked after August 31) – \$100.

(14) Remote Dispensing Machine/Facility. Expires March 31 annually – \$100. Due by February 28 annually.

(15) Charitable Pharmacy. Expires March 31 annually – \$75. Delinquent renewal fee (postmarked after February 28) – \$25.

(16) Home Dialysis. Expires March 31 annually – \$300. Delinquent renewal fee (postmarked after February 28) – \$75.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135, 689.774

Hist.: 1PB 1-1996, f. & cert. ef. 4-5-96; 1PB 1-1997, f. & cert. ef. 9-22-97; 1PB 3-1998, f. & cert. ef. 3-23-98; 1PB 2-2001(Temp), f. & cert. ef. 7-26-01 thru 1-22-02; 1PB 1-2002, f. & cert. ef. 1-8-02; 1PB 4-2002, f. 6-27-02, cert. ef. 7-1-02; 1PB 2-2005, f. 2-14-05, cert. ef. 3-1-05; 1PB 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; 1PB 5-2009, f. & cert. ef. 12-24-09; 1PB 6-2010, f. & cert. ef. 6-29-10; 1PB 5-2011(Temp), f. 6-24-11, cert. ef. 7-1-11 thru 12-27-11; 1PB 8-2011, f. & cert. ef. 12-15-11

## 855-110-0010

### Fees for Registration for Controlled Substances under ORS 475.095

(1) Animal Euthanasia controlled substance registration fee – \$50 annually.

(2) Drug Distribution Agent controlled substance registration fee – \$100 annually.

(3) Drug Room (including correctional facility) controlled substance registration fee – \$100 annually.

(4) Manufacturer controlled substance registration fee – \$100 annually.

(5) Retail or Institutional Drug Outlet controlled substance registration fee – \$100 annually.

(6) Schedule II Precursor registration fee – \$100 annually.

(7) Wholesaler controlled substance registration fee – \$100 annually.

(8) Remote Dispensing Facility controlled substance registration fee – \$100 annually.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 6-1982, f. & ef. 8-6-82; 1PB 2-1984, f. & ef. 3-7-84; 1PB 15-1989, f. & cert. ef. 12-26-89; 1PB 10-1990, f. & cert. ef. 12-5-90; 1PB 3-1991, f. & cert. ef. 9-19-91; 1PB 1-1996, f. & cert. ef. 4-5-96; 1PB 2-2005, f. 2-14-05, cert. ef. 3-1-05; 1PB 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; 1PB 5-2009, f. & cert. ef. 12-24-09; 1PB 5-2011(Temp), f. 6-24-11, cert. ef. 7-1-11 thru 12-27-11; 1PB 8-2011, f. & cert. ef. 12-15-11

## Construction Contractors Board Chapter 812

**Rule Caption:** Minimum Residential Continuing Education Requirements.

**Adm. Order No.:** CCB 15-2011(Temp)

**Filed with Sec. of State:** 11-18-2011



# ADMINISTRATIVE RULES

**Certified to be Effective:** 11-18-11 thru 5-16-12

**Notice Publication Date:**

**Rules Amended:** 812-021-0015

**Subject:** 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.

**Rules Coordinator:** Catherine Dixon—(503) 934-2185

## 812-021-0015

### Minimum Continuing Education Requirements – Continuing Education for Residential Contractors

(1) Residential contractors, other than residential limited contractors, shall have an owner, officer, RMI or employee, or a combination of those persons, who complete a minimum of 16 hours of continuing education every license period as described in sections (3) and (4).

(2) Residential limited contractors shall have an owner, officer, RMI or employee, or a combination of those persons, who complete:

(a) A minimum of eight hours of continuing education as described in subsection (3)(a), for license renewals on or after October 1, 2011, and before October 1, 2013;

(b) A minimum of eight hours of continuing education, for license renewals on or after October 1, 2013 as follows:

(A) Five core hours as described in subsection (4)(a); and

(B) Three elective hours as described in OAR 812-021-0019.

(3) For a residential contractor renewing on or after October 1, 2011, and before October 1, 2013, continuing education hours shall consist of the following:

(a) Eight core hours consisting of the following:

(A) Three hours of BEST offered by the agency or an approved provider;

(B) Two hours of education on one or more building codes offered by:

(i) A provider approved by the agency to offer courses in building codes; or

(ii) A provider offering a building codes course completed by the contractor on or before June 30, 2012, and approved by the Oregon Department of Consumer and Business Services, Building Codes Division, or the International Codes Council; and

(C) Three hours of education on laws, regulations, and business practices offered by the agency.

(b) For residential contractors renewing on or after October 1, 2011, and before October 1, 2013, education on “green” or sustainable building practices may satisfy the requirement for education on one or more building codes as required in paragraph (B) of subsection (a) provided that the contractor completes the education on “green” or sustainable building practices on or before September 30, 2011.

(c) Eight elective hours which may be satisfied by completing additional core hours or by completing other construction related courses or as otherwise set forth in OAR 812-021-0019.

(4) Effective October 1, 2011, if a residential contractor renews its license on or after October 1, 2011, but before October 1, 2013, for that renewal period only, the contractor may include any continuing education hours that it earned from July 1, 2009, to the renewal date.

(5) For a residential contractor renewing on or after October 1, 2013, continuing education hours shall consist of the following:

(a) Five core hours consisting of the following:

(A) Two hours of education on one or more building codes offered by a provider approved by the agency to offer courses in building codes; and

(B) Three hours of education on laws, regulations, and business practices offered by the agency.

(b) Eleven elective hours which may be satisfied by completing additional core hours or by completing other construction related courses or as otherwise set forth in OAR 812-021-0019.

(6) Courses shall be a minimum of one clock hour to qualify for one hour of continuing education credit.

(7) Credit shall not be given for a person repeating the same continuing education course during a two-year period.

(8) If, during the two years immediately preceding the expiration date of the license, a residential contractor served on active duty in the United States armed forces, including but not limited to mobilization or deploy-

ment, the continuing education requirement is waived for that two-year period. This exemption applies only if the residential contractor is a:

(a) Sole proprietor without employees;

(b) Sole owner of a corporation; or

(c) Sole member of a limited liability company.

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 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; CCB 13-2011, f. 9-29-11, cert. ef. 10-1-11; CCB 15-2011(Temp), f. & cert. ef. 11-18-11 thru 5-16-12

\*\*\*\*\*

**Rule Caption:** Housekeeping – cite reference changes.

**Adm. Order No.:** CCB 16-2011

**Filed with Sec. of State:** 12-13-2011

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

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

**Rules Amended:** 812-002-0260, 812-005-0800

**Subject:** 812-002-0260 and 812-005-0800 are amended to correct cite references.

**Rules Coordinator:** Catherine Dixon—(503) 934-2185

## 812-002-0260

### Dishonest or Fraudulent Conduct

“Dishonest or fraudulent conduct”, as used in ORS 701.098(1)(L) and (4)(a)(D) includes, but is not limited to, the following:

(1) Acting in a manner that, because of a wrongful or fraudulent act by the applicant or licensee, has resulted in injury or damage to another person; or

(2) Failing to pay monies when due for materials or services rendered in connection with the applicant’s or licensee’s operations as a contractor when the applicant or licensee has received sufficient funds as payment for the particular construction work project or operation for which the services or materials were rendered or purchased; or

(3) Accepting payment in advance on a contract or agreement and failing to perform the work or provide services required by the contract or agreement in a diligent manner and failing to return payment for unperformed work, upon reasonable and proper demand, within ten days of demand; or

(4) Displaying to the public false, misleading, or deceptive advertising whereby a reasonable person could be misled or injured; or

(5) Submitting a license application that includes false or misleading information; or

(6) Submitting a false gross business volume certification in order to qualify for a reduced bond amount as set forth in OAR 812-003-0280; or

(7) Failing to pay minimum wages or overtime wages as required under state or federal law; or

(8) Failing to comply with the state Prevailing Wage Rate Law, ORS 279C.800 to 279C.870; or

(9) Failing to comply with the federal Davis-Bacon and related acts when the terms of the contract require such compliance.

(10) Failing to pay wages as determined by the Bureau of Labor & Industries, Wage and Hour Division.

(11) Failing to timely pay a civil penalty or fine imposed by a unit of local, state, or federal government.

(12) Presenting for payment to the Board a check that subsequently is returned to the agency due to non-sufficient funds or closure of the account.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.098

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 11-2000(Temp), f. 9-21-00, cert. ef. 9-21-00 thru 3-19-01; CCB 14-2000, f. & cert. ef. 12-4-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 16-2011, f. 12-13-11, cert. ef. 1-1-12

## 812-005-0800

### Schedule of Penalties

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

(1) \$600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.021 and OAR 812-003-0120, which may be reduced to \$200 if the respondent becomes licensed or to \$50 if the advertisement or bid is withdrawn immediately upon notification from the agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and

(2) \$700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.021

## ADMINISTRATIVE RULES

and OAR 812-003-0120, when one or more previous violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(3) \$1,000 per offense for performing work as a contractor in violation of ORS 701.021 when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to \$700 if the respondent becomes licensed within a specified time; and

(4)(a) \$5,000 per offense for performing work as a contractor in violation of ORS 701.021, when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to \$700 if the contractor becomes licensed within a specified time and settles or makes reasonable attempts to settle with the owner.

(b) A "complaint for damages" as used in section (4) of this rule includes, but is not limited to:

(A) A Construction Contractors Board Dispute Resolution Services (DRS) complaint; or

(B) A letter to Construction Contractors Board indicating that a citizen has been damaged by the contractor; and

(5) \$5,000 per offense for performing work as a contractor in violation of ORS 701.021, when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(6) \$500 per offense for failure to respond to the agency's request for the list of subcontractors required in ORS 701.345; and

(7) \$1,000 per offense for hiring a unlicensed subcontractor; and

(8) For failing to provide an "Information Notice to Owners about Construction Liens" as provided in ORS 87.093, when no lien has been filed, \$200 for the first offense, \$400 for the second offense, \$600 for the third offense, \$1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, \$1,000.

(9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0120: First offense \$100, second offense \$200, subsequent offenses \$400.

(10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0260: First offense \$50, second offense \$100, subsequent offenses \$200.

(11) Failure to notify the Construction Contractors Board of a new or additional business name or personal surname (for sole proprietors) under which business as a contractor is conducted, in violation of OAR 812-003-0320: First offense warning, second offense \$50, subsequent offenses \$200.

(12) Failing to use a written contract as required by ORS 701.305: \$500 for the first offense; \$1,000 for the second offense; and \$5,000 for subsequent offenses.

(13) Violation of OAR 812-012-0130(1), failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.

(14) Failure to conform to information provided on the application in violation of ORS 701.046(4), issuance of a \$5,000 civil penalty, and suspension of the license until the contractor provides the agency with proof of conformance with the application and the terms of the application.

(a) If the violator is a limited contractor or residential limited contractor working in violation of the conditions established pursuant to OAR 812-003-0130 or 812-003-0131, the licensee shall be permanently barred from licensure in the limited contractor category or residential limited contractor endorsement.

(b) If the violator is a licensed developer, residential developer or commercial developer working in violation of the conditions established pursuant to ORS 701.005(3), (6) or (14) or 701.042, the licensee shall be permanently barred from licensure in the licensed developer category or residential developer or commercial developer endorsement.

(15) Knowingly assisting an unlicensed contractor to act in violation of ORS chapter 701, \$1,000.

(16) Failure to comply with any part of ORS Chapters 316, 656, or 657, 701.035, 701.046 or 701.091, as authorized by 701.106, \$1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute.

(17) Violating an order to stop work as authorized by ORS 701.225(3), \$1,000 per day.

(18) Working without a construction permit in violation of ORS 701.098, \$1,000 for the first offense; \$2,000 and suspension of CCB license for three (3) months for the second offense; \$5,000 and permanent revocation of CCB license for the third and subsequent offenses.

(19) Failure to comply with an investigatory order issued by the Board, \$500 and suspension of the license until the contractor complies with the order.

(20) Violation of ORS 701.098(1)(L) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, \$1,000, suspension of the license or both; second and subsequent offenses, \$5,000, per violation, revocation or suspension of the license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

(21) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

(a) Not paying prevailing wage on a public works job; or

(b) Violating the federal Davis-Bacon Act; or

(c) Failing to pay minimum wages or overtime wages as required under state and federal law; or

(d) Failing to comply with the payroll certification requirements of ORS 279C.845; or

(e) Failing to comply with the posting requirements of ORS 279C.840: \$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

(22) Violation of ORS 701.098(1)(L) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in subparagraphs (19) or (20), where more than two violations have occurred: \$5,000 and revocation of the license.

(23) When, as set forth in ORS 701.098(1)(h), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under 701.035(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows: \$1,000 for the first offense, \$2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

(24) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.

(25) Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): \$5,000.

(26) Failure to conform to the Standards of Practice in violation of OAR 812-008-0202 through 812-008-0214: \$750 per offense.

(27) Failure to conform to the Standards of Behavior in OAR 812-008-0201(2)-(4): \$750 per offense.

(28) Offering to undertake, bidding to undertake or undertaking repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: \$5,000 per offense.

(29) Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0202(4): \$400 per offense.

(30) Violation of work practice standards for lead-based paint (LBP) activity pursuant to OAR 812-007-0140 or 812-007-0240 first offense, \$1,000; second offense, \$3,000; and third offense, \$5,000 plus suspension of license for up to one year. The civil penalty is payable to the Construction Contractors Board LBP Activities Fund as provided in ORS 701.995 and OAR 812-007-0025.

(31) Violation of work practice standards for LBP renovation pursuant to OAR 812-007-0340 or violation of recordkeeping and reporting requirements pursuant to OAR 333-070-0110: first offense, \$1,000; second offense, \$3,000; and third offense, \$5,000 and suspension of the certified LBP renovation contractor license for up to one year. The civil penalty is payable to the Construction Contractors Board LBP Activities Fund as provided in ORS 701.995 and OAR 812-007-0025.

(32) Violation of OAR 812-007-0100, 812-007-0200 or 812-007-0300: first offense, \$1,000; second offense, \$3,000; and third offense, \$5,000. The civil penalty is payable to the Construction Contractors Board Lead-Based Paint (LBP) Activities Fund as provided in ORS 701.995 and OAR 812-007-0025.

(33) Violation of ORS 279C.590:

# ADMINISTRATIVE RULES

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to \$1,000; and

(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(34) Violation of ORS 701.315, inclusion of provisions in a contract that preclude a homeowner from filing a breach of contract complaint with the Board: \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(35) Violation of ORS 701.345, failure to maintain the list of subcontractors: \$1,000 for the first offense; \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(36) Violation of 701.098(1)(f), knowingly providing false information to the Board: \$1,000 and suspension of the license for up to three months for the first offense; \$2,000 and suspension of the license for up to one year for the second offense; and \$5,000 and permanent revocation of license for the third offense.

(37) Failing to provide a written contract with the contractual terms provided by ORS 701.305 or OAR 812-012-0110: \$200 for the first offense; \$500 for the second offense; and \$1,000 for subsequent offenses.

(38) Working while the license is suspended if the licensee was required to provide an increased bond under ORS 701.068(5), 701.068(6), or OAR 812-003-0175: revocation.

(39) Working while the license is suspended for any violation of ORS 701.098(4)(a)(A) or 701.098(4)(a)(B): \$5,000 for first offense, and revocation for second or subsequent offense.

(40) Working while the license is suspended for any reason except as otherwise provided for by this rule: revocation.

(41) Failure to comply with ORS 701.106(1)(a); \$1,000 for the first offense, \$5,000 for the second offense; \$5,000 and permanent revocation of CCB license for the third offense.

(42) Failure to deliver as required by ORS 701.109(2) a copy of a final judgment; \$200 first offense, \$400 second offense; \$600 for the third offense; \$1,000 for each subsequent offense.

(43) Failure to maintain insurance as required under ORS 701.073 or to provide proof of insurance as required under OAR 812-003-0200, where there is no claim of loss submitted to the insurance company: first offense, \$500; second offense, \$1,000; third and subsequent offenses, \$5,000.

(44) Failure to maintain insurance as required under ORS 701.073 or to provide proof of insurance as required under OAR 812-003-0200, where there is a claim of loss submitted to the insurance company: first offense, \$2,000; second and subsequent offenses, \$5,000.

(45) Undertaking, offering to undertake, or submitting a bid to work as a locksmith when an individual is not certified as a locksmith or otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(46) Undertaking, offering to undertake, or submitting a bid to provide locksmith services when a business is not a licensed construction contractor or otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(47) Using the title of locksmith, locksmith professional, commercial locksmith, lock installer or any title using a form of the word "locksmith" that indicates or tends to indicate that the individual is a locksmith, unless an individual is certified as a locksmith or otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(48) Using the title of locksmith, locksmith professional, commercial locksmith, lock installer or any title using a form of the word "locksmith" that indicates or tends to indicate that the business providing locksmith services, unless a business (a) is a licensed construction contractor and (b) is owned by or employs a certified locksmith or is otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(49) Violating any applicable provision of the rules in division 30, including violating any standard of professional conduct other than OAR 812-030-0300(4): first offense, \$1,000; second offense, \$3,000; third offense, \$5,000 and revocation of the certificate.

(50) Violating OAR 812-030-0300(4): first offense, \$200; second offense, \$500; third offense, \$1,000.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 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, 701.073, 701.091, 701.098, 701.106, 701.109, 701.227, 701.305, 701.315, 701.330, 701.345, 701.480, 701.485, 701.510, 701.515, 701.992 & 701.995

Hist.: 1BB 4-1982, f. & cf. 10-7-82; 1BB 1-1983, f. & cf. 3-1-83; Renumbered from 812-011-0080(13); 1BB 3-1983, f. 10-5-83, cf. 10-15-83; 1BB 3-1984, f. & cf. 5-11-84; 1BB 3-1985, f. & cf. 4-25-85; BB 1-1987, f. & cf. 3-5-87, BB 1-1988(Temp), f. & cf. 1-26-88; BB 2-1988, f. & cf. 6-6-88; CCB 1-1989, f. & cf. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1990(Temp), f. & cf. 7-27-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cf. 4-15-92; CCB 4-1992, f. & cf. 6-1-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cf. 10-5-95; CCB 3-1996, f. & cf. 8-13-96; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-1999(Temp), f. & cf. 11-1-99 thru 4-29-00; CCB 4-2000, f. & cf. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2000(Temp), f. & cf. 11-13-00 thru 5-11-01; CCB 2-2001 f. & cf. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 1-2002(Temp), f. & cf. 3-1-02 thru 8-26-02; CCB 2-2002, f. & cf. 3-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 8-2002, f. & cf. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 9-2004, f. & cf. 12-10-04; CCB 5-2005, f. 8-24-05, cert. ef. 1-1-06; Renumbered from 812-005-0005, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 2-2006, f. & cf. 1-26-06; CCB 7-2006, f. & cf. 6-23-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 4-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 2-2008(Temp), f. & cf. 1-2-08 thru 6-29-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 13-2008, f. 6-30-08, cert. ef. 7-1-08; CCB 17-2008, f. 9-26-08, cert. ef. 10-1-08; CCB 19-2008, f. & cf. 11-20-08; CCB 1-2009, f. 1-30-09, cert. ef. 2-1-09; CCB 4-2009, f. 5-6-09, cert. ef. 6-1-09; CCB 6-2009, f. & cf. 9-1-09; CCB 2-2010, f. & cf. 2-1-10; CCB 8-2010, f. & cf. 4-28-10; CCB 13-2010(Temp), f. & cf. 7-7-10 thru 1-2-11; Administrative correction 1-25-11; CCB 1-2011, f. 2-28-11, cert. ef. 3-1-11; CCB 4-2011, f. 6-24-11, cert. ef. 7-1-11; CCB 10-2011, f. 9-29-11, cert. ef. 10-1-11; CCB 16-2011, f. 12-13-11, cert. ef. 1-1-12

\*\*\*\*\*

**Rule Caption:** Home Inspector Rule Amendments to Implement SB 153 (2011).

**Adm. Order No.:** CCB 17-2011

**Filed with Sec. of State:** 12-13-2011

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

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

**Rules Amended:** 812-008-0000, 812-008-0020, 812-008-0030

**Subject:** • 812-008-0000 is amended to implement Senate Bill 153, which authorizes the CCB to adopt rules to determine whether an inspection and report, which is limited to one or more specific systems or components of a residential structure or appurtenance, is a sufficient assessment of the overall physical condition of the structure or appurtenance to constitute the services of a home inspector.

• 812-008-0020, as amended, reflects three types of businesses that do not inspect the overall physical condition of homes but rather provide specialized services. These services include energy audits, forensic evaluation and home performance testing. Each term is defined. The term "home inspection" specifically excludes these services. The terms "component" and "system" are clarified with respect to home energy appliances – namely, hot water heaters, furnaces and air conditioners.

• 812-008-0030 is amended to do the following: (1) Clarify the "grandfather" exemption created under earlier law; and (2) Add new exemptions for: (a) energy audit; (b) forensic evaluation; and (c) home performance testing. The references to ORS 701.350(1) and 701.350(2) are removed from sections (1) and (2) of the rule. Those statutory provisions do not contain express exemptions. The only statutory exemption is for "grandfathered" contractors, in OAR 812-008-0030(3)(a).

**Rules Coordinator:** Catherine Dixon—(503) 934-2185

## 812-008-0000

### Authority, Purpose, Scope

(1) Authority. These rules are promulgated in accordance with and under the authority of ORS chapter 701.

(2) Purpose.

(a) The purpose of these rules is to create a program to certify home inspectors.

(b) These rules prescribe the requirements for certification and practices of individuals, and licensing of businesses engaged in home inspections.

(c) These rules cover businesses and all individuals who offer to undertake, submit a bid to undertake or undertake a home inspection.

(d) These rules identify when an inspection and report that is limited to one or more specific systems or components of a residential structure or appurtenance is not a sufficient assessment of the overall physical condition



# ADMINISTRATIVE RULES

of the structure or appurtenance to constitute the services of a home inspector.

(3) Scope.

(a) These rules are limited to the establishment of certification for individuals and licensing of businesses that offer to undertake, submit a bid to undertake or undertake certified home inspections.

(b) These rules prescribe the requirements for, and the manner of certifying applicants to be Oregon certified home inspectors and the licensing of businesses employing these individuals, to assure the protection of consumers.

(c) These rules establish prescribed fees to the extent necessary to defray costs of those activities prescribed herein.

Stat. Auth.: ORS 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 17-2011, f. 12-13-11, cert. ef. 1-1-12

## 812-008-0020

### Definitions

The following definitions apply to Division 8 of OAR chapter 812:

(1) "Administrator" means the Administrator of the agency.

(2) "Agency" means the Oregon Construction Contractors Board.

(3) "Automatic safety controls" means the devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, loss of ignition, fuel, leaks, fire, freezing, or other unsafe conditions.

(4) "Central air conditioning" means a system that uses ducts to distribute cooled and/or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.

(5) "Certified individual" means an individual who successfully passes a test accredited by the agency, completes the education required for renewal, and satisfies any other requirements established by OAR chapter 812.

(6) "Component" means a readily accessible and observable aspect of a system, such as a floor, or wall, but not individual pieces such as boards or nails where many similar pieces make up the component. "Component" also includes, but is not limited to, the separate parts of an installed appliance or an electric or gas-powered system, including, but not limited to, a water heater, furnace or air conditioning unit.

(7) "Conspicuous" as used in these regulations shall mean a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(8) "Cross connection" means any physical connection or arrangement between potable water and any source of contamination.

(9) "Dangerous or adverse situations" means situations that pose a threat of injury to the Oregon certified home inspector, or damage to the property.

(10) "Describe" means report in writing a system or component by its type, or other observed characteristics, to distinguish it from other components or system used for the same purpose.

(11) "Dismantle" means to take apart or remove any component, device or piece of equipment that is bolted, screwed or fastened by other means and that would not be dismantled by a homeowner in the course of normal household maintenance.

(12) "Energy audit" means evaluation or testing of components or systems with a focus on energy efficiency or renewable energy, which may lead to recommendations that improve energy efficiency or renewable energy generation. "Energy audit" also includes quality assurance review or verification of installed or retrofitted components or systems impacting energy efficiency or renewable energy generation.

(13) "Enter" means to go into an area and observe all visible components.

(14) "Forensic evaluation" means evaluation or testing of components or systems for purposes of envelope analysis, materials testing or failure due to water intrusion or other external causes.

(15) "Functional drainage" means a drain is functional when it empties in a reasonable amount of time.

(16) "Functional flow" means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.

(17) "Home performance testing" means evaluation or testing of components or systems for purposes of comfort, energy efficiency, safety or indoor air quality.

(18) "Home inspection" means an inspection of substantially all of the components or systems as set forth in 812-008-0205 through 812-008-0214 for the purpose of determining the overall physical condition and habitability of the inspected structure at the time of inspection. A home inspection is not a re-inspection of isolated repairs made as part of a real estate transaction. A home inspection does not include energy audit, forensic evaluation or home performance testing.

(19) "Installed" means attached or connected such that the installed item requires tools for removal.

(20) "Normal operating controls" means homeowner-operated devices such as but not limited to thermostat, wall switch, or safety switch.

(21) "Observe" means the act of making a visual examination.

(22) "On-site water supply quality" means water quality based on the bacterial, chemical, mineral, and solids content of the water.

(23) "On-site water supply quantity" means the water quantity based on the rate of flow of water.

(24) "Operate" means to cause systems or equipment to function.

(25) "Oregon certified home inspector" means a person certified pursuant to ORS chapter 701, chapter 814, 1997 Oregon Laws and OAR chapter 812.

(26) "Readily accessible panel" means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person; and its edges and fasteners are not painted into place. This definition is limited to those panels within normal reach or from a four-foot stepladder, and that are not blocked by stored items, furniture, or building components.

(27) "Representative number" for multiple identical components such as windows and electrical outlets means one such component per room; for multiple identical exterior components, one such component on each side of the building.

(28) "Roof drainage systems" means gutters, downspouts, leaders, splash blocks, and similar components used to carry water off a roof and away from a building.

(29) "Shut down" means a piece of equipment or a system is shut down when it cannot be operated by the device or control that a homeowner should normally use to operate it or detached from a plug source. If its safety switch or circuit is in the "off" position, or its fuse is missing or blown, the inspector is not required to reestablish the circuit for the purpose of operating the equipment or system.

(30) "Solid fuel heating device" means any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, wood stoves (room heaters), central furnaces, and combinations of these devices.

(31) "Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

(32) "System" means a combination of interacting or interdependent components, assembled to carry out one or more functions. "System" also includes, but is not limited to, an installed appliance or an electric or gas-powered system, including but not limited to, a water heater, furnace or air conditioning unit.

(33) "Technically exhaustive" means an inspection involving the extensive use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.

(34) "Test" means a test administered by the agency.

(35) "Underfloor crawl space" means the area within the confines of the foundation and between the ground and the underside of the lowest floor structural component.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2006, f. & cert. ef. 6-23-06; CCB 17-2011, f. 12-13-11, cert. ef. 1-1-12

## 812-008-0030

### Certification and License Required

(1) Except as provided in section (3) of this rule, no individual shall undertake, offer to undertake or submit a bid to do work as an Oregon certified home inspector without first receiving certification to do same from the agency and without being an owner or employee of a business that is licensed with the agency.

# ADMINISTRATIVE RULES

(2) Except as provided in section (3) of this rule, no business shall undertake, offer to undertake or submit a bid to do work as an Oregon certified home inspector without first becoming licensed with the agency as a residential general contractor or residential specialty contractor, and without having an owner or employee who is an Oregon certified home inspector by the agency.

(3) The following persons are exempt from the requirements of this rule.

(a) Persons registered each year as a general contractor under ORS chapter 701 during the period from January 1, 1991, through August 11, 1997, as provided in section (3)(b) of chapter 814, 1997 Oregon Laws.

(b) Persons performing an energy audit or issuing a report on an energy audit.

(c) Persons performing a forensic evaluation or issuing a report on a forensic evaluation.

(d) Persons performing home performance testing or issuing a report on a home performance testing.

(4) No person, including persons covered by section (3) of this rule, shall use the title Oregon certified home inspector without receiving such certification from the agency.

(5) Certified individuals and licensed business undertaking certified home inspections shall comply with the standards of practice for undertaking certified home inspections as prescribed in these rules.

(6) All certificates to undertake home inspections are renewable upon meeting all requirements, including continuing education, as established by OAR chapter 812.

Stat. Auth.: ORS 670.310, 701.235, 701.350, 701.355

Stats. Implemented: ORS 701.081, 701.084, 701.350, 355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 17-2011, f. 12-13-11, cert. ef. 1-1-12

\*\*\*\*\*

## Department of Agriculture Chapter 603

**Rule Caption:** Reduce threshold for initiating seafood price negotiations from 75% to 66% for harvesters and dealers.

**Adm. Order No.:** DOA 23-2011(Temp)

**Filed with Sec. of State:** 12-8-2011

**Certified to be Effective:** 12-8-11 thru 1-15-12

**Notice Publication Date:**

**Rules Amended:** 603-076-0052

**Subject:** Reduces the threshold for initiating the seafood price negotiations from 75% to 66% (of harvesters with active permits for the specific seafood subject to negotiations and dealers by volume of pounds landed in the previous year) to ensure sufficient participation to conduct price negotiations this season. Failure to reduce the percentage to 66% from 75% will result in an inability to convene sufficient participation to conduct meetings that would encourage the efficient production and distribution of seafood because absent a reduction in the percentage of participants, talks could not occur. The general public would thus suffer if harvesters and dealers are unable to bargain collectively so as to assure the public interest in efficient production and distribution of seafood.

The ODA believes that the percentage of participants in relation to the industry as a whole is sufficient to allow the harvesters and the dealers to bargain collectively to arrive at a negotiated season starting price that encourages an orderly start to the season and the efficient production and distribution of seafood products.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

### 603-076-0052

#### Active State Supervision of Season Starting Price Negotiations for Seafood Commodities

To ensure the Director is actively supervising the conduct of the seafood harvester association representatives and the seafood dealers under the regulatory program in accordance with the requirements of the federal antitrust laws and the Oregon Antitrust Act:

(1)(a) The Director at the request of two-thirds (66%) of the harvesters with active permits for the specific seafood subject to the negotiations, and two thirds (66%) of the dealers by volume of pounds landed in the previous year of the specific seafood subject to negotiations shall convene a meeting of duly elected or appointed representatives of the seafood

harvester marketing associations and representatives of the seafood dealers at a predetermined location, date and time to enter into price negotiations with the objective of reaching agreement on a negotiated season starting price for review and approval by the Director.

(b) The Director may schedule a series of meetings between the representatives of the harvester marketing associations and the representatives of the seafood dealers.

(c) The names and affiliations of the representatives of the seafood harvester marketing associations and the seafood dealers shall be provided to the Department at least two working days prior to the first meeting.

(2) The Director or their designee shall be present at and actively supervise all meetings between the seafood marketing association and seafood dealer representatives pursuant to the regulatory program and, if necessary, mediate the price negotiations between the representatives at these meetings.

(3) The Director shall designate someone to keep minutes of all state-supervised meetings between the seafood harvester marketing association and seafood dealer representatives; minutes of the meetings shall be distributed to all interested parties upon written request of the Director.

(4) At the conclusion of the negotiations between the representatives of the seafood harvester marketing association and dealers the representatives shall by consensus take one of the following actions:

(a) Submit to the Director for review and approval a negotiated season starting price effective for the time period agreed to in the negotiations; or

(b) Notify the Director that the bargaining representatives cannot arrive at a negotiated price and request the Director establish the price based on the information presented in the negotiations; or

(c) Terminate the negotiations

(5) Within two (2) days after the parties' submission under section (4), the Director shall review the negotiated price and approve it as the established season opening price, or reject the parties' negotiated price and direct the parties' to continue their negotiations if it is determined that the price does not reflect the interests of the State of Oregon. The Director may request any information deemed necessary from the parties' to review and approve the established price. The Director shall immediately notify the parties' of the decision under this section in writing.

(6) In approving the established season opening price, the Director shall consider the negotiated price reached by representatives of the seafood harvesters and dealers. The Director may also consider information available from the parties, including inventories; previous price-harvest relationships; production and supply factors; competitive factors; local, national and world market production and supply, and prices; the influence of imported product on prices, and any other factors the Director deems necessary to approve the established price."

(7)(a) The Director must approve the established season opening price before the parties shall implement the season opening prices effective for the parties which participated in and agreed to be bound by such through negotiations.

(b) The Director shall not be involved in adjustments to seafood prices once the time period effective for the season opening price has expired.

(c) However, if during the applicable time period effective for the season opening price, a majority of seafood harvesters and a majority of dealers who were parties to the negotiations request the Director to be involved in any adjustments to the established season starting price, a continuation of the supervised price negotiations may occur. Any proposed adjustments to an established season opening price or applicable time period require approval by the Director before they may become effective.

(8) The established season opening price shall be binding for all parties to the negotiations who have agreed to the prices and time frames and other terms and conditions as specified and approved by the Director.

(9) Parties to the negotiations shall reimburse the Department for costs associated with supervising and administering the regulatory program. The Department will provide the parties with an itemized list of costs associated with program supervision, and cost recovery shall be as follows:

(a) Department consultative fees for Attorney General counsel directly related to supervising the regulatory program shall be divided evenly between the parties and reimbursed to the Department.

(b) All parties to the negotiations will be assessed a fee of \$100 towards the cost of state supervision of the negotiations. Costs above the total collected from the parties for this \$100 flat fee will be evenly divided between all parties.

(c) Total costs for the department's supervisory role will include: \$45.00 per hour for time devoted to administration and supervision of the

# ADMINISTRATIVE RULES

regulatory program, plus associated travel costs (mileage at state rates, and travel time) and expenses (copies, etc.).

Stat. Auth.: ORS 576.620 - 576.650, Ch. 487 OL 2003 & SB 673

Stats. Implemented: ORS 62.845, 646.515, 646.535 & 646.740

Hist.: DOA 13-2004, f. & cert. ef. 5-5-04; DOA 23-2011(Temp), f. & cert. ef. 12-8-11 thru 1-15-12

\*\*\*\*\*

**Rule Caption:** Biomass-based diesel definition and related amendments of the term “other renewable diesel”.

**Adm. Order No.:** DOA 24-2011

**Filed with Sec. of State:** 12-14-2011

**Certified to be Effective:** 12-14-11

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

**Rules Amended:** 603-027-0410, 603-027-0420, 603-027-0430, 603-027-0440, 603-027-0490

**Subject:** This rule: (1) Amends the definition of “other renewable diesel” to “biomass-based diesel” consistent with the Federal Trade Commission (FTC) definition; (2) Amends language throughout the rules associated with the term “other renewable diesel”; (3) Makes editorial correction of alphabetical listings; (4) Makes editorial renumbering due to these amendments; (5) Amends dispenser labeling requirements for biomass-based diesel to be consistent with FTC rules; (6) Makes editorial corrections of the word “shall” to “must” to be more consistent with the State of Oregon rulemaking protocol; and (7) Includes biomass-based diesel blends that do not meet ASTM International specifications in the enforcement proceedings section of the rule.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-027-0410

### Definitions

(1) “Accredited Laboratory” means a laboratory that is currently accredited by an independent laboratory accrediting body for analyzing motor fuels using American Society for Testing and Materials (ASTM) International test procedures and specifications.

(2) “Alcohol” means a volatile flammable liquid having the general formula  $C_nH_{(2n+1)}OH$  used or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles, and commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.

(3) “ASTM” means ASTM International, the national voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services; and the promotion of related knowledge. ASTM when used in these rules shall mean the 2011 Annual Book of ASTM Standards, Section 5, Volumes 05.01 through 05.05.

(4) “Antiknock Index (AKI)” means the arithmetic average of the Research Octane Number (RON) and Motor Octane Number (MON):  $AKI = (RON + MON) / 2$ . This value is called by a variety of names, in addition to antiknock index, including: Octane Rating, Posted Octane, (R+M)/2 Octane.

(5) “Automotive Fuel Rating” means the automotive fuel rating determined under 16 CFR 306.5, required to be certified under 16 CFR 306.6 and 16 CFR 306.8, and required to be posted under 16 CFR 306.10. Under this Rule, sellers of liquid automotive fuels, including alternative fuels, must determine, certify, and post an appropriate automotive fuel rating. The automotive fuel rating for gasoline is the antiknock index (octane rating). The automotive fuel rating for alternative liquid fuels consists of the common name of the fuel along with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel. For alternative liquid automotive fuels, a disclosure of other components, expressed as a minimum percentage by volume, may be included, if desired.

(6) “Automotive Gasoline, Automotive Gasoline-Oxygenate Blend” means a type of fuel suitable for use in spark-ignition automobile engines and also commonly used in marine and non-automotive applications.

(7) “Aviation Gasoline” means a type of gasoline suitable for use as a fuel in an aviation gas spark-ignition internal combustion engine.

(8) “Batch” and “Production Lot” means a homogenous production volume of finished biodiesel from one or more sources that is held in a single container where representative samples are taken and analyzed to provide an authentic certificate of analysis (COA) for the specific volume.

(9) “Bulk Facility” means a facility, including pipelines terminals, refinery terminals, rail and barge terminals and associated underground and above ground tanks connected or separate, from which motor vehicle fuels

are withdrawn from bulk and delivered to retail, wholesale or nonretail facilities or into a cargo tank or barge used to transport those products.

(10) “Base Gasoline” means all components other than ethanol in a blend of gasoline and ethanol.

(11) “Biodiesel” means a motor vehicle fuel consisting of mono-alkyl esters of long chain fatty acids derived from vegetable oils, animal fats, or other nonpetroleum resources, not including palm oil, designated as B100 and complying with ASTM D6751. Biodiesel produced in or imported into Oregon for use as a blend stock shall comply with B100 biodiesel requirements including ASTM International D6751 and the Certificate of Analysis.

(12) “Biodiesel Blend” means a fuel comprised of a blend of biodiesel fuel with petroleum-based diesel fuel, designated BXX. In the abbreviation BXX, the XX represents the volume percentage of biodiesel fuel in the blend.

(13) “Biomass” means organic matter that is available on a renewable or recurring basis and that is derived from:

(a) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and reduce uncharacteristic stand replacing wildfire risk;

(b) Wood material from hardwood timber described in ORS 321.267(3);

(c) Agricultural residues;

(d) Offal and tallow from animal rendering;

(e) Food wastes collected as provided under ORS Chapter 459 or 459A;

(f) Yard or wood debris collected as provided under ORS Chapter 459 or 459A;

(g) Wastewater solids; or

(h) Crops grown solely to be used for energy, and

(i) Biomass does not mean wood that has been treated with creosote, pentachlorophenol, inorganic arsenic, or other inorganic chemical compounds.

(14) “Biomass-Based Diesel”, also referred to as Other Renewable Diesel and Renewable Diesel, means a conventional diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the U.S. Environmental Protection Agency under the 2007 42 U.S.C. 7545, and includes fuel derived from biomass (Reference OAR 603-027-0410) and animal wastes, including poultry fats and poultry wastes, and other waste materials, or from municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater, except that the term does not include biodiesel as defined in OAR 603-027-0410, complies with ASTM International D975 Standard Specification for Diesel Fuel Oils or other applicable ASTM product specifications, can be used as a finished fuel or fuel blending component, and designated “100% Biomass-Based Diesel”.

(15) “Biomass-Based Diesel Blend”, also referred to as Other Renewable Diesel Blend and Renewable Diesel Blend, means a fuel comprised of a blend of biomass-based diesel fuel with conventional petroleum-based diesel fuel, designated “XX% Biomass-Based Diesel Blend”, and complies with ASTM International D975. In the abbreviation, “XX%”, the XX represents the volume percentage of biomass-based diesel in the blend.

(16) “Certificate of analysis” means:

(a) A document verifying that B100 biodiesel has been analyzed and complies with, at a minimum, the following ASTM D 6751 biodiesel fuel test methods and specifications:

(A) Flash point (ASTM D 93);

(B) Acid number (ASTM D 664);

(C) Cloud point (ASTM D 2500);

(D) Water and sediment (ASTM D 2709);

(E) Visual appearance (ASTM D 4176);

(F) Free glycerin (ASTM D 6584);

(G) Total glycerin (ASTM D 6584);

(H) Oxidation stability (EN 14112 as per ASTM D 6751); and

(I) Sulfur (ASTM D 5453 or ASTM D 7039).

(b) The ASTM International standards referenced in ORS 646.905(3) for free and total glycerin are incorrect. The correct ASTM International standards reference for free and total glycerin is ASTM D 6584.

(17) “Cetane Index” means an approximation of the cetane number of distillate fuel, which does not take into account the effect of a cetane improver additive, calculated from the density and distillation measurements. (Ref. ASTM D 976.)

(18) “Cetane Number” means a numerical measure of the ignition performance of a diesel fuel obtained by comparing it to reference fuels in a standardized engine test. (Ref. ASTM D 613.)



## ADMINISTRATIVE RULES

(19) "Coordinating Research Council (CRC) Rating" means a standardized format for rating injector and engine deposits as developed by the CRC.

(20) "Co-solvent" means an alcohol other than methanol which is blended with either methanol or ethanol or both to minimize phase separation in gasoline.

(21) "Dealer" means any motor vehicle fuel retailer dealer, nonretail dealer or wholesale dealer.

(22) "Director" means the Director of Agriculture.

(23) "Diesel Fuel" means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine.

(24) "Distillate" means any product obtained by condensing the vapors given off by boiling petroleum or its products.

(25) "EPA" means the United States Environmental Protection Agency.

(26) "E85 Fuel Ethanol" means a blend of ethanol and hydrocarbons of which the ethanol portion is nominally 75 to 85 volume percent denatured fuel ethanol (Ref. ASTM D 5798).

(27) "Ethanol" also known as "Denatured Fuel Ethanol", means nominally anhydrous ethyl alcohol meeting ASTM D 4806 standards. It is intended to be blended with gasoline for use as a fuel in a spark-ignition internal combustion engine. The denatured fuel ethanol is first made unfit for drinking by the addition of Alcohol and Tobacco Tax and Trade Bureau (TTB) approved substances before blending with gasoline.

(28) "Ethanol facilities production capacity" means the designed and "as-constructed" rated capacity as verified by the Oregon Department of Agriculture, or the ethanol facilities production capacity as determined by an independent Professional Engineer registered in the State of Oregon that is not the design consultant and as verified by the Oregon Department of Agriculture.

(29) "Feedstock" means the original biomass used in biofuel production.

(30) "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded.

(31) "Gasoline-Oxygenate Blend" means a fuel consisting primarily of gasoline along with a substantial amount (more than 0.35 mass percent oxygen, or more than 0.15 mass oxygen if methanol is the only oxygenate) of one or more oxygenates.

(32) "Lead Substitute" means an EPA-registered gasoline additive suitable, when added in small amounts to fuel, to reduce or prevent exhaust valve recession (or seat wear) in automotive spark-ignition internal combustion engines designed to operate on leaded fuel.

(33) "Lead Substitute Engine Fuel" means a gasoline or gasoline-oxygenate blend that contains a "lead substitute."

(34) "Low Temperature Operability" means a condition which allows the uninterrupted operation of a diesel engine through the continuous flow of fuel throughout its fuel delivery system at low temperatures.

(35) "Lubricity" means a qualitative term describing the ability of a fluid to affect friction between, and wear to, surfaces in relative motion under load.

(36) "Methanol" means methyl alcohol, a flammable liquid having the formula CH<sub>3</sub>OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

(37) "M100 Fuel Methanol" means nominally anhydrous methyl alcohol, generally containing small amounts of additives, suitable for use as a fuel in a compression-ignition combustion engine.

(38) "M85 Fuel Methanol" means a blend of methanol and hydrocarbons of which the methanol portion is nominally 70 to 85 volume percent and which meets the requirements of ASTM D 5797.

(39) "Motor Octane Number" means a numerical indication of a spark-ignition engine fuel's resistance to knock obtained by comparison with reference fuels in a standardized ASTM D 2700 Motor Method engine test.

(40) "Motor Vehicles" means all vehicles, vessels, watercraft, engines, machines, or mechanical contrivances that are propelled by internal combustion engines or motors.

(41) "Motor Vehicle Fuel" means gasoline, gasoline-ethanol blends, diesel, biomass-based diesel, biomass-based diesel blends, B100 Biodiesel, Biodiesel Blends, E85 Fuel Ethanol, M85 Fuel Methanol, or any other liquid product used for the generation of power in an internal combustion engine, except aviation jet fuels, liquefied petroleum gases or natural gases.

(42) "Nonretail dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is dispensed through a card or key-activated fuel dispensing device to nonretail customers.

(43) "Octane Rating" means the rating of the anti-knock characteristics of a grade or type of gasoline determined by dividing by two the sum of the research octane number and the motor octane number.

(44) "Octane Rating Certification Documentation" means an invoice, bill of lading, delivery ticket, letter or other documentation that specifies the actual octane rating or a rounded rating that is the largest whole number or half of a number that is less than or equal to the number determined by or certified to the person transferring the gasoline.

(45) "Official Sample" means a motor fuel sample delivered via nozzle directly through a fuel pump, dispenser, or metering device from either a fuel delivery truck, tank wagon, above ground or below ground fuel storage tank into a suitable sealable, one litre or larger pressure-tight metal or glass container in the presence of, or drawn by, a department representative in the manner prescribed by department procedures. An official sample shall be appropriately sealed and labeled as to its identity, type, brand, grade, posted automotive fuel rating and the location, source, date, and name of official taking it at the time it is withdrawn from storage. A custody transfer receipt or record will be completed whenever an official sample changes hands enroute to a qualified motor fuel standards laboratory.

(46) "Oxygen Content of Gasoline" means the percentage of oxygen by mass contained in a gasoline.

(47) "Oxygenate" means an oxygen-containing, ashless, organic compound, such as an alcohol or ether, which can be used as a fuel or fuel supplement.

(48) "Premium Diesel" means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine and shall meet Standard Fuel Specifications OAR 603-027-0420.

(49) "Production" means the ability of a biofuel production facility to produce biofuel that is in compliance with applicable ASTM International specifications.

(50) "Production Lot" and "Batch" means a homogenous production volume of finished biodiesel from one or more sources that is held in a single container where representative samples are taken and analyzed to provide an authentic certificate of analysis (COA) for the specific volume.

(51) "Research Octane Number" means a numerical indication of a spark-ignition engine fuel's resistance to knock obtained by comparison with reference fuels in a standardized ASTM D 2699 Research Method engine test.

(52) "Retail Dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is or offered for sale to the public.

(53) "SAE" means the SAE International, a technical organization for engineers, scientists, technicians, and others in positions that cooperate closely in the engineering, design, manufacture, use, and maintainability of self-propelled vehicles.

(54) "Sales" means volumes of biofuels measured in gallons per year, relevant consumer usage, demand, pricing, and other factors affecting sales.

(55) "Thermal Stability" means the ability of a fuel to resist the thermal stress which is experienced by the fuel when exposed to high temperatures in a fuel delivery system.

(56) "Unleaded" in conjunction with "engine fuel" or "gasoline" means any gasoline or gasoline-oxygenate blend to which no lead or phosphorus compounds have been intentionally added and which contains not more than 0.013 gram lead per liter (0.05 g lead per U.S. gal) and not more than 0.0013 gram phosphorus per liter (0.005 g phosphorus per U.S. gal).

(57) "Use" means the historic blending of biofuel in Oregon in areas using biofuel to meet Oregon's Renewable Fuel Standard (RFS) and other information relevant to industry blending of biofuel including the infrastructure capacity to blend and distribute biofuel.

(58) "Wholesale Dealer" means any person who sells motor vehicle fuel if the seller knows or has reasonable cause to believe that the buyer intends to resell the motor vehicle fuel in the same or an altered form to a retail dealer, a nonretail dealer, or another wholesale dealer.

(59) "Winter" or "Winterized" Diesel means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine which has been blended for low temperature operability and shall meet Standard Fuel Specifications OAR 603-027-0420.

(60) "Withdrawn From Bulk" means removed from a bulk facility for delivery directly into a cargo tank or a barge to be transported to a location other than another bulk facility for use or sale in this state.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & ORS 646.905 - 646.990

Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183

Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08; DOA 11-2009(Temp), f. & cert. ef. 7-24-09 thru 1-17-10; DOA 16-2009,

# ADMINISTRATIVE RULES

f. 12-23-09, cert. ef. 1-1-10; DOA 19-2010, f. & cert. ef. 9-14-10; DOA 24-2011, f. & cert. ef. 12-14-11

## 603-027-0420

### Standard Fuel Specifications

(1) Gasoline and Gasoline-Oxygenate Blends, as defined in this regulation, shall meet the following requirements:

(a) The ASTM D 4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel," except that volatility standards for unleaded gasoline blended with ethanol shall not be more restrictive than those adopted under the rules, regulations, and Clean Air Act waivers of the U.S. Environmental Protection Agency (which includes those promulgated by Oregon and Federally approved State Implementation Plans (SIP's)). Gasoline blended with ethanol shall be blended under any of the following three options:

(A) The base gasoline used in such blends shall meet the requirements of ASTM D 4814; or

(B) The blend shall meet the requirements of ASTM D 4814; or

(C) The base gasoline used in such blends shall meet all the requirements of ASTM D 4814 except distillation, and the blend shall meet the distillation requirements of the ASTM D 4814 specification.

(b) Blends of gasoline and ethanol shall not exceed the ASTM D 4814 vapor pressure standard by more than 1.0 psi.

(c) Minimum Antiknock Index (AKI). The AKI shall not be less than the AKI posted on the product dispenser or as certified on the invoice, bill of lading, shipping paper, or other documentation.

(d) Minimum Motor Octane Number. The minimum motor octane number must not be less than 82 for gasoline with an AKI of 87 or greater.

(e) Lead Substitute Gasoline. Gasoline and gasoline-oxygenate blends sold as "lead substitute" gasoline shall contain a lead substitute additive which provides a level of protection against exhaust valve seat recession which is equivalent to the level of protection provided by a gasoline containing at least 0.026 gram of lead per liter (0.10 g per U.S. gal).

(2) Ethanol intended for blending with gasoline shall meet the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel."

(3) Gasoline-Ethanol Blends Required

(a) Consistent with ORS 646.912, the Oregon Department of Agriculture shall study and monitor ethanol fuel production, use, and sales in Oregon.

(b) Except as provided in OAR 603-027-0420(3)(c), all retail dealers, nonretail dealers, or wholesale dealers may only sell or offer for sale gasoline that contains ten percent ethanol by volume.

(c) A retail dealer, nonretail dealer, or wholesale dealer may sell or offer for sale gasoline that is not blended with ethanol if the gasoline;

(A) Has an octane rating, as defined in ORS 646.945, of 91 or above, or if it is for use in;

(B) An aircraft;

(i) With a supplemental type certificate approved by the Federal Aviation Administration that allows the aircraft to use gasoline that is intended for use in motor vehicles, or

(ii) Issued a type certificate by an aircraft engine manufacturer that allows the aircraft to use gasoline that is intended for use in motor vehicles;

(C) An aircraft that has been issued an experimental certificate, described in 14 C.F.R. 21.191, by the Federal Aviation Administration and that is required by the manufacturer's specifications to use gasoline that is intended for use in motor vehicles;

(D) A light-sport aircraft, as defined in 14 C.F.R. 1.1, that is required by the manufacturer's specifications to use gasoline that is intended for use in motor vehicles;

(E) A vintage aircraft, as defined by the Oregon Department of Aviation by rule, that is required by the manufacturer's specifications to use gasoline that is intended for use in motor vehicles;

(F) An antique vehicle, as defined in ORS 801.125;

(G) A Class I all-terrain vehicle, as defined in ORS 801.190;

(H) A Class III all-terrain vehicle, as defined in ORS 801.194;

(I) A racing activity vehicle, as defined in ORS 801.404;

(J) A snowmobile, as defined in ORS 801.490;

(K) Tools, including but not limited to lawn mowers, leaf blowers, and chain saws; or

(L) A watercraft.

(d) Gasoline-ethanol blends shall contain not less than 9.2 percent by volume of agriculturally derived ethanol, exclusive of denaturants and permitted contaminants, that complies with

(A) OAR 603-027-0420(2) Ethanol ASTM D 4806 standards,

(B) Denatured as specified in 27 C.F.R parts 20 and 21, and

(C) Complies with the volatility requirements specified in 40 C.F.R. part 80.

(e) The ethanol shall be derived from agricultural product, woody waste or residue.

(f) The gasoline and gasoline-ethanol blends shall comply with OAR 603-027-0420(1).

(g) It is prohibited to blend with casinghead gasoline, absorption gasoline, drip gasoline, or natural gasoline after the gasoline has been sold, transferred, or otherwise removed from a refinery or terminal.

(4) Gasoline Additive Restrictions.

(a) Effective November 1, 2009, a wholesale dealer, retail dealer, or nonretail dealer may not sell or offer to sell any gasoline blended or mixed with:

(A) Ethanol unless the blend or mixture meets the specifications or registration requirements established by the United States Environmental Protection Agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. section 7545 and 40 C.F.R. Part 79, and the ethanol complies with ASTM International specification ASTM D 4806;

(B) Methyl tertiary butyl ether in concentrations that exceed 0.15 percent by volume; or

(C) A total of all of the following oxygenates that exceeds one-tenth of one percent, by weight, of;

(i) Diisopropyl ether,

(ii) Ethyl tert-butyl ether,

(iii) Iso-butanol,

(iv) Iso-propanol,

(v) N-butanol,

(vi) N-propanol,

(vii) Sec-butanol,

(viii) Tert-amyl methyl ether,

(ix) Tert-butanol,

(x) Tert-pentanol or tert-amyl alcohol, and

(xi) Any other additive that has not been approved by the California Air Resources Board or the United States Environmental Protection Agency.

(b) Nothing in this section shall prohibit transshipment through this state, or storage incident to the transshipment, of gasoline that contains methyl tertiary butyl ether in concentrations that exceed 0.15 percent by volume or any of the oxygenates listed in OAR 603-027-0420(4)(a)(C), provided,

(A) The gasoline is used or disposed of outside of this state; and

(B) The gasoline is segregated from gasoline intended for use within this state.

(c) Notwithstanding the additives in OAR 603-027-0420(4)(a), a person may sell, supply, or offer to sell or supply gasoline in this state that contains any oxygenate other than ethanol, if the California Air Resources Board (CARB), California Environmental Policy Council (CEPC), or the United States Protection Agency (U.S. EPA) allow use of the oxygenate.

(5) Diesel Fuel shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils."

(6) Winter or Winterized Diesel Fuel shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils" and have a cold flow performance measurement which meets the ASTM D 975 tenth percentile minimum ambient air temperature charts and maps by either ASTM Standard Test Method D 2500 (Cloud Point) or ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Winter or winterized diesel (low temperature operability) is only applicable October 1 - March 31 of each year.

(7) Premium Diesel Fuel - All diesel fuels identified on retail and nonretail dispensers, bills of lading, invoices, shipping papers, or other documentation with terms such as premium, super, supreme, plus, or premier shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils" and must conform to the following requirements:

(a) Cetane Number - A minimum cetane number of 47.0 as determined by ASTM Standard Test Method D 613;

(b) Low Temperature Operability - A cold flow performance measurement which meets the ASTM D 975 tenth percentile minimum ambient air temperature charts and maps by either ASTM Standard Test Method D 2500 (Cloud Point) or ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Low temperature operability is only applicable October 1 - March 31 of each year;

(c) Thermal Stability - A minimum reflectance measurement of 80 percent as determined by ASTM Standard Test Method D 6468 (180 minutes, 150 OC);

# ADMINISTRATIVE RULES

(d) Lubricity – A maximum wear scar diameter of 520 microns as determined by ASTM D 6079. If a single test of more than 560 microns is determined, a second test shall be conducted. If the average of the two tests is more

than 560 microns, the sample does not conform to the requirements of this part.

(8) Biodiesel; B100 Biodiesel and Biodiesel intended for blending with diesel fuel must,

(a) Meet the requirements of ASTM D 6751, “Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels”;

(b) Be analyzed and issued a Certificate of Analysis for each batch or production lot produced in or imported into Oregon prior to blending, sale, or offer for sale in Oregon. The Certificates of Analysis expire 45 days following the date the biodiesel sample was obtained.

(c) Biodiesel must be analyzed for and comply with the visual appearance test (ASTM D 4176) upon its first receipt at a wholesale facility and prior to commingling with existing product.

(d) Prior to blending, sale, or offer for sale in Oregon, biodiesel must be analyzed and the Certificate of Analysis issued by:

(A) An accredited motor fuel laboratory, or

(B) A non-accredited motor fuel laboratory that meets all of the following requirements;

(i) The laboratory facilities must house and allow proper operation of all required equipment in accordance with the applicable test procedures,

(ii) The laboratory must use personnel trained to perform and analyze ASTM International D 6751 biodiesel fuel tests and other required tests,

(iii) The laboratory must use testing equipment that has been calibrated or verified to meet the requirements of each ASTM International test procedure used,

(iv) The laboratory must participate in an ASTM International proficiency program or similar national proficiency program for at least three times per year with appropriate results, and

(v) The laboratory must maintain current documentation of personnel qualifications, equipment verification, and proficiency results for at least one year. These records shall be available for inspection and reproduction upon request by the Director.

(9) Biodiesel Blends;

(a) Biodiesel blends through B5 must meet the requirements of ASTM D 975 Standard Specification for Diesel Fuel Oils.

(b) Biodiesel blends of B6 through B20 must meet the requirements of ASTM D 7467, Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6-B20).

(c) Blends of biodiesel and diesel fuels greater than B20 must meet the following requirements:

(A) The base diesel fuel must meet the requirements of ASTM D 975, Standard Specification for Diesel Fuel Oils; and

(B) The biodiesel blend stock must meet:

(i) The requirements of ASTM D 6751, Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, and

(ii) The requirements in OAR 603-027-0420(8).

(d) Exception: Biodiesel may be blended with diesel fuel whose sulfur, lubricity, or aromatic levels are outside specification ASTM D 975, Standard Specification for Diesel Fuel Oils, grades 1-D S15, 1-D S500, 2-D S15, or 2-D S500 provided the finished mixture meets pertinent national and local specifications and requirements for these properties.

(10) Biomass-Based Diesel, also referred to as Other Renewable Diesel and Renewable Diesel, must meet the registration requirements for fuels and fuel additives established by the U.S. Environmental Protection Agency under the 2007 42 U.S.C. 7545, comply with ASTM International D975 Standard Specification for Diesel Fuel Oils or other applicable ASTM product specifications, can be used as a finished fuel or fuel blending component, and designated “100% Biomass-Based Diesel”.

(11) Biomass-Based Diesel Blends must comply with ASTM D975 Standard Specification for Diesel Fuel Oils.

(12) Biodiesel Blends, Biomass-Based Blends, or a Combination of Biodiesel and Biomass-Based Diesel Blends Required.

(a) Except as provided in subsection (d) of this section, a retail dealer, nonretail dealer, or wholesale dealer may only sell or offer for sale diesel fuel in Oregon containing;

(i) At least five percent biodiesel by volume, or

(ii) As of January 2, 2012, biomass-based diesel with at least five percent renewable component by volume, or

(iii) Five percent or less biodiesel by volume and five percent or less biomass-based diesel by volume provided the combined total of biodiesel and biomass-based diesel is at least five percent by volume.

(b) Biodiesel blends and biomass-based diesel blends shall contain the volume percent stated to the nearest;

(A) 1 volume percent for blends through 5 volume percent, and

(B) 2 volume percent for blends greater than 5 volume percent through 20 volume percent.

(c) Diesel fuel containing more than five percent biodiesel by volume or biomass-based diesel with more than five percent renewable component by volume must be labeled as required in OAR 603-027-0430.

(d) Exemption. The minimum biodiesel fuel content requirements in OAR 603-027-0420 do not apply to diesel fuel:

(A) Sold or offered for sale for use by railroad locomotives, marine engines, or home heating; or

(B) That otherwise meets the requirements in OAR 603-027-0420 but to which there have been added substances to prevent congealing or gelling of diesel fuel containing biodiesel or biomass-based diesel. This exception applies only to diesel fuel sold or offered for sale during the period from October 1 of any year to February 28 of the following year.

(13) Aviation Gasoline shall meet the requirements of ASTM D 910, “Standard Specification for Aviation Gasoline.”

(14) E85 Fuel Ethanol shall meet the requirements of ASTM D 5798, “Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines.”

(15) M85 Fuel Methanol shall meet the requirements of ASTM D 5797, “Standard Specification for Fuel Methanol (M70-M85) for Automotive Spark-Ignition Engines.”

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

Stat. Auth.: ORS 561.190, 646.905 - 646.990 & 1997 OL Ch. 310 (SB 414)

Stats. Implemented: ORS 646.905 - 646.990, 183 & 1997 OL Ch. 310 (SB 414)

Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 15-2007(Temp), f. & cert. ef. 10-15-07 thru 4-11-08; DOA 20-2007(Temp) f. & cert. ef. 11-29-07 thru 4-11-08; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08; DOA 11-2009(Temp), f. & cert. ef. 7-24-09 thru 1-17-10; DOA 16-2009, f. 12-23-09, cert. ef. 1-1-10; DOA 19-2010, f. & cert. ef. 9-14-10; DOA 7-2011, f. & cert. ef. 1-26-11; DOA 15-2011, f. & cert. ef. 9-9-11; DOA 24-2011, f. & cert. ef. 12-14-11

## 603-027-0430

### Classification and Method of Sale of Petroleum Products

(1) General Considerations:

(a) Documentation.

(A) When gasoline; gasoline-oxygenate blends; reformulated gasoline; M85 and M100 fuel methanol; E85 and E100 fuel ethanol; B100 biodiesel and biodiesel blends; biomass-based diesel and biomass-based diesel blends; diesel fuel; winter or winterized diesel fuel; premium diesel fuel; or aviation gasoline are sold, an invoice, bill of lading, shipping paper or other documentation, must accompany each delivery other than a sale by a retail or nonretail dealer. This document must identify the:

(i) Quantity,

(ii) The name of the product,

(iii) The particular grade of the product,

(iv) The word “Winter” or “Winterized” diesel if applicable,

(v) The word “Premium” diesel if applicable,

(vi) The volume percent biodiesel and biomass-based diesel, if a biodiesel, biodiesel blend, biomass-based diesel, or biomass-based diesel blend through 5 volume percent to the nearest 1 volume percent and for greater than 5 volume percent through 20 volume percent blends to the nearest 2 volume percent,

(vii) The applicable automotive fuel rating,

(viii) The name and address of the seller and buyer,

(ix) The date and time of the sale,

(x) For gasoline-oxygenate and gasoline-alcohol blends which contain more than 1.5 mass percent oxygen, the documentation shall state the oxygenate type and oxygenate content, in volume percent, to the nearest 0.5 volume percent, and

(xi) For non-ethanol blended gasoline the documentation shall state that the gasoline is non-ethanol blended.

(B) Each operator of a bulk facility and each person who imports motor vehicle fuels into this state for sale in this state shall keep, for at least one year, at the person’s registered place of business complete and accurate records of any motor vehicle fuels sold if sold or delivered in this state.

(C) Each biodiesel producer, each operator of a biodiesel bulk facility and each person who imports biodiesel into Oregon for sale in this state shall keep, on a monthly basis for at least one year, at the person’s registered place of business the certificate of analysis and the analysis records for visual appearance tests that are performed upon first receipt at a wholesale facility prior to commingling with existing product for each batch or production lot of biodiesel sold or delivered in Oregon.



# ADMINISTRATIVE RULES

(D) Each biodiesel producer in Oregon shall keep, on a monthly basis for at least one year, at the person's registered place of business, documentation declaring the producer's name, location address, date, and quantity of biodiesel production and sales. This documentation shall be completed on a form provided by the Department of Agriculture and mailed on a quarterly basis to the Department in Salem, Oregon.

(E) All retail dealers, nonretail dealers, and wholesale dealers in Oregon are required to provide, upon request of the Department, evidence of a certificate of analysis for the biodiesel received.

(F) Each ethanol production facility in Oregon shall keep, on a monthly basis for at least one year, at the person's registered place of business, documentation declaring the production facility's name, location address, net ethanol production capacity, the date that the net ethanol capacity was attained, quantity of ethanol produced, and sales in Oregon. This documentation shall be completed on a form provided by the Department of Agriculture and mailed on a quarterly basis to the Department in Salem, Oregon.

(G) Retail dealers and nonretail dealers shall maintain at their facilities the octane rating certification or motor vehicle fuel delivery documentation for the three most recent deliveries to the facility for each grade of gasoline, fuel ethanol, fuel methanol, biodiesel, biodiesel blends, diesel fuel, biomass-based diesel fuel, and biomass-based diesel fuel blends sold or offered for sale.

(b) Retail and Nonretail Gasoline Dispenser Labeling. All retail and nonretail gasoline dispensing devices must identify conspicuously on each face of the dispenser(s),

- (A) The type of product,
- (B) The particular grade of the product,
- (C) Type of oxygenate contained if applicable,

(i) Including the specific volume percent of ethanol in gasoline-ethanol blends stating, for example, "THIS PRODUCT CONTAINS 10% ETHANOL" or other similar language in type at least 12.7 millimeters (1/2 inch) in height, 1.5 millimeter (1/16 inch) stroke (width of type) located on each face and on the upper 50 percent of the dispenser front panels in a position clear and conspicuous from the driver's position,

(ii) Prohibited terms and phrases include but are not limited to, "Contains Up To 10% Ethanol", "May Contain Ethanol", or any other similar language,

- (D) The applicable automotive fuel rating, and

(E) If non-ethanol blended gasoline, other than 91 octane or above, in compliance with OAR 603-027-0420, the dispensers shall be labeled, "NON-ETHANOL BLENDED GASOLINE FOR EXEMPTED USE ONLY (ORS 646.913)" in capital letters and type at least 12.7 millimeters (1/2 inch) in height, 1.5 millimeter (1/16 inch) stroke (width of type) located on each face and on the upper 50 percent of the dispenser front panels in a position clear and conspicuous to the consumer.

(c) Posting of Exceptions for Non-Ethanol Blended Gasoline. The exceptions for non-ethanol blended gasoline, other than 91 octane or above, shall be posted at a business that sells or offers for sale non-ethanol blended gasoline in a position that is clear and conspicuous to the consumer. The exceptions shall be posted:

"NON-ETHANOL BLENDED GASOLINE FOR USE IN THE FOLLOWING APPLICATIONS ONLY;" in capital letters and type at least 6.4 millimeters (1/4 inch) in height, 1 millimeter (1/32 inch) stroke (width of type), followed by,

"AIRCRAFT WITH A SUPPLEMENTAL TYPE CERTIFICATE APPROVED BY THE FEDERAL AVIATION ADMINISTRATION THAT ALLOWS THE AIRCRAFT TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

AIRCRAFT ISSUED A TYPE CERTIFICATE BY AN AIRCRAFT ENGINE MANUFACTURER THAT ALLOWS THE AIRCRAFT TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

AN AIRCRAFT THAT HAS BEEN ISSUED AN EXPERIMENTAL CERTIFICATE, DESCRIBED IN 14 C.F.R. 21.191, BY THE FEDERAL AVIATION ADMINISTRATION AND THAT IS REQUIRED BY THE MANUFACTURER'S SPECIFICATIONS TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

A LIGHT-SPORT AIRCRAFT, AS DEFINED IN 14 C.F.R. 1.1, THAT IS REQUIRED BY THE MANUFACTURER'S SPECIFICATIONS TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

A VINTAGE AIRCRAFT, AS DEFINED BY THE OREGON DEPARTMENT OF AVIATION BY RULE, THAT IS REQUIRED BY THE MANUFACTURER'S SPECIFICATIONS TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

AN ANTIQUE VEHICLE, AS DEFINED IN ORS 801.125;  
A CLASS I ALL-TERRAIN VEHICLE, AS DEFINED IN ORS 801.190;

A CLASS III ALL-TERRAIN VEHICLE, AS DEFINED IN ORS 801.194;

A RACING ACTIVITY VEHICLE, AS DEFINED IN ORS 801.404;  
A SNOWMOBILE, AS DEFINED IN ORS 801.490;

TOOLS, INCLUDING BUT NOT LIMITED TO LAWN MOWERS, LEAF BLOWERS, AND CHAIN SAWS; OR A WATERCRAFT (Reference ORS 646.913)" in capital letters and type at least 3 millimeters (1/8 inch) in height, 0.4 millimeter (1/64 inch) stroke (width of type).

(d) Grade Name. The sale of any product under any posted grade name that indicates to the purchaser that it is of a certain automotive fuel rating or ASTM grade indicated in the posted grade name must be consistent with the applicable standard specified in OAR 603-027-0420 "Standard Fuel Specifications".

(2) Automotive Gasoline and Automotive Gasoline-Oxygenate Blends:

(a) Posting of Antiknock Index Required. All automotive gasoline and automotive gasoline-oxygenate blends shall post the antiknock index in accordance with 16 CFR Part 306.

(b) Use of Lead Substitute Must Be Disclosed. Each dispensing device from which gasoline or gasoline oxygenate blend containing a lead substitute is dispensed shall display the grade name followed by "With a Lead Substitute" (e.g. "Unleaded With a Lead Substitute"). The lettering of the lead substitute declaration shall not be less than 12.7 millimeters (1/2 in) in height and 1.5 centimeters (1/16 in) stroke (width of type). The color of the lettering shall be in definite contrast to the background color to which it is applied.

(c) Prohibition of Terms. It is prohibited to use specific terms to describe a grade of gasoline or gasoline-oxygenate blend unless it meets the minimum antiknock index requirement shown in Table 1.

TABLE 1. MINIMUM ANTIKNOCK INDEX REQUIREMENTS  
The minimum antiknock index for Premium, Super, Supreme and High Test is 91

The minimum antiknock index for Mid Grade and Plus is 89  
The minimum antiknock index for Unleaded with a Lead Substitute is 88

The minimum antiknock index for Regular and Unleaded (alone) is 87

(3) Diesel Fuel:

(a) Labeling of Product and Grade Required. Diesel fuel shall be identified by "Diesel" and grades "No. 1-D S15", "No. 1-D S500", "No. 1-D S5000", "No. 2-D S15", "No. 2-D S500", "No. 2-D S5000", or "No. 4-D". Each retail or nonretail dispenser of diesel fuel shall be labeled "Diesel" and the grade being dispensed.

(b) Location of Label. These labels shall be located on each face and on the upper 50 percent of the dispenser front panels in a position clear and conspicuous from the driver's position, in a type at least 12.7 millimeter (1/2 in) in height, 1.5 millimeter (1/16 in) stroke (width of type).

(4) Winter or Winterized Diesel Fuel:

(a) Labeling of Product and Grade Required. The dispensers of winterized diesel fuel must be labeled as required in OAR 603-027-0430(3)(a) and include the words "WINTERIZED DIESEL" or "WINTER DIESEL" (e.g. "WINTERIZED DIESEL No. 2-D S15").

(b) Location of Winterized Diesel Fuel Label. The location of the winterized diesel label shall be as required in OAR 603-027-0430(3)(b) or on a "pump topper" mounted on top of each winterized diesel dispenser with lettering as specified in OAR 603-027-0430(3)(b) and must be in a position that is clear and conspicuous from the driver's position.

(5) Premium Diesel Fuel :

(a) Labeling of Premium Diesel Required. In addition to labeling requirements specified in OAR 603-027-0430(3), all retail and nonretail dispensers of premium diesel shall be labeled "Premium Diesel" (e.g. "Premium Diesel No. 2-D S15").

(b) Location of Premium Diesel Fuel Label. The location of the premium diesel fuel label shall be located on the upper 50 percent of the dispenser front panels in a position clear and conspicuous from the driver's position, in a type at least 12.7 millimeter (1/2 inch) in height, 1.5 millimeter (1/16 inch) stroke (width of type).

(6) Biodiesel and Biomass-Based Diesel:

(a) Identification of Product.

(A) Biodiesel and biodiesel blends must be identified by the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel. (Examples: B10; B20; B100)

# ADMINISTRATIVE RULES

(B) Biomass-based diesel and biomass-based diesel blends must be identified by the numerical value representing the volume percentage of biomass-based diesel immediately followed by the percentage symbol (%) and then the term “Biomass-Based Diesel” or “Biomass-Based Diesel Blend”. (Examples: “10% Biomass-Based Diesel Blend”; “20% Biomass-Based Diesel Blend”; “70% Biomass-Based Diesel Blend”; “100% Biomass-Based Diesel”.)

(b) Labeling of Retail and Non-Retail Dispensers Containing Between 5% and Up To and Including 20% Biodiesel or Biomass-Based Diesel.

(A) If containing biodiesel, the dispenser(s) must be labeled with either:

(i) The capital letter “B” followed by the numerical value representing the volume percentage of biodiesel fuel and ending with “Biodiesel Blend” (Examples: “B10 Biodiesel Blend”; “B20 Biodiesel Blend”); or

(ii) The phrase, “Biodiesel Blend Between 5% and 20%” or similar words; or

(iii) The Federal Trade Commission (FTC) 2011 16 CFR Part 306 approved label “Biodiesel Blend” that is appropriate for blends from 5% to 20% biodiesel, or “B20 Biodiesel Blend” that is appropriate for 20% biodiesel blends only.

(B) If containing biomass-based diesel, the dispenser(s) must be labeled with either:

(i) “XX% Biomass-Based Diesel Blend” where the abbreviation “XX” represents the volume percentage of biomass-based diesel in the blend; or

(ii) The phrase, “Biomass-Based Diesel Blend Between 5% and 20%” or similar words; or

(iii) The Federal Trade Commission (FTC) 2011 16 CFR Part 306 approved label that is appropriate for biomass-based diesel blends from 5% to 20% biomass-based diesel.

(c) Labeling of Retail and Non-Retail Dispensers Containing More Than 20% Biodiesel or More Than 20% Biomass-Based Diesel.

(A) If containing more than 20% biodiesel, the dispenser(s) must be labeled;

(i) “Consult Vehicle Manufacturer Fuel Recommendations”, posted on the dispenser front panels in a position clear and conspicuous from the driver’s position in block letter type at least 6 mm (1/4 inch) in height by 0.8 mm (1/32) stroke (width of type) and the color must be in definite contrast to the background color to which it is applied; and in addition,

(ii) Separately labeled with the capital letter “B” followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either “Biodiesel” or “Biodiesel Blend” (Examples: “B100 Biodiesel”; “B60 Biodiesel Blend”); or

(iii) The Federal Trade Commission (FTC) 2011 16 CFR Part 306 approved label for biodiesel blends greater than 20% biodiesel.

(B) If containing more than 20% biomass-based diesel, the dispenser(s) must be labeled with:

(i) The numerical value representing the volume percentage of biomass-based diesel immediately followed by the percentage symbol (%) and then the term “Biomass-Based Diesel” or “Biomass-Based Diesel Blend” (Examples: “100% Biomass-Based Diesel”; “70% Biomass-Based Diesel Blend”); or

(ii) The Federal Trade Commission (FTC) 2011 16 CFR Part 306 approved label for biomass-based diesel blends greater than 20% biomass-based diesel.

(d) Documentation for Biodiesel, Biodiesel Blends, Biomass-Based Diesel, and Biomass-Based Diesel Blends. The operator of retail and non-retail dispensers must be provided, at the time of delivery of the fuel, with a declaration of the volume percent biodiesel, biomass-based diesel, or any combination thereof on an invoice, bill of lading, shipping paper, or other document in compliance with OAR 603-027-0430(1)(a).

(e) Exemption.

(A) Biodiesel blends containing 5% or less biodiesel by volume, 5% or less biomass-based diesel by volume, or a combination of 5% or less biodiesel by volume and 5% or less biomass-based diesel by volume, are exempted from the dispenser labeling requirements in OAR 603-027-0430(6) except,

(B) If a dispenser is labeled with any reference to biodiesel or biomass-based diesel and the fuel contains 5% or less biodiesel, 5% or less biomass-based diesel, or 5% or less biodiesel by volume and 5% or less biomass-based diesel by volume, then it must be labeled as appropriate either:

(i) With the capital letter “B” followed by the numerical value representing the volume percentage of biodiesel fuel and ending with “Biodiesel Blend” (Example: “B5 Biodiesel Blend”); or

(ii) With the numerical value representing the volume percentage of biomass-based diesel immediately followed by the percentage symbol (%) and then the term “Biomass-Based Diesel Blend” (Example: “5% Biomass-Based Diesel Blend”); or

(iii) If a combination of biodiesel and biomass-based diesel not exceeding five percent by volume of each product, “Contains Minimum 5% Renewable Fuel” or similar language.

(f) Size of Labeling Type. Except for the FTC 2011 16 CFR Part 306 approved labels and the “Consult Vehicle Manufacturer Fuel Recommendations” labels as specified, all labeling required in OAR 603-027-0430(6), must be in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type).

(7) Aviation Gasoline: Labeling of Grade Required. Aviation gasoline and dispensers shall be identified by and labeled with Grade 80, Grade 100, or Grade 100LL.

(8) E85 Fuel Ethanol:

(a) How to Identify E85 Fuel Ethanol. Fuel ethanol shall be identified as E85. (Example: E85)

(b) Retail or Nonretail E85 Fuel Ethanol Dispenser Labeling.

(A) Fuel ethanol dispensers shall be labeled with its automotive fuel rating in accordance with 16 Code of Federal Regulations Part 306.

(B) A label shall be posted which states, “For Use in Flexible Fuel Vehicles (FFV) Only”. This information shall be posted on the upper 50% of the dispenser front panels in a position clear and conspicuous from the driver’s position, in a type at least 12.7 mm (1/2 inch) in height, 1.5 mm (1/16 inch) stroke (width of type).

(C) A label must be posted that states, “Consult Vehicle Manufacturer Fuel Recommendations”. This label must be posted on the dispenser front panels in a position clear and conspicuous from the driver’s position in block letter type at least 6 mm (1/4 inch) in height by 0.8 mm (1/32 inch) stroke (width of type) and the color must be in definite contrast to the background color to which it is applied.

(9) Fuel Methanol:

(a) Identification of Fuel Methanol. Fuel methanol shall be identified by the capital letter M followed by the numerical value volume percentage of methanol. (Example: M85)

(b) Retail or Nonretail Dispenser Labeling. Each retail or nonretail dispenser of fuel methanol shall be labeled in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type) with the capital letter M followed by the numerical value volume percent methanol and ending with the word “methanol”. (Example: M85 Methanol).

(c) Additional Labeling Requirements. Fuel methanol shall be labeled with its automotive fuel rating in accordance with 16 CFR Part 306.

Stat. Auth.: ORS 561.190, 646.905 - 646.990 & 1997 OL Ch. 310 (SB 414)

Hist.: Implemented: ORS 183, 646.905 - 646.990 & 1997 OL Ch. 310 (SB 414)

Stat.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 15-2007(Temp), f. & cert. ef. 10-15-07 thru 4-11-08; DOA 20-2007(Temp), f. & cert. ef. 11-29-07 thru 4-11-08; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08; DOA 11-2009(Temp), f. & cert. ef. 7-24-09 thru 1-17-10; DOA 16-2009, f. 12-23-09, cert. ef. 1-1-10; DOA 19-2010, f. & cert. ef. 9-14-10; DOA 15-2011, f. & cert. ef. 9-9-11; DOA 24-2011, f. & cert. ef. 12-14-11

## 603-027-0440

### Storage Tanks

(1) Water in Motor Vehicle Fuel Storage:

(a) Water in Gasoline-Alcohol Blends, Biodiesel Blends, E85 Fuel Ethanol, M85 Fuel Methanol, and Aviation Gas. No water or water-alcohol phase greater than six millimeters (1/4 in) as determined by an appropriate detection paste is allowed to accumulate in any tank utilized in the storage of gasoline-alcohol blend, biodiesel, biodiesel blends, E85 fuel ethanol, M85 fuel methanol, and aviation fuel.

(b) Water in Gasoline, Diesel, Biomass-Based Diesel, Biomass-Based Diesel Blends, Gasoline-Ether, and Other Fuels. Water phase shall not exceed 25 mm (1 inch) in depth when measured with water indicating paste in any tank utilized in the storage of diesel, biomass-based diesel, biomass-based diesel blends, gasoline, gasoline-ether blends at retail or nonretail except as required in OAR 603-027-0440(1)(a).

(2) Product Storage Identification:

(a) Fill Connection Labeling.

(A) The fill connection for any motor vehicle fuel or aviation fuel storage tank from which the fuels are dispensed directly into motor vehicle or aircraft fuel tanks shall be permanently, plainly, and visibly marked as to the grade of product contained therein.

# ADMINISTRATIVE RULES

(B) In addition, storage tank fill connections of non-ethanol blended gasoline shall be permanently, plainly, and visibly marked that the product contained therein is non-ethanol blended gasoline.

(b) Declaration of Meaning of Color Code. When the fill connection device is marked by means of a color code, the color code key shall be conspicuously displayed at the place of business.

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & 646.905 - 646.990  
Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183  
Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08; DOA 11-2009(Temp), f. & cert. ef. 7-24-09 thru 1-17-10; DOA 16-2009, f. 12-23-09, cert. ef. 1-1-10; DOA 24-2011, f. & cert. ef. 12-14-11

## 603-027-0490

### Enforcement Proceedings; Civil Penalties

(1) Consolidation of Proceedings: Notwithstanding that each and every violation of these rules and/or 1997 Oregon Laws Chapter 310 is a separate and distinct act and in cases of continuing violations, each day's continuance is a separate and distinct violation, proceedings for a Stop Use, Hold and/or Removal Order, or for the assessment of civil penalties arising from the same conduct or failure to act may be consolidated into a single proceeding.

(2) The Director or the Director's designate shall prescribe a reasonable time for the elimination of the violation prior to imposing a civil penalty, except that if a party fails to abide by the terms of any Stop Use, Hold and/or Removal Order, the Director or the Director's designate may immediately impose a civil penalty in addition to any other remedies provided by law.

(3) Violations occurring after the time prescribed for the elimination of the violation shall be considered repeat violations.

(4) Civil penalties shall be due and payable when the person incurring the penalty receives a Civil Penalty Assessment Notice in writing from the Director or the Director's designate.

(5) A Civil Penalty Assessment Notice, Stop Use Order, Hold Order and/or Removal Order shall be in writing. In addition to the posting providing for by OAR 603-207-0470 for Stop Use, Hold and Removal Orders, these documents shall be served on the owner or operator of the facility by registered mail, certified mail, or in person. The notice shall include, but not be limited to:

(a) A reference to the particular section of the statute and/or administrative rule involved and;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed, if any;

(d) A statement of the person's right to request a hearing if such request is made within ten days of mailing of the notice and an explanation of how a hearing may be requested;

(e) A statement that the notice becomes a final order unless the person upon whom the Stop Use, Hold and/or Removal Order, and /or civil penalty is assessed makes a written request for a hearing within ten days from the date of the mailing of the notice.

(6) A civil penalty imposed under the applicable statutes or these regulations may be remitted or reduced at the Director's discretion upon such terms and conditions that are proper and consistent with public safety and welfare.

(7) Hearing Procedures: All hearings shall be conducted pursuant to the applicable contested case procedures as outlined in ORS 183.310 to 183.550, and the Attorney General's Uniform and Model Rules of Procedure (OAR chapter 137).

(8) Entry of Order and Appeal Rights: If a person notified of the Stop Use, Hold, and/or Removal Order and/or civil penalty fails to request a hearing as specified in OAR 603-027-0490(5)(e), or if after the hearing the person is found to be in violation of the provisions of these rules, a final order may be entered by the Department as follows:

(a) The order shall be signed by the Director or the Director's designate;

(b) If the order is not appealed, or if it is appealed and the order is sustained on appeal, the order shall constitute a judgment and may be recorded with the county clerk in any county of this state. Any penalty provided in the order so recorded becomes a lien upon the title of any interest and real property in the county owned by the person against whom the order is entered.

(9) Penalty schedule: In addition to any other penalty provided by law, the Director may assess a civil penalty for violation of any provision of Oregon Laws 1997, chapter 310 section (7) relating to Motor Fuel Standards Regulation. The amount of any civil penalty shall be determined using the following table and shall not exceed \$10,000. In establishing

penalty assessments within the table (Table 2), the department will consider factors such as the type of violation, the cause(s) of the violation, the economic impact on fuel purchasers, prior history of violations, repetition of violations, and the degree of demonstrated cooperativeness of the fuel seller. [Table not included. See ED. NOTE.]

(10) The commission of each violation has been categorized as to its magnitude of violation as follows:

(a) Gravity 1 (Minor):

(A) Labeling of Dispenser(s) (Ref. OAR 603-027-0430);

(i) Gasoline dispenser(s) not labeled with the identity of the product dispensed;

(ii) Gasoline dispenser(s) not labeled with the identity of the grade dispensed;

(iii) Gasoline dispenser(s) not labeled with the identity of oxygenates;

(iv) Gasoline-ethanol blend dispensers not labeled that the product contains 10% by volume ethanol in compliance with OAR 603-027-0430.

(v) Gasoline dispenser(s) of non-ethanol blended gasoline, other than 91 octane or above, not labeled for exempted use only in compliance with OAR 603-027-0430.

(vi) Exceptions for non-ethanol blended gasoline, other than 91 octane or above, not posted in compliance with OAR 603-027-0430.

(vii) Use of Prohibited Terms. Prohibited terms used to describe the grade of gasoline or gasoline-oxygenate blends. (Ref. OAR 603-027-0430);

(viii) Gasoline dispenser(s) not labeled with the Antiknock Index (AKI) number;

(ix) Gasoline dispenser(s) for lead substitute motor vehicle fuels not properly identified;

(x) Diesel dispenser not labeled with either the identity of the product and/or grade dispensed;

(xi) Location of either the diesel product and/or grade label not on each face and on the upper 50 percent of the dispenser front panels;

(xii) Winter or winterized diesel fuel dispenser(s) not labeled in compliance with OAR 603-027-0430;

(xiii) Premium diesel fuel dispenser(s) not labeled in compliance with OAR 603-027-0430;

(xiv) Aviation gasoline dispenser(s) not labeled with the identity of the grade dispensed;

(xv) Fuel ethanol dispenser(s) not labeled with the correct automotive fuel rating, "For Use In Flexible Fuel Vehicles (FFV) Only", or "Consult Vehicle Manufacturer Fuel Recommendations" in compliance with OAR 603-027-0430;

(xvi) Fuel methanol dispenser(s) not labeled with the correct automotive fuel rating and the identity of the product dispensed;

(xvii) Biodiesel, biodiesel blend, biomass-based diesel, or biomass-based diesel blend fuel dispenser(s) not labeled in compliance with OAR 603-027-0430.

(B) Storage Tank(s); Motor vehicle fuel storage tank(s);

(i) Not correctly identified as to the product contained;

(ii) Not correctly identified that the product contained therein is non-ethanol blended gasoline. (Ref. OAR 603-027-0440)

(C) Documentation; Wholesale Dealer and Bulk Facility (Ref. OAR 603-027-0430):

(i) Incorrect, incomplete, or no documentation of motor vehicle fuels provided to the retail dealer or nonretail dealer at the time of motor vehicle fuel delivery;

(ii) Motor vehicle fuel delivery documentation not maintained for at least one year at the person's registered place of business.

(D) Certificate of Analysis Documentation; Biodiesel Producer, Operator of a Biodiesel Bulk Facility, and each Person Who Imports Biodiesel not keeping on a monthly basis for at least one year, at the person's registered place of business the certificate of analysis for each batch or production lot of biodiesel sold or delivered in Oregon (Ref. OAR 603-027-0430);

(E) Visual Appearance Analysis Documentation; Biodiesel Producer, Operator of a Biodiesel Bulk Facility, and each Person Who Imports Biodiesel not keeping on a monthly basis for at least one year, at the person's registered place of business the analysis records for visual appearance tests that are performed upon first receipt at a wholesale facility prior to commingling with existing product for each batch or production lot of biodiesel sold or delivered in Oregon (Ref. OAR 603-027-0430);

(F) Documentation; Biodiesel Production Facility not keeping, on a monthly basis for at least one year, at the person's registered place of business, documentation declaring the producer's name, location address, date and quantity of biodiesel production and sales (Ref. OAR 603-027-0430);



# ADMINISTRATIVE RULES

(G) Documentation not delivered on a quarterly basis to the Oregon Department of Agriculture declaring the biodiesel producer's name, location address, date and quantity of biodiesel production and sales in compliance with OAR 603-027-0430;

(H) Documentation; Retail Dealer, Nonretail Dealer, and Wholesale Dealer not providing, upon request of the Department, evidence of a certificate of analysis for the biodiesel received (Ref. OAR 603-027-0430);

(I) Documentation; Ethanol Production Facility not keeping, on an annual basis by month, at the person's registered place of business, documentation declaring the production facility's name, location address, net ethanol production capacity, the date that the net ethanol capacity attained, quantity of ethanol produced, and sales in Oregon.

(J) Documentation declaring the ethanol facility's name, location address, net ethanol production, date, quantity of ethanol produced, and sales in Oregon not delivered to the Oregon Department of Agriculture on a quarterly basis in compliance with OAR 603-027-0430;

(K) Documentation; Retail Dealer and Nonretail Dealer (Ref. OAR 603-027-0430); Octane rating certification or motor vehicle fuel delivery documentation not maintained at their facilities for the three most recent deliveries to the facility for each grade of gasoline, fuel ethanol, fuel methanol, biodiesel, biodiesel blends, diesel fuel, biomass-based diesel fuel, and biomass-based diesel fuel blends sold or offered for sale.

(b) Gravity 2 (Moderate):

(A) Storage Tank(s);

(i) Water phase in motor vehicle fuel storage tank(s) for gasoline-alcohol blends, B100 Biodiesel, Biodiesel Blends, E85 fuel ethanol, M85 fuel methanol, and aviation fuel exceed allowable limits (Ref. OAR 603-027-0440);

(ii) Water phase in motor vehicle fuel storage tank(s) for gasoline, diesel, biomass-based diesel, biomass-based diesel blends, gasoline-ether, and other fuels exceed allowable limits (Ref. OAR 603-027-0440).

(c) GRAVITY 3 (Major):

(A) Automotive fuel rating of the gasoline does not meet the minimum antiknock index (AKI) posted on the dispenser or certified on the invoice, bill of lading, shipping paper, or other documentation. (Ref. OAR 603-027-0420 and 603-027-0430);

(B) Gasoline minimum motor octane number is less than 82 for gasoline with an AKI of 87 or greater;

(C) Gasoline does not meet ASTM standards (Ref. OAR 603-207-0420);

(D) Gasoline offered for sale with a lead substitute that does not meet requirements for a lead substitute gasoline. (Ref. OAR 603-027-0420);

(E) Ethanol intended for blending with gasoline does not meet the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel". (Ref. OAR 603-027-0420);

(F) Gasoline sold or offered for sale does not meet gasoline-ethanol blend requirements (Ref. OAR 603-027-0420);

(G) Gasoline Additive Restrictions: A wholesale dealer, retail dealer, or nonretail dealer selling or offering for sale gasoline blended or mixed with prohibited additives. (Ref. OAR 603-027-0420);

(H) Diesel fuel offered for sale does not meet ASTM standards (Ref. OAR 603-027-0420);

(I) Winter or Winterized diesel fuel offered for sale does not meet Standard Fuel Specifications (Ref. OAR 603-027-0420);

(J) Premium diesel fuel offered for sale does not meet Standard Fuel Specifications (Ref. OAR 603-027-0420);

(K) Biodiesel intended for blending with diesel fuel does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420);

(L) Biodiesel blend offered for sale does not meet fuel specifications (Ref. OAR 603-027-0420);

(M) Each batch or production lot of biodiesel produced in or imported into Oregon not analyzed and issued a Certificate of Analysis prior to blending, sale, or offered for sale in Oregon. (Ref. OAR 603-027-0420);

(N) Biodiesel Certificate of Analysis expired prior to blending, sale, or offer for sale in Oregon. (Ref. OAR 603-027-0420);

(O) Biodiesel not analyzed for and complying with the visual appearance test (ASTM D 4176) upon its first receipt at a wholesale facility and prior to commingling with existing product. (Ref. OAR 603-027-0420);

(P) Biodiesel not analyzed and the Certificate of Analysis issued by a motor fuel laboratory complying with OAR 603-027-0420 prior to blending, sale, or offer for sale in Oregon. (Ref. OAR 603-027-0420);

(Q) Biomass-based diesel sold or offered for sale does not meet fuel specifications (Ref. OAR 603-027-0420);

(R) Biomass-based diesel blends sold or offered for sale do not meet fuel specifications (Ref. OAR 603-027-0420);

(S) Diesel fuel sold or offered for sale does not meet diesel-biodiesel and biomass-based diesel blend requirements. (Ref. OAR 603-027-0420);

(T) Biodiesel, biodiesel blends, biomass-based diesel, biomass-based diesel blends, or any combination thereof content not to nearest 1 volume percent for blends through 5 percent by volume or not to nearest 2 volume percent for blends greater than 5 percent by volume through 20 percent by volume (Ref. OAR 603-027-0420);

(U) Aviation gasoline does not meet the requirements of ASTM D 910, "Standard Specification for Aviation Gasolines". (Ref. OAR 603-027-0420);

(V) E85 Fuel Ethanol offered for sale does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420);

(W) M85 Fuel Methanol offered for sale does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420).

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & 646.905 - 646.990  
Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183  
Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 12-2006, f. & cert. ef. 9-26-06; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08; DOA 11-2009(Temp), f. & cert. ef. 7-24-09 thru 1-17-10; DOA 16-2009, f. 12-23-09, cert. ef. 1-1-10; DOA 19-2010, f. & cert. ef. 9-14-10; DOA 24-2011, f. & cert. ef. 12-14-11

## Department of Agriculture, Oregon Trawl Commission Chapter 656

**Rule Caption:** Amending the basis for assessment of trawl landings.

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

**Filed with Sec. of State:** 11-30-2011

**Certified to be Effective:** 11-30-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 656-010-0000, 656-010-0010

**Subject:** For 2011, the Pacific Fishery Management Council implemented a Groundfish trawl Rationalization Catch Share Program (GTRCSP). The program allows trawl vessels to switch gear types and use pots and longline gear to harvest species identified as part of the trawl quota.

The current assessment definition for trawl-landed quota "fish and shellfish taken (produced) be ocean trawling" was sufficient to cover the activities of the trawl fleet until the 2011 GTRCSP program. The GTRCSP program's gear switching provision makes it necessary to modify the definition to that all trawl quota is treated equally for assessment purposes.

**Rules Coordinator:** Brad Pettinger—(541) 469-7830

### 656-010-0000

#### Definition

(1) Ocean trawling is defined as using a trawl vessel with a federal 'A' permit to harvest groundfish as identified by the Pacific Fishery Management Council within the allotted trawl quota or by harvesting any other species with a trawl net (e.g. pink shrimp, *Pandalus jordani*). The trawl vessel uses a trawl net, other gear types, or any combination thereof in harvesting.

(2) "Trawl Net" means a bag-shaped net composed of wings, body, intermediate and cod-end section, held open by two boats, otter boards, trawl doors, or a fixed beam frame commonly known as a "beam trawl". The cod-end section is the last 50 meshes of a trawl net. The intermediate section is the next 50 meshes forward of the cod-end section.

(3) Other gear types are defined as pot and longline gear.

Stat. Auth.: ORS 576  
Stats. Implemented: ORS 576  
Hist.: OTC 1-1981, f. & ef. 8-17-81; OTC 1-2011, f. & cert. ef. 11-30-11

### 656-010-0010

#### Assessment

Any person who is a first purchaser as defined in ORS Chapter 576 shall deduct and withhold an assessment at the rate of ½% (0.5 percent) on the full amount of the delivered product of fish and shellfish taken (produced) by ocean trawling. This assessment deduction shall be made upon the boat portion of incoming revenue thereof, for fish and shellfish taken (produced) by ocean trawling and delivered to an Oregon Port.

Stat. Auth.: ORS 576  
Stats. Implemented: ORS 576

# ADMINISTRATIVE RULES

Hist.: OTC 3, f. 12-18-63, ef. 1-1-64; OTC 4, f. 9-19-67, ef. 10-1-67; OTC 5, f. 3-19-69, ef. 4-1-69; OTC 1-1997, f. & cert. ef. 5-14-97; OTC 1-2001, f. 3-7-01, cert. ef. 4-1-01; OTC 1-2011, f. & cert. ef. 11-30-11

.....  
**Department of Community Colleges  
and Workforce Development  
Chapter 589**

**Rule Caption:** National Career Readiness Certificate (NCRC) Program.

**Adm. Order No.:** DCCWD 3-2011

**Filed with Sec. of State:** 12-9-2011

**Certified to be Effective:** 12-9-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 589-007-0700

**Subject:** This rule amendments provides housekeeping only and does not change the intent of the original rule. On August 1, 2011, the agency submitted a technical rule request to the Secretary of State changing the rule title from Career Readiness Certificate Program to the National Career Readiness Certificate Program. This rule amendment corrects two program references and reorganizes the order of Participant's Eligibility Criteria.

**Rules Coordinator:** Linda Hutchins—(503) 947-2456

**589-007-0700**

**National Career Readiness Certificate (NCRC) Program**

(1) The purpose of the National Career Readiness Certification (NCRC) program is to prepare Oregonians for the workplace and for college as a part of implementing an integrated workforce delivery system that focuses on developing the skills and talents of Oregonians.

(2) The NCRC in Oregon will provide individuals with documented, transportable, skills-based certificates. Employers will recognize the NCRC as a meaningful credential and will have confidence that certificate holders have the skills necessary to be successful in the workplace.

(3) The Department of Community Colleges and Workforce Development (CCWD) implements the statewide program for the National Career Readiness Certificate called for in Section 2, HB 2398, 2009 session.

(4) CCWD shall execute and oversee statewide implementation of the National Career Readiness Certificate. Implementation and administration of the NCRC must involve, at a minimum, developing and establishing policies and procedures for:

- (a) Initial skills review assessments to identify participant's skill levels;
- (b) Targeted instruction and remedial skill-building for participants;
- (c) Foundational skills assessments for participants;
- (d) Training of staff to administer assessments based on established guidelines;
- (e) Delivery site criteria and validation of these criteria;
- (f) Quality assurance processes;
- (g) Development of systems to collect, track and maintain data;
- (h) Participant's eligibility criteria:

(A) Must be a citizen or national of the United States, lawfully admitted permanent resident alien, refugee, asylee, or parolee, or other immigrant authorized by the Attorney General to work in the United States;

(B) Must be a resident of Oregon, Washington, or Idaho;

(C) Must comply with NCRC assessment-taking procedures and requirements as outlined in American College Testing (ACT) test coordinator manual and directions for administration.

(5) Services provided by the NCRC program shall include, but are not limited to:

(a) An assessment process that includes an initial skills review and a foundational skills assessment of examinees in reading for information, applied mathematics, and locating information at a minimum;

(b) Targeted and accelerated instruction and remedial skills training to increase foundational skills for participants as determined by the assessment process;

(c) Issuance of a National Career Readiness Certificate to any eligible individual who earns a minimum score of a 3 on each of the NCRC assessments for reading for information, applied mathematics, and locating information:

(A) Certificates issued to examinees on successful completion of the assessments must describe the skills demonstrated by the examinee as evidence of the individual's readiness for employment;

(B) Each of the NCRC assessments shall be scored on a scale of three to seven. The level of credential examinees receive is based on the following:

(i) A bronze-level certificate requires a minimum score of three or above on each of the assessments.

(ii) A silver-level certificate requires a minimum score of four or above on each of the assessments.

(iii) A gold-level certificate requires a minimum score of five or above on each of the assessments.

(iv) A platinum-level certificate requires a minimum score of six or above on each of the assessments.

(6) The results of the NCRC assessments must be used, at a minimum, to determine career readiness as determined by general skills requirements and job profiles; and to determine additional instructional needs for the participant in reading, locating information, and applied mathematics, or other, additional assessments needed or required.

(7) CCWD shall provide participants with the opportunity to agree to opt out of the NCRC database by informing the Agency in writing, by mail, and with examinee's signature that he or she wants to opt out of the database.

(8) CCWD shall conduct periodic studies of the assessments used in Oregon to document Essential Skill for high school graduation to compare their effectiveness in preparing graduates for successful transition to post-secondary education and the workplace.

Stat. Auth.: ORS 183, 660.318 & 660.330 - 660.339

Stats. Implemented:

Hist.: DCCWD 2-2009(Temp), f. & cert. ef. 7-15-09 thru 1-8-10; DCCWD 6-2009, f. & cert. ef. 12-14-09; DCCWD 3-2011, f. & cert. ef. 12-9-11

.....

**Rule Caption:** Oregon On-the-Job training Program.

**Adm. Order No.:** DCCWD 4-2011

**Filed with Sec. of State:** 12-9-2011

**Certified to be Effective:** 12-9-11

**Notice Publication Date:** 10-1-2011

**Rules Adopted:** 589-007-0800

**Subject:** Senate Bill 5508 (section 31), passed in the 2011 legislative session, directs the Department of Community Colleges and Workforce Development to fund and implement the Oregon On-the-Job training Program and to further fund the National Career Readiness Certificate (NCRC) Program. These programs support the governor's workforce agenda by providing solutions to workplace training, retention and advancement for Oregonians.

**Rules Coordinator:** Linda Hutchins—(503) 947-2456

**589-007-0800**

**Oregon On-the-Job Training (OJT) Program**

(1) The purpose of the Oregon On-the-Job Training (OJT) Program is to support the Governor's Workforce agenda by providing OJT and the National Career Readiness Certificate (NCRC) as solutions relating to employee hiring, training, and retention as defined by SB 5508.

(2) The Department of Community Colleges and Workforce Development (CCWD) determines the statewide implementation and operation of the OJT Program in Oregon.

(3) The OJT Program in Oregon shall involve at a minimum:

(a) Cost-effective solutions to the issues of employee hiring, training, and retention;

(b) Utilization of public and private resources;

(c) Certification of career readiness skills for participants as defined by the National Career Readiness Certificate;

(d) Employer provided, job-specific training for Oregonians newly hired under this program;

(e) A process to identify appropriate companies and job seekers to participate in the programs;

(f) A process by which monies may be appropriated and allocated to the local workforce investment boards to support projects identified by local workforce investment areas;

(g) Employer reimbursement schedules will follow local policies.

(4) Tracking and reporting to CCWD the outcomes of the Oregon On-the-Job Training Program in the local workforce investment area shall include, but are not limited to:

(a) The number of employers participating in the program;

(b) The number of employees completing training;

(c) The number of employees retained after completing training;

(d) Types of jobs filled by occupational codes;

(e) Characteristics of the unemployed being placed into OJTs;

# ADMINISTRATIVE RULES

(f) The number of participants that earn National Career Readiness Certificates;

(g) Signed NCRC letters of commitment from OJT employers to “prefer” job candidates that have an NCRC.

Stat. Auth.: ORS 183, 660.300 - 660.364

Stats. Implemented:

Hist.: DCCWD 2-2011(Temp), f. & cert. ef. 7-29-11 thru 1-25-12; DCCWD 4-2011, f. & cert. ef. 12-9-11

\*\*\*\*\*

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

**Rule Caption:** Repeals duplicative and unneeded rules relating to credit service organizations.

**Adm. Order No.:** FCS 10-2011

**Filed with Sec. of State:** 11-23-2011

**Certified to be Effective:** 11-23-11

**Notice Publication Date:** 10-1-2011

**Rules Repealed:** 441-830-0010, 441-830-0015, 441-830-0020, 441-830-0030, 441-830-0040

**Subject:** Until 2009, Oregon law required credit service organizations – entities registered improve a consumer’s credit record or to help obtain an extension of credit for a consumer – to register with DCBS. In 2009, the Legislature enacted House Bill 2191 (2009 OR Laws Ch. 604; the Act). The Act consolidated statutes regulating the practices of credit service organization and debt consolidation agencies into a single series. As part of the consolidation section 27 of the Act, a provision that was not codified in the Oregon Revised Statutes, repealed the existing provisions of law governing credit service organizations. However, several existing rules that implemented the credit service organization statutes remained in the administrative rules compilation. This rulemaking removes these duplicative and unneeded rules relating to credit service organizations.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

\*\*\*\*\*

**Rule Caption:** Establishes process and criteria for determining applicability of mortgage loan originator licensing to nonprofit organizations.

**Adm. Order No.:** FCS 11-2011

**Filed with Sec. of State:** 11-23-2011

**Certified to be Effective:** 11-23-11

**Notice Publication Date:** 10-1-2011

**Rules Adopted:** 441-880-0005, 441-880-0006, 441-880-0007, 441-880-0008

**Subject:** In response to the recent housing crisis, the Congress enacted the S.A.F.E. Mortgage Licensing Act of 2008 (Pub. L. 110-289). The S.A.F.E. Act sets minimum standards for the states to adopt for the licensing of mortgage loan originators; i.e., individuals that take mortgage loan applications and negotiate mortgage loan terms. After passage of the federal law and implementation at the state level, various groups raised concerns that the S.A.F.E. Act could apply to nonprofit organizations and government entities engaged in loan origination activities. In response, the U.S. Department of Housing and Urban Development issued final regulations in July 2011 (see 76 Fed. Reg. 38464). HUD determined that the S.A.F.E. Act applies to businesses, not “bona fide” nonprofit organizations and government entities. HUD’s interpretation required states to establish criteria for the nonprofit organization to be considered bona fide, for purposes of the S.A.F.E. Act, and to establish a basic process for making the determination. The adopted rules establish the process and criteria used to determine when a nonprofit organization is bona fide and clarifies that certain government employees need not obtain mortgage loan originator licenses.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

## 441-880-0005

### Application of ORS 86A.200 to 86A.239 to Employees of Agencies of the United States, State Agencies, Local Governments and Housing Authorities

As permitted by 24 C.F.R. § 3400.103(e)(6), the licensing provisions of ORS 86A.200 to 86A.239 do not apply to an employee of an agency of the United States, the executive department, a local government, a special government body, or a housing authority. The application of this rule is self-executing. For purposes of this rule:

(1) “Executive department” has the same meaning as the term is defined in ORS 174.112.

(2) “Local government” has the same meaning as the term is defined in ORS 174.116.

(3) “Special government body” has the same meaning as the term is defined in ORS 174.117.

(4) “Housing authority” has the same meaning as that term is used in ORS chapter 456.

Stat. Auth.: ORS 86A.242

Stat. Implemented: ORS 86A.203

Hist.: FCS 11-2011, f. & cert. ef. 11-23-11

## 441-880-0006

### Application of ORS 86A.200 to 86A.239 to Employees of Bona Fide Nonprofit Organizations

(1) As permitted by 24 C.F.R. § 3400.103(e)(7), the licensing provisions of ORS 86A.200 to 86A.239 do not apply to an employee of a bona fide nonprofit organization as that term is described by criteria established in OAR 441-880-0008, including a limited liability company of which the nonprofit corporation is the sole member, and subject to the following conditions:

(a) The employee may not originate residential mortgage loans outside the scope of the employee’s duties and employment at the bona fide nonprofit organization without obtaining a mortgage loan originator license.

(b) The employee shall act as a mortgage loan originator only with respect to residential mortgage loans with terms that are in the best interest of the borrower, as that term is described by criteria established in OAR 441-880-0008.

(2) For purposes of OAR 441-880-0006 through 441-880-0008, “employee” has the same meaning as the criteria listed in OAR 441-850-0005, as applied to the nonprofit organization.

Stat. Auth.: ORS 86A.242

Stat. Implemented: ORS 86A.203

Hist.: FCS 11-2011, f. & cert. ef. 11-23-11

## 441-880-0007

### Process for Determining if Nonprofit Organization is Bona Fide

As required by 24 C.F.R. § 3400.103(e)(7)(ii), the process for determining whether a nonprofit organization is a bona fide nonprofit organization is as follows:

(1) A nonprofit organization may request in writing that the director determine whether the nonprofit organization is a bona fide nonprofit organization with respect to the licensing of employees as mortgage loan originators under ORS 86A.200 to 86A.239. The nonprofit organization shall supply all information and documentation necessary for the director to make a determination that the nonprofit organization meets the criteria established in 441-880-0008 in a timely manner. If the nonprofit organization registers a member-managed limited liability company for the purpose of loan origination activities, the determination request and supporting documentation must be provided by and address the limited liability company. The request will be denied if the nonprofit organization fails to provide documents requested by the director within 30 days following the request.

(2) A nonprofit organization shall submit, at a minimum, all the following information:

(a) The determination letter or other indicia from the Internal Revenue Service recognizing the nonprofit organization as exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3).

(b) The nonprofit organization’s organizing documents, including articles of incorporation filed under ORS 65.047 and bylaws filed under ORS 65.061.

(c) The nonprofit organization’s evidence of registration as a charitable organization with the Attorney General under ORS 128.650.

(d) The most recent report filed with the Attorney General under ORS 128.670 detailing the nature of the assets held by the nonprofit organization and the administration of those assets by the organization.



## ADMINISTRATIVE RULES

(e) The nonprofit organization's most recent Form 990, Return of Organization Exempt from Income Tax, filed by the nonprofit organization.

(f) If not included within the nonprofit organization's Form 990 tax return, a description of the compensation and incentive structure for employees subject to any determination under these rules.

(g) A description of each loan program provided by the nonprofit organization, including a description of eligibility, purpose, loan terms, key features and servicing or securitization plans, if any.

(h) A copy of the nonprofit organization's complaint process, as required by 441-880-0008.

(i) Other information as requested by the director.

(3)(a) An employee of a nonprofit organization that has requested that the director make a determination that the organization is a bona fide nonprofit organization, and where the statements in such application are true and correct at the time made, is not subject to the licensing requirements of ORS 86A.200 to 86A.239 during the time that the director is making the determination.

(b) An employee of a nonprofit organization entity that has not requested that the director determine if the organization is a bona fide nonprofit organization is subject to the licensing requirements of ORS 86A.200 to 86A.239.

(4) A determination by the director on the application of ORS 86A.200 to 86A.239 to employees of bona fide nonprofit organizations, or during the period of time when the director is making a determination under (2)(a) of this rule, does not relieve the nonprofit organization from meeting any applicable requirements of laws other than ORS 86A.200 to 86A.239, including but not limited to federal and state laws related to lending, charitable activities or consumer protection.

(5)(a) A nonprofit organization determined by the director to be a bona fide nonprofit organization with respect to the licensing of employees as mortgage loan originators under ORS 86A.200 to 86A.239 shall submit to the director at least annually a certification that the nonprofit organization continues to meet the criteria under which the nonprofit organization requested a determination under this rule.

(b) The nonprofit organization shall attach with the certification the most recent financial audit performed by an independent third-party auditor including, but not limited to, audits performed on nonprofit organizations receiving federal funds according to OMB Circular A-133, published by the Office of Management and Budget and in effect as of the adoption of this rule.

(c) A nonprofit organization determined by the director to be a bona fide nonprofit organization with respect to the licensing of employees as mortgage loan originators under ORS 86A.200 to 86A.239 shall disclose to the director any significant changes to the materials submitted under this rule or to the nonprofit organization's operations affecting a determination under ORS 441-880-0008 as soon as is practicable.

(6)(a) In addition to the certifications required under this section, the director shall be authorized to periodically examine the books and activities of an organization determined to be a bona fide nonprofit organization by the director for compliance with OAR 441-880-0008.

(b) If the director determines that a nonprofit organization no longer satisfies the criteria established in OAR 441-880-0008, the director shall, subject to ORS chapter 183, rescind the director's determination that the organization's is a bona fide nonprofit organization with respect to the licensing of employees as mortgage loan originators under ORS 86A.200 to 86A.239.

(c) An examination under this section is an audit or examination for purposes of OAR 441-860-0110.

Stat. Auth.: ORS 86A.242

Stat. Implemented: ORS 86A.203

Hist.: FCS 11-2011, f. & cert. ef. 11-23-11

### 441-880-0008

#### Criteria for Determining if Nonprofit Organization is Bona Fide

As required by 24 C.F.R. § 3400.103(e)(7)(ii), a bona fide nonprofit organization is an organization that meets all of the following criteria:

(1) The nonprofit organization has been granted a tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3).

(2) The nonprofit organization promotes affordable housing, provides homeownership education, or provides similar services.

(3) The nonprofit organization conducts its activities in a manner that serves public or charitable purposes.

(4) The director may consider the following activities conclusive when making a determination under this section: (A) Making loans for the

purpose of providing assistance for downpayments, closing costs, or other home purchase subsidies;

(B) Making loans for the purpose of funding housing rehabilitation projects;

(C) Making loans for the purpose of providing energy efficiency assistance; or

(D) Making loans for the purpose of avoiding or preventing foreclosure.

(b) For purposes of this section, organizations that engage in the brokering of mortgage loans in a manner that would require a license under ORS 86A.100(5) will not be considered to have conclusively met the presumption in subsection (a).

(4) The nonprofit organization charges no more in fees than is necessary to support the organization's loan origination program activities. The director may consider recordation fees, application fees and housing counseling fees that together do not exceed one percent of the principal of loan as conclusive when making a determination under this section.

(5) The nonprofit organization compensates its employees in a manner that does not incentivize employees to act other than in the best interests of the borrower. For purposes of this section, compensation based on loan volume, loan terms, or other measures of performance will not be considered to have conclusively met the presumption that the nonprofit organization compensates employees in a manner that does not incentivize employees to act other than in the best interests of the borrower.

(6) The nonprofit organization provides for the borrower residential mortgage loans that are consistent with loan origination in a public or charitable context, that contain terms in the best interest of the borrower, and that are comparable to mortgage loans and housing assistance provided under government housing assistance programs. The director may consider any one of the following loan terms conclusive when making a determination that a loan is made in the best interest of the borrower:

(a) Loan terms that do not charge a recipient for the accrual of interest;

(b) Loan terms that charge interest at below market rates;

(c) Loan terms that require a borrower to qualify for the loan by the contribution of sweat equity;

(d) Loan terms that forgive repayment in whole or in part, whether over a period of time, on a specified date, or subject to ownership or occupancy conditions; or

(e) Loan terms that defer repayment for a minimum amount of time, until the residential dwelling is sold, or until the recipient no longer occupies the residential dwelling. This subsection does not apply to home equity conversion mortgages, commonly known as reverse mortgages.

(f) A loan whose terms restrict the use of the property by the borrower to the borrower's principal residence shall not be deemed to be a term that is unfavorable to the borrower so long as the loan otherwise qualifies under subsections (a) through (e) of this rule.

(7) The nonprofit organization requires or provides to employees subject to 441-880-0006 training on state and federal fair lending laws and consumer protection laws that are relevant to the loan origination services that the nonprofit organization provides to its borrowers. The director may consider training in one or more of the following laws directly related to the nonprofit organization's loan origination activities conclusive when making a determination under this section:

(a) The Equal Credit Opportunity Act, 15 U.S.C. § 1601 et seq. and Regulation B, 12 C.F.R. Part 202.

(b) The Truth in Lending Act, 15 U.S.C. § 1601 et seq. and Regulation Z, 12 C.F.R. Part 226.

(c) The Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq. and Regulation V, 12 C.F.R. Part 216.

(d) The Home Ownership and Equity Protection Act, 15 U.S.C. § 1639 et seq.

(e) The Home Mortgage Disclosure Act, 12 U.S.C. § 2801 et seq. and Regulation C, 12 C.F.R. Part 203.

(f) The Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq. and regulations implementing the Act, 24 C.F.R. Part 3500.

(g) The Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.

(h) Portions of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809 and §§ 6821-6827, and regulations implementing the Act, 16 CFR Part 314, that relate to the privacy of consumers' personal financial information.

(i) The S.A.F.E. Mortgage Licensing Act of 2008, 12 U.S.C. § 5101 et seq., and regulations implementing the Act, 12 C.F.R. Part 3400.

(8) The nonprofit organization requires a state criminal records check of each individual employed by the nonprofit organization to engage, in whole or in part, in loan origination activities.

# ADMINISTRATIVE RULES

(9) The nonprofit organization requires or provides continuing education on state and federal fair lending laws and consumer protection laws referenced under section (8) of this rule that are relevant to the loan origination services that the nonprofit organization provides to its borrowers.

(10) The nonprofit organization implements and administers a complaint process that, at a minimum, provides a process for receiving complaints from borrowers and creates a record of the resolution of the complaint, if any.

Stat. Auth.: ORS 86A.242  
Stat. Implemented: ORS 86A.203  
Hist.: FCS 11-2011, f. & cert. ef. 11-23-11

\*\*\*\*\*

**Rule Caption:** Repeals additional counseling fee for debt management service providers in accordance with statutory sunset.

**Adm. Order No.:** FCS 12-2011

**Filed with Sec. of State:** 12-15-2011

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

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

**Rules Amended:** 441-910-0000

**Rules Repealed:** 441-910-0092

**Subject:** During the 2009 regular session, the Legislature passed House Bill 2191 to govern the activities of debt management service providers. As part of the updated law, the Legislature placed statutory limits on the amount of fees that a registered debt management service provider could charge, including for counseling clients. During deliberations on the fee limits, the Legislature authorized a temporary, additional counseling fee that a registered debt management service provider may charge. In implementing the bill, the Department of Consumer and Business Services (DCBS) adopted rules clarifying under what circumstances a registered debt management service provider could charge the additional counseling fee. On January 1, 2012, the authority in statute for the additional counseling fee sunsets and will no longer be in force. Because the underlying authority for the rules will no longer be in force, DCBS is repealing these implementing rules. The repeal itself will be effective as of January 1, 2012.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

## 441-910-0000

### Definitions

The definitions of terms used in ORS 697.602 and the rules of OAR chapter 441, division 910 are:

(1) “Act as a broker” or “brokering” includes any of the following activities undertaken for the payment of money or other valuable consideration:

(a) Soliciting or receiving an application from a consumer for a debt management service;

(b) Providing a consumer’s name, address or other information that identifies the consumer to a debt management service provider for the purpose of arranging the provision of a debt management service;

(c) Referring a consumer to another debt management service provider, if the person is a debt management service provider; or

(d) Forwarding or providing a completed application for a debt management service to a debt management service provider.

(2) “Advantageous to the consumer” means a plan for a debt management service that places a consumer in a more favorable or beneficial position in relation to the consumer’s debt than if the consumer did not agree to debt management services, taking into consideration the suitability of the proposed services and the customer’s ability to pay for services. A plan under this section includes, but is not limited to, the following:

(a) A plan that improves or preserves a consumer’s credit record, history or rating;

(b) A plan that enables a consumer to obtain or use credit in the future; or

(c) A plan that obtains favorable or beneficial changes to the principal, interest, loan term, or other key terms of an existing debt obligation.

(3) “An activity for which a person receives money or other valuable consideration or expects to receive money or other valuable consideration” under ORS 697.602 does not include a negotiation, an offer, an attempt or an agreement to negotiate the sale, exchange, purchase, rental or leasing of real estate by a licensed real estate broker if:

(a) The sale price of the real estate is for an amount that is less than the amount of the seller’s outstanding obligation on the home loan, commonly known as a short sale; and

(b) The real estate broker receives compensation that is usual and customary for a real estate broker and under the terms of an executed real estate contract with the debtor as a real estate seller.

(4) “Director” means the Director of the Department of Consumer and Business Services.

(5) “Trust account” means an account held at an insured institution taking deposits at its headquarters in Oregon or a branch in Oregon into which all funds received or handled on behalf of Oregon consumers by the debt management service provider are initially deposited.

Stat. Auth.: ORS 697, 2009 OL ch. 604, § 21  
Stats. Implemented: ORS 697.632  
Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0000; FCS 4-2005, f. 12-8-05, cert. ef. 1-1-06; FCS 5-2009(Temp), f. & cert. ef. 8-14-09 thru 2-9-10; FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10; FCS 12-2011, f. 12-15-11, cert. ef. 1-1-12

\*\*\*\*\*

**Rule Caption:** Amends contact information required for inclusion in foreclosure notice form to meet statutory sunset.

**Adm. Order No.:** FCS 13-2011(Temp)

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 12-15-11 thru 6-12-12

**Notice Publication Date:**

**Rules Amended:** 441-505-3046, 441-710-0540, 441-730-0246, 441-850-0042

**Subject:** Since 2008, Oregon law on nonjudicial foreclosures has required a trustee recording a notice of default with a county clerk to deliver to a homeowner a foreclosure notice form. The foreclosure notice form is written into state statute, but contains blanks for certain contact information that the sender must provide in the foreclosure notice. This contact information includes a statewide contact telephone number, the telephone numbers and a website address for the Oregon State Bar’s Lawyer Referral Service, and a website address for a directory of legal aid programs. The Department of Consumer and Business Services (DCBS) by law is required to provide the resource telephone contact numbers and website addresses the sender is to insert in completing the notice.

In 2009, the Oregon Legislature added new information on loan modification resources to the foreclosure warning form. Uncodified provisions of the law (Section 9) repealed, among other things, the new requirement to include information loan modification resources as of January 2, 2012. This rulemaking activity implements the sunset provision by removing the loan modification information required to be displayed on the foreclosure warning form. Because the sunset provision takes effect on January 2, 2012, failure to adopt rules promptly will result in serious prejudice to users receiving a foreclosure notice form and recipients filling out and providing a foreclosure notice form.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

## 441-505-3046

### Contents of Foreclosure Notices

The sender of a notice form required by 2008 Or Laws, ch. 19, § 20 and as amended by 2009 Or Laws ch. 864, § 1 (Enrolled Senate Bill 628) must enter in the form and format adopted by this rule:

(1) The statewide telephone contact number for handling consumer queries as **800-SAFENET (800-723-3638)**

(2) The telephone number of the Oregon State Bar’s Lawyer Referral Service as **503-684-3763**;

(3) The Oregon State Bar’s Lawyer Referral Service toll-free number as **800-452-7636**;

(4) The website address of the Oregon State Bar as **http://www.osbar.org**;

(5) The website address for the organization providing more information and a directory of legal aid programs as **http://www.oregonlawhelp.org**;

Stat. Auth.: ORS 86.737  
Stats. Implemented: ORS 86.737  
Hist.: FCS 9-2008, f. 10-15-08, cert. ef. 10-16-08; FCS 6-2009(Temp), f. 8-21-09 thru 2-17-10; FCS 11-2009, f. 12-2-09, cert. ef. 12-7-09; FCS 13-2011(Temp), f. & cert. ef. 12-15-11 thru 6-12-12

# ADMINISTRATIVE RULES

## 441-710-0540

### Contents of Foreclosure Notices

The sender of a notice form required by 2008 Or Laws, ch. 19, § 20 and as amended by 2009 Or Laws ch. 864, § 1 (Enrolled Senate Bill 628) must enter in the form and format adopted by this rule:

- (1) The statewide telephone contact number for handling consumer queries as **800-SAFENET (800-723-3638)**
- (2) The telephone number of the Oregon State Bar's Lawyer Referral Service as **503-684-3763**;
- (3) The Oregon State Bar's Lawyer Referral Service toll-free number as **800-452-7636**;
- (4) The website address of the Oregon State Bar as **http://www.osbar.org**;
- (5) The website address for the organization providing more information and a directory of legal aid programs as **http://www.oregonlawhelp.org**

Stat. Auth.: ORS 86.737

Stats. Implemented: ORS 86.737

Hist.: FCS 9-2008, f. 10-15-08, cert. ef. 10-16-08; FCS 6-2009(Temp), f. 8-21-09 thru 2-17-10; FCS 11-2009, f. 12-2-09, cert. ef. 12-7-09; FCS 13-2011(Temp), f. & cert. ef. 12-15-11 thru 6-12-12

## 441-730-0246

### Contents of Foreclosure Notices

The sender of a notice form required by 2008 Or Laws, ch. 19, § 20 and as amended by 2009 Or Laws ch. 864, § 1 (Enrolled Senate Bill 628) must enter in the form and format adopted by this rule:

- (1) The statewide telephone contact number for handling consumer queries as **800-SAFENET (800-723-3638)**
- (2) The telephone number of the Oregon State Bar's Lawyer Referral Service as **503-684-3763**;
- (3) The Oregon State Bar's Lawyer Referral Service toll-free number as **800-452-7636**;
- (4) The website address of the Oregon State Bar as **http://www.osbar.org**;
- (5) The website address for the organization providing more information and a directory of legal aid programs as **http://www.oregonlawhelp.org**

Stat. Auth.: ORS 86.737

Stats. Implemented: ORS 86.737

Hist.: FCS 9-2008, f. 10-15-08, cert. ef. 10-16-08; FCS 6-2009(Temp), f. 8-21-09 thru 2-17-10; FCS 11-2009, f. 12-2-09, cert. ef. 12-7-09; FCS 6-2010, f. & cert. ef. 6-4-10; FCS 13-2011(Temp), f. & cert. ef. 12-15-11 thru 6-12-12

## 441-850-0042

### Contents of Foreclosure Notices

The sender of a notice form required by 2008 Or Laws, ch. 19, § 20 and as amended by 2009 Or Laws ch. 864, § 1 (Enrolled Senate Bill 628) must enter in the form and format adopted by this rule:

- (1) The statewide telephone contact number for handling consumer queries as **800-SAFENET (800-723-3638)**
- (2) The telephone number of the Oregon State Bar's Lawyer Referral Service as **503-684-3763**;
- (3) The Oregon State Bar's Lawyer Referral Service toll-free number as **800-452-7636**;
- (4) The website address of the Oregon State Bar as **http://www.osbar.org**;
- (5) The website address for the organization providing more information and a directory of legal aid programs as **http://www.oregonlawhelp.org**

Stat. Auth.: ORS 86.737

Stats. Implemented: ORS 86.737

Hist.: FCS 9-2008, f. 10-15-08, cert. ef. 10-16-08; FCS 6-2009(Temp), f. 8-21-09 thru 2-17-10; FCS 11-2009, f. 12-2-09, cert. ef. 12-7-09; FCS 13-2011(Temp), f. & cert. ef. 12-15-11 thru 6-12-12

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

**Rule Caption:** Registration of Contracting Entity that Enters into Contracts for Provider Leasing.

**Adm. Order No.:** ID 18-2011

**Filed with Sec. of State:** 11-16-2011

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

**Notice Publication Date:** 10-1-2011

**Rules Adopted:** 836-200-0250, 836-200-0255

**Subject:** This rulemaking establishes the process for a contracting entity that is not operating under a certificate of authority or license issued by the Department of Consumer and Business Services (DCBS) to register with DCBS. A contracting entity is a person that contracts directly with a provider for the delivery of health care services or contracts with a third party for the purposes of selling or making available to the third party the provider's health care services or discounted rates or the services or rates of a provider panel under a provider network contract. If the contracting entity is not an authorized insurer or licensee operating under a certificate of authority or license issued by DCBS, the contracting entity is required to register annually with DCBS.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-200-0250

### Purpose and Authority

OAR 836-200-0255 is adopted to implement the provisions of Section 3, chapter 561, Oregon Laws 2011. OAR 836-014-0255 applies to a contracting entity as defined in Section 1, chapter 561, Oregon Laws 2011 (Enrolled Senate Bill 634) other than an entity operating under a certificate of authority or license issued by the Department of Consumer and Business Services that enters into or renews a contract subject to Section 4, chapter 561, Oregon Laws 2011 on or after January 1, 2012.

Stat. Auth.: ORS 731.244 & sec. 3, ch. 561, OL 2011 (Enrolled SB 634)

Stat. Implemented.: Sec. 1 to 5, ch. 561, OL 2011 (Enrolled SB 634)

Hist.: ID 18-2011, f. 11-16-11, cert. ef. 1-1-12

## 836-200-0255

### Registration of Contracting Entity

(1) A contracting entity, as defined in Section 1, chapter 561, Oregon Laws 2011 (Enrolled Senate Bill 634), that is not operating under a certificate of authority or license issued by the Department of Consumer and Business Services shall register annually with the Department of Consumer and Business Services by submitting the following information to the department in the manner requested by the Director, along with a \$150 fee:

- (a) The official name of the entity and any secondary, alternative or substitute designations;
- (b) The mailing address and telephone number of the headquarters of the entity; and
- (c) The name and phone number of a representative of the entity who shall serve as the primary contact for the department.

(2) The requirements of this rule do not apply to a contracting entity that is under common ownership and control of a contracting entity that is licensed by or has a certificate of authority from the department.

Stat. Auth.: ORS 731.244 & sec. 3, ch. 561, OL 2011 (Enrolled SB 634)

Stat. Implemented.: Sec. 1 to 5, ch. 561, OL 2011 (Enrolled SB 634)

Hist.: ID 18-2011, f. 11-16-11, cert. ef. 1-1-12

\*\*\*\*\*

**Rule Caption:** Certified Retainer Medical Practices Application, Renewal and Disclosure Requirements.

**Adm. Order No.:** ID 19-2011

**Filed with Sec. of State:** 11-29-2011

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

**Notice Publication Date:** 10-1-2011

**Rules Adopted:** 836-200-0300, 836-200-0305, 836-200-0310, 836-200-0315

**Subject:** These rules implement Chapter 499, Oregon Laws 2011 (Enrolled Senate Bill 86). Senate Bill 86 creates an exemption from the Insurance Code for certified retainer medical practices. To be certified, a retainer medical practice must submit an application to the Department of Consumer and Business Services (DCBS) and meet certain criteria. These rules establish a certification framework that includes the process and requirements for applying for initial certification and a process to renew the certification. The rules also include provisions to clarify the statutory patient disclosure requirements and add one additional disclosure requirement.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-200-0300

### Statement of Purpose; Authority

OAR 836-200-0300 to 836-200-0315 are adopted by the Director of the Department of Consumer and Business Services pursuant to sections 2 and 3, chapter 499, Oregon Laws 2011 (Enrolled Senate Bill 86). The pur-



# ADMINISTRATIVE RULES

pose of OAR 836-200-0300 to 836-200-0315 is to establish the requirements for initial certification, disclosure requirements and certification renewal, for a retainer medical practice.

Stat. Auth.: ORS 731.244 & sec. 2, 3, ch. 499, OL 2011 (Enrolled SB 86)  
Stats. Implemented: sec. 2, 3, ch. 499, OL 2011 (Enrolled SB 86)  
Hist.: ID 19-2011, f. 11-29-11, cert. ef. 1-1-12

## 836-200-0305

### Retainer Medical Practice Application for Certification

(1) The Director of the Department of Consumer and Business Services may certify a retainer medical practice for a period of one year or more, if the applicant:

(a) Acts in accordance with the attestations required by paragraph (c) of this section;

(b) Complies with and meets the requirements of OAR 836-200-0300 to 836-200-0315 and sections 2 and 3, chapter 499, Oregon Laws 2011 (Enrolled Senate Bill 86); and

(c) Completes and submits to the satisfaction of the director a retainer medical practice application as set forth on the website for the Insurance Division of the Department of Consumer and Business Services at [www.insurance.oregon.gov](http://www.insurance.oregon.gov). As required on the form, the applicant shall:

(A) Attest to the following:

(i) Under the retainer medical agreement providers providing services are licensed or certified under ORS chapters 677, 678, 684, or 685 and the services provided will be limited to primary care services allowed within the scope of such licenses or certifications.

(ii) The applicant is not and has never been authorized in this or any other state to transact insurance or act as an insurer, managed care organization, health care services contractor, or similar entity;

(iii) The applicant is not controlled by any person described in subparagraph (ii) of this paragraph;

(iv) The applicant will structure the retainer medical practice to ensure that all services promised under the retainer medical agreement are within the capacity of the practice to provide in a timely manner;

(v) The applicant is financially responsible and has the necessary business experience or expertise to operate the practice;

(vi) The applicant will not discriminate based on race, religion, gender, sexual identity, sexual preference, or health status;

(vii) The applicant is authorized to conduct business in the State of Oregon and has complied with all registration requirements of this State; and

(viii) The information provided in the application and all supplemental and additional information is true and complete, and the applicant will submit to the jurisdiction of the courts of the State of Oregon.

(B) Establish to the satisfaction of the director that the applicant is financially responsible. To establish that an applicant is financially responsible, the applicant must provide all of the following:

(i) A statement of whether the applicant has filed for bankruptcy during the 25- year period prior to the application or renewal.

(ii) The applicant's business plan, including a discussion of how the applicant intends to monitor the practice to ensure the services promised under the retainer medical agreement are provided in a timely manner. The plan must include a clear description of how the retainer medical practice will ensure repayment of retainer medical fees paid in advance if the retainer medical practice is unable to provide the services promised under the retainer medical agreement.

(iii) A copy of any marketing materials and the retainer medical agreement that will be used for the 12-month certification period and each subsequent renewal. The agreement must include provisions that obligate the retainer medical practice to reimburse retainer medical patients for retainer medical fees paid in advance in the event the retainer medical practice is unable to provide services promised under the retainer medical agreement.

(C) Establish that the applicant has the necessary experience and expertise to operate a retainer medical practice by providing all of the following:

(i) The name of any other jurisdiction in which the applicant currently holds a license, registration or certification to transact business as a retainer medical practice or similar entity, or has held such a license or certification within ten years prior to the date of the application.

(ii) A statement of whether any license or registration of the applicant or any person with control of the applicant has ever been denied, suspended, revoked or not renewed in this or any other state and whether the applicant or any person with control of the applicant has otherwise ever been the subject of an enforcement action taken by a licensing or registration agency. For any action taken, the applicant shall provide the name and address of

the licensing or registration agency, the date of the action taken against the license or registration and a description of the reason for the action taken against the license or registration.

(iii) A biographical affidavit in the form and manner prescribed by the director, completed by each member of the board of directors, executive committee, or other governing board or committee of the applicant; and

(iv) A statement describing the background or training of the applicant that provides the necessary business experience or expertise to operate a retainer medical practice. The statement shall include the number of years the applicant has been in practice. The statement may also include a description of any similar business the applicant has operated, how many years the applicant operated the similar business and any pertinent training or experience the applicant has completed that has allowed the applicant to develop the necessary experience or expertise to operate a practice. The experience need not be specific to a retainer medical practice.

(D) Provide the names and Oregon license numbers of all providers providing services through the medical retainer practice.

(E) Provide the physical and mailing address, telephone number, facsimile number, email address and website address for each location providing retainer medical services.

(F) Provide the name and address for service of process for the retainer medical practice.

(G) Provide the name, mailing address, telephone number, signature and email address of the person completing the application on behalf of the applicant.

(H) Provide all names, including assumed business names, under which the retainer medical practice will operate, market or otherwise do business.

(2)(a) A retainer medical practice certification issued on or before February 1 of any given year is valid through January 31 of the following year.

(b) A retainer medical practice certification issued after February 1 of any given year is valid through January 31 of the second year following the year of certification.

Stat. Auth.: ORS 731.244 & sec. 2, 3, ch. 499, OL 2011 (Enrolled SB 86)  
Stats. Implemented: ORS 731.244, sec. 2, 3, ch. 499, OL 2011 (Enrolled SB 86)  
Hist.: ID 19-2011, f. 11-29-11, cert. ef. 1-1-12

## 836-200-0310

### Retainer Medical Practice Application for Renewal

(1) The director may renew a retainer medical practice certification if the practice complies with all of the following:

(a) The retainer medical practice completes and submits to the satisfaction of the director a retainer medical practice renewal application as set forth on the website for the Insurance Division of the Department of Consumer and Business Services at [www.insurance.oregon.gov](http://www.insurance.oregon.gov). The renewal application must be submitted annually before February 1 of each year in accordance with OAR 836-200-0305(2).

(b) The retainer medical practice acts in accordance with the attestations required by OAR 836-200-0305(1).

(c) The retainer medical practice shall provide with the renewal application, the following information for the prior calendar year through December 31:

(A) The total number of retainer medical patients under agreement with the retainer medical practice;

(B) The total number of retainer medical patients that voluntarily terminated the retainer medical agreement;

(C) The total number of patients with whom the retainer medical practice terminated an agreement and the reasons for the terminations;

(D) The total number of applicants declined by the retainer medical practice and the reasons for the declinations; and

(E) Any changes to the information submitted on the applicant's original application for certification.

(2) The director shall use the information required by section (1) of this rule to determine whether the retainer medical practice meets the requirements of, and complies with, section 2, chapter 499, Oregon Laws 2011 (Enrolled Senate Bill 86) for purposes of renewing a certification.

(3) A renewal certification shall be for a period of one year.  
Stat. Auth.: ORS 731.244 & sec. 2, 3, ch. 499, OL 2011 (Enrolled SB 86)  
Stats. Implemented: ORS 731.244, sec. 2, 3, ch. 499, OL 2011 (Enrolled SB 86)  
Hist.: ID 19-2011, f. 11-29-11, cert. ef. 1-1-12

## 836-200-0315

### Disclosures; Form and Contents

(1) The disclosures required by Section 2(4), chapter 499, Oregon Laws 2011 shall be in 12-point font or larger, on the first content page of marketing materials, including websites, and in the first content page of

# ADMINISTRATIVE RULES

contracts with retainer medical patients, including the retainer medical agreement.

(2) In addition to the disclosures required by Section 2(4), chapter 499, Oregon Laws 2011, a retainer medical practice shall make the following written information available to retainer medical patients and prospective retainer medical patients by prominently disclosing, in 12-point font or larger, in all marketing materials, including websites and in the medical retainer agreement:

(a) "The Department of Consumer and Business Services issued a certification to this practice. You can contact consumer advocates at the Department of Consumer and Business Services at (888) 977-4894, dcbs.insmail@state.or.us, or www.insurance.oregon.gov.";

(b) A statement explaining the retainer medical practice's cancellation and refund policy;

(c) A statement explaining how fees are charged by the retainer medical practice; and

(d) A list of services included for the fees charged.

Stat. Auth.: ORS 731.244 & sec. 2, 3, ch. 499, OL 2011 (Enrolled SB 86)

Stats. Implemented: ORS 731.244, sec. 2, 3, ch. 499, OL 2011 (Enrolled SB 86)

Hist.: ID 19-2011, f. 11-29-11, cert. ef. 1-1-12

\*\*\*\*\*

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

**Rule Caption:** Adopt changes in general industry, construction, agriculture, and maritime with federal amendments from SIP III and Oregon-initiated changes.

**Adm. Order No.:** OSHA 4-2011

**Filed with Sec. of State:** 12-8-2011

**Certified to be Effective:** 12-8-11

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

**Rules Adopted:** 437-002-0134

**Rules Amended:** 437-002-0005, 437-002-0120, 437-002-0140, 437-002-0220, 437-002-0340, 437-002-0360, 437-002-0364, 437-003-0001, 437-003-0015, 437-003-0096, 437-004-1110, 437-005-0001, 437-005-0002, 437-005-0003

**Rules Repealed:** 437-002-0123, 437-002-0125, 437-002-0127, 437-002-0128, 437-002-0130, 437-002-0135, 437-002-0136, 437-002-0137

**Subject:** Oregon OSHA adopted changes to rules in general industry, construction, agriculture, and maritime. Federal OSHA published a number of rule changes in these industries in the June 8, 2011 Federal Register. This is Phase III of the Standards Improvement Project (SIP III), the third in a series of rulemaking by Federal OSHA to improve and streamline the standards. This removes or revises individual requirements within rules that are confusing, outdated, duplicative, or inconsistent.

Oregon OSHA adopted the majority of the federal changes that include:

- Personal Protective Equipment – Division 2/I, remove requirements that employers prepare and maintain written training certification records.

- Respiratory Protection – revise requirements for breathing-gas containers.

- Material Handling/Slings – revise standards in general industry, construction, and maritime standards.

- Commercial Division Operations – Division 2/T, remove two obsolete recordkeeping requirements.

- General industry and construction – remove requirements in numerous standards for employers to transfer specific records to the National Institute for Occupational Safety and Health (NIOSH).

- Lead – amend trigger levels in general industry and construction.

In connection with rule changes in the SIP III rulemaking process, Oregon OSHA adopted additional changes to the subdivisions and rules opened during this rulemaking activity. We also made reference changes to Underground Installations in Division 3/P.

Oregon OSHA repealed all of Division 2/I rules with the exception of 1910.134 Respiratory Protection, 1910.137 Electrical Protective Equipment, 437-002-0138 Additional Oregon Rule for Elec-

trical Protective Equipment, 437-002-0139 Working Underway on Water, and 437-002-1139 Working Over or In Water.

To replace them, we adopted new Oregon-initiated rule, 437-002-0134 Personal Protective Equipment, that includes sections covering scope/application, hazard assessment, equipment, training, payment, fall protection, clothing, high visibility garments, eye, head, foot, leg, hand and skin protection.

The change in format simplifies the existing text while making little change to the overall rule requirements with the following exceptions:

- Modifies the hazard assessment requirement to clarify that employers must identify hazards to the entire body, including the torso and extremities, when performing the assessment. The assessment is currently limited to head, hands, eyes and face and foot protection.

- Change the fall protection component criteria to align with the systems criteria found in 1926.502 of the construction standards. The training requirement in this rule would also cover those parts not previously covered, such as fall protection.

**Definition of "potable water":** Previously, Oregon OSHA did not adopt 1910.141(a)(1), so the SIP-III changes to the definition of potable water must be addressed through Oregon-initiated rules. We will maintain the current definition of potable water in Division 2/J, 437-002-0141(1)(a), Sanitation and Division 4/J, 437-004-1105(1)(b), Sanitation. However, for consistency, we changed the definition of potable water in Division 4/J, 437-004-1110, Field Sanitation for Hand Labor Work, and Division 3/D, 437-003-0015 Drinking Water to the same definition.

**MOCA – 4,4'-Methylene bis (2-chloroaniline):** As a logical extension of the Federal OSHA SIP-III changes to 29 CFR 1910.1003, 13 Carcinogens, we amended the Oregon Rules for MOCA (4,4'-Methylene bis (2-chloroaniline)) at Division 2/Z, 437-002-0364. The requirements for respiratory protection are updated and the requirements for transfer of records is simplified. Most transfer of medical records to NIOSH is eliminated with the SIP III rulemaking. The employer is required to follow the requirements of the Respiratory Protection rule and select appropriate respirators based on the selection criteria in 1910.134(d). (The type of respirator to use is no longer specified.) We will also remove and reserve 437-002-0364(6)(a) which had a reporting requirement end date of December 1974

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—(503) 947-7449

### 437-002-0005

#### Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the **Code of Federal Regulations, 29 CFR 1910**, in the Federal Register:

(1) 29 CFR 1910.1, Purpose and scope; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(2) 29 CFR 1910.2, Definitions; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(3) 29 CFR 1910.3, Petitions for the issuance, amendment, or repeal of a standard; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(4) 29 CFR 1910.4, Amendments to this part; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(5) 29 CFR 1910.5, Applicability of standards; published 6/30/93, FR vol. 58, no. 124, p. 35308.

(6) 29 CFR 1910.6, Incorporation by reference; published 6/8/11, FR vol. 76, no. 110, p. 33590.

(7) 29 CFR 1910.7, Definition and requirements for a Nationally Recognized Testing Laboratory; published 5/11/88, FR vol. 53, no. 91, p. 16838.

(8) 29 CFR 1910.9, Compliance duties owed to each employee; published 12/12/08, Federal Register, vol. 73, no. 240, pp. 75568-75589.

These standards are on file at the Oregon Occupational Safety and Health

# ADMINISTRATIVE RULES

Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 17-1988, f. & ef. 11-10-88; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 8-1999, f. & cert. ef. 8-6-99; OSHA 4-2005, f. & cert. ef. 12-14-05; OSHA 4-2007, f. & cert. ef. 8-15-07; OSHA 7-2008, f. & cert. ef. 5-30-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 1-2010, f. & cert. ef. 2-19-10; OSHA 2-2010, f. & cert. ef. 2-25-10; OSHA 4-2011, f. & cert. ef. 12-8-11

## 437-002-0120

### Adoption by Reference

In addition to, and not in lieu of, any other health and safety codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the **Code of Federal Regulations, 29 CFR 1910**, in the Federal Register:

(1) 29 CFR 1910.132 General requirements. Repealed with Oregon OSHA Admin. Order 4-2011, filed and effective 12/8/11. In Oregon, OAR 437-002-0134 applies.

(2) 29 CFR 1910.133 Eye and face protection. Repealed with Oregon OSHA Admin. Order 4-2011, filed and effective 12/8/11. In Oregon, OAR 437-002-0134 applies.

(3) 29 CFR 1910.134 Respiratory protection, published 6/8/11, FR vol. 76, no. 110, p. 33590.

(4) 29 CFR 1910.135 Occupational head protection. Repealed with Oregon OSHA Admin. Order 4-2011, filed and effective 12/8/11. In Oregon, OAR 437-002-0134 applies.

(5) 29 CFR 1910.136 Occupational foot protection. Repealed with Oregon OSHA Admin. Order 4-2011, filed and effective 12/8/11. In Oregon, OAR 437-002-0134 applies.

(6) 29 CFR 1910.137 Electrical protective equipment, published 1/31/94, FR vol. 59, no. 20, pp. 4435-7.

(7) 29 CFR 1910.138 Hand Protection. Repealed with Oregon OSHA Admin. Order 4-2011, filed and effective 12/8/11. In Oregon, OAR 437-002-0134 applies.

(8) 29 CFR 1910.139 Respiratory protection for M. tuberculosis. Removed, 12/3/03, FR vol. 68, p. 75776-75780 (OR-OSHA Admin. Order 1-2004, f. 3/26/04, ef. 7/1/04).

(9) Appendices.

(a) Appendix A – References for further information (nonmandatory).

(b) Appendix B – Nonmandatory compliance guidelines for hazard assessment and personal protective equipment selection.

These standards are available from the Oregon Occupational Safety and Health Division (OR-OSHA), Department of Consumer and Business Services; and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 9-1993, f. 7-29-93, cert. ef. 9-15-93; OSHA 3-1994, f. & cert. ef. 8-1-94; OSHA 3-1997, f. & cert. ef. 3-28-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 1-2004, f. 3-26-04, cert. ef. 7-1-04; OSHA 5-2004, f. & cert. ef. 11-19-04; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 2-2010, f. & cert. ef. 2-25-10; OSHA 4-2011, f. & cert. ef. 12-8-11

## 437-002-0134

### Personal Protective Equipment

Application. This rule applies to personal protective equipment and other protective equipment for the eyes, face, head, extremities and torso to include protective clothing, respiratory devices, and protective shields and barriers, wherever employees encounter hazardous processes or environments, chemical hazards, radiological hazards, or mechanical irritants that are capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

(1) Hazard assessment and equipment selection.

(a) The employer must assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE) or other protective equipment. If such hazards are present, or likely to be present, the employer must:

(A) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment;

(i) All protective equipment must be of safe design and construction for the work to be performed.

(ii) Protective equipment must be worn and used in a manner which will make full use of its protective properties.

(B) Communicate selection decisions to each affected employee; and,

(C) Select PPE that properly fits each affected employee.

**NOTE:** Non-mandatory Appendix B contains an example of procedures that would comply with the requirement for a hazard assessment.

(b) The employer must verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment.

(2) Equipment

(a) Where employees provide their own protective equipment, the employer is responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment.

(b) All personal protective equipment must be provided, used, and maintained in a sanitary and reliable condition.

(c) Defective or damaged personal protective equipment must not be used

(d) Each employer must maintain a regular system of inspection and maintenance of personal protective equipment furnished to workers.

(3) Training.

(a) The employer must provide training to each employee who is required by this section to use PPE and each employee that is provided training must know at least the following:

(A) When PPE is necessary;

(B) What PPE is necessary;

(C) How to properly don, doff, adjust, and wear PPE;

(D) The limitations of the PPE; and,

(E) The proper care, maintenance, useful life and disposal of the PPE.

(b) Each affected employee must demonstrate an understanding of the training specified in paragraph (3)(a) of this section, and the ability to use PPE properly, before being allowed to perform work requiring the use of PPE.

(c) When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by paragraph (3)(b) of this section, the employer must retrain each such employee. Circumstances where retraining is required include, but are not limited to situations where:

(A) Changes in the workplace render previous training obsolete; or

(B) Changes in the types of PPE to be used render previous training obsolete; or

(C) Inadequacies in an affected employee's knowledge or use of assigned PPE indicate that the employee has not retained the requisite understanding or skill.

(4) Payment for protective equipment.

(a) Except as provided by paragraphs (4)(b) through (4)(f) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, must be provided by the employer at no cost to employees.

(b) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(c) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(d) The employer is not required to pay for:

(A) The logging boots required by OAR 437-007-0330 in Division 7.

(B) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(C) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(e) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(f) Where an employee provides adequate protective equipment he or she owns pursuant to paragraph (2)(a) of this section, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer must not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (4)(b) through (4)(e) of this section.

(5) Fall Protection.

(a) All employees must be protected from fall hazards when working on unguarded surfaces more than 10 feet above a lower level or at any height above dangerous equipment.

(b) The employer must ensure that fall protection systems are provided, installed, and used according to the criteria in 1926.502(d), and 437-003-0502 in Division 3/M, Construction/Fall Protection.

(6) Work Clothing.



# ADMINISTRATIVE RULES

(a) Clothing must be worn which is appropriate to the work performed and conditions encountered.

(b) Appropriate high temperature protective clothing must be worn by workers who are exposed to possible contact with molten metals or other substances that can cause burns.

(c) Loose sleeves, ties, lapels, cuffs, or other loose clothing must not be worn near moving machinery.

(d) Clothing saturated or impregnated with flammable liquids, corrosive or toxic substances, irritants, or oxidizing agents must be removed immediately and not worn again until properly cleaned.

(e) Rings, wristwatches, earrings, bracelets, and other jewelry which might contact power driven machinery or electric circuitry, must not be worn.

(7) High Visibility Garments. Employees exposed to hazards caused by on highway type moving vehicles in construction zones and street/highway traffic must wear highly visible upper body garments. The colors must contrast with other colors in the area sufficiently to make the worker stand out. Colors equivalent to strong red, strong orange, strong yellow, strong yellow-green or fluorescent versions of these colors are acceptable. During hours of darkness, the garments must also have reflective material visible from all sides for 1000 feet.

(8) Eye And Face Protection.

(a) The employer must ensure that each affected employee uses appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.

(b) The employer must ensure that each affected employee uses eye protection that provides side protection when there is a hazard from flying objects. Detachable side protectors (e.g., clip-on or slide-on side shields) meeting the pertinent requirements of this section are acceptable.

(c) The employer must ensure that each affected employee who wears prescription lenses while engaged in operations that involve eye hazards wears eye protection that incorporates the prescription in its design, or shall wear eye protection that can be worn over the prescription lenses without disturbing the proper position of the prescription lenses or the protective lenses.

(d) Eye and face PPE must be distinctly marked to facilitate identification of the manufacturer.

(e) The employer must ensure that each affected employee uses equipment with filter lenses that have a shade number appropriate for the work being performed for protection from injurious light radiation. The following is a listing of appropriate shade numbers for various operations.

(f) Protective eye and face protection devices must comply with any of the following consensus standards

(A) ANSI Z87.1-2003, American National Standard Practice for Occupational and Educational Eye and Face Protection, which is incorporated by reference in 1910.6;

(B) ANSI Z87.1-1989 (R-1998), American National Standard Practice for Occupational and Educational Eye and Face Protection, which is incorporated by reference in 1910.6; or

(C) ANSI Z87.1-1989, American National Standard Practice for Occupational and Educational Eye and Face Protection, which is incorporated by reference in 1910.6.

(g) Protective eye and face protection devices that the employer demonstrates are at least as effective as protective eye and face protection devices that are constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

(h) Employees whose occupation or assignment requires exposure to laser beams shall be furnished laser safety goggles as required by Occupational Health Regulations which will protect for the specific wavelength of the laser and be of optical density adequate for the energy involved.

(9) Head Protection.

(a) The employer must ensure that each affected employee wears a protective helmet when working in areas where there is a potential for injury to the head from falling or flying objects.

(b) The employer must ensure that a protective helmet designed to reduce electrical shock hazard is worn by each such affected employee when near exposed electrical conductors which could contact the head.

(c) Head protection must comply with any of the following consensus standards:

(A) ANSI Z89.1-2003, American National Standard for Industrial Head Protection, which is incorporated by reference in §1910.6;

(B) ANSI Z89.1-1997, American National Standard for Industrial Head Protection, which is incorporated by reference in 1910.6; or

(C) ANSI Z89.1-1986, American National Standard for Personnel Protection –Protective Headwear for Industrial Workers – Requirements, which is incorporated by reference in 1910.6.

(d) Head protection devices that the employer demonstrates are at least as effective as head protection devices that are constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

(e) Employees who are exposed to power-driven machinery or to sources of ignition shall wear caps or other head covering which completely covers the hair.

(10) Foot Protection.

(a) The employer must ensure that each affected employee use protective footwear when working in areas where there is a danger of foot injuries due to falling or rolling objects, or objects piercing the sole, and where such employee's feet are exposed to electrical hazards.

(b) Protective footwear must comply with any of the following consensus standards:

(A) ASTM F-2412-2005, Standard Test Methods for Foot Protection, and ASTM F-2413-2005, Standard Specification for Performance Requirements for Protective Footwear, which are incorporated by reference in 1910.6;

(B) ANSI Z41-1999, American National Standard for Personal Protection –Protective Footwear, which is incorporated by reference in 1910.6; or

(C) ANSI Z41-1991, American National Standard for Personal Protection –Protective Footwear, which is incorporated by reference in §1910.6.

(c) Protective footwear that the employer demonstrates is at least as effective as protective footwear that is constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this.

(d) Special types or designs of shoes or foot guards are required where conditions exist that make their use necessary for the safety of workers.

(11) Leg protection

(a) Leggings or high boots of leather, rubber, or other suitable material must be worn by persons exposed to hot substances or dangerous chemical spills.

(b) Employees using chain saws must wear chaps or leg protectors that cover the leg from the upper thigh to mid-calf. The protector must be material designed to resist cuts from the chain saw. Employers must provide this protection at no cost to the employee.

(12) Hand Protection.

(a) Employers must select and require employees to use appropriate hand protection when employees' hands are exposed to hazards such as those from skin absorption of harmful substances; severe cuts or lacerations; severe abrasions; punctures; chemical burns; thermal burns; and harmful temperature extremes.

(b) Employers must base the selection of the appropriate hand protection on an evaluation of the performance characteristics of the hand protection relative to the task(s) to be performed, conditions present, duration of use, and the hazards and potential hazards identified.

(c) Gloves must not be worn by persons whose hands are exposed to moving parts in which they could be caught.

(13) Skin protection Where the need for their use is necessary, protective covering, ointments, gloves, or other effective protection must be provided for and used by persons exposed to materials which are hazardous to the skin.

Stat. Auth.: ORS 654.025(2) & 656.726(4)  
Stats. Implemented: ORS 654.001 - 654.295  
Hist.: OSHA 4-2011, f. & cert. ef. 12-8-11

## 437-002-0140

### Adoption by Reference

In addition to and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the **Code of Federal Regulations, 29 CFR 1910**, in the Federal Register:

(1) 29 CFR 1910.141 Sanitation, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(2) Reserved for 29 CFR 1910.142 Temporary labor camps.

(3) 29 CFR 1910.143 Nonwater carriage disposal systems (Reserved).

(4) 29 CFR 1910.144 Safety color code for marking physical hazards, published 12/14/07, FR vol. 72, no. 240, p. 71061.

# ADMINISTRATIVE RULES

(5) 29 CFR 1910.145 Specifications for accident prevention signs and tags, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576; 7/25/11, FR vol. 76, no. 142, p. 44265.

(6) 29 CFR 1910.146 Permit-required confined spaces, published 1/4/99, FR vol. 64, no. 1, p. 204.

(7) 29 CFR 1910.147 The control of hazardous energy, (lock-out/tagout); published 5/2/11, Federal Register vol. 76, no. 84, p. 24576; 7/25/11, FR vol. 76, no. 142, p. 44265.

(8) 29 CFR 1910.148 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9239.

(9) 29 CFR 1910.149 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9239.

(10) 29 CFR 1910.150 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9239.

These federal standards are on file with the Oregon Occupational Safety and Health Division, Department of Consumer and Business Services and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-1990, f. 1-19-90, cert. ef. 3-1-90; OSHA 4-1991, f. 2-25-91, cert. ef. 3-15-91; OSHA 13-1992, f. 12-7-92, cert. ef. 2-1-93; OSHA 8-1993, f. & cert. ef. 7-1-93; OSHA 5-1994, f. & cert. ef. 9-30-94; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 5-1999, f. & cert. ef. 5-26-99; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 7-2008, f. & cert. ef. 5-30-08; OSHA 3-2011, f. & cert. ef. 11-1-11; OSHA 4-2011, f. & cert. ef. 12-8-11

## 437-002-0220

### Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1910, in the Federal Register:

(1) 29 CFR 1910.176 Handling materials - general, published 10/24/78, FR vol. 43, p. 49749.

(2) 29 CFR 1910.177 Servicing of multi-piece and single piece rim wheels; published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.

(3) 29 CFR 1910.178 Powered industrial trucks, published 4/3/06, FR vol. 71, no. 63, p. 16669.

(4) 29 CFR 1910.179 Overhead and gantry cranes, published 3/7/96, FR vol. 61, no. 46, p. 9239.

(5) 29 CFR 1910.180 Crawler, locomotive and truck cranes, published 3/7/96, FR vol. 61, no. 46, p. 9239.

(6) 29 CFR 1910.181 Derricks, published 3/7/96, FR vol. 61, no. 46, p. 9240.

(7) 29 CFR 1910.182 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9240.

(8) 29 CFR 1910.183 Helicopters, published 6/18/98, FR vol. 63, no. 117, p. 33467.

(9) 29 CFR 1910.184 Slings, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(10) 29 CFR 1910.189 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9240.

(11) 29 CFR 1910.190 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9240.

These rules are on file at the Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 13-1993, f. 8-20-93, cert. ef. 11-1-93; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 7-2003, f. & cert. ef. 12-5-03; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 3-2011, f. & cert. ef. 11-1-11; OSHA 4-2011, f. & cert. ef. 12-8-11

## 437-002-0340

### Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1910, in the Federal Register:

(1) 29 CFR 1910.401 Scope and application, published 7/22/77, Federal Register, vol. 42, p. 37668; amended 11/26/82, FR vol. 47, p. 53365; amended 2/17/04, FR vol. 69, p. 7351.

(2) 29 CFR 1910.402 Definitions, published 7/22/77, Federal Register, vol. 42, p. 37668; amended 11/26/82, FR vol. 47, p. 53365; amended 2/17/04, FR vol. 69, p. 7351.

(3) 29 CFR 1910.410 Qualification of dive team, published 7/22/77, Federal Register, vol. 42, p. 37668.

(4) 29 CFR 1910.420 Safe practices manual, published 7/22/77, Federal Register, vol. 42, p. 37668; amended 4/30/84, FR vol. 49, p. 18295.

(5) 29 CFR 1910.421 Pre-dive procedures, published 7/22/77, Federal Register, vol. 42, p. 37668; amended 4/6/82, FR vol. 47, p. 14706; 6/7/89, FR vol. 54, p. 24334.

(6) 29 CFR 1910.422 Procedures during dive, published 7/22/77, Federal Register, vol. 42, p. 37668.

(7) 29 CFR 1910.423 Post-dive procedures, published 7/22/77, Federal Register, vol. 42, p. 37668; amended 4/30/84, FR vol. 49, p. 18295.

(8) 29 CFR 1910.424 SCUBA diving, published 7/22/77, Federal Register, vol. 42, p. 37668.

(9) 29 CFR 1910.425 Surface-supplied air diving, published 7/22/77, Federal Register, vol. 42, p. 37668.

(10) 29 CFR 1910.426 Mixed-gas diving, published 7/22/77, Federal Register, vol. 42, p. 37668.

(11) 29 CFR 1910.427 Liveboating, published 7/22/77, Federal Register, vol. 42, p. 37668.

(12) 29 CFR 1910.430 Equipment, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 4/30/84, FR vol. 49, p. 18295; 9/18/88, FR, vol. 51, p. 33033.

(13) 29 CFR 1910.440 Recordkeeping requirements, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(14) 29 CFR 1910.441 Effective date, published 4/3/06, FR vol. 71, no. 63, p. 16669.

(15) 29 CFR 1910, Appendix A to Subdivision T, Examples of conditions which may restrict or limit exposures to hyperbaric conditions, published 7/22/77, Federal Register, vol. 42, p. 37668.

(16) 29 CFR 1910, Appendix B to Subdivision T, Guidelines for scientific diving, published 1/9/85, Federal Register, vol. 50, p. 1050.

(17) 29 CFR 1910, Appendix C to Subdivision T, Alternative Conditions under §1910.401(a)(3) for Recreational Diving Instructors and Diving Guides (Mandatory), published 2/17/04, Federal Register, vol. 69, p. 7351.

**NOTE:** These standards are on file at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-1993, f. 5-3-93, cert. ef. 6-1-93; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 2-2004, f. & cert. ef. 5-20-04; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 4-2011, f. & cert. ef. 12-8-11

## 437-002-0360

### Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1910, in the Federal Register:

(1) (Reserved) 29 CFR 1910.1000 Air contaminants.

**NOTE:** 29 CFR 1910.1000 was repealed on 11/15/93 by OR OSHA. In Oregon, OAR 437-002-0382 applies.

(2) 29 CFR 1910.1001 Asbestos, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(3) 29 CFR 1910.1002 Coal tar pitch volatiles, interpretation of term, published 1/21/83, Federal Register, vol. 43, p. 2768.

(4) 29 CFR 1910.1003 13 Carcinogens, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(5) 29 CFR 1910.1004 See §1910.1003, 13 Carcinogens.

(6) Reserved for 29 CFR 1910.1005.

(7) 29 CFR 1910.1006 See §1910.1003, 13 Carcinogens.

(8) 29 CFR 1910.1007 See §1910.1003, 13 Carcinogens.

(9) 29 CFR 1910.1008 See §1910.1003, 13 Carcinogens.

(10) 29 CFR 1910.1009 See §1910.1003, 13 Carcinogens.

(11) 29 CFR 1910.1010 See §1910.1003, 13 Carcinogens.

(12) 29 CFR 1910.1011 See §1910.1003, 13 Carcinogens.

(13) 29 CFR 1910.1012 See §1910.1003, 13 Carcinogens.

(14) 29 CFR 1910.1013 See §1910.1003, 13 Carcinogens.

(15) 29 CFR 1910.1014 See §1910.1003, 13 Carcinogens.

(16) 29 CFR 1910.1015 See §1910.1003, 13 Carcinogens.

(17) 29 CFR 1910.1016 See §1910.1003, 13 Carcinogens.

(18) 29 CFR 1910.1017 Vinyl chloride, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(19) 29 CFR 1910.1018 Inorganic arsenic, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(20) 29 CFR 1910.1020 Access to Employee Exposure and Medical Records, published 4/3/06, FR vol. 71, no. 63, p. 16669.

Appendix A Sample Authorization Letter.

Appendix B Availability of NIOSH RTECS.

(21) 29 CFR 1910.1025 Lead, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

# ADMINISTRATIVE RULES

(22) 29 CFR 1910.1026 Chromium (VI), published 3/17/10, FR vol. 75, no. 51, pp. 12681-12686.

(23) 29 CFR 1910.1027 Cadmium, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(24) 29 CFR 1910.1028 Benzene, and Appendices A, B, C, D, and E, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(25) 29 CFR 1910.1029 Coke oven emissions, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(26) 29 CFR 1910.1030 Bloodborne pathogens, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(27) 29 CFR 1910.1043 Cotton dust, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(28) 29 CFR 1910.1044 1,2 dibromo-3 chloropropane, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(29) 29 CFR 1910.1045 Acrylonitrile, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(30) 29 CFR 1910.1047 Ethylene oxide, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(31) 29 CFR 1910.1048 Formaldehyde, and Appendices A, B, C, D and E, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589; amended with AO 4-2011, f. 12/8/11, ef. 12/8/11.

(32) 29 CFR 1910.1050 Methyleneedianiline (MDA), published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(33) 29 CFR 1910.1051 1,3-Butadiene, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(34) 29 CFR 1910.1052 Methylene Chloride, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589; amended with AO 4-2011, f. 12/8/11, ef. 12/8/11.

(NOTE: 29 CFR 1910.1101 Asbestos, was repealed by Federal Register, vol. 57, no. 110, issued 6/8/92, p. 24330.)

(35) 29 CFR 1910.1096 Ionizing radiation, published 6/20/96, FR vol. 61, no. 46, p. 31427.

(36) 29 CFR 1910.1200 Hazard communication, published 3/7/96, FR vol. 61, no. 46, p. 9245.

(37) 29 CFR 1910.1201 Retention of DOT Markings, Placards and Labels, published 7/19/94, Federal Register, vol. 59, p. 36700.

(38) 29 CFR 1910.1450 Occupational Exposure to Hazardous Chemicals in Laboratories, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(39) 29 CFR 1910.1499 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9245.

(40) 29 CFR 1910.1500 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9245.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 13-1988, f. 8-2-88 & ef. 8-2-88; APD 14-1988, f. & ef. 9-12-88; APD 18-1988, f. & ef. 11-17-88; APD 4-1989(Temp), f. 3-31-89, ef. 5-1-89; APD 6-1989(Temp), f. 4-20-89, ef. 5-1-89; APD 9-1989, f. & ef. 7-7-89; APD 11-1989, f. 7-14-89, ef. 8-14-89; APD 13-1989, f. & ef. 7-17-89; OSHA 1-1990(Temp), f. & ef. 1-11-90; OSHA 3-1990(Temp), f. & ef. 1-19-90; OSHA 6-1990, f. & ef. 3-2-90; OSHA 7-1990, f. & ef. 3-2-90; OSHA 9-1990, f. 5-8-90, ef. 8-8-90; OSHA 11-1990, f. 6-7-90, ef. 7-1-90; OSHA 13-1990(Temp), f. 6-28-90, ef. 8-1-90; OSHA 14-1990, f. 6-28-90, ef. 8-1-90; OSHA 19-1990, f. & ef. 8-31-90; OSHA 20-1990, f. & ef. 9-18-90; OSHA 21-1990, f. & ef. 9-18-90; OSHA 7-1991, f. & cert. ef. 4-25-91; OSHA 13-1991, f. & cert. ef. 10-10-91; OSHA 15-1991, f. & cert. ef. 12-13-91; OSHA 1-1992, f. & cert. ef. 1-22-92; OSHA 4-1992, f. & cert. ef. 4-16-92; OSHA 5-1992, f. 4-24-92, cert. ef. 7-1-92; OSHA 6-1992, f. & cert. ef. 5-18-92; OSHA 9-1992(Temp), f. & cert. ef. 9-24-92; OSHA 11-1992, f. & cert. ef. 10-9-92; OSHA 12-1992, f. & cert. ef. 10-13-92; OSHA 14-1992, f. & cert. ef. 12-7-92; OSHA 15-1992, f. & cert. ef. 12-30-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 6-1993(Temp), f. & cert. ef. 5-17-93; OSHA 12-1993, f. 8-20-93, cert. ef. 11-1-93; OSHA 17-1993, f. & cert. ef. 11-15-93; OSHA 4-1994, f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 4-1996, f. & cert. ef. 9-13-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 8-1997, f. & cert. ef. 11-14-97; OSHA 1-1998, f. & cert. ef. 2-13-98; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 1-1999, f. & cert. ef. 3-22-99; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 6-2001, f. & cert. ef. 5-15-01; OSHA 10-2001, f. 9-14-01, cert. ef. 10-18-01; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 1-2005, f. & cert. ef. 4-12-05; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 3-2010, f. 6-10-10, cert. ef. 6-15-10; OSHA 4-2011, f. & cert. ef. 12-8-11

## 437-002-0364

### Oregon Rules for MOCA (4,4'-Methylene Bis (2-chloroaniline))

(1) Application. This rule applies to any areas in which MOCA (4,4'-Methylene bis (2-chloroaniline)) (CAS# 101-14-4) is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to transshipment in sealed containers, except for the labeling requirements under OAR 437-002-0364(5)(b), (c), and (d).

(2) Definitions: "Absolute filter" is one capable of retaining 99.97 percent of a monodisperse aerosol of 0.3  $\mu\text{m}$  particles. "Administrator"

means the Administrator of the Oregon Occupational Safety and Health Division, or any person directed to act for the Administrator. "Authorized employee" means an employee whose duties require them to be in the regulated area and who has been specifically assigned by the employer. "Clean change room" means a room where employees put on clean clothing and/or protective equipment in an environment free of MOCA. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this rule. "Closed system" means an operation involving MOCA where containment prevents the release of MOCA into regulated areas, non-regulated areas, or the external environment. "Decontamination" means the inactivation of MOCA or its safe disposal. "Disposal" means the safe removal of MOCA from the work environment. "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of MOCA which may result in exposure to or contact with MOCA. "External environment" means any environment external to regulated and non-regulated areas. "Isolated system" means a fully enclosed structure other than the vessel of containment of MOCA which is impervious to the passage of MOCA and which would prevent the entry of MOCA into regulated areas, non-regulated areas, or the external environment, should leakage or spillage from the vessel of containment occur. "Laboratory type hood" is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving MOCA within the hood does not require the insertion of any portion of any employee's body other than their hands and arms. "Non-regulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled. "Open-vessel system" means an operation involving MOCA in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of MOCA into regulated areas, non-regulated areas, or the external environment. "Protective clothing" means clothing designed to protect an employee against contact with or exposure to MOCA. "Regulated area" means an area where entry and exit is restricted and controlled.

(3) Requirements for areas containing MOCA.

(a) A regulated area shall be established by an employer where MOCA is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(A) Isolated systems. Employees working with MOCA within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(B) Closed system operation. Within regulated areas where MOCA is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while MOCA is contained within:

(i) Access shall be restricted to authorized employees only; and

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close the door to exit and before engaging in other activities.

(C) Open vessel system operations. Open vessel system operations as defined in OAR 437-002-0364(2) are prohibited.

(D) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving "laboratory type hoods," or in locations where MOCA is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this rule shall apply.

(i) Access shall be restricted to authorized employees only.

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, non-regulated areas or the external environment unless decontaminated. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

(iv) Employees engaged in MOCA handling operations must be provided and required to wear and use respiratory protection, in accordance with OAR 437, Division 2/1, Personal Protective Equipment, 1910.134, Respiratory Protection.



## ADMINISTRATIVE RULES

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under OAR 437-002-0364(5)(b), (c) and (d).

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exit of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(E) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with MOCA could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with OAR 437, Division 2/I, Personal Protective Equipment;

(ii) Be decontaminated before removing the protective garments and hood; and

(iii) Be required to shower upon removing the protective garments and hood.

(F) Premixed solutions. Where MOCA is present only in a single solution at a temperature not exceeding 220° F, the establishment of a regulated area is not required; however:

(i) Only authorized employees shall be permitted to handle such materials;

(ii) Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;

(iii) Employees shall be required to remove and leave protective clothing and equipment when leaving the work area at the end of the work day, or at any time solution is spilled on such clothing or equipment. Used clothing and equipment shall be placed in impervious containers for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under OAR 437-002-0364(5)(b), (c) and (d).

(iv) Employees shall be required to wash hands and face after removing such clothing and equipment and before engaging in other activities;

(v) Employees assigned to work covered by OAR 437-002-0364(3)(a)(F) shall be deemed to be working in regulated areas for the purposes of OAR 437-002-0364(4)(a); (b)(A), (B); (c)(C), (D), and 437-002-0364(5) through (7).

(vi) Work areas where solution may be spilled shall be:

(I) Covered daily or after any spill with a clean covering; or

(II) Cleaned thoroughly daily and after any spill.

(4) General Regulated Area Requirements:

(a) Emergencies. In an emergency, immediate measures including, but not limited to, the requirements of sections (A), (B), (C), (D), and (E) below shall be implemented:

(A) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(B) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(C) Special medical surveillance by a physician shall be instituted within 24 hours, for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with OAR 437-002-0364(6)(b).

(D) Where an employee has a known contact with MOCA, such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(E) An incident report on the emergency shall be reported as provided in OAR 437-002-0364(6)(b).

(F) Emergency deluge showers and eyewash fountains supplied with running potable water shall be located near, within sight of, and on the same level with locations where a direct exposure to MOCA would be most likely as a result of equipment failure, or improper work practice.

(b) Hygiene Facilities and Practices.

(A) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smok-

ing materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(B) Where employees are required by OAR 437-002-0364 to wash, washing facilities shall be provided in accordance with OAR 437, Division 2/J, 1910.141, Sanitation.

(C) Where employees are required by OAR 437-002-0364 to shower, shower facilities shall be provided in accordance with OAR 437, Division 2/J, 1910.141 Sanitation.

(D) Where employees wear protective clothing and equipment clean change rooms shall be provided in accordance with OAR 437, Division 2/J, 1910.141, Sanitation, for the number of such employees required to change clothes.

(E) Where toilets are in regulated areas, such toilets shall be in a separate room.

(c) Contamination Control.

(A) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to non-regulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean make-up air in equal volume shall replace air removed.

(B) Any equipment, materials, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in non-regulated areas or the external environment.

(C) Decontamination procedures shall be established and implemented to remove MOCA from the surfaces of materials, equipment, and the decontamination facility.

(D) Dry sweeping and dry mopping is prohibited.

(5) Signs, Information and Training.

(a) Signs.

(A) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT  
AUTHORIZED PERSONNEL ONLY

(B) Entrances to regulated areas containing operations covered in OAR 437-002-0364 (3)(a)(E), shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT  
EXPOSED IN THIS AREA  
IMPERVIOUS SUIT INCLUDING  
GLOVES, BOOTS, AND AIR-SUPPLIED  
HOOD REQUIRED AT ALL TIMES  
AUTHORIZED PERSONNEL ONLY

(C) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(b) Container Contents Identification.

(A) Containers of a carcinogen and containers required under OAR 437-002-0364(3)(a)(D)(v), and 437-002-0391(5)(b), (c) and (d), which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with OAR 437-002-0364 (5)(e) may have contents identification limited to a generic or proprietary name, or other proprietary identification, of MOCA and percent.

(B) Containers of MOCA and containers required under OAR 437-002-0364(3)(a)(D)(v), and 437-002-0391(5)(b), (c) and (d), which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with OAR 437-002-0364(5)(e) shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry Number as listed in OAR 437-002-0364(1).

(C) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(D) Containers which have MOCA contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(c) Lettering. Lettering on signs and instructions required by OAR 437-002-0364(5)(a) and (b) shall be a minimum letter height of 2 inches. Labels on containers required under this division shall not be less than 1/2 the size of the largest lettering on the package, and not less than 8 point type in any instance; provided that no such required lettering need be more than 1 inch in height.

(d) Prohibited Statements. No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(e) Training and Indoctrination.

(A) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

# ADMINISTRATIVE RULES

- (i) The nature of the carcinogenic hazards of MOCA including local and systemic toxicity;
- (ii) The specific nature of the operation involving MOCA which could result in exposure;
- (iii) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;
- (iv) The purpose for and application of decontamination practices and purposes;
- (v) The purpose for and significance of emergency practices and procedures;
- (vi) The employee's specific role in emergency procedures;
- (vii) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of MOCA;

(viii) The purpose for and application of specific first aid procedures and practices; and

(ix) A review of OAR 437-002-0364 at the employee's first training and indoctrination program and annually thereafter.

(B) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(C) All materials relating to the program shall be provided upon request to authorized representatives of the Administrator.

(6) Reports.

(a) Reserved.

(b) Incidents. Incidents which result in the release of MOCA into any area where employees may be potentially exposed shall be reported in accordance with this rule.

(A) A report of the occurrence of the incident and the facts obtainable at that time, including a report of any medical treatment of affected employees, shall be made within 24 hours to the Administrator.

(B) A written report shall be filed with the Administrator within 15 calendar days thereafter, and shall include:

(i) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(ii) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(iii) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(7) Medical Surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations:

(A) Before an employee is assigned to enter a regulated area, a pre-assignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(B) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the pre-assignment examination.

(C) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(b) Records:

(A) Employers of employees examined pursuant to this rule shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. The employer shall comply with the requirements concerning transfer of records set forth in Division 2/Z, 1910.1020(h).

(B) Records required by this rule shall be provided upon request to employees, designated representatives, and the Administrator in accordance with OAR 437, Division 2/Z, 1910.1020, Access to Employee Exposure and Medical Records.

(C) Any physician who conducts a medical examination required by this rule shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 3-1975, f. 10-6-75, ef. 11-1-75; WCB 4-1979, f. 5-21-79, ef. 7-15-79; WCB 8-1980, f. 11-5-80, ef. 12-1-80; OSHA 12-1993, f. 8-20-93, cert. ef. 11-1-93; OSHA 4-2011, f. & cert. ef. 12-8-11

## 437-003-0001

### Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, in the Federal Register:

(1) Subdivision A – GENERAL

(a) 29 CFR 1926.1 Purpose and Scope, published 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.2 Variances from safety and health standards, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.3 Inspections – right of entry, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.4 Rules of practice for administrative adjudications for enforcement of safety and health standards, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.6 Incorporation by reference, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(2) Subdivision B – GENERAL INTERPRETATIONS

(a) 29 CFR 1926.10 Scope of subpart, published 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.11 Coverage under section 103 of the act distinguished, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.12 Reorganization plan No. 14 of 1950, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.13 Interpretation of statutory terms, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.14 Federal contracts for 'mixed' types of performance, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.15 Relationship to the service contract act; Walsh-Healey Public Contracts Act, published 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.16 Rules of construction, published 4/6/79, FR vol. 44, p. 20940.

(3) Subdivision C – GENERAL SAFETY AND HEALTH PROVISIONS

(a) 29 CFR 1926.20 General safety and health provisions, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(b) 29 CFR 1926.21 Safety training and education, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.22 Recording and reporting of injuries (Reserved)

(d) 29 CFR 1926.23 First aid and medical attention, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.24 Fire protection and prevention, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.25 Housekeeping, published 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.26 Illumination, published 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.27 Sanitation, published 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.28 Personal protective equipment, published 4/6/79, FR vol. 44, p. 20940.

(j) 29 CFR 1926.29 Acceptable certifications, published 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.30 Shipbuilding and ship repairing, published 3/7/96, FR vol. 61, no. 46, p. 9249.

(l) 29 CFR 1926.31 (Reserved).

(m) 29 CFR 1926.32 Definitions, published 6/30/93, FR vol. 58, no. 124, p. 35078.

(n) 29 CFR 1926.33 Access to employee exposure and medical records, published 6/20/96, FR vol. 61, no. 46, p. 31427.

(o) 29 CFR 1926.34 Means of egress, published 6/30/93, Federal Register, vol. 58, no. 124, p. 35083.

(4) Subdivision D – OCCUPATIONAL HEALTH AND ENVIRONMENTAL CONTROLS

(a) 29 CFR 1926.50 Medical services and first aid, published 6/18/98, FR vol. 63, no. 117, p. 33469.

(b) 29 CFR 1926.51 Sanitation, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(c) 29 CFR 1926.52 Occupational noise exposure, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.53 Ionizing radiation, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.54 Nonionizing radiation, published 4/6/79, FR vol. 44, p. 20940.

# ADMINISTRATIVE RULES

(f) 29 CFR 1926.55 Gases, vapors, fumes, dusts, and mists, published 1/10/97, FR vol. 62, no. 7, p. 1619.

(g) 29 CFR 1926.56 Illumination, published 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.57 Ventilation, published 1/8/98, FR vol. 63, no. 5, p. 1295.

(i) 29 CFR 1926.58 Reserved, §1926.58, Asbestos, tremolite, anthophyllite and actinolite is redesignated as §1926.1101, Asbestos, and §1926.58 is reserved (8/10/94, FR vol. 59, no. 153, pp. 41131-62).

(j) 29 CFR 1926.59 Hazard Communication, published 6/20/96, FR vol. 61, p. 31427.

(k) 29 CFR 1926.60 Methylenedianiline (MDA), published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(l) 29 CFR 1926.61 Retention of DOT markings, placards and labels, published 6/20/96, FR vol. 61, p. 31427.

(m) 29 CFR 1926.62 Lead, published 6/8/11, Federal Register, no. 76, no. 110, p. 33590.

**NOTE:** Cadmium has been redesignated as §1926.1127.

(n) 29 CFR 1926.65 Hazardous Waste Operations and Emergency Response

**NOTE:** Division 2/H, 1910.120, Hazardous Waste Operations and Emergency Response, applies to Construction.

(5) Subdivision E – PERSONAL PROTECTIVE AND LIFE SAVING EQUIPMENT

(a) 29 CFR 1926.95 Criteria for personal protective equipment, published 11/15/07, FR vol. 72, no. 220, p. 64342.

(b) 29 CFR 1926.100 Head protection, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.101 Hearing protection, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.102 Eye and face protection, published 6/30/93, FR vol. 58, no. 124, p. 35160.

(e) 29 CFR 1926.103 Respiratory protection, published 1/8/98, FR vol. 63, no. 5, p. 1297.

**NOTE:** 29 CFR 1926.104 Removed, 8/9/94, FR vol. 59, no. 152, p. 40729.

(f) 29 CFR 1926.105 Reserved, 8/9/94, FR vol. 59, no. 152, p. 40729.

(g) 29 CFR 1926.106 Working over or near water, published 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.107 Definitions applicable to this subpart, published 8/9/94, FR vol. 59, no. 152, p. 40729.

(6) Subdivision F – FIRE PROTECTION AND PREVENTION

(a) 29 CFR 1926.150 Fire protection, published 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.151 Fire prevention, published 7/11/86, FR vol. 51, p. 25318.

(c) 29 CFR 1926.152 Flammable and combustible liquids, published 6/30/93, FR vol. 58, no. 124, p. 35162.

(d) 29 CFR 1926.153 Liquefied petroleum gas (LP-Gas), published 6/30/93, FR vol. 58, no. 124, p. 35170.

(e) 29 CFR 1926.154 Temporary heating devices, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.155 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.

(7) Subdivision G – SIGNS, SIGNALS, AND BARRICADES

(a) 29 CFR 1926.200 Accident prevention signs and tags, published 6/30/93, FR vol. 58, no. 124, p. 35173; amended with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(b) 29 CFR 1926.201 Signaling, REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(c) 29 CFR 1926.202 Barricades, REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(d) 29 CFR 1926.203 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940; amended with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(8) Subdivision H – MATERIALS HANDLING, STORAGE, USE AND DISPOSAL

(a) 29 CFR 1926.250 General requirements for storage, published 6/30/93, FR vol. 58, no. 124, p. 35173.

(b) 29 CFR 1926.251 Rigging equipment for material handling, published 6/8/11, Federal Register, vol. 74, no. 110, p. 33590.

(c) 29 CFR 1926.252 Disposal of waste materials, published 4/6/79, FR vol. 44, p. 20940.

(9) Subdivision I – TOOLS – HAND AND POWER

(a) 29 CFR 1926.300 General requirements, published 3/7/96, FR vol. 61, no. 46, p. 9250.

(b) 29 CFR 1926.301 Hand tools, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.302 Power operated hand tools, published 6/30/93, FR vol. 58, no. 124, p. 35175.

(d) 29 CFR 1926.303 Abrasive wheels and tools, published 6/30/93, FR vol. 58, no. 124, p. 35175.

(e) 29 CFR 1926.304 Woodworking tools, published 3/7/96, FR vol. 61, no. 46, p. 9251.

(f) 29 CFR 1926.305 Jacks - lever and ratchet, screw, and hydraulic, published Federal Register vol. 58, no. 124, p. 35176.

(10) Subdivision J – WELDING AND CUTTING

(a) 29 CFR 1926.350 Gas welding and cutting, published 6/30/93, FR vol. 58, no. 124, p. 35179.

(b) 29 CFR 1926.351 Arc welding and cutting, published 7/11/86, FR vol. 51, p. 25318.

(c) 29 CFR 1926.352 Fire prevention, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.353 Ventilation and protection in welding, cutting, and heating, published 6/30/93, FR vol. 58, no. 124, p. 35179.

(e) 29 CFR 1926.354 Welding, cutting, and heating in way of preservative coatings, published 4/6/79, FR vol. 44, p. 20940.

(11) Subdivision K – ELECTRICAL

(a) 29 CFR 1926.400 Introduction, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(b) 29 CFR 1926.401 (Reserved)

(c) 29 CFR 1926.402 Applicability, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(d) 29 CFR 1926.403 General requirements, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(e) 29 CFR 1926.404 Wiring design and protection, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335; amended with AO 5-2002, repeal (b)(1), f. 6/28/02, ef. 10/1/03.

(f) 29 CFR 1926.405 Wiring methods, components, and equipment for general use, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(g) 29 CFR 1926.406 Specific purpose equipment and installations, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(h) 29 CFR 1926.407 Hazardous (classified) locations, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(i) 29 CFR 1926.408 Special systems, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(j) 29 CFR 1926.409 (Reserved)

(k) 29 CFR 1926.415 (Reserved)

(l) 29 CFR 1926.416 General requirements, published 8/12/96, FR vol. 61, no. 156, p. 41738.

(m) 29 CFR 1926.417 Lockout and tagging of circuits, published 8/12/96, FR vol. 61, no. 156, p. 41739.

(n) 29 CFR 1926.418 (Reserved)

(o) 29 CFR 1926.430 (Reserved)

(p) 29 CFR 1926.431 Maintenance of equipment, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(q) 29 CFR 1926.432 Environmental deterioration of equipment, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(r) 29 CFR 1926.433 - 29 CFR 1926.440 (Reserved)

(s) 29 CFR 1926.441 Battery locations and battery charging, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(t) 29 CFR 1926.442 - 29 CFR 1926.448 (Reserved)

(u) 29 CFR 1926.449 Definitions applicable to this subpart, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(12) Subdivision L – SCAFFOLDING

(a) 29 CFR 1926.450 Scope, application and definitions applicable to this subpart, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(b) 29 CFR 1926.451 General requirements, published 11/25/96, FR vol. 61, no. 228, p. 59831.

(c) 29 CFR 1926.452 Additional requirements applicable to specific types of scaffolds, published 8/30/96, FR vol. 61, no. 170, p. 46113.

(d) 29 CFR 1926.453 Aerial lifts, published 11/25/96, FR vol. 61, no. 228, p. 59832.

(e) 29 CFR 1926.454 Training, published 8/30/96, FR vol. 61, no. 170, p. 46117.

(f) Appendix A to Subpart L Scaffold Specifications, published 8/30/96, FR vol. 61, no. 170, p. 46117.

(g) Appendix B to Subpart L Criteria for determining the feasibility of providing safe access and fall protection for scaffold erectors and dismantlers (Reserved), published 8/30/96, FR vol. 61, no. 170, p. 46122.



# ADMINISTRATIVE RULES

(h) Appendix C to Subpart L List of National Consensus Standards, published 8/30/96, FR vol. 61, no. 170, p. 46122.

(i) Appendix D to Subpart L List of training topics for scaffold erectors and dismantlers, published 8/30/96, FR vol. 61, no. 170, p. 46122.

(j) Appendix E to Subpart L Drawing and illustrations, published 11/25/96, FR vol. 61, no. 228, p. 59832.

## (13) Subdivision M – FALL PROTECTION

(a) 29 CFR 1926.500 Scope, application, and definitions applicable to this subpart, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(b) 29 CFR 1926.501 Duty to have fall protection, published 8/9/94, FR vol. 59, no. 152, p. 40732-40733; amended with AO 6-2002, f. and ef. 7/19/02.

(c) 29 CFR 1926.502 Fall protection systems criteria and practices, published 8/9/94, FR vol. 59, no. 152, p. 40733-40738; amended with AO 6-2002, f. and ef. 7/19/02.

(d) 29 CFR 1926.503 Training requirements. REPEALED with AO 6-2002, f. and ef. 7/19/02, replaced with OI.

(e) Appendix A to Subpart M Determining Roof Widths, published 8/9/94, FR vol. 59, no. 152, p. 40738-40742.

(f) Appendix B to Subpart M Guardrail Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743.

(g) Appendix C to Subpart M Personal Fall Arrest Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743-40746.

(h) Appendix D to Subpart M Positioning Device Systems, published 8/9/94, FR vol. 59, no. 152, p. 40746.

## (14) Subdivision N – HELICOPTERS, HOISTS, ELEVATORS, AND CONVEYORS

(a) 29 CFR 1926.550 (Reserved).

(b) 29 CFR 1926.551 Helicopters, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.552 Material hoists, personnel hoists, and elevators, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.553 Base-mounted drum hoist, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(e) 29 CFR 1926.554 Overhead hoists, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.555 Conveyors, published 4/6/79, FR vol. 44, p. 20940.

## (15) Subdivision O – MOTOR VEHICLES, MECHANIZED EQUIPMENT, AND MARINE OPERATIONS

(a) 29 CFR 1926.600 Equipment, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(b) 29 CFR 1926.601 Motor vehicles, REPEALED by OR-OSHA Admin. Order 6-2007, f. 9/26/07, ef. 9/26/07.

(c) 29 CFR 1926.602 Material handling equipment, published 12/1/98, FR vol. 63, no. 230, p. 66274; amended by AO 7-2003, f. 12/5/03, ef. 12/5/03.

(d) 29 CFR 1926.603 Pile driving equipment, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.604 Site clearing, published 7/22/77, FR vol. 42, p. 37674.

(f) 29 CFR 1926.605 Marine operations and equipment, published 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.606 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.

## (16) Subdivision P – EXCAVATIONS

(a) 29 CFR 1926.650 Scope, application, and definitions applicable to this subdivision, published 10/31/89, FR vol. 54, no. 209, pp. 45959-45961.

(b) 29 CFR 1926.651 General requirements, published 8/9/94, FR vol. 59, no. 152, p. 40730.

(c) 29 CFR 1926.652 Requirements for protective systems, published 10/31/89, FR vol. 54, no. 209, pp. 45961-45962.

(d) Appendices A-F to Subdivision P, Excavations, published 10/31/89, FR vol. 54, no. 209, pp. 45962-45991.

## (17) Subdivision Q – CONCRETE AND MASONRY CONSTRUCTION

(a) 29 CFR 1926.700 Scope, application and definitions applicable to this subpart, published 10/18/90, FR vol. 55, no. 202, p. 42326.

(b) 29 CFR 1926.701 General requirements, published 8/9/94, FR vol. 59, no. 152, p. 40730.

(c) 29 CFR 1926.702 Requirements for equipment and tools, published 6/16/88, FR vol. 53, p. 22612.

(d) 29 CFR 1926.703 Requirements for cast-in-place concrete, published 6/16/88, FR vol. 53, p. 22612.

(e) 29 CFR 1926.704 Requirements for precast concrete, published 10/5/89, FR vol. 54, no. 192, p. 41088.

(f) 29 CFR 1926.705 Requirements for lift-slab construction operations, published 10/18/90, FR vol. 55, no. 202, p. 42326.

(g) Appendix A to 1926.705 Lift-slab operations, published 10/18/90, FR vol. 55, no. 202, p. 42326.

(h) 29 CFR 1926.706 Requirements for masonry construction, published 6/16/88, FR vol. 53, p. 22612; amended with OR-OSHA Admin. Order 1-2003, f. 1/30/03, ef. 4/30/03.

## (18) Subdivision R – STEEL ERECTION

(a) 29 CFR 1926.750 Scope, published 7/17/01, FR vol. 66, no. 137, p. 37137.

(b) 29 CFR 1926.751 Definitions, published 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(c) 29 CFR 1926.752 Site layout, site-specific erection plan and construction sequence, published 7/17/01, FR vol. 66, no. 137, p. 37137.

(d) 29 CFR 1926.753 Hoisting and rigging, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(e) 29 CFR 1926.754 Structural steel assembly, published 4/3/06, FR vol. 71, no. 63, p. 16669.

(f) 29 CFR 1926.755 Column anchorage, published 7/17/01, FR vol. 66, no. 137, p. 37137.

(g) 29 CFR 1926.756 Beams and columns, published 7/17/01, FR vol. 66, no. 137, p. 37137.

(h) 29 CFR 1926.757 Open web steel joists, published 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(i) 29 CFR 1926.758 Systems-engineered metal buildings, published 7/17/01, FR vol. 66, no. 137, p. 37137.

(j) 29 CFR 1926.759 Falling object protection, published 7/17/01, FR vol. 66, no. 137, p. 37137.

(k) 29 CFR 1926.760 Fall protection, published 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(l) 29 CFR 1926.761 Training, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(m) Appendix A to Subpart R Guidelines for establishing the components of a site-specific erection plan: Nonmandatory Guidelines for Complying with §1926.752(e), published 7/17/01, FR vol. 66, no. 137, p. 37137.

(n) Appendix B to Subpart R Reserved.

(o) Appendix C to Subpart R Illustrations of bridging terminus points: Nonmandatory Guidelines for Complying with §1926.757(a)(10) and §1926.757(c)(5), published 7/17/01, FR vol. 66, no. 137, p. 37137.

(p) Appendix D to Subpart R Illustration of the use of control lines to demarcate controlled decking zones (CDZs): Nonmandatory Guidelines for Complying with §1926.760(c)(3), REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(q) Appendix E to Subpart R Training: Nonmandatory Guidelines for Complying with §1926.761, published 7/17/01, FR vol. 66, no. 137, p. 37137.

(r) Appendix F to Subpart R Perimeter columns: Nonmandatory Guidelines for Complying with §1926.756(e) to Protect the Unprotected Side or Edge of a Walking/Working Surface, published 7/17/01, FR vol. 66, no. 137, p. 37137.

(s) Appendix G to Subpart R Fall protection systems criteria and practices from §1926.502: Nonmandatory Guidelines for Complying with Complying with §1926.760(d), REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(t) Appendix H to Subpart R Double connections: Illustration of a clipped end connection and a staggered connection: Non-Mandatory Guidelines for Complying with Complying with §1926.756(c)(1), published 7/17/01, FR vol. 66, no. 137, p. 37137.

## (19) Subdivision S – UNDERGROUND CONSTRUCTION, CAISSONS, COFFERDAMS, AND COMPRESSED AIR

(a) 29 CFR 1926.800 Tunnels and shafts, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(b) 29 CFR 1926.801 Caissons, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.802 Cofferdams, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.803 Compressed air, published 7/11/86, FR vol. 51, p. 25318.

(e) 29 CFR 1926.804 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.

## ADMINISTRATIVE RULES

- (f) Appendix A to Subpart S Decompression Tables, published 4/6/79, FR vol. 44, p. 20940.
- (20) Subdivision T – DEMOLITION
- (a) 29 CFR 1926.850 Preparatory operations, published 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.851 Stairs, passageways, and ladders, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.852 Chutes, published 4/6/79, FR vol. 44, p. 20940.
- (d) 29 CFR 1926.853 Removal of materials through floor openings, published 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.854 Removal of walls, masonry sections, and chimneys, published 4/6/79, FR vol. 44, p. 20940.
- (f) 29 CFR 1926.855 Manual removal of floors, published 4/6/79, FR vol. 44, p. 20940.
- (g) 29 CFR 1926.856 Removal of walls, floors, and materials with equipment, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (h) 29 CFR 1926.857 Storage, published 4/6/79, FR vol. 44, p. 20940.
- (i) 29 CFR 1926.858 Removal of steel construction, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (j) 29 CFR 1926.859 Mechanical demolition, published 4/6/79, FR vol. 44, p. 20940.
- (k) 29 CFR 1926.860 Selective demolition by explosives, published 4/6/79, FR vol. 44, p. 20940.
- (21) Subdivision U – BLASTING AND USE OF EXPLOSIVES
- (a) 29 CFR 1926.900 General provisions, published 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.901 Blaster qualifications, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.902 Surface transportation of explosives, published 6/30/93, FR vol. 58, no. 124, p. 35311.
- (d) 29 CFR 1926.903 Underground transportation of explosives, published 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.904 Storage of explosives and blasting agents, published 6/30/93, FR vol. 58, no. 124, p. 35311.
- (f) 29 CFR 1926.905 Loading of explosives or blasting agents, published 6/30/93, FR vol. 58, no. 124, p. 35184.
- (g) 29 CFR 1926.906 Initiation of explosive charges – electric blasting, published 6/18/98, FR vol. 63, no. 117, p. 33469.
- (h) 29 CFR 1926.907 Use of safety fuse, published 4/6/79, FR vol. 44, p. 20940.
- (i) 29 CFR 1926.908 Use of detonating cord, published 4/6/79, FR vol. 44, p. 20940.
- (j) 29 CFR 1926.909 Firing the blast, published 4/6/79, FR vol. 44, p. 20940.
- (k) 29 CFR 1926.910 Inspection after blasting, published 4/6/79, FR vol. 44, p. 20940.
- (l) 29 CFR 1926.911 Misfires, published 4/6/79, FR vol. 44, p. 20940.
- (m) 29 CFR 1926.912 Underwater blasting, published 4/6/79, FR vol. 44, p. 20940.
- (n) 29 CFR 1926.913 Blasting in excavation work under compressed air, published 4/6/79, FR vol. 44, p. 20940.
- (o) 29 CFR 1926.914 Definitions applicable to this subpart, published 6/30/93, FR vol. 58, no. 124, p. 35184, 35311.
- (22) Subdivision V – POWER TRANSMISSION AND DISTRIBUTION
- (a) 29 CFR 1926.950 General requirements, published 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.951 Tools and protective equipment, published 8/9/94, FR vol. 59, no. 152, p. 40730.
- (c) 29 CFR 1926.952 Mechanical equipment, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (d) 29 CFR 1926.953 Material handling, published 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.954 Grounding for protection of employees, published 4/6/79, FR vol. 44, p. 20940.
- (f) 29 CFR 1926.955 Overhead lines, published 4/6/79, FR vol. 44, p. 20940.
- (g) 29 CFR 1926.956 Underground lines, published 4/6/79, FR vol. 44, p. 20940.
- (h) 29 CFR 1926.957 Construction in energized substations, published 4/6/79, FR vol. 44, p. 20940.
- (i) 29 CFR 1926.958 External load helicopters, published 4/6/79, FR vol. 44, p. 20940.
- (j) 29 CFR 1926.959 Lineman's body belts, safety straps, and lanyards, published 4/6/79, FR vol. 44, p. 20940.
- (k) 29 CFR 1926.960 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.
- (23) Subdivision W – ROLLOVER PROTECTIVE STRUCTURES: OVERHEAD PROTECTION
- (a) 29 CFR 1926.1000 Rollover protective structures (ROPS) for material handling equipment, published 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.1001 Minimum performance criteria for rollover protective structure for designated scrapers, loaders, dozers, graders, and crawler tractors, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.1002 Protective frame (ROPS) test procedures and performance requirements for wheel-type agricultural and industrial tractors used in construction, published 7/20/06, FR vol. 71, no. 139, p. 41127..
- (d) 29 CFR 1926.1003 Overhead protection for operators of agricultural and industrial tractors, published 2/28/06, FR vol. 71, no. 39, p. 9909.
- (24) Subdivision X – STAIRWAYS AND LADDERS
- (a) 29 CFR 1926.1050 Scope, application and definitions applicable to this Subdivision, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (b) 29 CFR 1926.1051 General requirements, published 11/14/90, FR vol. 55, no. 220, p. 47688.
- (c) 29 CFR 1926.1052 Stairways, published 8/23/91, FR vol. 56, no. 164, pp. 41793-41794.
- (d) 29 CFR 1926.1053 Ladders, published 8/23/91, FR vol. 56, no. 164, pp. 41793-41794.
- (e) 29 CFR 1926.1054 (Reserved)
- (f) 29 CFR 1926.1055 (Reserved)
- (g) 29 CFR 1926.1056 (Reserved)
- (h) 29 CFR 1926.1057 (Reserved)
- (i) 29 CFR 1926.1058 (Reserved)
- (j) 29 CFR 1926.1059 (Reserved)
- (k) 29 CFR 1926.1060 Training requirements, published 11/14/90, FR vol. 55, no. 220, p. 47691.
- (25) Subdivision Z – TOXIC AND HAZARDOUS SUBSTANCES
- (a) 29 CFR 1926.1101 Asbestos, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.
- (b) 29 CFR 1926.1126 Chromium (VI), published; 3/17/10, FR vol. 75, no. 51, pp. 12681-12686.
- (c) 29 CFR 1926.1127 Cadmium, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.
- (d) 29 CFR 1926.1152 Methylene Chloride, published 12/18/97, FR vol. 62, no. 243, p. 66275.
- (26) Subdivision AA – (Reserved)
- (27) Subdivision BB – (Reserved)
- (28) Subdivision CC – Cranes and Derricks in Construction
- (a) 29 CFR 1926.1400 Scope, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (b) 29 CFR 1926.1401 Definitions, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (c) 29 CFR 1926.1402 Ground conditions, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (d) 29 CFR 1926.1403 Assembly/Disassembly – selection of manufacturer or employer procedures, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (e) 29 CFR 1926.1404 Assembly/Disassembly – general requirements (applies to all assembly and disassembly operations), published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (f) 29 CFR 1926.1405 Disassembly – additional requirements for dismantling of booms and jibs (applies to both the use of manufacturer procedures and employer procedures), published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (g) 29 CFR 1926.1406 Assembly/Disassembly – employer procedures – general requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (h) 29 CFR 1926.1407 Power line safety (up to 350 kV) – assembly and disassembly, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (i) 29 CFR 1926.1408 Power line safety (up to 350 kV) – equipment operations, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (j) 29 CFR 1926.1409 Power line safety (over 35 kV), published 8/9/10, FR vol. 75, vol. 152, pp. 47906-48177.
- (k) 29 CFR 1926.1410 Power line safety (all voltages) – equipment operations closer than the Table A zone, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (l) 29 CFR 1926.1411 Power line safety – while traveling, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

# ADMINISTRATIVE RULES

(m) 29 CFR 1926.1412 Inspections, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(n) 29 CFR 1926.1413 Wire rope – inspection, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(o) 29 CFR 1926.1414 Wire rope – selection and installation criteria, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(p) 29 CFR 1926.1415 Safety devices, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(q) 29 CFR 1926.1416 Operational aids, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(r) 29 CFR 1926.1417 Operation, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(s) 29 CFR 1926.1418 Authority to stop operation, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(t) 29 CFR 1926.1419 Signals – general requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(u) 29 CFR 1926.1420 Signals – radio, telephone or other electronic transmission of signals, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(v) 29 CFR 1926.1421 Signals – voice signals – additional requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(w) 29 CFR 1926.1422 Signals – hand signal chart, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(x) 29 CFR 1926.1423 Fall protection, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(y) 29 CFR 1926.1424 Work area control, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(z) 29 CFR 1926.1425 Keeping clear of the load, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(aa) 29 CFR 1926.1426 Free fall and controlled load lowering, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(bb) 29 CFR 1926.1427 Operator qualification and certification, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(cc) 29 CFR 1926.1428 Signal person qualifications, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(dd) 29 CFR 1926.1429 Qualifications of maintenance & repair employees, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ee) 29 CFR 1926.1430 Training, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ff) 29 CFR 1926.1431 Hoisting personnel, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(gg) 29 CFR 1926.1432 Multiple-crane/derrick lifts – supplemental requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(hh) 29 CFR 1926.1433 Design, construction and testing, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ii) 29 CFR 1926.1434 Equipment modifications, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(jj) 29 CFR 1926.1435 Tower cranes, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(kk) 29 CFR 1926.1436 Derricks, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ll) 29 CFR 1926.1437 Floating cranes/derricks and land cranes/derricks on barges, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(mm) 29 CFR 1926.1438 Overhead & gantry cranes, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(nn) 29 CFR 1926.1439 Dedicated pile drivers, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(oo) 29 CFR 1926.1440 Sideboom cranes, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(pp) 29 CFR 1926.1441 Equipment with a rated hoisting/lifting capacity of 2,000 pounds or less, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(qq) 29 CFR 1926.1442 Severability, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(rr) Appendix A to Subdivision CC of 1926 – Standard Hand Signals, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ss) Appendix B to Subdivision CC of 1926 – Assembly/Disassembly – Sample Procedures for Minimizing the Risk of Unintended Dangerous Boom Movement, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(tt) Appendix C to Subdivision CC of 1926 – Operator Certification – Written Examination – Technical Knowledge Criteria, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(29) Subdivision DD – Cranes and Derricks Used in Demolition and Underground Construction, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(a) 29 CFR 1926.1500 Scope, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(b) 29 CFR 1926.1501 Cranes and Derricks, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

Stat. Auth.: ORS 654.025(2) & 656.726(4).  
Stats. Implemented: ORS 654.001 - 654.295.

Hist.: APD 5-1989(Temp), f. 3-31-89, ef. 5-1-89; APD 8-1989, f. & ef. 7-7-89; APD 14-1989(Temp), f. 7-20-89, ef. 8-1-89; APD 15-1989, f. & ef. 9-13-89; OSHA 3-1990(Temp), f. & cert. ef. 1-19-90; OSHA 7-1990, f. & cert. ef. 3-2-90; OSHA 8-1990, f. & cert. ef. 3-30-90; OSHA 13-1990(Temp), f. 6-28-90, ef. 8-1-90; OSHA 19-1990, f. & cert. ef. 8-31-90; OSHA 27-1990, f. 12-12-90, cert. ef. 2-1-91; OSHA 6-1991, f. 3-18-91, cert. ef. 4-15-91; OSHA 7-1991, f. & cert. ef. 4-25-91; OSHA 15-1991, f. & cert. ef. 12-13-91; OSHA 16-1991, f. 12-16-91, cert. ef. 1-1-92; OSHA 6-1992, f. & cert. ef. 5-18-92; OSHA 11-1992, f. & cert. ef. 10-9-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 16-1993, f. & cert. ef. 11-1-93; OSHA 4-1994, f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 3-1995, f. & cert. ef. 2-22-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 6-1995, f. & cert. ef. 4-18-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 5-1996, f. & cert. ef. 11-29-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 2-1997, f. & cert. ef. 3-12-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 7-1997, f. & cert. ef. 9-15-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 6-1998, f. & cert. ef. 10-15-98; OSHA 7-1998, f. & cert. ef. 12-18-98; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 3-2000, f. & cert. ef. 2-8-00; OSHA 3-2001, f. & cert. ef. 2-5-01; OSHA 3-2002, f. 4-15-02, cert. ef. 4-18-02; OSHA 5-2002, f. 6-28-02 cert. ef. 10-1-03; OSHA 6-2002, f. & cert. ef. 7-19-02; OSHA 1-2003, f. 1-30-03 cert. ef. 4-30-03; OSHA 2-2003, f. & cert. ef. 1-30-03; OSHA 7-2003, f. & cert. ef. 12-5-03; OSHA 8-2003, f. 12-30-03 cert. ef. 1-1-04; OSHA 1-2005, f. & cert. ef. 4-12-05; OSHA 2-2006, f. & cert. ef. 4-28-06; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 5-2006, f. 8-7-06, cert. ef. 1-1-07; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 6-2007, f. & cert. ef. 9-26-07; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 3-2010, f. 6-10-10, cert. ef. 6-15-10; OSHA 1-2011, f. & cert. ef. 2-9-11; OSHA 4-2011, f. & cert. ef. 12-8-11

## 437-003-0015

### Drinking Water

(1) Potable water means water meeting the bacteriological and chemical quality requirements prescribed in the OAR chapter 333, division 61, Public Water Systems, of the Oregon State Health Division.

(2) In addition to and not in lieu of any provisions in 1926.51(a), drinking water containers shall be constructed of materials that maintain water quality, shall be refilled daily or more often as necessary, shall be kept covered, and shall be regularly cleaned.

Stat. Auth.: ORS 654.025(2) & 656.726(4)  
Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 5-1989, f. 3-31-89, ef. 5-1-89; APD 8-1989, f. & ef. 7-7-89; OSHA 4-2011, f. & cert. ef. 12-8-11

## 437-003-0096

### Underground Installations

In addition to and not in lieu of any rules relating to “underground installations” adopted in Oregon Administrative Rules, Chapter 437, the following Oregon Revised Statutes and Oregon Administrative Rules administered by the Oregon Public Utility Commission (PUC) shall apply:

- (1) ORS 757.541 through 757.571; and
- (2) OAR 952-001-0050 and 860-024-0007.

Stat. Auth.: ORS 654.025(2) & 656.726(4)  
Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 8-1990, f. 3-30-90, cert. ef. 9-1-90; OSHA 4-2011, f. & cert. ef. 12-8-11

## 437-004-1110

### Field Sanitation for Hand Labor Work

(1) Scope. This applies to any agricultural establishment where employees do hand-labor operations in the field.

(2) Exceptions. These rules do not apply to:

- (a) Logging operations;
- (b) The care or feeding of livestock;
- (c) Hand-labor operations in permanent structures (e.g., canning facilities or packing houses); or
- (d) Machine operators working entirely separate from hand-labor operations.

(3) Definitions.

Agricultural employer – See universal definition in 4/B, OAR 437-004-0100. Agricultural establishment – See universal definition in 4/B, OAR 437-004-0100. Hand labor operation – means agricultural activities or agricultural operations performed by hand or with hand tools, including:

(A) Hand-cultivation, hand-weeding, hand-planting, and hand-harvesting of vegetables, nuts, fruits, seedlings, or other crops (including mushrooms);



# ADMINISTRATIVE RULES

(B) Hand packing or sorting, whether done on the ground, on a moving machine, or in a temporary packing shed in the field; and

(C) Except for purposes of OAR 437-004-1110(6), operation of vehicles or machinery, when such activity is in conjunction with other hand-labor operators. Handwashing facility – means a facility providing either a basin, container, or outlet with an adequate supply of potable water, soap, and single-use towels. Potable water – is water meeting the bacteriological and chemical quality requirements in the OAR chapter 333, division 61 Public Water Systems, of the Oregon State Health Division.

**NOTE:** OAR chapter 333, division 61 defines potable water as “Safe Drinking Water – water which has sufficiently low concentrations of microbiological, inorganic chemical, organic chemical, radiological, or physical substances so that individuals drinking such water at normal levels of consumption, will not be exposed to disease organisms or other substances that may produce harmful physiological effects.”

Toilet facility – means a fixed or portable facility designed for adequate collection and containment of the products of both defecation and urination. Toilet facility includes biological, chemical, flush, and combustion toilets and sanitary privies.

(4) General requirements. Agricultural employers must provide and pay for everything required by this section for employees doing hand-labor operations in the field.

(5) Potable drinking water.

(a) Provide potable water that is available immediately to all employees.

(b) The water must be suitably cool and in sufficient amounts, taking into account the air temperature, humidity, and the nature of the work, to meet the needs of all employees.

(c) Dispense water in single-use drinking cups or by angle jet fountains. Do not use common drinking cups or dippers.

(6) Toilet and handwashing facilities.

(a) Provide one toilet facility and one handwashing facility for each 20 employees or fraction thereof.

(b) Toilet facilities must have adequate ventilation, appropriate screens, self-closing doors that close and latch from the inside and ensure privacy.

(c) Maintain privies and portable toilets as follows:

(A) Structures must be free of hazards, in good repair and be stable.

(B) Except for urinals, multiple units must have separate compartments with doors with inside latches to ensure privacy.

(C) Seats must have lids that raise to allow use as urinals, unless there are separate urinals.

(d) Privies and portable toilets built after the effective date of these rules must comply with the rules of the Department of Environmental Quality.

(e) Provide toilet facilities for each sex, where practicable. Distinctly mark them “women” and “men” in English and in the native language of employees expected to work in the fields or with easily understood pictures or symbols.

(f) The employer must ensure that for each toilet facility:

(A) There is enough toilet paper to meet the workers’ needs during the shift; and

(B) There are toilet paper holders or dispensers for each seat.

(g) Locate toilet and handwashing facilities adjacent to each other and no more than a 5 minute or a 1/4-mile (1,320 feet) unobstructed walk from each hand laborer’s place of work in the field.

(h) Where, due to terrain, it is not feasible to locate facilities as in (g) above, the facilities must be at the point of closest vehicular access.

(7) Maintenance.

(a) Potable drinking water and toilet and handwashing facilities must comply with appropriate public health sanitation practices.

(b) Drinking water containers must be made of materials that maintain water quality. Refill them daily or more often as necessary and keep them covered and clean.

(c) Toilet facilities must work and be clean and safe.

(d) Empty and recharge chemical toilets prior to the start of each season of operation and at least every 6 months thereafter during use or when the tank is three-quarters full, whichever occurs first.

(e) Where crops intended for human consumption are produced, toilets must not contaminate crops.

(f) Refill handwashing facilities with potable water as necessary to ensure an adequate supply and maintain them in a clean and sanitary condition.

(g) Disposal of wastes from facilities, including handwashing water and towels, must not cause unsanitary conditions or contamination of crops.

(8) Field sanitation notice. Employers that grow or harvest food crops for human consumption must post a notice describing the requirements of

these rules and advising where workers may file complaints regarding field sanitation matters. It must be in the language of the majority of the workers.

(9) Reasonable use.

(a) The employer must notify each employee of the location of the sanitation facilities and water, and allow each employee reasonable opportunities during the workday to use them. The employer must inform each employee of the importance of good hygiene practices to minimize exposure to the hazards in the field from heat, communicable diseases, retention of urine and agrichemical residues, including, but not limited to the following:

(A) Using the water and facilities provided for drinking, handwashing, and elimination;

(B) Drinking water frequently, especially on hot days;

(C) Urinating as frequently as necessary;

(D) Washing hands both before and after using the toilet; and

(E) Washing hands before eating and smoking.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 4-2011, f. & cert. ef. 12-8-11

## 437-005-0001

### Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1915, in the Federal Register:

(1) Subdivision A

(a) 29 CFR 1915.1. Purpose and authority, published 4/20/82, Federal Register (FR) vol. 47, p. 16984.

(b) 29 CFR 1915.2. Scope and application, published 4/20/82, FR vol. 47, p. 16984.

(c) 29 CFR 1915.3. Responsibility, published 4/20/82, FR vol. 47, p. 16984.

(d) 29 CFR 1915.4. Definitions, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.5. Incorporation by reference, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.

(f) 29 CFR 1915.6. Commercial diving operations, published 4/20/82, FR vol. 47, p. 16984.

(g) 29 CFR 1915.7. Competent person, published 7/25/94, FR vol. 59, p. 37856.

(h) 29 CFR 1915.9. Compliance duties owed to each employee, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(2) Subdivision B

(a) 29 CFR 1915.11. Scope, application and definitions applicable to this Subpart, published 7/25/94, FR vol. 59, p. 37857.

(b) 29 CFR 1915.12. Precautions before entering confined and enclosed spaces and other dangerous atmospheres, published 3/16/95, FR vol. 60, no. 51, p. 14218.

(c) 29 CFR 1915.13. Cleaning and other cold work, published 7/25/94, FR vol. 59, p. 37859.

(d) 29 CFR 1915.14. Hot work, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.15. Maintenance of safe conditions, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.16. Warning signs and labels, published 7/25/94, FR vol. 59, p. 37861.

Appendix A to Subpart B published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

Appendix B to Subpart B published 7/25/94, FR vol. 59, p. 37816.

(3) Subdivision C

(a) 29 CFR 1915.31. Scope & application of subdivision, published 4/20/82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.32. Toxic cleaning solvents, published 5/24/96, FR vol. 61, no. 102, p. 26351.

(c) 29 CFR 1915.33. Chemical paint & preservative remover, published 5/24/96, FR vol. 61, no. 102, p. 26351.

(d) 29 CFR 1915.34. Mechanical paint removers, published 5/24/96, FR vol. 61, no. 102, p. 26351.

(e) 29 CFR 1915.35. Painting, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.36. Flammable liquids, published 4/20/82, FR vol. 47, p. 16984.

(4) Subdivision D

(a) 29 CFR 1915.51. Ventilation & protection in welding, cutting and heating, published 7/3/02, FR vol. 67, no. 128, p. 44541.

# ADMINISTRATIVE RULES

- (b) 29 CFR 1915.52. Fire prevention. REMOVED 9/15/04, FR vol. 69, p. 55667.
- (c) 29 CFR 1915.53. Welding, cutting and heating of hollow metal containers & structure not covered by 1915.12, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (d) 29 CFR 1915.55. Gas welding & cutting, published 4/20/82, FR vol. 47, p. 16984.
- (e) 29 CFR 1915.56. Arc welding and cutting, published 4/20/82, FR vol. 47, p. 16984.
- (f) 29 CFR 1915.57. Uses of fissionable material in ship repairing and shipbuilding, published 4/20/82, FR vol. 47, p. 16984.
- (5) Subdivision E
- (a) 29 CFR 1915.71. Scaffolds or staging, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (b) 29 CFR 1915.72. Ladders, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (c) 29 CFR 1915.73. Guarding of deck openings and edges, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (d) 29 CFR 1915.74. Access to vessels, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (e) 29 CFR 1915.75. Access to and guarding of dry docks and marine railways, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (f) 29 CFR 1915.76. Access to cargo spaces and confined spaces, published 4/20/82, FR vol. 47, p. 16984.
- (g) 29 CFR 1915.77. Working surfaces, published amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- (6) Subdivision F
- (a) 29 CFR 1915.80. Scope, application, definitions and effective dates, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (b) 29 CFR 1915.81. Housekeeping, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (c) 29 CFR 1915.82. Lighting, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (d) 29 CFR 1915.83. Utilities, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (e) 29 CFR 1915.84. Working alone, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (f) 29 CFR 1915.85. Vessel radar and communication systems, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (g) 29 CFR 1915.86. Lifeboats, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (h) 29 CFR 1915.87. Medical services and first aid, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (i) 29 CFR 1915.88. Sanitation, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (j) 29 CFR 1915.89. Control of hazardous energy (lockout/tagout), published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (k) 29 CFR 1915.90. Safety color code for marking physical hazards, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (l) 29 CFR 1915.91. Accident prevention signs and tags, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (m) 29 CFR 1915.92. Retention of DOT markings, placards, and labels, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (n) 29 CFR 1915.93. Motor vehicle safety equipment, operation, and maintenance, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (o) 29 CFR 1915.94. Servicing of multi-piece and single-piece rim wheels, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- Subdivision G
- (a) 29 CFR 1915.111. Inspection, published 4/20/82, FR vol. 47, p. 16984.
- (b) 29 CFR 1915.112. Ropes, chains and slings, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.
- (c) 29 CFR 1915.113. Shackles and hooks, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.
- (d) 29 CFR 1915.114. Chain falls and pull lifts, published 4/20/82, FR vol. 47, p. 16984.
- (e) 29 CFR 1915.115. Hoisting and hauling equipment, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (f) 29 CFR 1915.116. Use of gear, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (g) 29 CFR 1915.117. Qualifications of operators, published 4/20/82, FR vol. 47, p. 16984.
- (h) 29 CFR 1915.118. Tables, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (8) Subdivision H
- (a) 29 CFR 1915.131. General precautions, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (b) 29 CFR 1915.132. Portable electric tools, published 4/20/82, FR vol. 47, p. 16984.
- (c) 29 CFR 1915.133. Hand tools, published 4/20/82, FR vol. 47, p. 16984.
- (d) 29 CFR 1915.134. Abrasive wheels, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (e) 29 CFR 1915.135. Powder actuated fastening tools, published 5/24/96, FR vol. 61, no. 102, p. 26351.
- (f) 29 CFR 1915.136. Internal combustion engines other than ship's equipment, published 4/20/82, FR vol. 47, p. 16984.
- (9) Subdivision I
- (a) 29 CFR 1915.151. Scope, application and definitions, published 5/24/96, FR vol. 61, no. 102, p. 26352.
- (b) 29 CFR 1915.152. General requirements, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.
- (c) 29 CFR 1915.153. Eye and face protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.
- (d) 29 CFR 1915.154. Respiratory protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.
- (e) 29 CFR 1915.155. Head protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.
- (f) 29 CFR 1915.156. Foot protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.
- (g) 29 CFR 1915.157. Hand and body protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.
- (h) 29 CFR 1915.158. Lifesaving equipment, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (i) 29 CFR 1915.159. Personal fall arrest systems (PFAS), published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (j) 29 CFR 1915.160. Positioning device systems, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- Appendix A to Subpart I, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- Appendix B to Subpart I, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (10) Subdivision J
- (a) 29 CFR 1915.161. Scope and application of subdivision, published 4/20/82, FR vol. 47, p. 16984.
- (b) 29 CFR 1915.162. Ship's boilers, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (c) 29 CFR 1915.163. Ship's piping systems, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (d) 29 CFR 1915.164. Ship's propulsion machinery, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (e) 29 CFR 1915.165. Ship's decking machinery, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (11) Subdivision K
- (a) 29 CFR 1915.171. Scope and application of subdivision, published 4/20/82, FR vol. 47, p. 16984.
- (b) 29 CFR 1915.172. Portable air receiver and other unfired pressure vessels, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (c) 29 CFR 1915.173. Drums and containers, published 4/20/82, FR vol. 47, p. 16984.
- (12) Subdivision L
- (a) 29 CFR 1915.181. Electrical circuits and distribution boards, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (13) Subdivisions M O (Reserved)
- (14) Subdivision P
- (a) 29 CFR 1915.501. General provisions, published 9/15/04, FR vol. 69, p. 55667.
- (b) 29 CFR 1915.502. Fire safety plan, published 9/15/04, FR vol. 69, p. 55667.
- (c) 29 CFR 1915.503. Precautions for hot work, published 9/15/04, FR vol. 69, p. 55667.
- (d) 29 CFR 1915.504. Fire watches, published 9/15/04, FR vol. 69, p. 55667.
- (e) 29 CFR 1915.505. Fire response, published 10/17/06, FR vol. 71, no. 200, p. 60843.
- (f) 29 CFR 1915.506. Hazards of fixed extinguishing systems on board vessels and vessel sections, published 9/15/04, FR vol. 69, p. 55667.
- (g) 29 CFR 1915.507. Land-side fire protection systems, published 10/17/06, FR vol. 71, no. 200, p. 60843.
- (h) 29 CFR 1915.508. Training, published 9/15/04, FR vol. 69, p. 55667.
- (i) 29 CFR 1915.509. Definitions applicable to this subpart, published 9/15/04, FR vol. 69, p. 55667.

# ADMINISTRATIVE RULES

Appendix A to Subpart P, published 9/15/04, FR vol. 69, p. 55667.

(15) Subdivision Q-Y (Reserved)

(16) Subdivision Z

(a) 29 CFR 1915.1000, Air Contaminants, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.1001, Asbestos, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

Appendix A to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.

Appendix B to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.

Appendix C to 1915.1001, published 6/8/11, FR vol. 76, no. 110, p. 33590.

Appendix D to 1915.1001, published 8/10/94, FR vol. 59, p. 40964.

Appendix E to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.

Appendix F to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.

Appendix G to 1915.1001, published 8/10/94, FR vol. 59, p. 40964.

Appendix H to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.

Appendix I to 1915.1001, published 8/10/94, FR vol. 59, p. 40964.

Appendix J to 1915.1001, published 8/10/94, FR vol. 59, p. 40964.

Appendix K to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.

Appendix L to 1915.1001, published 8/23/96, FR vol. 61, p. 43454.

(c) 29 CFR 1915.1002. Coal tar pitch volatiles; interpretation of term, published 6/20/96, FR vol. 61, p. 31427.

(d) 29 CFR 1915.1003. 13 Carcinogens (4 Nitrophenyl, etc.), published 6/20/96, FR vol. 61, p. 31427.

(e) 29 CFR 1915.1004. alpha Naphthylamine, published 6/20/96, FR vol. 61, p. 31427.

(f) 29 CFR 1915.1005. (Reserved)

(g) 29 CFR 1915.1006. Methyl chloromethyl ether, published 6/20/96, FR vol. 61, p. 31427.

(h) 29 CFR 1915.1007. 3,3'-Dichlorobenzidene (and its salts), published 6/20/96, FR vol. 61, p. 31427.

(i) 29 CFR 1915.1008. bis Chloromethyl ether, published 6/20/96, FR vol. 61, p. 31427.

(j) 29 CFR 1915.1009. beta Naphthylamine, published 6/20/96, FR vol. 61, p. 31427.

(k) 29 CFR 1915.1010. Benzidine, published 6/20/96, FR vol. 61, p. 31427.

(l) 29 CFR 1915.1011. 4 Aminodiphenyl, published 6/20/96, FR vol. 61, p. 31427.

(m) 29 CFR 1915.1012. Ethyleneimine, published 6/20/96, FR vol. 61, p. 31427.

(n) 29 CFR 1915.1013. beta Propiolactone, published 6/20/96, FR vol. 61, p. 31427.

(o) 29 CFR 1915.1014. 2 Acetylaminofluorene, published 6/20/96, FR vol. 61, p. 31427.

(p) 29 CFR 1915.1015. 4 Dimethylaminoazobenzene, published 6/20/96, FR vol. 61, p. 31427.

(q) 29 CFR 1915.1016. N Nitrosodimethylamine, published 6/20/96, FR vol. 61, p. 31427.

(r) 29 CFR 1915.1017. Vinyl chloride, published 6/20/96, FR vol. 61, p. 31427.

(s) 29 CFR 1915.1018. Inorganic arsenic, published 6/20/96, FR vol. 61, p. 31427.

(t) 29 CFR 1915.1020 Access to employee exposure and medical records, published 6/20/96, FR vol. 61, p. 31427.

(u) 29 CFR 1915.1025. Lead, published 6/20/96, FR vol. 61, p. 31427.

(v) 29 CFR 1915.1026 Chromium (VI), published 3/17/10, FR vol. 75, no. 51, pp. 12681-12686.

(w) 29 CFR 1915.1027. Cadmium, published 6/20/96, FR vol. 61, p. 31427.

(x) 29 CFR 1915.1028. Benzene, published 6/20/96, FR vol. 61, p. 31427.

(y) 29 CFR 1915.1030. Bloodborne pathogens, published 6/20/96, FR vol. 61, p. 31427.

(z) 29 CFR 1915.1044. 1,2 dibromo 3 chloropropane, published 6/20/96, FR vol. 61, p. 31427.

(aa) 29 CFR 1915.1045. Acrylonitrile, published 6/20/96, FR vol. 61, p. 31427.

(bb) 29 CFR 1915.1047. Ethylene oxide, published 6/20/96, FR vol. 61, p. 31427.

(cc) 29 CFR 1915.1048. Formaldehyde, published 6/20/96, FR vol. 61, p. 31427.

(dd) 29 CFR 1915.1050. Methylenedianiline, published 6/20/96, FR vol. 61, p. 31427.

(ee) 29 CFR 1915.1052 Methylene Chloride, published 1/10/97, Federal Register, vol. 62, no. 7, p. 1619.

(ff) 29 CFR 1915.1120 Access to employee exposure and medical records has been redesignated to §1915.1020.

(Note: 29 CFR 1915.99, Hazard Communication was redesignated as 1915.1200 on 7/1/93, FR vol. 58, no. 125, p. 35514.)

(gg) 29 CFR 1915.1200. Hazard communication, published 6/20/96, FR vol. 61, p. 31427.

(hh) 29 CFR 1915.1450. Occupational exposure to hazardous chemicals in laboratories, published 6/20/96, FR vol. 61, p. 31427.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 10-1992, f. 9-24-92, cert. ef. 11-1-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 19-1993, f. & cert. ef. 12-29-93; OSHA 4-1994 f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 2-1995, f. & cert. ef. 1-25-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 5-1996, f. & cert. ef. 11-29-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 3-1997, f. & cert. ef. 3-28-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 7-1998, f. & cert. ef. 12-18-98; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 4-2001, f. & cert. ef. 2-5-01; OSHA 4-2003, f. & cert. ef. 5-6-03; OSHA 8-2004, f. & cert. ef. 12-30-04; OSHA 1-2005, f. & cert. ef. 4-12-05; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 1-2007, f. 1-9-07 cert. ef. 1-16-07; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 2-2010, f. & cert. ef. 2-25-10; OSHA 3-2010, f. 6-10-10, cert. ef. 6-15-10; OSHA 3-2011, f. & cert. ef. 11-1-11; OSHA 4-2011, f. & cert. ef. 12-8-11

## 437-005-0002

### Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1917, in the Federal Register:

(1) Subdivision A

(a) 29 CFR 1917.1 Scope and applicability, published 2/28/06, FR vol. 71, no. 39, p. 10100.

(b) 29 CFR 1917.2 Definitions, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(c) 29 CFR 1917.3 Incorporation by reference, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.

(d) 29 CFR 1917.5 Compliance duties owed to each employee, published 12/12/08, FR vol. 73, no. 240, pp.75568-75589

(2) Subdivision B

(a) 29 CFR 1917.11 Housekeeping, published 7/25/97, FR vol. 62, no. 143, p. 40196.

(b) 29 CFR 1917.12 Slippery conditions, published 7/5/83, FR vol. 48, p. 30909.

(c) 29 CFR 1917.13 Slings, published 7/25/97, FR vol. 62, no. 143, p. 40197.

(d) 29 CFR 1917.14 Stacking of cargo and pallets, published 7/5/83, FR vol. 48, p. 30909.

(e) 29 CFR 1917.15 Coopering, published 7/5/83, FR vol. 48, p. 30909.

(f) 29 CFR 1917.16 Line handling, published 7/5/83, FR vol. 48, p. 30909.

(g) 29 CFR 1917.17 Railroad facilities, published 7/25/97, FR vol. 62, no. 143, p. 40197.

(h) 29 CFR 1917.18 Log handling, published 7/5/83, FR vol. 48, p. 30909.

(i) 29 CFR 1917.19 Movement of barges and rail cars, published 7/5/83, FR vol. 48, p. 30909.

(j) 29 CFR 1917.20 Interference with communications, published 7/25/97, FR vol. 62, no. 143, p. 40197.

(k) 29 CFR 1917.21 Open fires, published 7/5/83, FR vol. 48, p. 30909.

(l) 29 CFR 1917.22 Hazardous cargo (see 1917.2(p)), published 7/5/83, FR vol. 48, p. 30909.

(m) 29 CFR 1917.23 Hazardous atmospheres and substances (see 1917.2(p)), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(n) 29 CFR 1917.24 Carbon monoxide, published 7/25/97, FR vol. 62, no. 143, p. 40197.

(o) 29 CFR 1917.25 Fumigants, pesticides, insecticides and hazardous preservatives (see 1917.2(p)), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(p) 29 CFR 1917.26 First aid and lifesaving facilities, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(q) 29 CFR 1917.27 Personnel, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(r) 29 CFR 1917.28 Hazard communication (see also §1917.1(a)(2)(vi)), published 7/25/97, FR vol. 62, no. 143, p. 40198.

(s) 29 CFR 1917.29 Retention of DOT markings, placards and labels, published 7/19/94, Federal Register, vol. 59, no. 137, p. 36700.



# ADMINISTRATIVE RULES

- (t) 29 CFR 1917.30 Emergency action plans, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (3) Subdivision C
- (a) 29 CFR 1917.41 House falls, published 7/5/83, FR vol. 48, p. 30909.
- (b) 29 CFR 1917.42 Miscellaneous auxiliary gear, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (c) 29 CFR 1917.43 Powered industrial trucks, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (d) 29 CFR 1917.44 General rules applicable to vehicles, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (e) 29 CFR 1917.45 Cranes and derricks (see also §1917.50), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (f) 29 CFR 1917.46 Load indicating devices, published 7/25/97, FR vol. 62, no. 143, p. 40199.
- (g) 29 CFR 1917.47 Winches, published 7/5/83, FR vol. 48, p. 30909.
- (h) 29 CFR 1917.48 Conveyors, published 7/25/97, FR vol. 62, no. 143, p. 40200.
- (i) 29 CFR 1917.49 Spouts, chutes, hoppers, bins, and associated equipment, published 7/5/83, FR vol. 48, p. 30909.
- (j) 29 CFR 1917.50 Certification of marine terminal material handling devices (see also Mandatory Appendix IV, Part 1918 of this chapter), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (k) 29 CFR 1917.51 Hand tools, published 7/5/83, FR vol. 48, p. 30909.
- (4) Subdivision D
- (a) 29 CFR 1917.70 General, published 7/5/83, FR vol. 48, p. 30909.
- (b) 29 CFR 1917.71 Terminals handling intermodal container or roll on roll off operations, published 12/10/08, FR vol. 73, no. 238, pp. 75246-75290.
- (c) 29 CFR 1917.72 (Reserved)
- (d) 29 CFR 1917.73 Terminal facilities handling menhaden and similar species of fish (see also §1917.2, definition of hazardous cargo, materials, substance, or atmosphere), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (5) Subdivision E
- (a) 29 CFR 1917.91 Eye and face protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.
- (b) 29 CFR 1917.92 Respiratory protection, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (c) 29 CFR 1917.93 Head protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.
- (d) 29 CFR 1917.94 Foot protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.
- (e) 29 CFR 1917.95 Other protective measures, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (f) 29 CFR 1917.96 Payment for protective equipment, published 11/15/07, FR vol. 72, no. 220, p. 64342.
- (6) Subdivision F
- (a) 29 CFR 1917.111 Maintenance and load limits, published 7/5/83, FR vol. 48, p. 30909.
- (b) 29 CFR 1917.112 Guarding of edges, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (c) 29 CFR 1917.113 Clearance heights, published 7/5/83, FR vol. 48, p. 30909.
- (d) 29 CFR 1917.114 Cargo doors, published 7/5/83, FR vol. 48, p. 30909.
- (e) 29 CFR 1917.115 Platforms and skids, published 7/5/83, FR vol. 48, p. 30909.
- (f) 29 CFR 1917.116 Elevators and escalators, published 7/13/84, FR vol. 49, p. 28551.
- (g) 29 CFR 1917.117 Manlifts, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (h) 29 CFR 1917.118 Fixed ladders, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (i) 29 CFR 1917.119 Portable ladders, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (j) 29 CFR 1917.120 Fixed stairways, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (k) 29 CFR 1917.121 Spiral stairways, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (l) 29 CFR 1917.122 Employee exits, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (m) 29 CFR 1917.123 Illumination, published 7/25/97, FR vol. 62, no. 143, p. 40201.

- (n) 29 CFR 1917.124 Dockboards (car and bridge plates), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (o) 29 CFR 1917.125 Guarding temporary hazards, published 7/5/83, FR vol. 48, p. 30909.
- (p) 29 CFR 1917.126 River banks, published 7/25/97, FR vol. 62, no. 143, p. 40201.
- (q) 29 CFR 1917.127 Sanitation, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.
- (r) 29 CFR 1917.128 Signs and marking, published 7/5/83, FR vol. 48, p. 30909.
- (7) Subdivision G
- (a) 29 CFR 1917.151 Machine guarding, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (b) 29 CFR 1917.152 Welding, cutting and heating (hot work) (see also §1917.2, definition of hazardous cargo, materials, substance, or atmosphere), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (c) 29 CFR 1917.153 Spray painting (see also §1917.2, definition of hazardous cargo, materials, substance, or atmosphere), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (d) 29 CFR 1917.154 Compressed air, published 7/5/83, FR vol. 48, p. 30909.
- (e) 29 CFR 1917.155 Air receivers, published 7/5/83, FR vol. 48, p. 30909.
- (f) 29 CFR 1917.156 Fuel handling and storage, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (g) 29 CFR 1917.157 Battery charging and changing, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40202.
- (h) 29 CFR 1917.158 Prohibited operations, published 7/5/83, FR vol. 48, p. 30909.

These standards are available at the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, and the United States Government Printing Office.

Stat. Auth.: ORS 654.025(2) & 656.726(4)  
Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 10-1992, f. 9-24-92, cert. ef. 11-1-92; OSHA 4-1994 f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 9-1997, f. & cert. ef. 12-31-97; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 9-2000, f. & cert. ef. 10-10-00; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 6-2009, f. & cert. ef. 6-5-09; OSHA 2-2010, f. & cert. ef. 2-25-10; OSHA 4-2011, f. & cert. ef. 12-8-11

## 437-005-0003

### Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1918, in the Federal Register:

#### (1) Subdivision A

- (a) 29 CFR 1918.1 Scope and application, published 2/28/06, FR vol. 71, no. 39, p. 10100.
- (b) 29 CFR 1918.2 Definitions, published 6/8/11, Federal Register, vol. 76, no. 110, 33590.
- (c) 29 CFR 1918.3 Incorporation by reference, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.
- (d) 29 CFR 1918.5 Compliance duties owed to each employee, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

#### (2) Subdivision B

- (a) 29 CFR 1918.11 Gear certification (see also §§1918.2 and 1918.51), published 7/25/97, FR vol. 62, no. 143, p. 40202.

#### (3) Subdivision C

- (a) 29 CFR 1918.21 General requirements, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (b) 29 CFR 1918.22 Gangways, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (c) 29 CFR 1918.23 Jacob's ladders, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (d) 29 CFR 1918.24 Fixed and portable ladders, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (e) 29 CFR 1918.25 Bridge plates and ramps (see also §1918.86), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (f) 29 CFR 1918.26 Access to barges and river towboats, published 7/25/97, FR vol. 62, no. 143, p. 40202.

#### (4) Subdivision D

- (a) 29 CFR 1918.31 Hatch coverings, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (b) 29 CFR 1918.32 Stowed cargo and temporary landing surfaces, published 7/25/97, FR vol. 62, no. 143, p. 40202.

# ADMINISTRATIVE RULES

- (c) 29 CFR 1918.33 Deck loads, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (d) 29 CFR 1918.34 Other decks, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (e) 29 CFR 1918.35 Open hatches, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (f) 29 CFR 1918.36 Weather deck rails, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (g) 29 CFR 1918.37 Barges, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (5) Subdivision E
- (a) 29 CFR 1918.41 Coaming clearances, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (b) 29 CFR 1918.42 Hatch beam and pontoon bridles, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (c) 29 CFR 1918.43 Handling hatch beams and covers, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (6) Subdivision F
- (a) 29 CFR 1918.51 General requirements (see also §1918.11 and Appendix III of this part), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (b) 29 CFR 1918.52 Specific requirements, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (c) 29 CFR 1918.53 Cargo winches, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (d) 29 CFR 1918.54 Rigging gear, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (e) 29 CFR 1918.55 Cranes (see also §1918.11), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (7) Subdivision G
- (a) 29 CFR 1918.61 General (see also Appendix IV of this part), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (b) 29 CFR 1918.62 Miscellaneous auxiliary gear, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (c) 29 CFR 1918.63 Chutes, gravity conveyors and rollers, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (d) 29 CFR 1918.64 Powered conveyors, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (e) 29 CFR 1918.65 Mechanically powered vehicles used aboard vessels, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (f) 29 CFR 1918.66 Cranes and derricks other than vessel's gear, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (g) 29 CFR 1918.67 Notifying ship's officers before using certain equipment, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (h) 29 CFR 1918.68 Grounding, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (i) 29 CFR 1918.69 Tools, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (j) 29 CFR 1918.70 - 1918.80 (Reserved)
- (8) Subdivision H
- (a) 29 CFR 1918.81 Slings, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (b) 29 CFR 1918.82 Building drafts, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (c) 29 CFR 1918.83 Stowed cargo, tiering and breaking down, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (d) 29 CFR 1918.84 Bulling cargo, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (e) 29 CFR 1918.85 Containerized cargo operations, published 12/10/08, FR vol. 73, no. 238, pp. 75246-75290.
- (f) 29 CFR 1918.86 Roll-on roll-off (Ro-Ro) operations (see also §1918.25), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (g) 29 CFR 1918.87 Ship's cargo elevators, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (h) 29 CFR 1918.88 Log operations, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (i) 29 CFR 1918.89 Handling hazardous cargo (see also §§1918.2 and 1918.99), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (9) Subdivision I
- (a) 29 CFR 1918.90 Hazard communication (see also §1918.1(b)(4)), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (b) 29 CFR 1918.91 Housekeeping, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (c) 29 CFR 1918.92 Illumination, published 7/25/97, FR vol. 62, no. 143, p. 40202.

- (d) 29 CFR 1918.93 Hazardous atmospheres and substances (see also §1918.2(j)), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (e) 29 CFR 1918.94 Ventilation and atmospheric conditions (see also §1918.2), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (f) 29 CFR 1918.95 Sanitation, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.
- (g) 29 CFR 1918.96 Maintenance and repair work in the vicinity of longshoring operations, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (h) 29 CFR 1918.97 First aid and lifesaving facilities (see also Appendix V of this part), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (i) 29 CFR 1918.98 Qualifications of machinery operators and supervisory training, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (j) 29 CFR 1918.99 Retention of DOT markings, placards and labels, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (k) 29 CFR 1918.100 Emergency action plans, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (10) Subdivision J
- (a) 29 CFR 1918.101 Eye and face protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.
- (b) 29 CFR 1918.102 Respiratory protection, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (c) 29 CFR 1918.103 Head protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.
- (d) 29 CFR 1918.104 Foot protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.
- (e) 29 CFR 1918.105 Other protective measures, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (f) 29 CFR 1918.106 Payment for protective equipment, published 11/15/07, FR vol. 72, no. 220, p. 64342.
- (11) Appendix I – Cargo Gear Register and Certificates (Non-Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (12) Appendix II – Tables for Selected Miscellaneous Auxiliary Gear (Mandatory), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (13) Appendix III – The Mechanics of Conventional Cargo Gear (Non-Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (14) Appendix IV – Special Cargo Gear (Mandatory), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (15) Appendix V – Basic Elements of a First Aid Training Program (Non-Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- These standards are available at the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, and the United States Government Printing Office.  
Stat. Auth.: ORS 654.025(2) & 656.726(4)  
Stats. Implemented: ORS 654.001 - 654.295  
Hist.: OSHA 10-1992, f. 9-24-92, cert. ef. 11-1-92; OSHA 4-1994 f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 9-1997, f. & cert. ef. 12-31-97; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 9-2000, f. & cert. ef. 10-10-00; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 6-2009, f. & cert. ef. 6-5-09; OSHA 2-2010, f. & cert. ef. 2-25-10; OSHA 4-2011, f. & cert. ef. 12-8-11

\*\*\*\*\*

**Rule Caption:** Adopt Oregon-initiated changes in general industry and construction in conjunction with federal amendments from SIP III.

**Adm. Order No.:** OSHA 5-2011

**Filed with Sec. of State:** 12-8-2011

**Certified to be Effective:** 7-1-12

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

**Rules Adopted:** 437-002-1001, 437-002-1017, 437-002-1018, 437-002-1025, 437-002-1027, 437-002-1028, 437-002-1029, 437-002-1043, 437-002-1044, 437-002-1045, 437-002-1047, 437-002-1048, 437-002-1050, 437-002-1051, 437-002-1052, 437-003-0062, 437-003-1101, 437-003-1127, 437-003-3060

**Rules Amended:** 437-002-0360, 437-003-0001

**Subject:** Oregon OSHA adopted changes to rules in general industry and construction. Federal OSHA published a number of rule changes in these industries in the June 8, 2011 Federal Register. This is Phase III of the Standards Improvement Project (SIP III), the third in a series of rulemaking by Federal OSHA to improve and stream-

# ADMINISTRATIVE RULES

line the standards. This removes or revises individual requirements within rules that are confusing, outdated, duplicative, or inconsistent.

In connection with rule changes in the SIP III rulemaking process, Oregon OSHA adopted additional changes to the subdivisions and rules opened during this rulemaking activity.

## For Substance-specific rules:

We adopted new Oregon-initiated rules in Divisions 2/Z, 3/D, and 3/Z, that replace the respiratory protection program paragraphs in the 1910 and 1926 substance specific rules referencing 1910.134 Respiratory Protection. The new rules expand the 1910.134 reference to include paragraphs (e) Medical Evaluation, and (o) Appendices. Also, notes are added following each of these new rules to clarify that these requirements are in addition to other medical evaluation and respiratory-protection-related requirements in each rule.

In most instances, the change in the requirement for a respirator medical evaluation (1910.134(e)) is a change in timing. Employers in many instances are already required to provide respirator medical evaluations based on contaminant exposure and required use of a respirator. Employers subject to the substance-specific rules would be required to provide a respirator medical evaluation to determine the employee's ability to wear a respirator without adverse health effects before the employee is fit tested or required to use a respirator in the workplace.

By adding section (o) of 1910.134, the new rules specify that all the Appendices to 1910.134 apply, providing approved procedures and respirator protocols to employers. These include Appendix A, Fit Testing Procedures; Appendix B-1, User Seal Check Procedures; Appendix B-2, Respirator Cleaning Procedures; Appendix C, OSHA Respirator Medical Evaluation Questionnaire; and Appendix D, Information for Employees Using Respirators When Not Required under the Standard.

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—(503) 947-7449

## 437-002-0360

### Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1910, in the Federal Register:

(1) (Reserved) 29 CFR 1910.1000 Air contaminants.

**NOTE:** 29 CFR 1910.1000 was repealed on 11/15/93 by OR OSHA. In Oregon, OAR 437-002-0382 applies.

(2) 29 CFR 1910.1001 Asbestos, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.

(3) 29 CFR 1910.1002 Coal tar pitch volatiles, interpretation of term, published 1/21/83, Federal Register, vol. 43, p. 2768.

(4) 29 CFR 1910.1003 13 Carcinogens, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(5) 29 CFR 1910.1004 See §1910.1003, 13 Carcinogens.

(6) Reserved for 29 CFR 1910.1005.

(7) 29 CFR 1910.1006 See §1910.1003, 13 Carcinogens.

(8) 29 CFR 1910.1007 See §1910.1003, 13 Carcinogens.

(9) 29 CFR 1910.1008 See §1910.1003, 13 Carcinogens.

(10) 29 CFR 1910.1009 See §1910.1003, 13 Carcinogens.

(11) 29 CFR 1910.1010 See §1910.1003, 13 Carcinogens.

(12) 29 CFR 1910.1011 See §1910.1003, 13 Carcinogens.

(13) 29 CFR 1910.1012 See §1910.1003, 13 Carcinogens.

(14) 29 CFR 1910.1013 See §1910.1003, 13 Carcinogens.

(15) 29 CFR 1910.1014 See §1910.1003, 13 Carcinogens.

(16) 29 CFR 1910.1015 See §1910.1003, 13 Carcinogens.

(17) 29 CFR 1910.1016 See §1910.1003, 13 Carcinogens.

(18) 29 CFR 1910.1017 Vinyl chloride, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.

(19) 29 CFR 1910.1018 Inorganic arsenic, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.

(20) 29 CFR 1910.1020 Access to Employee Exposure and Medical Records, published 4/3/06, FR vol. 71, no. 63, p. 16669.

Appendix A Sample Authorization Letter.

Appendix B Availability of NIOSH RTECS.

(21) 29 CFR 1910.1025 Lead, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.

(22) 29 CFR 1910.1026 Chromium (VI), published 3/17/10, FR vol. 75, no. 51, pp. 12681-12686.

(23) 29 CFR 1910.1027 Cadmium, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.

(24) 29 CFR 1910.1028 Benzene, and Appendices A, B, C, D, and E, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.

(25) 29 CFR 1910.1029 Coke oven emissions, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.

(26) 29 CFR 1910.1030 Bloodborne pathogens, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(27) 29 CFR 1910.1043 Cotton dust, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.

(28) 29 CFR 1910.1044 1,2 dibromo-3 chloropropane, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.

(29) 29 CFR 1910.1045 Acrylonitrile, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.

(30) 29 CFR 1910.1047 Ethylene oxide, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.

(31) 29 CFR 1910.1048 Formaldehyde, and Appendices A, B, C, D and E, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.

(32) 29 CFR 1910.1050 Methyleneedianiline (MDA), published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.

(33) 29 CFR 1910.1051 1,3-Butadiene, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.

(34) 29 CFR 1910.1052 Methylene Chloride, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.

(NOTE: 29 CFR 1910.1101 Asbestos, was repealed by Federal Register, vol. 57, no. 110, issued 6/8/92, p. 24330.)

(35) 29 CFR 1910.1096 Ionizing radiation, published 6/20/96, FR vol. 61, no. 46, p. 31427.

(36) 29 CFR 1910.1200 Hazard communication, published 3/7/96, FR vol. 61, no. 46, p. 9245.

(37) 29 CFR 1910.1201 Retention of DOT Markings, Placards and Labels, published 7/19/94, Federal Register, vol. 59, p. 36700.

(38) 29 CFR 1910.1450 Occupational Exposure to Hazardous Chemicals in Laboratories, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(39) 29 CFR 1910.1499 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9245.

(40) 29 CFR 1910.1500 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9245.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 13-1988, f. 8-2-88 & ef. 8-2-88; APD 14-1988, f. & ef. 9-12-88; APD 18-1988, f. & ef. 11-17-88; APD 4-1989(Temp), f. 3-31-89, ef. 5-1-89; APD 6-1989(Temp), f. 4-20-89, ef. 5-1-89; APD 9-1989, f. & ef. 7-7-89; APD 11-1989, f. 7-14-89, ef. 8-14-89; APD 13-1989, f. & ef. 7-17-89; OSHA 1-1990(Temp), f. & ef. 1-11-90; OSHA 3-1990(Temp), f. & ef. 1-19-90; OSHA 6-1990, f. & ef. 3-2-90; OSHA 7-1990, f. & ef. 3-2-90; OSHA 9-1990, f. 5-8-90, ef. 8-8-90; OSHA 11-1990, f. 6-7-90, ef. 7-1-90; OSHA 13-1990(Temp), f. 6-28-90, ef. 8-1-90; OSHA 14-1990, f. 6-28-90, ef. 8-1-90; OSHA 19-1990, f. & ef. 8-31-90; OSHA 20-1990, f. & ef. 9-18-90; OSHA 21-1990, f. & ef. 9-18-90; OSHA 7-1991, f. & cert. ef. 4-25-91; OSHA 13-1991, f. & cert. ef. 10-10-91; OSHA 15-1991, f. & cert. ef. 12-13-91; OSHA 1-1992, f. & cert. ef. 1-22-92; OSHA 4-1992, f. & cert. ef. 4-16-92; OSHA 5-1992, f. 4-24-92, cert. ef. 7-1-92; OSHA 6-1992, f. & cert. ef. 5-18-92; OSHA 9-1992(Temp), f. & cert. ef. 9-24-92; OSHA 11-1992, f. & cert. ef. 10-9-92; OSHA 12-1992, f. & cert. ef. 10-13-92; OSHA 14-1992, f. & cert. ef. 12-7-92; OSHA 15-1992, f. & cert. ef. 12-30-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 6-1993(Temp), f. & cert. ef. 5-17-93; OSHA 12-1993, f. 8-20-93, cert. ef. 11-1-93; OSHA 17-1993, f. & cert. ef. 11-15-93; OSHA 4-1994, f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 4-1996, f. & cert. ef.



# ADMINISTRATIVE RULES

9-13-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 8-1997, f. & cert. ef. 11-14-97; OSHA 1-1998, f. & cert. ef. 2-13-98; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 1-1999, f. & cert. ef. 3-22-99; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 6-2001, f. & cert. ef. 5-15-01; OSHA 10-2001, f. 9-14-01, cert. ef. 10-18-01; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 1-2005, f. & cert. ef. 4-12-05; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 3-2010, f. 6-10-10, cert. ef. 6-15-10; OSHA 4-2011, f. & cert. ef. 12-8-11; OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-002-1001

### Asbestos Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d)(except (d)(1)(iii)), and (e) through (m) and (o), which covers each employee required by Division 2/Z, 1910.1001 Asbestos, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these Asbestos rules.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-002-1017

### Vinyl Chloride Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii), and (d)(3)(iii)(B)(1) and (2)), and (e) through (m) and (o), which covers each employee required by Division 2/Z, 1910.1017, Vinyl Chloride, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these Vinyl Chloride rules.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-002-1018

### Inorganic Arsenic Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii)), and (e) through (m) and (o), which covers each employee required by Division 2/Z, 1910.1018 Inorganic Arsenic, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these Inorganic Arsenic rules.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-002-1025

### Lead Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii)), and (e) through (m) and (o), which covers each employee required by Division 2/Z, 1910.1025 Lead, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these Lead rules.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-002-1027

### Cadmium Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii)), and (e) through (m) and (o), which covers each employee required by Division 2/Z, 1910.1027 Cadmium, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these Cadmium rules.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-002-1028

### Benzene Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii), and (d)(3)(iii)(B)(1) and (2)), and (e) through (m) and (o), which covers each employee required by Division 2/Z, 1910.1028 Benzene, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these Benzene rules.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-002-1029

### Coke Oven Emissions Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii), and (d)(3)(iii)(B)(1) and (2)), and (e) through (m) and (o), which covers each employee required by Division 2/Z, 1910.1029 Coke Oven Emissions, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these Coke Oven Emissions rules.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-002-1043

### Cotton Dust Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii), and (d)(3)(iii)(B)(1) and (2)), and (e) through (m) and (o), which covers each employee required by Division 2/Z, 1910.1043 Cotton Dust, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these Cotton Dust rules.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-002-1044

### 1,2-Dibromo-3-Chloropropane Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii), and (e) through (m) and (o), which covers each employee required by Division 2/Z, 1910.1044 1,2-Dibromo-3-Chloropropane, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these 1,2-Dibromo-3-Chloropropane rules.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-002-1045

### Acrylonitrile Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii), and (d)(3)(iii)(B)(1) and (2)), and (e) through (m) and (o), which covers each employee required by Division 2/Z, 1910.1045 Acrylonitrile, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these Acrylonitrile rules.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-002-1047

### Ethylene Oxide Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii), and (e) through (m) and (o), which covers each employee required by Division 2/Z, 1910.1047 Ethylene Oxide, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these Ethylene Oxide rules.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-002-1048

### Formaldehyde Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii), and (d)(3)(iii)(B)(1) and (2)), and (e) through (m) and (o), which covers each employee required by Division 2/Z, 1910.1048 Formaldehyde, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these Formaldehyde rules.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-002-1050

### Methylenedianiline Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii), and (e) through (m) and (o), which covers each employee required by Division 2/Z, 1910.1050 Methylenedianiline, to use a respirator.

# ADMINISTRATIVE RULES

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these Methylene dianiline rules.  
Stat. Auth.: ORS 654.025(2) & 656.726(4)  
Stats. Implemented: ORS 654.001 - 654.295  
Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-002-1051

### 1,3-Butadiene Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii)), and (d)(3)(iii)(B)(1) and (2)), and (e) through (m) and (o), which covers each employee required by Division 2/Z, 1910.1051 1,3-Butadiene, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these 1,3-Butadiene rules.  
Stat. Auth.: ORS 654.025(2) & 656.726(4)  
Stats. Implemented: ORS 654.001 - 654.295  
Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-002-1052

### Methylene Chloride Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii)), and (e) through (m) and (o), which covers each employee required by Division 2/Z, 1910.1052 Methylene Chloride, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these Methylene Chloride rules.  
Stat. Auth.: ORS 654.025(2) & 656.726(4)  
Stats. Implemented: ORS 654.001 - 654.295  
Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-003-0001

### Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, in the Federal Register:

- (1) Subdivision A – GENERAL
    - (a) 29 CFR 1926.1 Purpose and Scope, published 4/6/79, FR vol. 44, p. 20940.
    - (b) 29 CFR 1926.2 Variances from safety and health standards, published 4/6/79, FR vol. 44, p. 20940.
    - (c) 29 CFR 1926.3 Inspections – right of entry, published 4/6/79, FR vol. 44, p. 20940.
    - (d) 29 CFR 1926.4 Rules of practice for administrative adjudications for enforcement of safety and health standards, published 4/6/79, FR vol. 44, p. 20940.
    - (e) 29 CFR 1926.6 Incorporation by reference, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (2) Subdivision B – GENERAL INTERPRETATIONS
    - (a) 29 CFR 1926.10 Scope of subpart, published 4/6/79, FR vol. 44, p. 20940.
    - (b) 29 CFR 1926.11 Coverage under section 103 of the act distinguished, published 4/6/79, FR vol. 44, p. 20940.
    - (c) 29 CFR 1926.12 Reorganization plan No. 14 of 1950, published 4/6/79, FR vol. 44, p. 20940.
    - (d) 29 CFR 1926.13 Interpretation of statutory terms, published 4/6/79, FR vol. 44, p. 20940.
    - (e) 29 CFR 1926.14 Federal contracts for ‘mixed’ types of performance, published 4/6/79, FR vol. 44, p. 20940.
    - (f) 29 CFR 1926.15 Relationship to the service contract act; Walsh-Healey Public Contracts Act, published 4/6/79, FR vol. 44, p. 20940.
    - (g) 29 CFR 1926.16 Rules of construction, published 4/6/79, FR vol. 44, p. 20940.
  - (3) Subdivision C – GENERAL SAFETY AND HEALTH PROVISIONS
    - (a) 29 CFR 1926.20 General safety and health provisions, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.
    - (b) 29 CFR 1926.21 Safety training and education, published 4/6/79, FR vol. 44, p. 20940.
    - (c) 29 CFR 1926.22 Recording and reporting of injuries (Reserved)
    - (d) 29 CFR 1926.23 First aid and medical attention, published 4/6/79, FR vol. 44, p. 20940.
    - (e) 29 CFR 1926.24 Fire protection and prevention, published 4/6/79, FR vol. 44, p. 20940.
    - (f) 29 CFR 1926.25 Housekeeping, published 4/6/79, FR vol. 44, p. 20940.
    - (g) 29 CFR 1926.26 Illumination, published 4/6/79, FR vol. 44, p. 20940.
    - (h) 29 CFR 1926.27 Sanitation, published 4/6/79, FR vol. 44, p. 20940.
    - (i) 29 CFR 1926.28 Personal protective equipment, published 4/6/79, FR vol. 44, p. 20940.
    - (j) 29 CFR 1926.29 Acceptable certifications, published 4/6/79, FR vol. 44, p. 20940.
    - (k) 29 CFR 1926.30 Shipbuilding and ship repairing, published 3/7/96, FR vol. 61, no. 46, p. 9249.
    - (l) 29 CFR 1926.31 (Reserved).
    - (m) 29 CFR 1926.32 Definitions, published 6/30/93, FR vol. 58, no. 124, p. 35078.
    - (n) 29 CFR 1926.33 Access to employee exposure and medical records, published 6/20/96, FR vol. 61, no. 46, p. 31427.
    - (o) 29 CFR 1926.34 Means of egress, published 6/30/93, Federal Register, vol. 58, no. 124, p. 35083.
  - (4) Subdivision D – OCCUPATIONAL HEALTH AND ENVIRONMENTAL CONTROLS
    - (a) 29 CFR 1926.50 Medical services and first aid, published 6/18/98, FR vol. 63, no. 117, p. 33469.
    - (b) 29 CFR 1926.51 Sanitation, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.
    - (c) 29 CFR 1926.52 Occupational noise exposure, published 4/6/79, FR vol. 44, p. 20940.
    - (d) 29 CFR 1926.53 Ionizing radiation, published 4/6/79, FR vol. 44, p. 20940.
    - (e) 29 CFR 1926.54 Nonionizing radiation, published 4/6/79, FR vol. 44, p. 20940.
    - (f) 29 CFR 1926.55 Gases, vapors, fumes, dusts, and mists, published 1/10/97, FR vol. 62, no. 7, p. 1619.
    - (g) 29 CFR 1926.56 Illumination, published 4/6/79, FR vol. 44, p. 20940.
    - (h) 29 CFR 1926.57 Ventilation, published 1/8/98, FR vol. 63, no. 5, p. 1295.
    - (i) 29 CFR 1926.58 Reserved, §1926.58, Asbestos, tremolite, anthophyllite and actinolite is redesignated as §1926.1101, Asbestos, and §1926.58 is reserved (8/10/94, FR vol. 59, no. 153, pp. 41131-62).
    - (j) 29 CFR 1926.59 Hazard Communication, published 6/20/96, FR vol. 61, p. 31427.
    - (k) 29 CFR 1926.60 Methylene dianiline (MDA), published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.
    - (l) 29 CFR 1926.61 Retention of DOT markings, placards and labels, published 6/20/96, FR vol. 61, p. 31427.
    - (m) 29 CFR 1926.62 Lead, published 6/8/11, Federal Register, no. 76, no. 110, p. 33590; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.
  - NOTE:** Cadmium has been redesignated as §1926.1127.
  - (n) 29 CFR 1926.65 Hazardous Waste Operations and Emergency Response  
**NOTE:** Division 2/H, 1910.120, Hazardous Waste Operations and Emergency Response, applies to Construction.
  - (5) Subdivision E – PERSONAL PROTECTIVE AND LIFE SAVING EQUIPMENT
    - (a) 29 CFR 1926.95 Criteria for personal protective equipment, published 11/15/07, FR vol. 72, no. 220, p. 64342.
    - (b) 29 CFR 1926.100 Head protection, published 4/6/79, FR vol. 44, p. 20940.
    - (c) 29 CFR 1926.101 Hearing protection, published 4/6/79, FR vol. 44, p. 20940.
    - (d) 29 CFR 1926.102 Eye and face protection, published 6/30/93, FR vol. 58, no. 124, p. 35160.
    - (e) 29 CFR 1926.103 Respiratory protection, published 1/8/98, FR vol. 63, no. 5, p. 1297.
  - NOTE:** 29 CFR 1926.104 Removed, 8/9/94, FR vol. 59, no. 152, p. 40729.
  - (f) 29 CFR 1926.105 Reserved, 8/9/94, FR vol. 59, no. 152, p. 40729.
  - (g) 29 CFR 1926.106 Working over or near water, published 4/6/79, FR vol. 44, p. 20940.
  - (h) 29 CFR 1926.107 Definitions applicable to this subpart, published 8/9/94, FR vol. 59, no. 152, p. 40729.
- (6) Subdivision F – FIRE PROTECTION AND PREVENTION
  - (a) 29 CFR 1926.150 Fire protection, published 4/6/79, FR vol. 44, p. 20940.
  - (b) 29 CFR 1926.151 Fire prevention, published 7/11/86, FR vol. 51, p. 25318.

## ADMINISTRATIVE RULES

- (c) 29 CFR 1926.152 Flammable and combustible liquids, published 6/30/93, FR vol. 58, no. 124, p. 35162.
- (d) 29 CFR 1926.153 Liquefied petroleum gas (LP-Gas), published 6/30/93, FR vol. 58, no. 124, p. 35170.
- (e) 29 CFR 1926.154 Temporary heating devices, published 4/6/79, FR vol. 44, p. 20940.
- (f) 29 CFR 1926.155 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.
- (7) Subdivision G – SIGNS, SIGNALS, AND BARRICADES
- (a) 29 CFR 1926.200 Accident prevention signs and tags, published 6/30/93, FR vol. 58, no. 124, p. 35173; amended with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.
- (b) 29 CFR 1926.201 Signaling, REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.
- (c) 29 CFR 1926.202 Barricades, REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.
- (d) 29 CFR 1926.203 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940; amended with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.
- (8) Subdivision H – MATERIALS HANDLING, STORAGE, USE AND DISPOSAL
- (a) 29 CFR 1926.250 General requirements for storage, published 6/30/93, FR vol. 58, no. 124, p. 35173.
- (b) 29 CFR 1926.251 Rigging equipment for material handling, published 6/8/11, Federal Register, vol. 74, no. 110, p. 33590.
- (c) 29 CFR 1926.252 Disposal of waste materials, published 4/6/79, FR vol. 44, p. 20940.
- (9) Subdivision I – TOOLS – HAND AND POWER
- (a) 29 CFR 1926.300 General requirements, published 3/7/96, FR vol. 61, no. 46, p. 9250.
- (b) 29 CFR 1926.301 Hand tools, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.302 Power operated hand tools, published 6/30/93, FR vol. 58, no. 124, p. 35175.
- (d) 29 CFR 1926.303 Abrasive wheels and tools, published 6/30/93, FR vol. 58, no. 124, p. 35175.
- (e) 29 CFR 1926.304 Woodworking tools, published 3/7/96, FR vol. 61, no. 46, p. 9251.
- (f) 29 CFR 1926.305 Jacks - lever and ratchet, screw, and hydraulic, published Federal Register vol. 58, no. 124, p. 35176.
- (10) Subdivision J – WELDING AND CUTTING
- (a) 29 CFR 1926.350 Gas welding and cutting, published 6/30/93, FR vol. 58, no. 124, p. 35179.
- (b) 29 CFR 1926.351 Arc welding and cutting, published 7/11/86, FR vol. 51, p. 25318.
- (c) 29 CFR 1926.352 Fire prevention, published 4/6/79, FR vol. 44, p. 20940.
- (d) 29 CFR 1926.353 Ventilation and protection in welding, cutting, and heating, published 6/30/93, FR vol. 58, no. 124, p. 35179.
- (e) 29 CFR 1926.354 Welding, cutting, and heating in way of preservative coatings, published 4/6/79, FR vol. 44, p. 20940.
- (11) Subdivision K – ELECTRICAL
- (a) 29 CFR 1926.400 Introduction, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (b) 29 CFR 1926.401 (Reserved)
- (c) 29 CFR 1926.402 Applicability, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (d) 29 CFR 1926.403 General requirements, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (e) 29 CFR 1926.404 Wiring design and protection, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335; amended with AO 5-2002, repeal (b)(1), f. 6/28/02, ef. 10/1/03.
- (f) 29 CFR 1926.405 Wiring methods, components, and equipment for general use, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (g) 29 CFR 1926.406 Specific purpose equipment and installations, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (h) 29 CFR 1926.407 Hazardous (classified) locations, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (i) 29 CFR 1926.408 Special systems, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (j) 29 CFR 1926.409 (Reserved)
- (k) 29 CFR 1926.415 (Reserved)
- (l) 29 CFR 1926.416 General requirements, published 8/12/96, FR vol. 61, no. 156, p. 41738.
- (m) 29 CFR 1926.417 Lockout and tagging of circuits, published 8/12/96, FR vol. 61, no. 156, p. 41739.
- (n) 29 CFR 1926.418 (Reserved)
- (o) 29 CFR 1926.430 (Reserved)
- (p) 29 CFR 1926.431 Maintenance of equipment, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (q) 29 CFR 1926.432 Environmental deterioration of equipment, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (r) 29 CFR 1926.433 - 29 CFR 1926.440 (Reserved)
- (s) 29 CFR 1926.441 Battery locations and battery charging, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (t) 29 CFR 1926.442 - 29 CFR 1926.448 (Reserved)
- (u) 29 CFR 1926.449 Definitions applicable to this subpart, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (12) Subdivision L – SCAFFOLDING
- (a) 29 CFR 1926.450 Scope, application and definitions applicable to this subpart, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (b) 29 CFR 1926.451 General requirements, published 11/25/96, FR vol. 61, no. 228, p. 59831.
- (c) 29 CFR 1926.452 Additional requirements applicable to specific types of scaffolds, published 8/30/96, FR vol. 61, no. 170, p. 46113.
- (d) 29 CFR 1926.453 Aerial lifts, published 11/25/96, FR vol. 61, no. 228, p. 59832.
- (e) 29 CFR 1926.454 Training, published 8/30/96, FR vol. 61, no. 170, p. 46117.
- (f) Appendix A to Subpart L Scaffold Specifications, published 8/30/96, FR vol. 61, no. 170, p. 46117.
- (g) Appendix B to Subpart L Criteria for determining the feasibility of providing safe access and fall protection for scaffold erectors and dismantlers (Reserved), published 8/30/96, FR vol. 61, no. 170, p. 46122.
- (h) Appendix C to Subpart L List of National Consensus Standards, published 8/30/96, FR vol. 61, no. 170, p. 46122.
- (i) Appendix D to Subpart L List of training topics for scaffold erectors and dismantlers, published 8/30/96, FR vol. 61, no. 170, p. 46122.
- (j) Appendix E to Subpart L Drawing and illustrations, published 11/25/96, FR vol. 61, no. 228, p. 59832.
- (13) Subdivision M – FALL PROTECTION
- (a) 29 CFR 1926.500 Scope, application, and definitions applicable to this subpart, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (b) 29 CFR 1926.501 Duty to have fall protection, published 8/9/94, FR vol. 59, no. 152, p. 40732-40733; amended with AO 6-2002, f. and ef. 7/19/02.
- (c) 29 CFR 1926.502 Fall protection systems criteria and practices, published 8/9/94, FR vol. 59, no. 152, p. 40733-40738; amended with AO 6-2002, f. and ef. 7/19/02.
- (d) 29 CFR 1926.503 Training requirements. REPEALED with AO 6-2002, f. and ef. 7/19/02, replaced with OI.
- (e) Appendix A to Subpart M Determining Roof Widths, published 8/9/94, FR vol. 59, no. 152, p. 40738-40742.
- (f) Appendix B to Subpart M Guardrail Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743.
- (g) Appendix C to Subpart M Personal Fall Arrest Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743-40746.
- (h) Appendix D to Subpart M Positioning Device Systems, published 8/9/94, FR vol. 59, no. 152, p. 40746.
- (14) Subdivision N – HELICOPTERS, HOISTS, ELEVATORS, AND CONVEYORS
- (a) 29 CFR 1926.550 (Reserved).
- (b) 29 CFR 1926.551 Helicopters, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.552 Material hoists, personnel hoists, and elevators, published 4/6/79, FR vol. 44, p. 20940.
- (d) 29 CFR 1926.553 Base-mounted drum hoist, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (e) 29 CFR 1926.554 Overhead hoists, published 4/6/79, FR vol. 44, p. 20940.
- (f) 29 CFR 1926.555 Conveyors, published 4/6/79, FR vol. 44, p. 20940.
- (15) Subdivision O – MOTOR VEHICLES, MECHANIZED EQUIPMENT, AND MARINE OPERATIONS
- (a) 29 CFR 1926.600 Equipment, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (b) 29 CFR 1926.601 Motor vehicles, REPEALED by OR-OSHA Admin. Order 6-2007, f. 9/26/07, ef. 9/26/07.



## ADMINISTRATIVE RULES

- (c) 29 CFR 1926.602 Material handling equipment, published 12/1/98, FR vol. 63, no. 230, p. 66274; amended by AO 7-2003, f. 12/5/03, ef. 12/5/03.
- (d) 29 CFR 1926.603 Pile driving equipment, published 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.604 Site clearing, published 7/22/77, FR vol. 42, p. 37674.
- (f) 29 CFR 1926.605 Marine operations and equipment, published 4/6/79, FR vol. 44, p. 20940.
- (g) 29 CFR 1926.606 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.
- (16) Subdivision P – EXCAVATIONS
- (a) 29 CFR 1926.650 Scope, application, and definitions applicable to this subdivision, published 10/31/89, FR vol. 54, no. 209, pp. 45959-45961.
- (b) 29 CFR 1926.651 General requirements, published 8/9/94, FR vol. 59, no. 152, p. 40730.
- (c) 29 CFR 1926.652 Requirements for protective systems, published 10/31/89, FR vol. 54, no. 209, pp. 45961-45962.
- (d) Appendices A-F to Subdivision P, Excavations, published 10/31/89, FR vol. 54, no. 209, pp. 45962-45991.
- (17) Subdivision Q – CONCRETE AND MASONRY CONSTRUCTION
- (a) 29 CFR 1926.700 Scope, application and definitions applicable to this subpart, published 10/18/90, FR vol. 55, no. 202, p. 42326.
- (b) 29 CFR 1926.701 General requirements, published 8/9/94, FR vol. 59, no. 152, p. 40730.
- (c) 29 CFR 1926.702 Requirements for equipment and tools, published 6/16/88, FR vol. 53, p. 22612.
- (d) 29 CFR 1926.703 Requirements for cast-in-place concrete, published 6/16/88, FR vol. 53, p. 22612.
- (e) 29 CFR 1926.704 Requirements for precast concrete, published 10/5/89, FR vol. 54, no. 192, p. 41088.
- (f) 29 CFR 1926.705 Requirements for lift-slab construction operations, published 10/18/90, FR vol. 55, no. 202, p. 42326.
- (g) Appendix A to 1926.705 Lift-slab operations, published 10/18/90, FR vol. 55, no. 202, p. 42326.
- (h) 29 CFR 1926.706 Requirements for masonry construction, published 6/16/88, FR vol. 53, p. 22612; amended with OR-OSHA Admin. Order 1-2003, f. 1/30/03, ef. 4/30/03.
- (18) Subdivision R – STEEL ERECTION
- (a) 29 CFR 1926.750 Scope, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (b) 29 CFR 1926.751 Definitions, published 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (c) 29 CFR 1926.752 Site layout, site-specific erection plan and construction sequence, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (d) 29 CFR 1926.753 Hoisting and rigging, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (e) 29 CFR 1926.754 Structural steel assembly, published 4/3/06, FR vol. 71, no. 63, p. 16669.
- (f) 29 CFR 1926.755 Column anchorage, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (g) 29 CFR 1926.756 Beams and columns, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (h) 29 CFR 1926.757 Open web steel joists, published 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (i) 29 CFR 1926.758 Systems-engineered metal buildings, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (j) 29 CFR 1926.759 Falling object protection, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (k) 29 CFR 1926.760 Fall protection, published 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (l) 29 CFR 1926.761 Training, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.
- (m) Appendix A to Subpart R Guidelines for establishing the components of a site-specific erection plan: Nonmandatory Guidelines for Complying with §1926.752(e), published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (n) Appendix B to Subpart R Reserved.
- (o) Appendix C to Subpart R Illustrations of bridging terminus points: Nonmandatory Guidelines for Complying with §1926.757(a)(10) and §1926.757(c)(5), published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (p) Appendix D to Subpart R Illustration of the use of control lines to demarcate controlled decking zones (CDZs): Nonmandatory Guidelines for Complying with §1926.760(c)(3), REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (q) Appendix E to Subpart R Training: Nonmandatory Guidelines for Complying with §1926.761, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (r) Appendix F to Subpart R Perimeter columns: Nonmandatory Guidelines for Complying with §1926.756(e) to Protect the Unprotected Side or Edge of a Walking/Working Surface, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (s) Appendix G to Subpart R Fall protection systems criteria and practices from §1926.502: Nonmandatory Guidelines for Complying with Complying with §1926.760(d), REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (t) Appendix H to Subpart R Double connections: Illustration of a clipped end connection and a staggered connection: Non-Mandatory Guidelines for Complying with Complying with §1926.756(c)(1), published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (19) Subdivision S – UNDERGROUND CONSTRUCTION, CAISSONS, COFFERDAMS, AND COMPRESSED AIR
- (a) 29 CFR 1926.800 Tunnels and shafts, published 8/9/10, FR vol. 75, no. 152, pp.47906-48177.
- (b) 29 CFR 1926.801 Caissons, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.802 Cofferdams, published 4/6/79, FR vol. 44, p. 20940.
- (d) 29 CFR 1926.803 Compressed air, published 7/11/86, FR vol. 51, p. 25318.
- (e) 29 CFR 1926.804 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.
- (f) Appendix A to Subpart S Decompression Tables, published 4/6/79, FR vol. 44, p. 20940.
- (20) Subdivision T – DEMOLITION
- (a) 29 CFR 1926.850 Preparatory operations, published 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.851 Stairs, passageways, and ladders, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.852 Chutes, published 4/6/79, FR vol. 44, p. 20940.
- (d) 29 CFR 1926.853 Removal of materials through floor openings, published 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.854 Removal of walls, masonry sections, and chimneys, published 4/6/79, FR vol. 44, p. 20940.
- (f) 29 CFR 1926.855 Manual removal of floors, published 4/6/79, FR vol. 44, p. 20940.
- (g) 29 CFR 1926.856 Removal of walls, floors, and materials with equipment, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (h) 29 CFR 1926.857 Storage, published 4/6/79, FR vol. 44, p. 20940.
- (i) 29 CFR 1926.858 Removal of steel construction, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (j) 29 CFR 1926.859 Mechanical demolition, published 4/6/79, FR vol. 44, p. 20940.
- (k) 29 CFR 1926.860 Selective demolition by explosives, published 4/6/79, FR vol. 44, p. 20940.
- (21) Subdivision U – BLASTING AND USE OF EXPLOSIVES
- (a) 29 CFR 1926.900 General provisions, published 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.901 Blaster qualifications, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.902 Surface transportation of explosives, published 6/30/93, FR vol. 58, no. 124, p. 35311.
- (d) 29 CFR 1926.903 Underground transportation of explosives, published 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.904 Storage of explosives and blasting agents, published 6/30/93, FR vol. 58, no. 124, p. 35311.
- (f) 29 CFR 1926.905 Loading of explosives or blasting agents, published 6/30/93, FR vol. 58, no. 124, p. 35184.
- (g) 29 CFR 1926.906 Initiation of explosive charges – electric blasting, published 6/18/98, FR vol. 63, no. 117, p. 33469.
- (h) 29 CFR 1926.907 Use of safety fuse, published 4/6/79, FR vol. 44, p. 20940.
- (i) 29 CFR 1926.908 Use of detonating cord, published 4/6/79, FR vol. 44, p. 20940.
- (j) 29 CFR 1926.909 Firing the blast, published 4/6/79, FR vol. 44, p. 20940.
- (k) 29 CFR 1926.910 Inspection after blasting, published 4/6/79, FR vol. 44, p. 20940.

# ADMINISTRATIVE RULES

- (l) 29 CFR 1926.911 Misfires, published 4/6/79, FR vol. 44, p. 20940.
- (m) 29 CFR 1926.912 Underwater blasting, published 4/6/79, FR vol. 44, p. 20940.
- (n) 29 CFR 1926.913 Blasting in excavation work under compressed air, published 4/6/79, FR vol. 44, p. 20940.
- (o) 29 CFR 1926.914 Definitions applicable to this subpart, published 6/30/93, FR vol. 58, no. 124, p. 35184, 35311.
- (22) Subdivision V – POWER TRANSMISSION AND DISTRIBUTION
  - (a) 29 CFR 1926.950 General requirements, published 4/6/79, FR vol. 44, p. 20940.
  - (b) 29 CFR 1926.951 Tools and protective equipment, published 8/9/94, FR vol. 59, no. 152, p. 40730.
  - (c) 29 CFR 1926.952 Mechanical equipment, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (d) 29 CFR 1926.953 Material handling, published 4/6/79, FR vol. 44, p. 20940.
  - (e) 29 CFR 1926.954 Grounding for protection of employees, published 4/6/79, FR vol. 44, p. 20940.
  - (f) 29 CFR 1926.955 Overhead lines, published 4/6/79, FR vol. 44, p. 20940.
  - (g) 29 CFR 1926.956 Underground lines, published 4/6/79, FR vol. 44, p. 20940.
  - (h) 29 CFR 1926.957 Construction in energized substations, published 4/6/79, FR vol. 44, p. 20940.
  - (i) 29 CFR 1926.958 External load helicopters, published 4/6/79, FR vol. 44, p. 20940.
  - (j) 29 CFR 1926.959 Lineman's body belts, safety straps, and lanyards, published 4/6/79, FR vol. 44, p. 20940.
  - (k) 29 CFR 1926.960 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.
- (23) Subdivision W – ROLLOVER PROTECTIVE STRUCTURES: OVERHEAD PROTECTION
  - (a) 29 CFR 1926.1000 Rollover protective structures (ROPS) for material handling equipment, published 4/6/79, FR vol. 44, p. 20940.
  - (b) 29 CFR 1926.1001 Minimum performance criteria for rollover protective structure for designated scrapers, loaders, dozers, graders, and crawler tractors, published 4/6/79, FR vol. 44, p. 20940.
  - (c) 29 CFR 1926.1002 Protective frame (ROPS) test procedures and performance requirements for wheel-type agricultural and industrial tractors used in construction, published 7/20/06, FR vol. 71, no. 139, p. 41127..
  - (d) 29 CFR 1926.1003 Overhead protection for operators of agricultural and industrial tractors, published 2/28/06, FR vol. 71, no. 39, p. 9909.
- (24) Subdivision X – STAIRWAYS AND LADDERS
  - (a) 29 CFR 1926.1050 Scope, application and definitions applicable to this Subdivision, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (b) 29 CFR 1926.1051 General requirements, published 11/14/90, FR vol. 55, no. 220, p. 47688.
  - (c) 29 CFR 1926.1052 Stairways, published 8/23/91, FR vol. 56, no. 164, pp. 41793-41794.
  - (d) 29 CFR 1926.1053 Ladders, published 8/23/91, FR vol. 56, no. 164, pp. 41793-41794.
  - (e) 29 CFR 1926.1054 (Reserved)
  - (f) 29 CFR 1926.1055 (Reserved)
  - (g) 29 CFR 1926.1056 (Reserved)
  - (h) 29 CFR 1926.1057 (Reserved)
  - (i) 29 CFR 1926.1058 (Reserved)
  - (j) 29 CFR 1926.1059 (Reserved)
  - (k) 29 CFR 1926.1060 Training requirements, published 11/14/90, FR vol. 55, no. 220, p. 47691.
- (25) Subdivision Z – TOXIC AND HAZARDOUS SUBSTANCES
  - (a) 29 CFR 1926.1101 Asbestos, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.
  - (b) 29 CFR 1926.1126 Chromium (VI), published; 3/17/10, FR vol. 75, no. 51, pp. 12681-12686.
  - (c) 29 CFR 1926.1127 Cadmium, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590; amended with OR-OSHA Admin. Order 5-2011, f. 12/8/11, ef. 7/1/12.
  - (d) 29 CFR 1926.1152 Methylene Chloride, published 12/18/97, FR vol. 62, no. 243, p. 66275.
- (26) Subdivision AA – (Reserved)
- (27) Subdivision BB – (Reserved)
- (28) Subdivision CC – Cranes and Derricks in Construction
  - (a) 29 CFR 1926.1400 Scope, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (b) 29 CFR 1926.1401 Definitions, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (c) 29 CFR 1926.1402 Ground conditions, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (d) 29 CFR 1926.1403 Assembly/Disassembly – selection of manufacturer or employer procedures, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (e) 29 CFR 1926.1404 Assembly/Disassembly – general requirements (applies to all assembly and disassembly operations), published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (f) 29 CFR 1926.1405 Disassembly – additional requirements for dismantling of booms and jibs (applies to both the use of manufacturer procedures and employer procedures), published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (g) 29 CFR 1926.1406 Assembly/Disassembly – employer procedures – general requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (h) 29 CFR 1926.1407 Power line safety (up to 350 kV) – assembly and disassembly, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (i) 29 CFR 1926.1408 Power line safety (up to 350 kV) – equipment operations, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (j) 29 CFR 1926.1409 Power line safety (over 35 kV), published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (k) 29 CFR 1926.1410 Power line safety (all voltages) – equipment operations closer than the Table A zone, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (l) 29 CFR 1926.1411 Power line safety – while traveling, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (m) 29 CFR 1926.1412 Inspections, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (n) 29 CFR 1926.1413 Wire rope – inspection, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (o) 29 CFR 1926.1414 Wire rope – selection and installation criteria, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (p) 29 CFR 1926.1415 Safety devices, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (q) 29 CFR 1926.1416 Operational aids, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (r) 29 CFR 1926.1417 Operation, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (s) 29 CFR 1926.1418 Authority to stop operation, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (t) 29 CFR 1926.1419 Signals – general requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (u) 29 CFR 1926.1420 Signals – radio, telephone or other electronic transmission of signals, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (v) 29 CFR 1926.1421 Signals – voice signals – additional requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (w) 29 CFR 1926.1422 Signals – hand signal chart, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (x) 29 CFR 1926.1423 Fall protection, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (y) 29 CFR 1926.1424 Work area control, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (z) 29 CFR 1926.1425 Keeping clear of the load, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (aa) 29 CFR 1926.1426 Free fall and controlled load lowering, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (bb) 29 CFR 1926.1427 Operator qualification and certification, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (cc) 29 CFR 1926.1428 Signal person qualifications, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (dd) 29 CFR 1926.1429 Qualifications of maintenance & repair employees, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (ee) 29 CFR 1926.1430 Training, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (ff) 29 CFR 1926.1431 Hoisting personnel, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (gg) 29 CFR 1926.1432 Multiple-crane/derrick lifts – supplemental requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
  - (hh) 29 CFR 1926.1433 Design, construction and testing, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

# ADMINISTRATIVE RULES

(ii) 29 CFR 1926.1434 Equipment modifications, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(jj) 29 CFR 1926.1435 Tower cranes, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(kk) 29 CFR 1926.1436 Derricks, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ll) 29 CFR 1926.1437 Floating cranes/derricks and land cranes/derricks on barges, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(mm) 29 CFR 1926.1438 Overhead & gantry cranes, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(nn) 29 CFR 1926.1439 Dedicated pile drivers, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(oo) 29 CFR 1926.1440 Sideboom cranes, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(pp) 29 CFR 1926.1441 Equipment with a rated hoisting/lifting capacity of 2,000 pounds or less, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(qq) 29 CFR 1926.1442 Severability, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(rr) Appendix A to Subdivision CC of 1926 – Standard Hand Signals, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ss) Appendix B to Subdivision CC of 1926 – Assembly/Disassembly – Sample Procedures for Minimizing the Risk of Unintended Dangerous Boom Movement, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(tt) Appendix C to Subdivision CC of 1926 – Operator Certification – Written Examination – Technical Knowledge Criteria, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(29) Subdivision DD – Cranes and Derricks Used in Demolition and Underground Construction, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(a) 29 CFR 1926.1500 Scope, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(b) 29 CFR 1926.1501 Cranes and Derricks, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295.

Hist.: APD 5-1989(Temp), f. 3-31-89, ef. 5-1-89; APD 8-1989, f. & ef. 7-7-89; APD 14-1989(Temp), f. 7-20-89, ef. 8-1-89; APD 15-1989, f. & ef. 9-13-89; OSHA 3-1990(Temp), f. & cert. ef. 1-19-90; OSHA 7-1990, f. & cert. ef. 3-2-90; OSHA 8-1990, f. & cert. ef. 3-30-90; OSHA 13-1990(Temp), f. 6-28-90, ef. 8-1-90; OSHA 19-1990, f. & cert. ef. 8-31-90; OSHA 27-1990, f. 12-12-90, cert. ef. 2-1-91; OSHA 6-1991, f. 3-18-91, cert. ef. 4-15-91; OSHA 7-1991, f. & cert. ef. 4-25-91; OSHA 15-1991, f. & cert. ef. 12-13-91; OSHA 16-1991, f. 12-16-91, cert. ef. 1-1-92; OSHA 6-1992, f. & cert. ef. 5-18-92; OSHA 11-1992, f. & cert. ef. 10-9-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 16-1993, f. & cert. ef. 11-1-93; OSHA 4-1994, f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 3-1995, f. & cert. ef. 2-22-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 6-1995, f. & cert. ef. 4-18-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 5-1996, f. & cert. ef. 11-29-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 2-1997, f. & cert. ef. 3-12-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 7-1997, f. & cert. ef. 9-15-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 6-1998, f. & cert. ef. 10-15-98; OSHA 7-1998, f. & cert. ef. 12-18-98; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 3-2000, f. & cert. ef. 2-8-00; OSHA 3-2001, f. & cert. ef. 2-5-01; OSHA 3-2002, f. 4-15-02, cert. ef. 4-18-02; OSHA 5-2002, f. 6-28-02, cert. ef. 10-1-03; OSHA 6-2002, f. & cert. ef. 7-19-02; OSHA 1-2003, f. 1-30-03, cert. ef. 4-30-03; OSHA 2-2003, f. & cert. ef. 1-30-03; OSHA 7-2003, f. & cert. ef. 12-5-03; OSHA 8-2003, f. 12-30-03, cert. ef. 1-1-04; OSHA 1-2005, f. & cert. ef. 4-12-05; OSHA 2-2006, f. & cert. ef. 4-28-06; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 5-2006, f. 8-7-06, cert. ef. 1-1-07; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 6-2007, f. & cert. ef. 9-26-07; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 3-2010, f. 6-10-10, cert. ef. 6-15-10; OSHA 1-2011, f. & cert. ef. 2-9-11; OSHA 4-2011, f. & cert. ef. 12-8-11; OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-003-0062

### Lead Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii)), and (e) through (m) and (o), which covers each employee required by Division 3/D, 1926.62 Lead, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these Lead rules.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-003-1101

### Asbestos Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii)),

and (e) through (m) and (o), which covers each employee required by Division 3/Z, 1926.1101 Asbestos, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these Asbestos rules.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-003-1127

### Cadmium Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii)), and (e) through (m) and (o), which covers each employee required by Division 3/Z, 1926.1127 Cadmium, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these Cadmium rules.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

## 437-003-3060

### Methylenedianiline Respiratory Protection Program

The employer must implement a respiratory protection program in accordance with Division 2/I, 1910.134(b) through (d) (except (d)(1)(iii)), and (e) through (m) and (o), which covers each employee required by Division 3/D, 1926.60 Methylenedianiline, to use a respirator.

**NOTE:** This is in addition to other respiratory protection and medical surveillance requirements specified in these Methylenedianiline rules.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12

\*\*\*\*\*

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

**Rule Caption:** Medical fee schedule; managing care; attending physicians; delay of reconsideration of claim closure pending settlement.

**Adm. Order No.:** WCD 5-2011

**Filed with Sec. of State:** 11-18-2011

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

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 436-009-0080, 436-010-0210, 436-010-0230, 436-010-0280, 436-015-0008, 436-030-0003, 436-030-0036, 436-030-0145, 436-030-0165

**Subject: Revised OAR 436-009, "Oregon Medical Fee and Payment Rules" rule 0080, affecting payment for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS):** Establishes maximum payments for DMEPOS Healthcare Common Procedure Coding System (HCPCS) codes published by the Centers for Medicare and Medicaid Services. The rule also includes maximum payment criteria for services and items that have no HCPCS codes, and for equipment that is used or rented.

**Revised OAR 436-010, "Medical Services":** Implements House Enrolled Bill 2743 (2011) by including podiatric physicians and surgeons among those health care providers who may serve as attending physicians, without limitation, in the workers' compensation system. In addition, the agency has corrected the term, "lumbar spondylosis," to "lumbar spondylolysis."

**Revised OAR 436-015, "Managed Care Organizations":** Implements Enrolled House Bill 2093 (2011) by referring to civil penalties and to cease and desist orders that may be issued under ORS 656.260(20).

**Revised OAR 436-030, "Claim Closure and Reconsideration":** Implements Enrolled House Bill 2094 (2011) by describing the process for the director to delay the reconsideration proceeding and toll the reconsideration timeline for up to 45 days when both parties request the delay for settlement negotiations. The rules also more fully describe the arbiter selection process, including options for participation by the parties in the selection, and align rule with statute regarding the effective suspension date if a worker fails to attend or cooperate with a medical arbiter examination.

**Rules Coordinator:** Fred Bruyns—(503) 947-7717



# ADMINISTRATIVE RULES

## 436-009-0080

### Durable Medical Equipment and Medical Supplies

(1) Durable medical equipment (DME) is equipment that is primarily and customarily used to serve a medical purpose, can withstand repeated use, could normally be rented and used by successive patients, is appropriate for use in the home, and not generally useful to a person in the absence of an illness or injury. For example: Transcutaneous Electrical Nerve Stimulation (TENS), MicroCurrent Electrical Nerve Stimulation (MENS), home traction devices, heating pads, reusable hot/cold packs, etc.

(2) A prosthetic is an artificial substitute for a missing body part or any device aiding performance of a natural function. For example: hearing aids, eye glasses, crutches, wheelchairs, scooters, artificial limbs, etc.

(3) An orthosis is an orthopedic appliance or apparatus used to support, align, prevent or correct deformities, or to improve the function of a moveable body part. For example: brace, splint, shoe insert or modification, etc.

(4) Supplies are materials that may be reused multiple times by the same person, but a single supply is not intended to be used by more than one person, including, but not limited to incontinent pads, catheters, bandages, elastic stockings, irrigating kits, sheets, and bags.

(5) When billing for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS), providers must use the following modifiers, when applicable:

- (a) -NU for purchased, new equipment;
- (b) -UE for purchased, used equipment; and
- (c) -RR for rented equipment

(6) Unless otherwise provided by contract, insurers must pay for DMEPOS according to the following table: [Table not included. See ED. NOTE.]

(7) For items rented, unless otherwise provided by contract:

(a) After a rental period of 13 months, the item is considered purchased, if the insurer so chooses.

(b) The insurer may purchase a rental item anytime within the 13 month rental period, with a credit of 75 percent of the rental paid going towards the purchase.

(8) For items purchased, unless otherwise provided by contract:

(a) The provider is entitled to payment for any labor and reasonable expenses directly related to any subsequent modifications other than those performed at the time of purchase or repairs. The insurer must pay for labor at the provider's usual rate; or

(b) The provider may offer a service agreement at an additional cost.

(9)(a) Testing for hearing aids must be done by a licensed audiologist or an otolaryngologist.

(b) Based on current technology, the preferred types of hearing aids for most workers are programmable behind the ear (BTE), in the ear (ITE), and completely in the canal (CIC) multi channel. Any other types of hearing aids needed for medical conditions will be considered based on justification from the attending physician or authorized nurse practitioner.

(c) Payment for hearing aids is determined under section (6) of this rule. However, without approval from the insurer or director, the payment for hearing aids may not exceed \$5000 for a pair of hearing aids, or \$2500 for a single hearing aid.

(10) The worker may select the service provider, except for claims enrolled in a managed care organization (MCO) when service providers are specified by the MCO contract.

(11) Except as provided in subsection (9)(c) of this rule, this rule does not apply to a worker's direct purchase of DME and supplies, and does not limit a worker's right to reimbursement for actual out-of-pocket expenses under OAR 436-009-0025.

(12) DME, prosthetics, orthotics, and supplies dispensed by a hospital (inpatient or outpatient) must be billed and paid according to OAR 436-009-0020.

[ED. NOTE: Table referenced are available from the agency.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11; WCD 4-2011(Temp) f. 6-30-11, cert. ef. 7-5-11 thru 12-31-11; WCD 5-2011, f. 11-18-11, cert. ef. 1-1-12

## 436-010-0210

### Who May Provide Medical Services and Authorize Timeloss

(1) Type A and B attending physicians may authorize time loss and manage medical services subject to the limitations of ORS chapter 656. (See "Matrix for health care provider types" Appendix A)

(2) Emergency room physicians may authorize time loss for not more than 14 days when they refer the worker to a primary care physician. However an emergency room physician also in private practice, apart from the duties of an emergency room physician, may qualify as a type A attending physician. For the purpose of this rule, private practice means a physician who treats individuals on an established patient basis.

(3) Authorized primary care physicians and authorized nurse practitioners may provide medical services to injured workers subject to the terms and conditions of the governing MCO. An MCO may allow greater latitude for the provider types to treat a worker enrolled under ORS 656.260.

(4) Attending physicians and authorized nurse practitioners may prescribe treatment or services to be carried out by persons licensed to provide a medical service. Attending physicians may prescribe treatment or services to be carried out by persons not licensed to provide a medical service or treat independently only when such services or treatment is rendered under the physician's direct control and supervision. Reimbursement to a worker for home health care provided by a worker's family member is not required to be provided under the direct control and supervision of the attending physician if the family member demonstrates competency to the satisfaction of the attending physician.

(5) Authorized nurse practitioners, out-of-state nurse practitioners, and physician assistants working within the scope of their license and as directed by the attending physician, need not be working under a written treatment plan as prescribed in OAR 436-010-0230(4)(a), nor under the direct control and supervision of the attending physician.

(6) In order to provide any compensable medical service under ORS chapter 656, a nurse practitioner licensed under ORS 678.375 to 678.390 must certify in a form provided by the director that the nurse practitioner has reviewed a packet of materials which the director will provide upon request and must have been assigned an authorized nurse practitioner number by the director. An authorized nurse practitioner may:

(a) Provide compensable medical services to an injured worker for a period of 90 days from the date of the first nurse practitioner visit on the initial claim. Thereafter, medical services an authorized nurse practitioner provides are not compensable without the attending physician's authorization; and

(b) Authorize temporary disability benefits for a period of up to 90 days from the date of the first nurse practitioner visit on the initial claim.

(7) In accordance with ORS 656.245(2)(a), with the approval of the insurer, the worker may choose an attending physician outside the state of Oregon. Upon receipt of the worker's request, or the insurer's knowledge of the worker's request to treat with an out-of-state physician, the insurer must give the worker written notice of approval or denial of the worker's choice of attending physician within 14 days.

(a) If the insurer does not approve the worker's out-of-state physician, notice to the worker must clearly state the reason(s) for the denial, which may include, but are not limited to, the out-of-state physician's refusal to comply with OAR 436-009 and 436-010, and identify at least two other physicians of the same healing art and specialty whom it would approve. The notice must also inform the worker that if the worker disagrees with the denial, the worker may refer the matter to the director for review under the provisions of OAR 436-010-0220.

(b) If the insurer approves the worker's choice of out-of-state attending physician, the insurer must immediately notify the worker and the medical service provider in writing of the following:

(A) The Oregon fee schedule requirements;

(B) The manner in which the out-of-state physician may provide compensable medical treatment or services to Oregon injured workers; and

(C) The insurer may not pay billings for compensable services in excess of the maximum allowed under the fee schedule.

(8) After giving prior approval, if the out-of-state physician does not comply with these rules, the insurer may object to the worker's choice of physician and must notify the worker and the physician in writing of the reason for the objection, that payment for services rendered by that physician after notification will not be reimbursable, and that the worker may be liable for payment of services rendered after the date of notification.

(9) If the worker is aggrieved by an insurer decision to object to an out-of-state attending physician, the worker or the worker's representative may refer the matter to the director for review under the provisions of OAR 436-010-0220.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.005(12), 656.245 & 656.260

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 5-1984(Admin), f. & ef. 8-20-84; Renumbered from 436-069-0301, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 12-

# ADMINISTRATIVE RULES

1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0050; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-000; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 12-2007(Temp), f. 12-14-07, cert. ef. 1-2-08 thru 6-29-08; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08; WCD 5-2011, f. 11-18-11, cert. ef. 1-1-12

## 436-010-0230

### Medical Services and Treatment Guidelines

(1) Medical services provided to the injured worker must not be more than the nature of the compensable injury or the process of recovery requires. Services which are unnecessary or inappropriate according to accepted professional standards are not reimbursable.

(2) An employer or insurer representative may not attend a worker's medical appointment without written consent of the worker. The worker has the right to refuse such attendance.

(a) The consent form must state that the worker's benefits cannot be suspended if the worker refuses to have a representative present.

(b) The consent form must be written in a way that allows the worker to understand it and to overcome language or cultural differences.

(c) The insurer must retain a copy of a signed consent form in the claim file.

(3) Insurers have the right to require evidence of the frequency, extent, and efficacy of treatment and services.

(4)(a) Except as otherwise provided by an MCO, ancillary services including but not limited to physical therapy or occupational therapy, by a medical service provider other than the attending physician, authorized nurse practitioner, or specialist physician will not be reimbursed unless prescribed by the attending physician, authorized nurse practitioner, or specialist physician and carried out under a treatment plan prepared prior to the commencement of treatment and sent by the ancillary medical service provider to the attending physician, authorized nurse practitioner, or specialist physician, and the insurer within seven days of beginning treatment. The treatment plan must include objectives, modalities, frequency of treatment, and duration. The treatment plan may be recorded in any legible format including, but not limited to, signed chart notes. Treatment plans required under this subsection do not apply to services provided under ORS 656.245(2)(b)(A).

(b) The attending physician, authorized nurse practitioner, or specialist physician must sign a copy of the treatment plan within 30 days of the commencement of treatment and send it to the insurer. Failure of the physician or authorized nurse practitioner to sign or mail the treatment plan may subject the attending physician or authorized nurse practitioner to sanctions under OAR 436-010-0340, but shall not affect payment to the ancillary medical service provider.

(c) Medical services prescribed by an attending physician, specialist physician, or authorized nurse practitioner and provided by a chiropractic physician, naturopathic physician, or acupuncturist, will be subject to the treatment plan requirements set forth in subsection (4)(a) and (b) of this rule.

(d) Unless otherwise provided for within utilization and treatment standards under an MCO contract, the usual range for therapy visits does not exceed 20 visits in the first 60 days, and 4 visits a month thereafter. This rule does not constitute authority for an arbitrary provision of or limitation of services, but is a guideline for reviewing treatment or services. The attending physician or authorized nurse practitioner must document the need for medical services in excess of these guidelines when submitting a written treatment plan. The process outlined in OAR 436-010-0008 should be followed when an insurer believes the treatment plan is inappropriate.

(e) Unless otherwise provided for within utilization and treatment standards under an MCO contract, a physical therapist must simultaneously submit a progress report to the attending physician and the insurer each 30 days or after every visit if the worker is seen less frequently. The progress report may be included in the provider's chart notes. The progress report must include:

- (A) Subjective status of the worker;
- (B) Objective data from tests and measurements conducted;
- (C) Functional status of the worker;
- (D) Interpretation of above data; and
- (E) Any change in the treatment plan.

(5) The attending physician or authorized nurse practitioner, when requested by the insurer or the director through the insurer to complete a physical capacity or work capacity evaluation, must complete the evaluation within 20 days, or refer the worker for such evaluation within seven

days. The attending physician or authorized nurse practitioner must notify the insurer and the worker in writing if the worker is incapable of participating in such evaluation.

(6) Prescription medications are required medical services under the provisions of ORS 656.245(1)(a), (1)(b), and (1)(c) and do not require prior approval under the palliative care provisions of OAR 436-010-0290. A pharmacist, dispensing physician, or authorized nurse practitioner must dispense generic drugs to injured workers in accordance with and under ORS 689.515. For the purposes of this rule, the worker will be deemed the "purchaser" and may object to the substitution of a generic drug. However, payment for brand name drugs are subject to the limitations provided in OAR 436-009-0090. Workers may have prescriptions filled by a provider of their choice, unless otherwise provided for in accordance with an MCO contract. Except in an emergency, drugs and medicine for oral consumption supplied by a physician's or authorized nurse practitioner's office are compensable only for the initial supply to treat the worker with the medication up to a maximum of 10 days, subject to the requirements of the provider's licensing board, this rule and OAR 436-009-0090. Compensation for certain drugs is limited as provided in OAR 436-009-0090.

(7) Dietary supplements including, but not limited to, minerals, vitamins, and amino acids are not reimbursable unless a specific compensable dietary deficiency has been clinically established in the injured worker or they are provided in accordance with a utilization and treatment standard adopted by the director. Vitamin B-12 injections are not reimbursable unless necessary because of a specific dietary deficiency of malabsorption resulting from a compensable gastrointestinal condition.

(8) X-ray films must be of diagnostic quality and accompanied by a report. 14" x 36" lateral views are not reimbursable.

(9) Upon request of either the director or the insurer, original diagnostic studies, including but not limited to actual films, must be forwarded to the director, the insurer, or the insurer's designee, within 14 days of receipt of a written request.

(a) Diagnostic studies, including films must be returned to the medical provider within a reasonable time.

(b) The insurer must pay for a reasonable charge made by the provider for the costs of delivery of diagnostic studies, including films.

(c) If a medical provider does not forward the films to the director or the insurer within 14 days of receipt of a written request, civil penalties may be imposed.

(10) Articles including but not limited to beds, hot tubs, chairs, Jacuzzis, and gravity traction devices are not compensable unless a need is clearly justified by a report which establishes that the "nature of the injury or the process of recovery requires" the item be furnished. The report must specifically set forth why the worker requires an item not usually considered necessary in the great majority of workers with similar impairments. Trips to spas, to resorts or retreats, whether prescribed or in association with a holistic medicine regimen, are not reimbursable unless special medical circumstances are shown to exist.

(11) Physical restorative services may include but are not limited to a regular exercise program or swim therapy. Such services are not compensable unless the nature of the worker's limitations requires specialized services to allow the worker a reasonable level of social and/or functional activity. The attending physician or authorized nurse practitioner must justify by report why the worker requires services not usually considered necessary for the majority of injured workers.

(12) The cost of repair or replacement of prosthetic appliances damaged when in use at the time of and in the course of a compensable injury is a compensable medical expense, including when the worker received no physical injury. For purposes of this rule, a prosthetic appliance is an artificial substitute for a missing body part or any device that aids the performance of a natural function, including but not limited to hearing aids and eyeglasses.

(13) Lumbar artificial disc replacement that is not excluded from compensability under OAR 436-009-0015(6)(g) is always inappropriate for injured workers with the following conditions (absolute contraindications):

- (a) Metabolic bone disease – for example, osteoporosis;
- (b) Known spondyloarthropathy (seropositive and seronegative);
- (c) Posttraumatic vertebral body deformity at the level of the proposed surgery;
- (d) Malignancy of the spine;
- (e) Implant allergy to the materials involved in the artificial disc;
- (f) Pregnancy – currently;
- (g) Active infection, local or systemic;
- (h) Lumbar spondylolisthesis or lumbar spondylolysis;

# ADMINISTRATIVE RULES

(i) Prior fusion, laminectomy that involves any part of the facet joint, or facetectomy at the same level as proposed surgery; or

(j) Spinal stenosis – lumbar – moderate to severe lateral recess and central stenosis.

(14) Lumbar artificial disc replacement that is not excluded from compensability under OAR 436-009-0015(6)(g) may be inappropriate for injured workers with the following conditions, depending on severity, location, etc. (relative contraindications):

(a) A comorbid medical condition compromising general health, for example, hepatitis, poorly controlled diabetes, cardiovascular disease, renal disease, autoimmune disorders, AIDS, lupus, etc.;

(b) Arachnoiditis;

(c) Corticosteroid use (chronic ongoing treatment with adrenal immunosuppression);

(d) Facet arthropathy – lumbar – moderate to severe, as shown radiographically;

(e) Morbid obesity – BMI greater than 40;

(f) Multilevel degenerative disc disease – lumbar – moderate to severe, as shown radiographically;

(g) Osteopenia – based on bone density test;

(h) Prior lumbar fusion at a different level than the proposed artificial disc replacement; or

(i) Psychosocial disorders – diagnosed as significant to severe.

(15) Cervical artificial disc replacement that is not excluded from compensability under OAR 436-009-0015(6)(h) is always inappropriate for injured workers with any of the following conditions (absolute contraindications):

(a) Instability in the cervical spine which is greater than 3.5 mm of anterior motion or greater than 20 degrees of angulation;

(b) Significantly abnormal facets;

(c) Osteoporosis defined as a T-score of negative (-)2.5 or more negative (e.g. -2.7);

(d) Allergy to metal implant;

(e) Bone disorders (any disease that affects the density of the bone);

(f) Uncontrolled diabetes mellitus;

(g) Active infection, local or systemic;

(h) Active malignancy, primary or metastatic;

(i) Bridging osteophytes (severe degenerative disease);

(j) A loss of disc height greater than 75 percent relative to the normal disc above;

(k) Chronic indefinite corticosteroid use;

(l) Prior cervical fusion at two or more levels; or

(m) Pseudo-arthritis at the level of the proposed artificial disc replacement.

(16) Cervical artificial disc replacement that is not excluded from compensability under OAR 436-009-0015(6)(h) may be inappropriate for injured workers with any of the following conditions, depending on severity, location, etc. (relative contraindications):

(a) A comorbid medical condition compromising general health, for example hepatitis, poorly controlled diabetes, cardiovascular disease, renal disease, autoimmune disorders, AIDS, lupus, etc.;

(b) Multilevel degenerative disc disease – cervical – moderate to severe, as shown radiographically;

(c) Osteopenia – based on bone density test with a T-score range of negative (-)1.5 to negative (-)2.5;

(d) Prior cervical fusion at one level;

(e) A loss of disc height of 50 percent to 75 percent relative to the normal disc above; or

(f) Psychosocial disorders – diagnosed as significant to severe.

Stat. Auth: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248, 656.252, OL 2011, ch. 117

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 5-1984(Admin), f. & ef. 8-20-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0201, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 2-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 2-1989, f. 8-21-89, cert. ef. 9-1-89; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0080; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11; WCD 5-2011, f. 11-18-11, cert. ef. 1-1-12

## 436-010-0280

### Determination of Impairment

(1) On disabling claims, when the worker becomes medically stationary, the attending physician must complete a closing exam or refer the worker to a consulting physician for all or part of the closing exam. For workers under the care of an authorized nurse practitioner or a type B attending physician other than a chiropractic physician, the provider must refer the worker to a type A attending physician to do a closing exam if there is a likelihood the worker has permanent impairment. The closing exam must be completed under OAR 436-030 and OAR 436-035.

(2) The attending physician or authorized nurse practitioner has 14 days from the medically stationary date to send the closing report to the insurer. Within eight days of the medically stationary date, the attending physician may arrange a closing exam with a consulting physician. This exam does not count as an IME or a change of attending physician.

(3) When an attending physician requests a consulting physician to do the closing exam, the consulting physician has seven days from the date of the exam to send the report for the concurrence or objections of the attending physician. The attending physician must also state, in writing, whether they agree or disagree with all or part of the findings of the exam. Within seven days of receiving the report, the attending physician must make any comments in writing and send the report to the insurer. (See "Matrix for Health Care Provider types" Appendix A)

(4) The attending physician must specify the worker's residual functional capacity or refer the worker for completion of a second level physical capacities exam or work capacities exam (as described in OAR 436-009-0070(4)) pursuant to the following:

(a) A physical capacities exam when the worker has not been released to return to regular work, has not returned to regular work, has returned to modified work, or has refused an offer of modified work.

(b) A work capacities exam when there is question of the worker's ability to return to suitable and gainful employment. It may also be required to specify the worker's ability to perform specific job tasks.

(5) If the insurer issues a major contributing cause denial on the accepted claim and the worker is not medically stationary, the attending physician must do a closing exam. An authorized nurse practitioner or a type B attending physician other than a chiropractic physician must refer the worker to a type A attending physician for a closing exam. (See "Matrix for Health Care Provider types" Appendix A)

(6) The closing report must address the accepted conditions and must include:

(a) Objective findings of permanent impairment; and

(b) A statement of the validity of the impairment findings.

(7) The director may prescribe by bulletin what comprises a complete closing report, including, but not limited to, those specific clinical findings related to the specific body part or system affected. The bulletin may also include the impairment reporting format or form to be used as a supplement to the narrative report.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 656.726(4) & 656.245(2)(b)(B)

Stats. Implemented: ORS 656.245 & 656.252

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0601, 5-1-85; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0080; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 12-2007(Temp), f. 12-14-07, cert. ef. 1-2-08 thru 6-29-08; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 5-2011, f. 11-18-11, cert. ef. 1-1-12

## 436-015-0008

### Administrative Review

(1) Any party may request that the director provide voluntary mediation after a request for administrative review or hearing is filed. The request must be in writing. When a dispute is resolved by agreement of the parties to the director's satisfaction, any agreement shall be reduced to writing and approved by the director. If the dispute does not resolve through mediation, administrative review shall continue.

(2) Administrative review before the director: The process for administrative review of such matters shall be as follows:

(a) Any party that disagrees with an action taken by an MCO pursuant to these rules must first use the MCO's dispute resolution process. If the party does not appeal the MCO's decision, in writing and within 30 days of the mailing date of the decision, the party will lose all rights to further appeal the decision.



# ADMINISTRATIVE RULES

(b) The aggrieved party shall file a written request for administrative review with the administrator of the Workers' Compensation Division within 60 days of the date the MCO issues a final decision under the MCO's dispute resolution process. If a party has been denied access to an MCO dispute resolution process because the complaint or dispute was not included in the MCO's dispute resolution process or because the MCO's dispute resolution process was not completed for reasons beyond a party's control, the party may request administrative review within 60 days of the failure of the MCO to issue a decision. The request must specify the grounds upon which the action is contested.

(c) The director shall create a documentary record sufficient for judicial review. The director may require and allow the parties to submit such input and information appropriate to complete the review.

(d) The director shall review the relevant information and issue an order. The order shall specify that it will become final and not subject to further review unless a written request for hearing is filed with the administrator within 30 days of the mailing date of the order.

(3) Hearings before an administrative law judge: Any party who disagrees with an order under these rules may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order. OAR 436-001 applies to the hearing. In the review of orders issued pursuant to ORS 656.260(14) and (16), no new medical evidence or issues shall be admitted at hearing. In these reviews, administrative orders may be modified at hearing only if the administrative order is not supported by substantial evidence in the record or reflects an error of law. The dispute may be remanded to the MCO for further evidence taking, correction, or other necessary action if the administrative law judge or director determines the record has been improperly, incompletely, or otherwise insufficiently developed.

(4) Contested case hearings of sanctions and civil penalties: Under ORS 656.740, any party that disagrees with a proposed order or proposed assessment of civil penalty issued by the director pursuant to ORS 656.745, or to a civil penalty or cease and desist order issued under ORS 656.260(20), may request a hearing by the Hearings Division of the Workers' Compensation Board as follows:

(a) The party shall file a written request for a hearing with the administrator of the Workers' Compensation Division within 60 days after the mailing date of the proposed order or assessment. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The division shall forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.

(c) An administrative law judge from the Hearings Division, acting on behalf of the director, shall conduct the hearing in accordance with ORS 656.740 and ORS chapter 183.

(5) Hearings on the suspension or revocation of an MCO's certification:

(a) At a hearing on a notice of intent to suspend issued pursuant to OAR 436-015-0080(2), the MCO must show cause why it should be permitted to continue to provide services under these rules.

(A) If the director determines that the acts or omissions of the MCO justify suspension of the MCO's certification, the director may issue an order suspending the MCO for a period of time up to a maximum of one year or may initiate revocation proceedings pursuant to OAR 436-015-0080(5). If the director determines that the acts or omissions of the MCO do not justify suspension, the director shall issue an order withdrawing the notice.

(B) If the MCO disagrees with the order, it may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 60 days of the mailing date of the order.

(C) OAR 436-001 applies to the hearing.

(b) A revocation issued pursuant to OAR 436-015-0080(5) shall become effective within 10 days after service of such notice upon the MCO unless within such period of time the MCO corrects the grounds for revocation to the satisfaction of the director or files a written request for hearing with the administrator of the Workers' Compensation Division.

(A) If the MCO appeals, the administrator shall set a date for a hearing and shall give the MCO at least ten days notice of the time and place of the hearing. At hearing, the MCO shall show cause why it should be permitted to continue to provide services under these rules.

(B) Within thirty days after the hearing, the director shall issue an order affirming or withdrawing the revocation.

(C) If the MCO disagrees with the order, it may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 60 days of the mailing date of the order.

(D) OAR 436-001 applies to the hearing.

(c) An emergency revocation issued pursuant to OAR 436-015-0080(7) is effective immediately. The MCO must file a request for hearing as provided in OAR 436-001-0019 within 60 days of the mailing date of the order. OAR 436-001 applies to the hearing.

Stat. Auth.: ORS 183.310 - 183.550 & 656.726(4)

Stats. Implemented: ORS 656.260

Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; Administrative correction 6-13-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 6-2004, f. 6-14-04, cert. ef. 6-29-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2011, f. 11-18-11, cert. ef. 1-1-12

## 436-030-0003

### Applicability of Rules

(1) Except as provided in section (3) of this rule, these rules apply to all accepted claims for workers' compensation benefits and all requests for reconsideration the department receives on or after the effective date of these rules.

(2) All orders the division issues to carry out the statute and these rules are considered an order of the director.

(3) These rules carry out ORS 656.005, 656.214, 656.262, 656.268, 656.273, 656.278, and 656.325.

(a) For claims in which the worker became medically stationary before July 2, 1990, OAR 436-030-0020, 436-030-0030, and 436-030-0050 as adopted by WCD Administrative Order 13-1987 effective January 1, 1988 will apply.

(b) OAR 436-030-0055(3)(b), (3)(d), and (4)(a) apply to all claims with dates of injury on or after January 1, 2002.

Stat. Auth.: ORS 656.268, 656.726

Stats. Implemented: ORS 656.206, 656.210, 656.212, 656.262, 656.268, 656.273, 656.277, 656.325, 656.726

Hist.: WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0003, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1991(Temp), f. 8-20-91, cert. ef. 9-1-91; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 12-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 6-29-01; Administrative correction 11-20-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; WCD 4-2002, f. 4-5-02, cert. ef. 4-8-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 5-2011, f. 11-18-11, cert. ef. 1-1-12

## 436-030-0036

### Determining Temporary Disability

(1) Temporary disability must be determined under ORS chapter 656, OAR 436-060, and this rule, less time worked. Beginning and ending dates of each authorized period of temporary total disability and temporary partial disability must be noted on the Notice of Closure, as well as the statements "Less time worked" and "Temporary disability was determined in accordance with the law."

(2) Except as provided in section (3) of this rule and ORS 656.268(10), a worker is not entitled to any award of temporary disability for any period of time in which the worker is medically stationary.

(3) Awards of temporary disability must include the day the worker is medically stationary or the date the claim otherwise qualifies for closure, unless temporary disability is not authorized for another reason at that time.

Stat. Auth.: ORS 656.268, 656.726

Stats. Implemented: ORS 656.005, 656.160, 656.210, 656.212, 656.236, 656.245, 656.262, 656.268, 656.726,

Hist.: WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 5-2011, f. 11-18-11, cert. ef. 1-1-12

## 436-030-0145

### Reconsideration Time Frames and Postponements

(1) When appealing a Notice of Closure for claims that are medically stationary or that statutorily qualified for closure on or after June 7, 1995, a request for reconsideration must be mailed within:

(a) Sixty (60) days of the mailing date of the Notice of Closure for a worker's request.

(b) Seven (7) days of the mailing date of the Notice of Closure for an insurer's request. An insurer's request for reconsideration is limited to the findings used to rate impairment.

(2) The reconsideration proceeding begins upon:

# ADMINISTRATIVE RULES

(a) The director's receipt of the worker's request for reconsideration, if the insurer has not previously requested reconsideration consistent with subsection (1)(b) of this rule; or

(b) The 61st day after the closure of the claim, if the insurer has requested reconsideration consistent with subsection (1)(b) of this rule; unless the director receives, within the appeal time frames in section (1) of this rule, a request for reconsideration or a statement by the worker instructing the director to start the reconsideration proceeding.

(3) Fourteen days from the date of the director's notice of the start of the reconsideration proceeding, the reconsideration request and all other appropriate information submitted by the parties will become part of the record used in the reconsideration proceeding. Requests for a medical arbiter panel must be submitted within this time frame.

(a) Evidence received or issues raised subsequent to the 14 day deadline will be considered in the reconsideration proceeding to the extent practicable.

(b) Upon review of the record the director may request, under ORS 656.268(6), any additional information deemed necessary for the reconsideration and set appropriate time frames for response.

(c) Except as provided in section (4), (5) and (6) of this rule, the director will either mail an Order on Reconsideration within 18 working days from the date the reconsideration proceeding begins or notify the parties that the reconsideration proceeding is postponed for not more than 60 additional days as provided under ORS 656.268(6).

(4) The director may delay the reconsideration proceeding and toll the reconsideration timeline for up to 45 days when both parties provide written notice to the director requesting the delay for settlement negotiations. The notice is only effective if the director receives it before the 18th working day after the reconsideration proceeding begins.

(a) This delay of the reconsideration proceeding expires:

(A) When the director receives a written request from either party to resume the reconsideration proceeding;

(B) When the director receives a copy of the approved settlement resolving some or all of the issues raised at the reconsideration proceeding; or

(C) On the next calendar day following the authorized delay period.

(b) The director may authorize only one delay period for each reconsideration proceeding.

(5) When the director provides notice the worker failed to attend the medical arbiter examination without good cause or failed to cooperate with the arbiter examination and suspends benefits under ORS 656.268(8), the reconsideration proceeding will be postponed for up to 60 additional days from the date the director determines and provides notice, to allow completion of the arbiter process.

(6) The reconsideration proceeding may be stayed for one of the following reasons:

(a) The parties consent to deferring the reconsideration proceeding, under ORS 656.268(8)(i)(B), when the medical arbiter examination is not medically appropriate because the worker's medical condition is not stationary; or

(b) When a Claim Disposition Agreement (CDA) is filed, the reconsideration proceeding is stayed until the CDA is either approved or set aside.

(7) If the director fails to mail an Order on Reconsideration or a Notice of Postponement under the time frames specified in ORS 656.268, the reconsideration request is automatically deemed denied. The parties may immediately thereafter proceed as though the director had issued an Order on Reconsideration affirming the Notice of Closure.

(8) Notwithstanding any other provision regarding the reconsideration proceeding, the director may extend nonstatutory time frames to allow the parties sufficient time to present evidence and address their issues and concerns.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.268, OL 2011, ch. 99

Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 5-2011, f. 11-18-11, cert. ef. 1-1-12

## 436-030-0165

### Medical Arbiter Examination Process

(1) The director will select a medical arbiter physician or a panel of physicians in accordance with ORS 656.268(8)(d).

(a) Any party that objects to a physician on the basis that the physician is not qualified under ORS 656.005(12)(b) must notify the director of

the specific objection before the examination. If the director determines that the physician is not qualified to be a medical arbiter on the specific case, an examination will be scheduled with a different physician.

(b) When the worker resides outside the state of Oregon, a medical arbiter examination may be scheduled out-of-state with a physician who is licensed within that state to provide medical services in the same manner as required by ORS 656.268(8).

(c) Arbiters or panel members will not include any health care provider whose examination or treatment is the subject of the review.

(d) To be effective, the written notice of agreement to the completion of the medical arbiter process in this rule.

(2) If the director determines there are enough appropriate physicians available to create a list of possible arbiters and it is practicable, each party will be given the opportunity to agree on a physician and to remove one physician from the list through the process described below:

(a) The director will send the list to the parties electronically or by overnight mail.

(b) If the parties agree on a physician, every party must send a signed, written notice of that choice to the director.

(c) A party can remove a physician from the list, even when the parties have agreed on a physician to conduct the exam, by submitting a signed, written notice of that choice to the director.

(d) To be effective, the written notice of agreement on or rejection of a physician must be received by the director within three working days of the date the director sent the list.

(3) The worker's disability benefits will be suspended when the director determines the worker failed to attend or cooperate with the medical arbiter examination, unless the worker establishes a "good cause" reason for missing the examination or for not cooperating with the arbiter. The worker must call the director within 24 hours of the missed examination to provide any "good cause" reason.

(a) Notice of the examination will be considered adequate notice if the appointment letter is mailed to the last known address of the worker and to the worker's attorney, if the worker is represented.

(b) For the purposes of this rule, non-cooperation includes, but is not limited to, refusal to complete any reasonable action necessary to evaluate the worker's impairment. However, it does not include circumstances such as a worker's inability to carry out any part of the examination due to excessive pain or when the physician reports the findings as medically invalid.

(c) Failure of the worker to respond within the time frames outlined in statute for completion of the reconsideration proceeding may be considered a failure to establish "good cause."

(4) If a worker misses the medical arbiter examination, the director will determine whether or not there was a "good cause" reason for missing the examination.

(5) Upon determination that there was not a "good cause" reason for missing the examination, or that the worker failed to cooperate with the arbiter, the worker's disability benefits will be suspended and the reconsideration proceeding postponed for up to an additional 60 days.

(6) The suspension will be lifted if any of the following occur during the additional 60-day postponement period:

(a) The worker establishes a "good cause" reason for missing or failing to cooperate with the examination;

(b) The worker withdraws the request for reconsideration; or

(c) The worker attends and cooperates with a rescheduled arbiter examination.

(7) If none of the events which end the suspension under section (6) of this rule occur before the expiration of the 60-day additional postponement, the suspension of benefits will remain in effect.

(8) The medical arbiter or panel of medical arbiters must perform a record review or examine the worker as requested by the director and perform such tests as may be reasonable and necessary to establish the worker's impairment.

(a) The parties must submit to the director any issues they wish the medical arbiter or panel of medical arbiters to address within 14 days of the date of the director's notice of the start of the reconsideration proceeding. The parties must not submit issues directly to the medical arbiter or panel of medical arbiters. The medical arbiter or panel of medical arbiters will only consider issues appropriate to the reconsideration proceeding.

(b) The report of the medical arbiter or panel of medical arbiters must address all questions raised by the director.

(c) The medical arbiter will provide copies of the arbiter report to the director, the worker or the worker's attorney, and the insurer within five working days after completion of the arbiter review. The cost of providing

# ADMINISTRATIVE RULES

copies of such additional reports must be reimbursed according to OAR 436-009-0070 and must be paid by the insurer.

(9) When the worker's medical condition is not stationary on reconsideration which may result in difficulties in obtaining findings of impairment by the arbiter, the director will, where appropriate, send a letter to the parties requesting consent to defer the reconsideration proceeding.

(a) If the parties agree to the deferral, the reconsideration proceeding will be deferred until the medical record reflects the worker's condition has stabilized sufficiently to allow for examination to obtain the impairment findings. The parties must notify the director when it is appropriate to schedule the medical arbiter examination and provide the necessary medical records when requested. Interim medical information that may be helpful to the director and the medical arbiter in assessing and describing the impairment due to the compensable condition may be submitted at the time the parties notify the director that the medical arbiter exam can be scheduled. The director will determine whether the interim medical information is consistent with the provisions of ORS 656.268(6) and (8).

(b) If deferral is not appropriate, at the director's discretion either a medical arbiter examination or a medical arbiter record review may be obtained, or the director may issue an Order on Reconsideration based on the record available at claim closure and other evidence submitted in accordance with ORS 656.268(6).

(10) All costs related to record review, examinations, tests, and reports of the medical arbiter must be paid under OAR 436-009-0015, 436-009-0040, and 436-009-0070.

(11) When requested by the Hearings Division, the director may schedule a medical arbiter examination for a worker who has appealed a Notice of Closure rescinding permanent total disability benefits under ORS 656.206.

Stat. Auth.: ORS 656.726  
Stats. Implemented: ORS 656.268  
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 11-1995(Temp), f. & cert. ef. 8-23-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 5-2011, f. 11-18-11, cert. ef. 1-1-12

\*\*\*\*\*

## Department of Corrections Chapter 291

**Rule Caption:** Capital Punishment – IV/Medical Team Procedures.

**Adm. Order No.:** DOC 23-2011(Temp)

**Filed with Sec. of State:** 11-17-2011

**Certified to be Effective:** 11-17-11 thru 5-15-12

**Notice Publication Date:**

**Rules Adopted:** 291-024-0081

**Subject:** Immediate adoption of this temporary rule is necessary in order for ODOC to establish by rule certain of its operational policies and procedures and internal management directives for carrying out of defendant Gary Haugen's death sentence by lethal injection, on December 6, 2011, or on such later date as the court directs, including specific ODOC policies and procedures and internal management directives relating to the selection and training of the execution IV/medical team and lethal injection procedures.

**Rules Coordinator:** Janet R. Worley — (503) 945-0933

### 291-024-0081

#### IV/Medical Team Procedures

(1) Selection and Training of IV/Medical Team:

(a) The Superintendent or designee will obtain the services of at least two qualified medical professionals to prepare and insert intravenous lines in the condemned inmate for purposes of carrying out the inmate's death sentence via lethal injection. The Superintendent or designee will also obtain the services of an additional qualified medical professional to supervise the IV team and oversee the IV procedure, and assist the Superintendent. The Superintendent or designee shall ensure that all members of the IV/medical team are licensed, have proper training and experience in the preparation and insertion of IVs, and that team members pass a criminal background check.

(b) The Superintendent or designee shall ensure that IV/medical team members participate in training with ODOC staff to prepare team members to carry out their respective duties in an execution.

(2) Lethal Injection Procedures:

(a) Prior to the date of the execution, the IV/medical team will evaluate the condemned inmate in order to identify suitable veins for insertion of IVs for infusion of the lethal chemicals.

(b) On the date of the scheduled execution, the Superintendent or designee will direct the removal of the lethal chemicals and other medical supplies from secure storage for use in carrying out the execution. Upon reporting to the Penitentiary on the date of the scheduled execution, the IV/medical team will inventory and insure that necessary medical supplies are on site, and prepare the syringes containing the lethal chemicals. Each syringe will be labeled with the name of the drug it contains and the name of the condemned inmate. The syringes will be numbered in order they are to be administered.

(c) When directed by the Superintendent or designee, the IV team will prepare and insert two intravenous catheters into a peripheral vein located in each of the condemned inmate's arms, and hook up the inmate to the heart monitor. The IV team will monitor and ensure the proper functioning of the IVs by slow infusion of normal saline. If only one functioning IV site is established or if no functioning site is established after protracted attempts, the Superintendent or designee will direct the IV team to suspend further action, and direct the supervising qualified medical professional to evaluate the inmate to determine whether different peripheral functioning infusion site should be attempted or a cut-down procedure is necessary. In the event that the IV/medical team is unable to establish at least one functioning IV site after protracted efforts, the Superintendent will order a halt to the execution proceedings, and direct the IV/medical team to cease their efforts and remove the IVs from the condemned inmate.

(d) In carrying out their respective duties the IV/medical team will seek to ensure that no unnecessary pain or suffering is caused to the condemned inmate by the IV procedures.

(e) Upon establishing at least one functioning IV site, the Superintendent's shall order the executioner to begin the administration of the lethal chemicals by intravenous infusion in the following order: ultra-short-acting barbiturate; chemical paralytic agent; and potassium chloride.

(f) The Superintendent will observe a minimum waiting period starting from the time of infusion of the ultra-short acting barbiturate before ordering the infusion of the chemical paralytic agent and potassium chloride; if pentobarbital is used the Superintendent will observe a minimum waiting period of five minutes from the start of the infusion of the pentobarbital.

(g) Following infusion of the ultra-short-barbiturate, the Superintendent will monitor the inmate through appropriate procedures under the supervision of the supervising qualified medical professional to determine that the condemned inmate is nonresponsive before starting infusion of the chemical paralytic agent and potassium chloride. Such procedures shall include seeking a voluntary auditory response from the condemned inmate, and if no response, testing the condemned inmate's involuntary ocular response by brushing the condemned inmate's eyelashes. After waiting the minimum designated waiting period for the ultra-short-acting barbiturate to take effect, and upon determining that the condemned inmate is nonresponsive, the Superintendent will order the executioner to begin infusion of the chemical paralytic agent, to be followed by the potassium chloride, until all of the lethal chemicals have been infused.

(3) Post-Execution Procedures: After the condemned inmate is pronounced dead by the supervising qualified medical professional, the Superintendent or designee will direct the IV team to enter the execution room and disconnect all tubing. All tubing will be placed with solution bags and will be removed by the Medical Examiner and/or funeral home. All items used by IV team will be placed in appropriate biohazard containers for disposal. The IV team will inventory and document all supplies and equipment used during the execution.

Stat Auth: ORS 137.463, 137.473, 179.040, 423.020, 423.030, 423.075  
Stats. Implemented: ORS 137.463, 137.473, 179.040, 423.020, 423.030, 423.075  
Hist.: DOC 23-2011(Temp), f. & cert. ef. 11-17-11 thru 5-15-12

\*\*\*\*\*

**Rule Caption:** Prohibited Inmate Conduct and Processing Disciplinary Actions.

**Adm. Order No.:** DOC 24-2011

**Filed with Sec. of State:** 12-2-2011

**Certified to be Effective:** 12-7-11

**Notice Publication Date:** 7-1-2011

**Rules Amended:** 291-105-0005, 291-105-0010, 291-105-0013, 291-105-0015, 291-105-0021, 291-105-0026, 291-105-0028, 291-105-0031, 291-105-0036, 291-105-0041, 291-105-0046, 291-105-0066, 291-105-0069, 291-105-0081, 291-105-0100



# ADMINISTRATIVE RULES

**Subject:** The rule violations for inmate misconduct were revised significantly in July 2009. Staff has expressed concern in the application of certain rule violations. These rule amendments are necessary to define terms, clarify and update rule violations; add a provision authorizing designated Department officials, in the interest of justice, to withdraw an inmate disciplinary order and direct that a hearing be reopened for a Department hearings officer to consider new or additional evidence; and address a number of housekeeping issues.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

## 291-105-0005

### Authority, Purpose and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 421.068, 421.180, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of this rule is to define the rules of conduct governing inmates and outline the procedures to be followed in processing disciplinary action(s).

(3) Policy:

(a) It is the policy of the Department of Corrections to hold inmates accountable for misconduct while incarcerated, and to promote and reinforce pro-social behavior by inmates, through a system of disciplinary rules and procedures that embrace the Oregon Accountability Model.

(b) Inmates in Department of Corrections facilities shall be disciplined for violation of specified rules of prohibited inmate conduct in accordance with the procedures set forth in these rules. The primary objectives of these rules are:

(A) To provide for the safe, secure, efficient, and orderly management of Department of Corrections facilities, specifically including the safety and security of Department employees, inmates, and property of the Department of Corrections;

(B) To establish norms of acceptable inmate conduct, and consistent and fair procedures for the processing of inmate misconduct reports and the imposition of disciplinary sanctions, which are understood by both employees and inmates alike;

(C) To establish a comprehensive range of appropriate disciplinary sanctions for violation of the rules of prohibited inmate conduct; and

(D) To provide a consistent Departmental response to like types of misconduct committed by inmates with similar misconduct histories.

(c) To promote these objectives, the rules define appropriate disciplinary sanctions for each rule violation on a disciplinary sanction grid. Inmates found in violation of the rules of prohibited inmate conduct are disciplined in accordance with the sanction grid, subject to deviation upon order of the hearings officer, functional unit manager, or his/her designee for substantial reasons.

(d) The Department intends that the authorization in OAR 291-105-0100 to withdraw an order and direct the disciplinary hearing to be reopened applies retroactively to disciplinary orders issued on, before, or after the effective date of the rule.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Hist.: CD 7-1979, f. & ef. 3-14-79; CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 11-2011(Temp), f. & cert. ef. 6-10-11 thru 12-7-11; DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

## 291-105-0010

### Definitions

(1) Adjudicator: The assigned employee within the facility responsible for the disposition of all informal hearings and minor misconduct reports that are to be adjudicated without a formal hearing.

(2) Attempt: Conduct which constitutes a substantial step towards the commission of a rule violation.

(3) Calendar Day: All weekdays, weekends, and holidays.

(4) Conduct Order: An Oregon Department of Corrections form CD 708, that allows restriction of an inmate's privileges for no more than 72 hours, without the need of a major or minor misconduct report disciplinary hearing, for cited rule violations, in accordance with OAR 291-105-0021(1).

(5) Conspiracy: An agreement between an inmate and one or more persons to engage in, cause, or conceal a rule violation.

(6) Contraband: Any article or thing which an inmate is prohibited by statute, rule or order from obtaining, possessing, or which the inmate is not

specifically authorized to obtain or possess or which the inmate alters without authorization.

(7) Controlled Substance: A drug or its precursor as listed in ORS 475.005 through 475.999.

(8) Dangerous or Deadly Weapon: Any instrument, article or substance which is readily capable of causing death or a serious physical injury.

(9) Deadly Force: Physical force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.

(10) Department of Corrections (DOC) Employee: Any person who is full time, part time, or under temporary employment by the Department of Corrections; any person under contractual arrangement to provide services to the Department; any person employed by private or public sector agencies who is serving under Department sanctioned special assignment to provide services or support to Department programs within any Department of Corrections facility. Any person, as described above, assigned to work for a residential or extended care Corrections Treatment Program.

(11) Department of Corrections Facility: Any institution, facility, or staff office, including the grounds, operated by the Department of Corrections.

(12) Distribution: The transfer of contraband from one person to another (Distribution includes smuggling.)

(13) Drugs: Any controlled substance.

(14) Electronic Device: An electronic communication device capable of making or receiving wireless transmissions, including but not limited to, cell phone, pagers, or Blue-tooth enabled devices; etc.

(15) Escape Device: Any item specifically designed for, physically altered for, or readily capable of being used to facilitate an escape from a Department of Corrections facility, or from custody.

(16) Explosive: A substance which, when subjected to a suitable initiating impulse, undergoes a chemical change characterized by the liberation of heat in the formation of products which are mainly gaseous.

(17) Fine: A monetary sanction imposed in accordance with the Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions. Inmate fines shall be deposited in the Department of Corrections Inmate Welfare Fund as confiscated funds.

(18) Functional Unit: Any organizational component within the Department of Corrections responsible for the delivery of services or coordination of programs.

(19) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, Deputy Director, an assistant director, or an administrator and has responsibility for the delivery of program services or coordination of program operations.

(20) Good Cause: Denoting of adequate or substantial grounds or reason to take a certain action, or fail to take an action prescribed by law. What constitutes a good cause is usually determined on a case-by-case basis and is thus relative.

(21) Harassment—Racial, Religious or Sexual: Directing offensive language or gestures toward or about another person or group or subjecting another to physical contact because of the other person's or group's race, sex, color, religion, national origin, age, marital status or disability.

(22) Hearings Officer: A DOC employee assigned to review and dispose of major, and certain minor, misconduct reports through a formal hearing.

(23) Hostage: A person held as security in order to obtain demands.

(24) Inmate: Any person under the supervision of the Department of Corrections, who is not on parole, post prison supervision, or probation status.

(25) Intoxicants: Any substance, including but not limited to, unauthorized medication and alcoholic beverages, which causes a disturbance of mental or physical capacity resulting from the introduction of the substance in the body. Intoxicants do not include controlled substances.

(26) Lesser Included Violation: Any violation which is a lesser degree of the charged violation (for example, Assault III is a lesser included violation of Assault I or Assault II. Contraband III is a lesser included violation of Contraband I or II, etc.)

(27) Local Jail: Any city or county lock up or local correctional facility.

(28) Officer-in-Charge: That person designated by the functional unit manager to supervise the facility and make operational decisions in accordance with policy, rule or procedure during periods when the functional unit manager or officer of the day are not readily available.

(29) Order: Any direction given to an inmate that directs or forbids the doing of some act over which the inmate has control. An order may be writ-

# ADMINISTRATIVE RULES

ten, verbal or gestured communication (including all Department of Corrections functional unit rules and procedures; all federal, state and local laws; conditions of transitional leave; and court ordered terms and conditions).

(30) Oregon Corrections Enterprises (OCE): A semi-independent state agency that is a non-Department of Corrections agency or division, which is under the authority of the Director of the Department of Corrections. For purposes of this rule only, Oregon Corrections Enterprises shall not be considered an external organization.

(31) Oregon Corrections Enterprises (OCE) Employee: Any person employed full-time, part-time, or under temporary appointment by the Oregon Corrections Enterprises. For the purposes of this rule only, employee shall also include any person under contractual arrangement to provide services to the agency; any person employed by private or public sector agencies who is serving under agency-sanctioned special assignment to provide services or support to agency programs.

(32) Physical Force: The use of hands, other parts of the body, objects, instruments, chemical devices, electronic devices, firearms or other physical methods used to restrain, subdue, control, intimidate or to compel persons to act in a particular way or to stop acting a particular way.

(33) Physical Injury: Impairment of physical condition or substantial pain.

(34) Possession: To have physical possession of or otherwise exercise control over property.

(35) Reimbursement: A monetary amount ordered in accordance with the Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions. Reimbursement funds will be credited to the institution or program suffering fiduciary loss or cost from the inmate misconduct, and shall be the actual cost incurred.

(36) Restitution: A monetary amount ordered in accordance with the Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions. Restitution funds will be credited to the institution or program suffering fiduciary loss or cost from the inmate misconduct, and shall be the actual cost incurred.

(37) Security Device: Any fixture, device or tool, the purpose of which is to assist with safety or security.

(38) Security Threat Activity: Inmate behavior which poses a significant threat to the safe and secure operation of the facility, including but not limited to, threatening or inflicting bodily injury on another person, posing a high risk of escape, promoting or engaging in disruptive group behavior, distributing a controlled substance, or being involved in any other activity that could significantly threaten the safe and secure operation of the facility.

(39) Security Threat Group (STG): Any group of two or more individuals who:

(a) Have a common name, identifying symbol, or characteristic which serves to distinguish themselves from others.

(b) Have members, affiliates, or associates who individually or collectively engage, or have engaged, in a pattern of illicit activity or acts of misconduct that violates Oregon Department of Corrections rules.

(c) Have the potential to act in concert to present a threat, or potential threat, to staff, public, visitors, inmates, offenders or the secure and orderly operation of the institution.

(40) Serious Physical Injury: Injury that creates a substantial risk of death, causes serious and protracted disfigurement, impairment of health, loss or impairment of any bodily organ function, or death.

(41) Sexual Activity: Sexual contact including, but not limited to, sexual intercourse, deviate sexual intercourse, kissing, fondling, or manipulation of the genitalia, buttocks, and breasts of another person, or of oneself, in a manner that produces or is intended to produce sexual stimulation or gratification.

(42) Short-Term Transitional Leave: A leave for a period not to exceed 90 days preceding an established release date which allows an inmate opportunity to secure appropriate transitional support when necessary for successful reintegration into the community in accordance with ORS 421.148, 421.510 and the Department's rule on Short-Term Transitional Leave, Emergency Leaves and Supervised Trips. The Department may grant a transitional leave of up to 30 days for inmates who are not participating in an alternative incarceration program.

(43) Temporary Segregation Status: Placement in a disciplinary segregation unit or local jail pending disciplinary hearing.

(44) Working Day: Monday through Friday, excluding weekends and holidays.

(45) Working File: Those documents maintained in a Department of Corrections facility or community corrections office for administrative and case management purposes.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

Hist.: CD 7-1979, f. & ef. 3-14-79; CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. & ef. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 38-1987, f. & ef. 10-2-87; CD 5-1989, f. & ef. 4-21-89; CD 8-1992, f. & ef. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. & ef. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. & ef. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. & ef. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. & ef. 2-25-99, cert. ef. 3-1-99; DOC 28-1999(Temp), f. & ef. 12-22-99 thru 6-19-00; DOC 16-2000, f. & ef. 6-19-00; DOC 6-2002, f. & ef. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. & ef. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & ef. 6-2-08; DOC 24-2011, f. & ef. 12-2-11, cert. ef. 12-7-11

## 291-105-0013

### Inmate Access to the Rules of Prohibited Conduct

During the reception and orientation process inmates will be provided with the rules on Prohibited Conduct and a notice of inmate rights in a disciplinary hearing. Spanish speaking inmates will receive a copy in Spanish; other inmates with a language barrier will receive assistance from an individual who speaks their language. Inmates with a visual, speech or hearing disability shall be provided with assistance appropriate to the degree of their disability. In addition, copies of OAR 291-105-0005 through 291-105-0100 will be posted in the legal library, and general library of each facility, available for review by inmates, and copies can be obtained from either the Rules Coordinator upon request at the rate of \$.50 per page pursuant to the Department of Corrections rule on Release of Public Records, or from the library coordinator upon request at the rate of \$.10 per page, as pursuant to the Department of Corrections rule on Legal Affairs (Inmate).

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Hist.: CD 6-1986(Temp), f. & ef. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 5-1989, f. & ef. 4-21-89; CD 8-1992, f. & ef. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. & ef. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. & ef. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. & ef. 11-13-96, cert. ef. 11-15-96; DOC 6-2002, f. & ef. 4-30-02, cert. ef. 5-1-02; DOC 24-2011, f. & ef. 12-2-11, cert. ef. 12-7-11

## 291-105-0015

### Rules of Misconduct

#### (1) Violations Involving Property

(a) **1.01 Arson:** An inmate commits arson if he/she starts an unauthorized fire or causes an explosion.

(b) **1.05 Property I:** An inmate commits Property I when he/she, except as authorized by a DOC or OCE employee, destroys, abuses, alters, damages, defaces, misuses, tampers with, or wastes materials or property, or fails to properly protect or produce property issued to him/her in a timely manner and:

(A) **1.05.01** The property involved exceeds \$75 in value; or

(B) **1.05.02** The misconduct involves the functioning of a security device; or

(C) **1.05.03** The misconduct involves a threat to the safety, security or orderly operation of the facility; or

(D) **1.05.04** The misconduct includes possession of an unauthorized or altered blade, such as a razor blade or pencil sharpener.

(c) **1.06 Property II** (minor violation): An inmate commits Property II when he/she, except as authorized by a DOC or OCE employee, destroys, alters, abuses, damages, defaces, misuses, tampers with or wastes materials or property or fails to properly protect or produce property issued to him/her in a timely manner.

(d) **1.10 Contraband I:** An inmate commits Contraband I if he/she:

(A) **1.10.01** Possesses any intoxicant; or

(B) **1.10.02** Possesses any drug paraphernalia; or

(C) **1.10.03** Has any controlled substance or intoxicant in his/her urine or blood, or other body parts that is found under any Department-authorized screening process such as urinalysis, breathalyzer, oral swabs, etc. ; or

(D) **1.10.04** Fails to provide, refuses to submit, or submits an unacceptable urine sample for testing; or

(E) **1.10.05** Alters, substitutes, contaminates or destroys a urine sample; or

(F) **1.10.06** Possesses money in the amount of \$10 or more.

(e) **1.11 Contraband II:** An inmate commits Contraband II if he/she possesses contraband other than that listed in Contraband I (OAR 291 105 0015(d)(A F) and Contraband III (OAR 291 105 0015(f) and it creates a threat to the safety, security or orderly operation of the facility, including but not limited to:

(A) **1.11.01** Tobacco or smoking paraphernalia, unauthorized medication, items of barter (such as jewelry or canteen items not purchased by the inmate), checks, money under \$10, or unauthorized sexually explicit material; or

# ADMINISTRATIVE RULES

(B) **1.11.02** Items that were obtained by threats of or actual theft, forgery or coercion.

(f) **1.12 Contraband III** (minor violation): An inmate commits Contraband III if he/she possesses contraband other than that listed on Contraband I (OAR 291-105-0015(d)(A-F) and Contraband II (OAR 291-105-0015(e)(A-B)), including un-cancelled stamps, expired self-medication, legal material belonging to another inmate, or property in excess of that authorized by staff .

(g) **1.15 Drug Possession:** An inmate commits Drug Possession if he/she possesses a controlled substance.

(h) **1.20 Possession of Body Modification Paraphernalia:** An inmate commits Possession of Body Modification Paraphernalia if he/she possesses items capable of being used in body modification, including but not limited to motors, needles, ink.

(i) **1.25 Unauthorized Use of Information Systems I:** An inmate commits Unauthorized Use of Information Systems I if he/she operates or uses any DOC, OCE or unauthorized information system equipment including, but not limited to, terminals, personal computers, minicomputers, work stations, controllers, printers, copiers, fax machines or phones that exceeds the conditions of use or access granted by the Director, functional unit manager, or designee, as appropriate, in the following manner:

(A) **1.25.01** To send, receive, or read messages or e-mails; access the Internet, or access the AS400, DOC servers or network devices, programs, other unauthorized computer programs, etc;

(B) **1.25.02** To conduct illegitimate business activity; or

(C) **1.25.03** To do unauthorized legal work.

(j) **1.26 Unauthorized Use of Information Systems II:** An inmate commits Unauthorized Use of Information Systems II if he/she operates or uses any DOC, OCE or unauthorized information system equipment including, but not limited to, terminals, personal computers, copiers, fax machines, or phones that exceeds the conditions of use or access granted by the Director, functional unit manager, or designee, as appropriate, in the following manner:

(A) **1.26.01** To prepare a letter or other unauthorized document;

(B) **1.26.02** To make copies for personal use (e.g., photos, greeting cards, pictures, newspaper articles); or

(C) **1.26.03** To use the phone in excess of or outside the parameters permitted under the Department's rules.

## (2) Violations Against Persons

(a) **2.01 Staff Assault I:** An inmate commits Staff Assault I if he/she:

(A) **2.01.01** Causes physical injury to a DOC or OCE employee, visitor or volunteer; or

(B) **2.01.02** Causes bodily fluids (human or animal) to come in contact with a DOC or OCE employee, visitor or volunteer, including (human or animal) feces, urine, spit, semen and blood, etc.; or

(C) **2.01.03** Causes physical injury to a DOC or OCE employee, visitor or volunteer and uses a dangerous or deadly weapon; or

(D) **2.01.05** Harms or endangers the well being of an animal used to conduct DOC affairs.

(b) **2.02 Staff Assault II:** An inmate commits Staff Assault II if he/she refuses to stop his/her assaultive behavior after being ordered to do so which necessitates a DOC or OCE staff member to use physical force to stop the assaultive behavior and the actions result in staff injury.

(c) **2.05 Inmate Assault I:** An inmate commits Inmate Assault I if he/she:

(A) **2.05.01** Causes serious physical injury to another inmate or causes injury to an inmate that requires staff transporting the inmate to an outside agency for medical care; or

(B) **2.05.02** Causes physical injury to another inmate and uses a dangerous or deadly weapon; or

(C) **2.05.03** Commits a unilateral attack in a location or under circumstances which creates a threat to the safety, security, or orderly operation of the facility, such as the dining hall or the recreation area ; or

(D) **2.05.04** Refuses to stop his/her assaultive behavior after being ordered to do so which necessitates a DOC or OCE staff member to use physical force to stop the assaultive behavior and which results in no staff or inmate injury.

(d) **2.06 Inmate Assault II:** An inmate commits Inmate Assault II if he/she:

(A) **2.06.1** Causes bodily fluids (human or animal) to come in contact with another inmate, including (human or animal) feces, urine, spit, semen and blood, etc.; or

(B) **2.06.02** Commits a unilateral attack or is involved in a mutual fight that causes physical injury to another inmate; or

(C) **2.06.03** Is involved in a mutual fight in a location or under circumstances which creates a threat to the safety, security, or orderly operation of the facility, such as a dining hall or recreation area.

(e) **2.07 Inmate Assault III:** An inmate commits Inmate Assault III if he/she commits a unilateral attack or is involved in a mutual fight.

(f) **2.10 Disrespect I:** An inmate commits Disrespect I if he/she directs hostile, sexual, abusive or threatening language or gestures, verbal or written, towards or about another person that involves racial, religious or sexual harassment or a physical threat to the other person.

(g) **2.11 Disrespect II:** An inmate commits Disrespect II if he/she directs hostile, sexual, abusive or threatening language or gestures, verbal or written, towards or about another person the expression of which or under circumstances that create a threat to the safety, security or orderly operation of the facility (including, but not limited to, when one or more other persons are present, or in a location such as a dining hall or recreation yard).

(h) **2.12 Disrespect III** (minor violation): An inmate commits Disrespect III when he/she directs hostile, sexual, abusive or threatening language or gestures, verbal or written, towards or about another person.

(i) **2.15 Extortion I:** An inmate commits Extortion I if he/she compels or induces a DOC or OCE employee or any other person who is not an inmate to act or refrain from acting by threats, force or intimidation. (Extortion includes the use of threats, force or intimidation to collect gambling and other types of debt.)

(j) **2.16 Extortion II:** An inmate commits Extortion II if he/she:

(A) **2.16.01** Compels or induces an inmate to act or refrain from acting by threats, force or intimidation (Extortion includes the use of threats, force or intimidation to collect gambling and other types of debt.); or

(B) **2.16.02** Compels or induces a DOC or OCE employee to act or refrain from performing a job duty through use of demands, including but not limited to, changes to housing or work assignments; etc.

(k) **2.20 Sexual Assault:** An inmate commits Sexual Assault if he/she engages in non-consensual sexual activity with another person, or when force is used or when the person is unable to consent because of age or incapacitation (mental defect, mental incapacitation or physical helplessness).

(l) **2.25 Sexual Coercion:** An inmate commits Sexual Coercion if he/she compels or induces another person to engage in sexual activity by deceit, threats, force or intimidation or for personal favors.

(m) **2.30 Non-assaultive Sexual Activity:** An inmate commits Non assaultive Sexual Activity if he/she engages in sexual activity and the sexual activity is conducted without violence, threat of violence, coercion, or use of a weapon.

(n) **2.35 Sexual Solicitation:** An inmate commits Sexual Solicitation if he/she solicits another person to engage in sexual activity.

(o) **2.40 Hostage Taking:** An inmate commits Hostage Taking if he/she interferes with another person's personal liberty by taking him/her hostage.

(p) **2.45 Body Modification:** An inmate commits body modification if he/she alters or allows to be altered his/her body or the body of another by tattooing, piercing, puncturing, scarring, etc., that includes modifying or perpetuating a previous piercing or tattoo.

## (3) Violations Involving Fraud or Deception

(a) **3.01 False Information to Employees I:** An inmate commits False Information to Employees I if he/she presents or causes the presentation of false or misleading information to a DOC or OCE employee that creates a threat to the safety, security or orderly operation of the facility. False or misleading information shall include gestures, verbal or written communication.

(b) **3.02 False Information to Employees II** (minor violation): An inmate commits False Information to Employees II when he/she presents or causes the presentation of false and misleading information to DOC or OCE employees. False or misleading information includes gestures, verbal or written communication.

(c) **3.05 Forgery:** An inmate commits Forgery if he/she falsely makes, completes, alters or presents a written instrument.

(d) **3.10 Gambling:** An inmate commits Gambling when he/she wagers anything of value in games of chance, or an inmate possesses paraphernalia associated with gambling or possesses the proceeds of gambling activity, money or otherwise.

(e) **3.15 Fraud:** An inmate commits fraud if he/she deceives another person or business in order to obtain money, property or something of value.

(4) **Violations Against the Orderly Operation of the Department or Facility:**



# ADMINISTRATIVE RULES

(a) **4.01 Disobedience of an Order I:** An inmate commits Disobedience of an Order I if he/she overtly refuses to promptly, or in a timely manner, comply with a valid order, which creates a threat to the safety, security, or orderly operation of the facility (such as when one or more other persons are present).

(b) **4.02 Disobedience of an Order II:** An inmate commits Disobedience of an Order II if he/she fails to comply with a valid order, which creates a threat to the safety, security or orderly operation of the facility (such as when one or more other persons are present).

(c) **4.03 Disobedience of an Order III** (minor violation): An inmate commits Disobedience of an Order III if he/she fails to comply with a valid order.

(d) **4.04 Transitional Leave Violation:** An inmate commits Transitional Leave Violation if he/she refuses to follow a valid order or conditions of transitional leave.

(e) **4.05 Disturbance:** An inmate commits a Disturbance if he/she advocates, incites, creates, engages in, maintains or promotes a situation characterized by unruly, noisy, or violent conduct or unauthorized group activity, which disrupts the orderly administration of or poses a direct threat to the security of a facility, facility programs or the safety of DOC or OCE employees or other persons.

(f) **4.10 Distribution I:** An inmate commits Distribution I if he/she:

(A) **4.10.01** Distributes or has distributed to him/her any controlled substance, intoxicant, drug paraphernalia or money in the amount of \$10 or more; or

(B) **4.10.02** Possesses such items as listed in (A) above which have been packaged for distribution.

(g) **4.11 Distribution II:** An inmate commits Distribution II if he/she:

(A) **4.11.01** Distributes or has distributed to him/her or manufactures contraband that creates a threat to the safety, security and orderly operation of the facility; or

(B) **4.11.02** Possesses such items as listed in (A) above which have been packaged for distribution.

(h) **4.15 Compromising an Employee:** An inmate commits Compromising an Employee when he/she knowingly engages a DOC or OCE employee or DOC contractor or volunteer in a personal or business transaction including, but not limited to, through the use of bribery, contraband distribution or sexual solicitation, either directly or through another person(s).

(i) **4.20 Escape I:** An inmate commits Escape I if he/she departs without authorization from:

(A) **4.20.01** Within the security perimeter of a facility; or

(B) **4.20.02** The immediate control of DOC or OCE staff while in secure physical custody and outside the facility security perimeter.

(j) **4.21 Escape II:** An inmate commits Escape II if he/she departs without authorization from:

(A) **4.21.01** The grounds of a minimum security facility without a security perimeter; or

(B) **4.21.02** The direct supervision of personnel authorized to supervise inmates while outside the facility security perimeter; or

(C) **4.21.03** Transitional leave and an escape warrant has been issued.

(k) **4.25 Possession of an Escape Device:** An inmate commits Possession of an Escape Device if he/she possesses any item specifically designed for, physically altered for, or readily capable of being used to facilitate an escape from a DOC facility or from custody.

(l) **4.30 Possession of a Weapon:** An inmate commits Possession of a Weapon if he/she possesses an instrument, article or substance that is specifically designed for, physically altered for, or readily capable of causing death or serious physical injury to a person or animal used to conduct DOC affairs.

(m) **4.33 Possession of an Electronic Device:** An inmate commits Possession of an Electronic Device if he/she possesses an unauthorized electronic communication device.

(n) **4.35 Racketeering:** An inmate commits Racketeering if he/she engages in illicit activity that is carried out for the purpose of personal or financial gain through acts of crime, extortion of money or advantage by threats of force.

(o) **4.40 Unauthorized Area I:** An inmate commits Unauthorized Area I when he/she fails to be present or is in any location not designated by assignment, programmed activity, call out or staff directive that creates a threat to the safety, security or orderly operation of the facility.

(p) **4.41 Unauthorized Area II** (minor violation): An inmate commits Unauthorized Area II when he/she fails to be present or is in any location not designated by assignment, programmed activity, call out or staff directive.

(q) **4.45 Unauthorized Organization I:** An inmate commits Unauthorized Organization I if he/she involves himself/herself with a group of two or more persons, whether formal or informal, and who collectively or in concert creates or actively promotes, recruits, participates in or involves himself/herself in security threat activity.

(r) **4.46 Unauthorized Organization II:** An inmate commits Unauthorized Organization II if, except as specified by Department of Corrections rule on Group Activities (Inmate) (OAR 291 145):

(A) **4.46.01** Supports, displays, or endorses through verbal, visual or written acts or communication (e.g., STG tattoos, STG graffiti, STG hand signs) any club, association or organization which is a security threat group; or

(B) **4.46.02** Engages in a petition drive without specific authorization from the functional unit manager.

[ED. NOTE: Exhibits referenced are available from the agency]

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

Hist.: CD 8(Temp)/CD 11(Temp)/CD 12(Temp), f. & ef. 10-20-72 thru 2-16-73; CD 33, f. 6-16-76, ef. 7-1-76; CD 34(Temp), f. & ef. 7-19-76; CD 36, f. 11-5-76, ef. 11-15-76; CD 7-1979, f. & ef. 3-14-79; CD 19-1979(Temp), f. & ef. 10-19-79, Renumbered from 291-040-0050; CD 13-1980, f. & ef. 4-15-80, Renumbered from 291-040-0050; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 38-1987, f. & ef. 10-2-87; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-14-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 9-2009, f. 6-24-09, cert. ef. 7-1-09; DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

## 291-105-0021

### Procedures for Handling Misconduct by Inmates

(1) Corrective Action: DOC or OCE employees shall be expected to use less than formalized procedures if the act(s) of misconduct do not constitute a threat to life, health, facility security or good order, employee authority or property and in a manner that promotes and embraces the Oregon Accountability Model. Corrective action may include: reprimand, warning and counseling, and as authorized by the functional unit manager or officer-in-charge, loss of leisure activities conduct order (CD 708) for no more than 72 hours.

(a) Staff issuing a conduct order shall promptly notify the inmate of the action.

(b) Staff issuing a conduct order shall promptly complete the conduct order and forward it to the officer-in-charge or designee for review.

(c) The officer-in-charge or designee shall review and approve, cancel or modify the conduct order within four hours or as soon as practicable of it being issued by staff. If the officer-in-charge or designee determines that the incident warrants a misconduct report rather than a conduct order, the officer-in-charge or designee will ensure the conduct order is cancelled.

(d) A copy of the conduct order shall be delivered to the inmate within four hours or as soon as practicable.

#### (2) Misconduct Reports:

(a) When the misconduct justifies submission of a misconduct report, the DOC or OCE employee shall file a misconduct report with an immediate supervisor or the officer in charge no later than 24 hours AFTER sufficient evidence is gathered, discovered, or observed to support a charge of violation of rules. Determination of the sufficiency of evidence shall be a matter of judgment for the employee submitting the report and the immediate supervisor reviewing the report.

(b) The reviewing supervisor will ensure the report is accurate, appropriate and supported by sufficient information. The supervisor will then sign the report. The reviewing supervisor or designee shall be responsible for providing the inmate with a copy of the misconduct report, rules of prohibited conduct, and the notice of hearing and inmate rights within 24 hours of the filing of the report unless the inmate is unavailable to be served.

(c) The hearing may be held within 24 hours with the inmate's consent.

(d) The misconduct report shall be submitted on a Department of Corrections form, and shall be as specific and comprehensive as possible.

(A) The misconduct report shall include a description of any unusual relevant inmate behavior and information regarding how the employee became aware of the behavior. The misconduct report must contain sufficient and complete facts to support the alleged rule violation(s), including a description of what the restitution is for and the amount of restitution to be ordered, if it is possible to determine.

(B) Attempt and Conspiracy: If an inmate attempts or conspires to commit an act of prohibited conduct, it shall be considered the same as if the inmate had completed the act.

# ADMINISTRATIVE RULES

(e) The misconduct report must specifically allege all the major or minor rule violations the inmate is alleged to have violated, and demonstrate conduct constituting an attempt or conspiracy. Neither the hearings officer nor the adjudicator may add or change any violations. The hearings officer may find the inmate in violation of lesser included violations.

(f) Reports from DOC or OCE employee witnesses shall also be submitted.

(g) When the alleged misconduct occurs while the inmate is in the temporary physical custody of a jurisdiction other than the Department of Corrections, employees from that jurisdiction may provide a written description of the misconduct to Department employees.

(A) On review of such written information, the officer-in-charge at the facility receiving the inmate back into the physical custody of the Department may determine that the described action violates a rule(s) of prohibited inmate conduct and direct that a misconduct report be submitted.

(B) The written description provided by the temporary custody jurisdiction shall accompany the misconduct report. A misconduct report shall not be submitted absent a written description of the allegation from the temporary physical custody jurisdiction.

(C) If it is determined that the other jurisdiction maintained the inmate in a similarly restrictive status, the inmate shall be credited with the number of days he/she was held in segregation type status by the other jurisdiction.

(3) Temporary Placement in Disciplinary Segregation Status: An inmate charged with committing a rule violation may be placed in temporary disciplinary segregation status pending resolution of the charge. This action will be taken when the functional unit manager or the officer in-charge determines that the alleged rule violation charged is of such seriousness that the good order and security of the facility requires immediate removal of the inmate from the general population, or it is determined the inmate is a threat to the community or is likely to escape or abscond.

(a) If temporary disciplinary segregation status is ordered, the officer in charge must complete the portion of the Department of Corrections misconduct report specifying the reason(s) why immediate temporary disciplinary segregation of the inmate was deemed necessary.

(b) A completed copy of the Department of Corrections misconduct report will be forwarded to the functional unit manager or designee who will review the inmate's pre hearing detention status within 72 hours of the inmate's placement in temporary disciplinary segregation status. If approved, the functional unit manager or designee will initial the report. If the inmate is temporarily confined in a local jail while on short term transitional leave or emergency leave, the functional unit manager or designee will be notified for review of the inmate's status, within 72 hours of the inmate's confinement.

(4) Scheduling a Hearing:

(a) An inmate charged with a rule violation shall be scheduled for a hearing as soon as practicable.

(5) Initiating a Hearing:

(a) A hearing shall be initiated within ten calendar days (including Saturdays, Sundays, and legal holidays) if the inmate is placed in temporary segregation status.

(b) All other hearings shall be initiated as soon as practicable. For significant delays, reasons for longer timeframes shall be made part of the hearing record.

(c) When an inmate charged with a level I or level II rule violation is released from custody prior to a hearing being held, a hearing will be initiated as soon as practicable upon his/her return to DOC custody.

(d) The hearing may be postponed or continued for a reasonable period for good cause as provided in OAR 291 105 0064. The reason(s) for the postponement or continuance shall be made part of the record.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 38-1987, f. & ef. 10-2-87; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08; DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

## 291-105-0026

### Hearings Officers Responsibilities

(1) Unless waived by the inmate, a formal hearing shall be conducted by the hearings officer on all misconduct reports classified by the adjudicator as charging a major rule violation(s), and included minor violation(s),

and on all misconduct reports charging a minor rule violation(s) for which an inmate requests a formal hearing.

(2) Prior to the formal hearing, the hearings officer shall review the misconduct report alleging major rule violation and, if there is no prima facie case for a major rule violation, dismiss the major violations and refer the minor violations back to the adjudicator for an informal hearing. The hearings officer may substitute minor violations as lesser included violations.

(3) The hearings officer shall not have been a witness to the event, have personal knowledge of any material, disputed fact relating to the case or have participated in the case as a charging or investigating officer.

(4) The hearings officer will conduct the hearing and shall decide, based upon the evidence, whether the inmate has violated the rule(s) as charged in the misconduct report. The hearings officer may not add or change the violation(s) in the misconduct report. The hearings officer may find a violation of a lesser included violation (see Definitions).

(5) The hearings officer may dismiss the alleged rule violation(s) at any stage of the proceedings, with or without prejudice, stating in writing the reason for the dismissal. An alleged rule violation(s) dismissed without prejudice may be resubmitted in another misconduct report utilizing the same process as provided in OAR 291-105-0021(2).

(6) The hearings officer or other employees as requested by the hearings officer shall report disciplinary actions which involve security threat activity to the facility's security threat manager.

(7) Behavioral Health Services staff will be notified when inmates with mental health, developmental disability issues, or inmates that have engaged in self-harm activities or suicide attempts are placed in disciplinary segregation or are scheduled for a disciplinary hearing.

(a) Behavioral Health Services staff will then determine whether an evaluation shall be submitted to the hearings staff in the institution housing the inmate.

(b) If an evaluation is to be provided, Behavioral Health Services staff will contact hearings staff within two working days of receiving notification and advise them that an evaluation will be submitted for consideration at the hearing. Behavioral Health Services staff will include the timeline for submission of the evaluation.

(c) The hearings officer will postpone the hearing if necessary, to ensure that such an evaluation is considered in the case at issue.

(8) The mental health evaluation shall address the following:

(a) Is the inmate able to understand the charges and the hearing process at this time;

(b) From a mental health standpoint, should sanctions be modified or are sanctions for the alleged misconduct contraindicated; and

(c) Did the inmate's mental health status contribute to the alleged violation.

(9) If a mental health evaluation is not provided by Behavioral Health Services staff prior to the inmate's hearing, the hearings officer may request a mental health evaluation be completed on the inmate prior to disposition of the hearing.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1987, f. & ef. 8-20-86; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08; DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

## 291-105-0028

### Conduct of Formal Hearings on Major and Minor Violations

(1) Unless waived by the inmate, a formal hearing shall be conducted by the hearings officer on all misconduct reports charging a major rule violation(s), and included minor violations, on all misconduct reports charging a minor rule violation(s) for which an inmate requests a formal hearing, and on all misconduct reports referred by the adjudicator for a formal hearing in accordance with OAR 291-105-0041(6).

(2) The findings must be on the merits. Technical and clerical errors in the writing or processing of the misconduct report should not be grounds for dismissal, unless there is substantial prejudice to the inmate.

(3) Standard of Proof: Rules violation(s) shall be found upon proof by a preponderance of the evidence. The term preponderance of the evidence means the greater weight of evidence (e.g., 51% vs. 49%). It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate.

(4) The hearings officer shall consider such evidence as would be considered by reasonable persons in the conduct of their serious affairs.

## ADMINISTRATIVE RULES

(5) Once the formal hearing has begun, if the hearings officer determines that the major violations are not supported by the facts as written in the misconduct report, the hearings officer may substitute appropriate minor violations as lesser included violations and proceed with the hearing.

(6) At the hearing, the inmate will be allowed to speak in his/her own behalf, exercise his/her rights, and submit evidence as allowed in OAR 291-105-0056.

(7) The hearings officer may pose questions during the hearing.

(8) An investigation shall be conducted in a formal hearing upon the inmate's request if the information sought, taken in the light most favorable to the inmate, together with reasonable inferences to be drawn from the information, would constitute a defense to the charge or substantially mitigate the violation. The information sought must be within the ability of the facility to procure. If a request for investigation is denied, the reason(s) for denial shall be made a part of the record.

(9) Testimony of Witnesses:

(a) The hearings officer shall direct the scheduling and taking of testimony of witnesses at the hearing. Witnesses may include inmates, employees, or other persons. Testimony may be taken in person, by telephone, or by written report or statement.

(b) The inmate may request that the hearings officer schedule witnesses to present testimony at the hearing. The request should be submitted to the hearings officer in writing in advance of the hearing, and include a list of the person(s) the inmate requests be called to testify and the questions sought to be posed to each person. Requests for witnesses must minimally be made to the hearings officers at the time of the hearing. The hearings officer shall arrange for the taking of testimony from such witnesses as properly requested by the inmate, subject to the exclusions and restrictions provided in these rules. Requests for witnesses made or received after a hearing is decided will not be considered.

(c) The inmate shall not directly pose questions to any witness.

(d) The hearings officer may limit testimony when it is cumulative or irrelevant.

(e) The hearings officer may exclude a specific inmate or employee witness upon finding that the witness' testimony, if taken in the light most favorable to the inmate, together with the reasonable inferences to be drawn from that testimony, would not constitute a defense to the charge or substantially mitigate the violation, or that the witness' appearance at the hearing would present an immediate undue risk to the safe, secure, or orderly operation of the facility, specifically including the safety and security of DOC or OCE employees and inmates. If a witness is excluded, the reason(s) shall be made a part of the record.

(f) The hearings officer may exclude other persons as witnesses upon finding that the witness' testimony would not assist the hearings officer in the resolution of the disciplinary action, or that the witness' appearance at the hearing would present an undue risk to the safe, secure, or orderly operation of the facility, specifically including the safety and security of DOC or OCE employees and inmates. The reason(s) for exclusion shall be made a part of the record.

(g) The hearings officer may, on his/her own motion, call witnesses to testify.

(h) Witnesses requested by the inmate may refuse to testify.

(i) Persons requested as witnesses, other than inmates or employees, may refuse to appear or testify.

(j) All questions that may assist in eliciting evidence that, if taken in the light most favorable to the inmate, together with the reasonable inferences to be drawn from that evidence, would constitute a defense to the charge or substantially mitigate the violation shall be posed. The reason for not posing a question will be made part of the record.

(k) Confidential Informants:

(A) When confidential informant testimony is submitted to the hearings officer, the identity of the informant and the verbatim statement of the informant shall be submitted to the hearings officer in writing using form CD 1276, but shall remain confidential in accordance with OAR 291-105-0036(3).

(B) In order for the hearings officer to rely on the testimony of a confidential informant, information must be submitted to the hearings officer from which the hearings officer can find that the informant is a person who can be believed or that the information provided in the disciplinary action at issue is truthful.

(10) Documents and Physical Evidence:

(a) An inmate participating in a formal disciplinary hearing may present documents and physical evidence during the hearing, subject to the exclusions and restrictions provided in these rules.

(b) The reporting employee(s) or agent(s) of the Department of Corrections or Oregon Corrections Enterprises who are knowledgeable of the rule violation(s) charged in the misconduct report(s) may submit documents and physical evidence in advance of or during the hearing.

(c) The hearings officer may exclude documents and physical evidence upon finding that such evidence would not assist the hearings officer in the resolution of the disciplinary action, or that such evidence would present an undue risk to the safe, secure, or orderly operation of the facility, specifically including the safety and security of DOC or OCE employees and inmates. The reason(s) for exclusion shall be made a part of the record.

(d) The hearings officer may classify documents and physical evidence as confidential upon finding that disclosure would present an undue risk to the safe, secure, or orderly operation of any Department of Corrections facility, specifically including the safety and security of DOC or OCE employees and inmates, or that disclosure would interfere with an ongoing official investigation. The reason(s) for classifying documents and physical evidence as confidential shall be made a part of the record. Documents and physical evidence classified as confidential by the hearings officer shall not be shown or otherwise provided to the inmate.

(e) The hearings officer may show to the inmate or read into the record documents received in evidence. However, the hearings officer will not provide copies of the documents to the inmate. Inmates may request and obtain copies of nonexempt records in accordance with the Department's rule on Release of Public Records (OAR 291-037).

(11) The hearings officer shall determine whether a violation has occurred and, if so, impose the appropriate sanction on the grid.

(a) The hearings officer may postpone the rendering of a decision for a reasonable period of time, not to exceed three working days, for the purpose of reviewing the evidence and imposing the appropriate sanction. The decision will be based solely upon information obtained in the hearing process, including DOC or OCE employee reports, the statements of the inmate charged, and evidence derived from witnesses and documents.

(b) Attempt and Conspiracy: An inmate who attempts or conspires to commit a rule violation shall be found in violation of the rule and shall be subject to appropriate sanctions on the same basis as if the inmate had committed the rule violation.

(12) At the formal hearing the hearings officer shall decide:

(a) No Violation: The hearings officer may find that the inmate did not commit the violation(s) charged, in which case the inmate may be restored to similar status and privileges as before he/she was charged, as allowed by other rules, policies, etc.

(b) Violation: The hearings officer may find that the inmate committed the violation(s) charged, in which case, the hearings officer will so inform the inmate.

(c) Dismissal: The hearings officer may dismiss the alleged rule violation(s) without entering a finding if:

(A) There is insufficient evidence to support the alleged violation(s);

(B) Corrective action using less formalized procedures would be more appropriate; or

(C) The inmate is released from custody.

(d) Violation Not Responsible: When an inmate deemed serious mentally ill engages in misconduct and is determined not to be responsible for their actions.

(e) Violation of Transitional Leave: When conduct constitutes a violation of the inmate's condition(s) of transitional leave, the hearings officer shall also recommend revocation of his/her transitional leave.

(13) At the conclusion of the hearing, the inmate shall be informed of the finding and any sanctions imposed.

(14) If no violation is found or all of the alleged charges are dismissed on the misconduct report(s), the report(s) shall not be placed in the inmate's file, but may be retained for statistical or litigation purposes in the Hearings Section records.

(15) Upon the finding of violation(s) by the hearings officer, the hearings officer shall:

(a) Determine the location of the violation(s) on the major or minor grids (Exhibits 1 and 2).

(b) Determine the inmate's prior misconduct history as recorded on the Disciplinary Misconduct System. (Evidence of the inmate's prior misconduct history shall be placed in the record either orally or in writing.)

(c) Determine which box on the grid is appropriate for the inmate's misconduct and his/her prior misconduct history.

(d) Impose sanctions within the range of sanctions in the appropriate box.



# ADMINISTRATIVE RULES

(e) Determine if a deviation (upward or downward) is appropriate. The hearings officer must document in writing the substantial reasons for the deviation in accordance with OAR 291-105-0072.

(f) Determine if consecutive sanctions are appropriate for separate rule violations arising from a single misconduct report. The hearings officer must document in writing the substantial reasons for consecutive sanctions, in accordance with OAR 291-105-0066(4)(b).

(16) The hearings officer may also consider imposing the additional sanctions that are available in the major range of sanctions (OAR 291-105-0069).

(17) The hearings officer may suspend imposition of any or all of the imposed disciplinary sanctions, informing the inmate of expected conduct to avoid imposition and the length of time for which the sanction will be suspended.

(18) The hearings officer may impose any or all sanctions previously suspended, after finding that the rule violation in question was also a violation of the conditions of the suspension.

(19) A verbatim record of the hearing shall be made. A written record will be made of the decision and the supporting reasons.

[ED. NOTE: Exhibits & Forms referenced are available from the agency.]  
Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075  
Hist.: Formerly Exhibit 2 to OAR 291-105-026; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. ef. 8-20-86; CD 38-1987, f. & ef. 10-2-87; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 19-2001(Temp), f. & cert. ef. 12-3-01 thru 6-1-02; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08; DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

## 291-105-0031

### Processing of the Formal Record on Major and Minor Violations

(1) Within ten working days following the conclusion of the hearing, the hearings officer shall prepare and issue a preliminary order containing the hearings officer's findings of fact and conclusions of law. Once issued, the preliminary order shall be delivered to the functional unit manager or designee for his/her review.

(2) The hearings officer may issue an amended order for restitution purposes. In all such instances, the hearings officer shall convene or reconvene a hearing with the inmate regarding the restitution issue(s), in accordance with the provision of OAR 291-105-0028 and 291-105-0056. In such cases the inmate shall be provided a Notice of Hearing in accordance with OAR 291-105-0056(3), a written description of what the restitution is for and the amount of restitution to be ordered.

(3) Upon receipt of the preliminary order, the functional unit manager or designee shall note the date received on the order. Within five working days after receipt of the preliminary order, the functional unit manager or designee shall do one of the following:

(a) Approve and sign the preliminary order without amendment, upon which the preliminary order becomes the Final Order;

(b) Issue an amended order dismissing the misconduct report(s) or changing the disciplinary sanction(s) (or their imposition) in the preliminary order, for one or more of the reasons specified in OAR 291-105-0031(5), upon which the amended order becomes the Final Order; or

(c) Order the hearings officer to reopen the hearing to receive and consider additional evidence not submitted in the original hearing, and to issue an amended preliminary order after consideration of the additional evidence.

(4) If the functional unit manager or designee fails to act on the preliminary order within seven working days following its receipt, the preliminary order shall become the Final Order.

(5) Grounds for Issuance of Amended Orders: The functional unit manager or designee may issue an amended order for one or more of the following reasons:

(a) The evidence in the record is insufficient to support the violation(s) found, in which case the functional unit manager or designee may find a violation of a lesser included violation (see definitions) or order the dismissal of the misconduct report(s);

(b) The sanction(s) imposed by the hearings officer was not within the range of sanctions in the correct box on the grid, in which case the functional unit manager or designee may impose appropriate sanctions from the correct grid box;

(c) The deviation ordered by the hearings officer was not supported by written substantial reasons, in which case the functional unit manager or designee may impose the appropriate sanctions without the deviation, or

order the deviation upon written substantial reasons found by the functional unit manager or designee;

(d) The deviation ordered by the hearings officer included a segregation sanction in excess of 50%, in which case the functional unit manager or designee shall impose a sanction that does not exceed 50%;

(e) The consecutive segregation sanctions imposed by the hearings officer for multiple rule violations arising out of the same misconduct report were not supported by written reasons, in which case the functional unit manager or designee may impose the segregation sanctions served concurrently, or order the segregation sanctions served consecutively upon written reasons;

(f) To order a deviation not ordered by the hearings officer, upon written substantial reasons found by the functional unit manager or designee;

(g) To impose mandatory consecutive sanctions not imposed by the hearings officer, for multiple rule violations arising out of two or more misconduct reports;

(h) To impose consecutive sanctions not imposed by the hearings officer, for multiple rule violations arising out of the same misconduct report, upon written reasons;

(i) To suspend imposition of any or all sanctions imposed by the hearings officer, informing the inmate of expected conduct to avoid imposition of the sanction(s); and

(j) To impose any or all sanctions ordered suspended by the hearings officer. The reasons for imposing the previously suspended sanctions shall be explained in writing in the order.

(k) To amend sanctions imposed or to impose sanctions not imposed by the hearings officer, within the range of sanctions listed in the appropriate grid box and OAR 291-105-0066(2), 291-105-0069 or 291-105-0071.

(6) Within seven working days after the Final Order is signed by the functional unit manager or his/her designee, or after a preliminary order becomes the Final Order under OAR 291-105-0031(3) and (4), a copy of the Final Order shall be provided to the inmate.

(7) Minor typographical or calculation errors on the written Findings of Fact, Conclusions and Order may be rectified by correcting that document to accurately reflect the results of the hearing, without actually reconvening the hearing. The inmate shall be notified in writing of such corrections.

(8) The record of the hearing and supporting documents shall be maintained in the hearings officer's records for a minimum of three years. A copy of the misconduct report(s) and the Final Order (Findings of Fact, Conclusions and Order) shall be permanently retained in the inmate's working file, except in those instances where all major charges have been reduced to minor violations or dismissed by the hearings officer.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075  
Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

## 291-105-0036

### Preparation of the Formal Record on Major and Minor Violations

(1) The record of the formal hearing shall include:

(a) The misconduct report(s);

(b) The Notice of hearing and rights;

(c) Supporting material;

(d) The Final Order (Findings of Fact, Conclusions and Order) issued by the hearings officer, functional unit manager or his/her designee.

(2) A transcript or recording of the hearing shall not be a part of the record, however, it shall be prepared and provided to the Inspector General, Attorney General or their designees or to the court, upon request. A copy of the transcript or recording of the hearing shall not be provided directly to the inmate by the hearings office.

(3) Information received that is determined to be confidential shall be clearly labeled "confidential" and shall not be shared with or provided to inmates.

(a) Confidential information may be summarized for the inmate at the time of his/her hearing, without releasing the confidential information verbatim or the name of a confidential informant.

(b) Confidential information may be shared with the functional unit manager. Confidential information may also be shared with Department employees, the Attorney General or the courts with approval of the Inspector General or the Hearings Administrator. Employee requests for confidential information shall be approved by the functional unit manager

# ADMINISTRATIVE RULES

prior to being forwarded to the Inspector General or the Hearings Administrator.

(c) Such confidential information shall be archived in a secure area outside the secure perimeter of any facility.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 421.068, 421.180, 421.185, 421.190, 423.020, 423.030 & 423.075  
Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 32-1987(Temp), f. & ef. 8-5-87; CD 38-1987, f. & ef. 10-2-87; CD 11-1988, f. & cert. ef. 8-19-88; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

## 291-105-0041

### Adjudicator Responsibilities

(1) An adjudicator and designated alternate(s) shall be appointed by the functional unit manager in each Department of Corrections facility.

(2) Duties and Powers of the Adjudicator: The adjudicator will receive all misconduct reports, once they have been reviewed and approved by a reviewing supervisor and a copy has been provided to the inmate. The adjudicator shall:

(a) Promptly forward the misconduct reports to the hearings section for entry into the inmate disciplinary system and assignment of a case number. The hearings section will promptly return misconduct reports charging only minor rule violations to the adjudicator once they have been entered into the inmate disciplinary system and assigned a case number.

(b) Refer all major reports and all minor reports for which the inmate requests a formal hearing to the hearings officer who shall proceed in accordance with OAR 291-105-0028. If a case contains both major and minor violations, the entire incident, even if it involves more than one inmate, shall be handled by the hearings officer in a formal hearing.

(c) Conduct an informal hearing on minor reports in accordance with OAR 291-105-0046.

(3) The adjudicator shall not have been a witness to the event, have personal knowledge of any material, disputed fact relating to the case or have participated in the case as a charging or investigating officer.

(4) The adjudicator shall conduct the informal hearing and decide whether the inmate has violated the rule(s) as charged in the misconduct report. The adjudicator may not add or change the violations in the misconduct report.

(5) The adjudicator may dismiss the misconduct report(s) at any stage of the proceedings, with or without prejudice, stating in writing the reason for the dismissal. A new misconduct report dismissed without prejudice may be resubmitted utilizing the same process as provided in OAR 291-105-0021(2).

(6) The adjudicator may decline to conduct an informal hearing and refer the case to the hearings officer for a formal hearing when the inmate's mental competency is an issue.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075  
Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08; DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

## 291-105-0046

### Conduct of the Informal Hearings on Minor Violations

(1) An informal hearing shall be conducted by the adjudicator or designee on all misconduct report(s) which do not charge a major violation(s), unless the inmate requests a formal hearing, in writing, on the Notice of Inmate Rights form, prior to the informal hearing.

(2) Findings by the adjudicator or designee must be on the merits. Technical and clerical errors in the writing or processing of the misconduct report shall not be grounds for dismissal.

(3) The adjudicator or designee shall consider such evidence as would be considered by reasonable persons in the conduct of their serious affairs.

(4) Standard of Proof: Rule violation(s) shall be found upon proof by a preponderance of the evidence. The term preponderance of the evidence means the greater weight of evidence (e.g., 51% vs. 49%). It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate.

(5) The inmate shall be given the opportunity to speak in his/her own behalf, exercise his/her rights, and submit evidence as set forth in OAR

291-105-0056. Inmates shall not be permitted to call witnesses in an informal hearing.

(6) The adjudicator may pose questions during the hearing.

(7) Documents and Physical Evidence:

(a) An inmate participating in an informal disciplinary hearing may present documents and physical evidence during the hearing, subject to the exclusions and restrictions provided in these rules.

(b) The reporting employee(s) or agent(s) of the Department of Corrections or Oregon Corrections Enterprises who are knowledgeable of the rule violation(s) charged in the misconduct report(s) may submit documents and physical evidence in advance of or during the hearing.

(c) The adjudicator designee may exclude documents and physical evidence upon finding that such evidence would not assist the adjudicator in the resolution of the disciplinary action, or that such evidence would present an undue risk to the safe, secure or orderly operation of the facility, specifically including the safety and security of DOC or OCE employees and inmates. The reason(s) for exclusion shall be made a part of the record.

(d) The adjudicator or designee may classify documents and physical evidence as confidential (and not disclose such evidence to the inmate) upon finding that disclosure would present an undue risk to the safe, secure or orderly operation of the facility, specifically including the safety and security of DOC or OCE employees and inmates, or that disclosure would interfere with an ongoing official investigation or criminal prosecution. The reason(s) for classifying documents and physical evidence as confidential shall be made a part of the record.

(8) At the informal hearing the adjudicator or designee shall decide:

(a) No Violation: The adjudicator or designee may find that the inmate did not commit the violation charged, in which case the inmate will be restored to the same status and privileges as before he/she was charged.

(b) Violation: The adjudicator or designee may find that the inmate did commit the violation charged, in which case, the adjudicator will so inform the inmate.

(c) Dismissal: The adjudicator or designee may dismiss the alleged rule violation(s) without entering a finding if:

(A) There is insufficient evidence to support the alleged violation(s); or

(B) Corrective action using less formalized procedures would be more appropriate; or

(C) The inmate is released from custody.

(9) At the conclusion of the hearing the inmate shall be informed of the finding and any sanctions imposed.

(10) If the inmate is found in violation, the record of the decision shall be retained in the Hearings Unit records for a minimum of three years.

(11) Upon finding that a violation occurred as charged, the adjudicator or designee shall:

(a) Determine the location of the violation(s) on the minor disciplinary grid (Exhibit 2).

(b) Impose sanctions within the range of sanctions in the appropriate box.

(12) The adjudicator or designee may also consider imposing the additional sanctions that are available in the minor range of sanctions (OAR 291-105-0071).

(13) The adjudicator or designee may suspend imposition of any or all of the ordered disciplinary sanctions, informing the inmate of expected future conduct to avoid imposition and the length of time for which the sanction will be suspended.

(14) The adjudicator may impose any or all sanctions previously suspended, after finding that the rule violation in question was also a violation of the conditions of the suspension.

(15) The adjudicator or designee may give a verbal warning and reprimand in lieu of sanctions on the minor grid, informing the inmate of expected future conduct.

(16) No verbatim recording of the hearing shall be made.

(17) If the inmate is transferred to another facility before the informal hearing is complete, the misconduct report shall be forwarded to the other facility for processing.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 421.068, 421.180, 421.185, 421.190, 423.020, 423.030 & 423.075  
Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 30-1985, f. & ef. 8-16-85; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08; DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

# ADMINISTRATIVE RULES

## 291-105-0066

### Principles of Application of Disciplinary Sanctions

(1) A single act of misconduct may violate more than one misconduct rule.

(2) Loss of Privilege: If the inmate's misconduct involves the abuse or misuse of a specific privilege (i.e., recreation yard, canteen, etc.), the hearings officer or adjudicator may order a loss of that specific privilege, and may increase the loss of that specific privilege sanction up to twice the amount listed in the appropriate grid block.

(3) For rule violations arising out of separate misconduct reports, segregation sanctions shall be served consecutively, up to 180 days.

(4) For rule violations arising out of the same misconduct report:

(a) Concurrent segregation sanctions may be imposed by the hearings officer or functional unit manager, up to 180 days. The inmate shall be ordered to only serve the sanction for the most serious violation in the misconduct report.

(b) Consecutive sanctions may be imposed by the hearings officer or functional unit manager. The reasons for consecutive sanctions shall be supported by written substantial reasons outlining the factor(s) supporting the consecutive sanctions. No aspect of the misconduct that serves as a necessary element of misconduct may be used as an aggravating factor if that factor is also used to impose discipline.

(5) The Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions contains two inmate disciplinary grids. One grid governs inmate disciplinary action for major violations (Exhibit 1). One grid governs inmate disciplinary action for minor violations (Exhibit 2).

(6) Each of the inmate disciplinary grids shall outline the available sanctions within each box, which includes fines, segregation time and the loss of privileges.

(7) There are additional sanctions that will be available to the hearings officers and adjudicators at all levels of discipline for major violations and minor violations (OAR 291-105-0069 and 0071). These sanctions shall be applied consistently and in proportion to the violation and the inmate's prior misconduct.

(8) Merger and Consecutive Sanctions: In the case of multiple rule violations, a hearings officer or adjudicator shall impose a sanction or sanctions for only the single most severe or most applicable rule violation found as charged in a single misconduct report, except as specifically allowed by OAR 291-105-0066(4)(b). The applicable sanctions for the remaining rule violations shall be deemed to have merged with the sanction(s) imposed for the single rule violation, unless consecutive sanctions are imposed as authorized in OAR 291-105-0066(4)(b).

(9) The hearings officer shall consider input from a multidisciplinary team where the inmate is housed and Behavioral Health Services Unit employees. The hearings officer may recommend sanctions be modified or are contraindicated, irrespective of the sanctions contained on the disciplinary grids and OAR 291-105-0069 and 0071.

(10) Limitations on the Length of Confinement in Disciplinary Segregation for Rule Violations:

(a) No inmate shall be confined in disciplinary segregation for more than 180 consecutive days. On the 180th consecutive day of confinement in disciplinary segregation, an inmate shall be reassigned and ordered to other housing. Once reassigned and ordered to other housing, the inmate shall be subject to additional confinement in disciplinary segregation (up to a maximum of another 180 days) as a sanction for a new rule violation, notwithstanding that the inmate remains in the segregation unit.

(b) Once an inmate has received the maximum sanction of 180 consecutive days, the hearings officer or adjudicator is not required to impose any additional segregation sanction. The hearings officer or adjudicator is also not required to order additional loss of privileges sanctions to an inmate who has already received the maximum 180 days segregation sanction, if he/she determines that the sanction would not be meaningful to the inmate. Such action shall be made a part of the written record of the hearing.

(c) New Violations Committed While Assigned to Disciplinary Segregation: If an inmate is ordered to serve an additional disciplinary segregation sanction for committing a new rule violation while assigned to disciplinary segregation, the additional disciplinary segregation sanction may be served consecutively to any prior segregation sanctions then being served, up to a maximum of 180 days.

(d) New Violations Committed While Assigned to Intensive Management Unit or IMU Status: An inmate who commits a new rule violation while assigned to the Intensive Management Unit (IMU), or while assigned to IMU status, shall not be ordered to serve a disciplinary segre-

gation sanction for the violation. The inmate shall be subject to the range of additional sanctions described in OAR 291-105-0069 & 291-105-0071, including but not limited to fines and loss of privileges.

(11) When an inmate has been assigned to segregation as part of a disciplinary sanction that is Level I or Level II on the major violation grid and the inmate is temporarily transferred to the custody of a jurisdiction other than the Department, or is released from prison, he/she shall not be given credit for time served in segregation while he/she is out of Department custody.

(a) Once the inmate is returned to the Department's custody, the number of days he/she actually served in segregation will be subtracted from the total original sanction and he/she will serve the remainder of the segregation sanction in a Department segregation unit.

(b) If it is determined that the other jurisdiction maintained the inmate in a similarly restrictive status, the inmate shall be credited with the number of days he was held in segregation type status by the other jurisdiction.

(12) In those instances where there exists a need to create available bed space in a segregation unit, the functional unit manager or designee, in his/her sole discretion, may release an inmate(s) from segregation.

(a) At that point, the segregation sanction will be deemed to have been completed and the remaining segregation sanction will not be served as loss of privileges, while the inmate resides in the general inmate population.

(b) Any loss of privileges sanction ordered to be served upon the inmate's release from segregation, shall begin at the time the inmate is actually released from segregation.

(13) Inmates who commit a rule violation may be subject to classification review in accordance with the Department of Corrections rule on Classification (Inmate) (OAR 291-104).

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.068, 421.180, 421.185, 421.190, 423.020, 423.030 & 423.075

Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 29-1986, f. & ef. 8-20-86; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08; DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

## 291-105-0069

### Additional Sanctions for Major Violations

(1) The additional sanctions available to the hearings officer for major violations are:

(a) Restitution or Reimbursement: Inmates shall be responsible for making full restitution for any damage or loss of property. In addition, inmates shall be financially responsible for all costs associated with or resulting from the violation. These shall include the costs of any drug urinalysis testing. There is no limit on the amount of restitution or reimbursement which can be imposed for a major sanction. There must always be a factual basis in the record to support the restitution or reimbursement amount and that amount must be reasonable.

(b) Confiscation of property or contraband.

(c) Reduction to Basic Visiting Status (non contact): For any major violation, basic visiting status may be imposed up to a maximum of 180 days for any one violation. Any inmate found in violation of Distribution I involving drugs, Drug Possession, or Contraband I involving drugs, drug paraphernalia, or drug testing including attempt or conspiracy, within the past two years shall be restricted to basic visits for each violation as follows:

(A) First violation: 1 year (365 days)

(B) Second violation: 2 years (730 days)

(C) Third or more violation(s): 4 years (1,460 days)

(i) Basic visiting sanctions shall be served consecutively to the conclusion of any assignment to disciplinary segregation or Intensive Management Unit.

(ii) Reduction to basic visiting status sanctions shall be served consecutively up to 7 years (2,555 days). No inmate shall serve more than 7 years (2,555 days) of consecutive reduction to basic visiting status sanctions at any one time.

(d) Extra Work Detail: For a major violation, the limit on extra work detail is a maximum of 80 hours, to be completed within 30 days after the Final Order has been signed.

(e) Revocation of short-term transitional leave and return the inmate to a Department of Corrections facility.

(f) Recommendation for no Favorable Future Consideration of Parole Release Date.



# ADMINISTRATIVE RULES

(g) Recommendation for an extension of parole release date in accordance with the rule on Prison Term Modification (OAR 291-097).

(h) Recommendation for reduction in earned time, statutory good time or extra good time credits in accordance with the rule on Prison Term Modification (OAR 291-097).

(2) Recommendations for reduction of earned time, statutory good time or extra good time and recommendations for an extension of parole release date shall be mandatory sanctions for all violations at level one of the major misconduct grid.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 421.068, 421.180, 421.185, 421.190, 423.020, 423.030 & 423.075  
Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 29-1986, f. & ef. 8-20-86; CD 38-1987, f. & ef. 10-2-87; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08; DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

## 291-105-0081

### Adjustments to Final Orders

(1) Based upon an inmate's significant positive behavior change and after consideration of each individual inmate's particular circumstances, the functional unit manager or designee may make adjustments to final orders either at his/her discretion, or upon employee recommendation.

(2) Adjustments to segregation time and fine sanctions from final orders may not exceed the limits established in Exhibit 3.

(3) Adjustments of up to 50% of the total sanction accrued to that point in time may be made to basic visiting on a one-time basis only.

(4) Up to 50% of the cumulative total (at the time of restoration consideration) of previously retracted earned time, statutory good time or extra good time credits resulting from disciplinary sanctions may be restored. Earned time credits will be restored toward the most recent retraction and continue thereafter in reverse order. At no time will a restoration of earned time, statutory good time or extra good time credits cause an inmate's release date to move within 60 days of the date of the adjustment. Earned time, statutory good time and extra good time restored under this section can only be later retracted if the subsequent findings of fact is signed by the functional unit manager or designee after the date of the restoration.

(5) Adjustments to final orders shall be initiated and documented using the Adjustment to Final Order form (CD 1460). Copies of Adjustment to Final Order will be provided to appropriate sections for necessary action, including the hearings section where the amendment will be entered into the inmate disciplinary system.

[ED. NOTE: Exhibits referenced are available from the agency.]  
Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075  
Hist.: DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08; DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

## 291-105-0100

### Vacating or Withdrawing the Final Order in the Interest of Justice

The Inspector General, Assistant Director for Operations or the Institutions Administrator may, in the interest of justice, vacate all or part of a final disciplinary order or withdraw the order and direct that a disciplinary hearing be reopened for consideration of new evidence.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075  
Hist.: DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08; DOC 11-2011(Temp), f. & cert. ef. 6-10-11 thru 12-7-11; DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

\*\*\*\*\*

**Rule Caption:** Interstate Compact for Adult Offenders.

**Adm. Order No.:** DOC 25-2011

**Filed with Sec. of State:** 12-5-2011

**Certified to be Effective:** 12-7-11

**Notice Publication Date:** 4-1-2011

**Rules Adopted:** 291-180-0252, 291-180-0262

**Rules Repealed:** 291-180-0115, 291-180-0125, 291-180-0135, 291-180-0145, 291-180-0155, 291-180-0165, 291-180-0175, 291-180-0185, 291-180-0195, 291-180-0205, 291-180-0215, 291-180-0225, 291-180-0235, 291-180-0245, 291-180-0255, 291-180-0285, 291-180-0295, 291-180-0305, 291-180-0315, 291-180-0325, 291-180-0335, 291-180-0345, 291-180-0355, 291-180-0365, 291-180-0375, 291-180-0385, 291-180-0395, 291-180-0405, 291-180-0415, 291-180-0425, 291-180-0435, 291-180-0445, 291-180-0455, 291-180-0465, 291-180-0475, 291-180-0485, 291-180-0495, 291-180-0505,

291-180-0515, 291-180-0525, 291-180-0535, 291-180-0545, 291-180-0555, 291-180-0565, 291-180-0575, 291-180-0585, 291-180-0595, 291-180-0605, 291-180-0615, 291-180-0625, 291-180-0635, 291-180-0645, 291-180-0655, 291-180-0665

**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

## 291-180-0252

### Standards for Interstate Transfer of Adult Offenders

(1) The Department of Corrections adopts by this reference standards for the interstate transfer of adult offender supervision set out in the official ICAOS rules, published by the Interstate Commission for Adult Offender Supervision, as updated to reflect amendments to the rules effective March 1, 2011. The rules may be viewed at the ICAOS website at [www.interstatecompact.org](http://www.interstatecompact.org).

(2) This rule applies retroactively to all offenders relocating to other states, applying for or receiving interstate compact services under the Interstate Compact for Adult Offender Supervision, on or after August 31, 2011.

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 25-2011, f. 12-5-11 cert. ef. 12-7-11

## 291-180-0262

### Travel Permits

(1) No offenders shall relocate to another state except as provided by the ICAOS rules. Travel Permits may be issued for up to 30 days, with a subsequent extension of 15 days in emergency situations. Offenders shall be transferred pursuant to ICAOS rules if their need exceeds 45 consecutive days in another state. The offender shall return and remain in Oregon pending the Interstate Compact transfer process. No person shall be allowed to travel out of state for treatment or programming purposes that exceeds 45 consecutive days unless they have been accepted through the Interstate Compact transfer process.

(2) This rule applies retroactively to all offenders relocating to other states, applying for or receiving interstate compact services under the Interstate Compact for Adult Offender Supervision, on or after August 31, 2011.

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 25-2011, f. 12-5-11 cert. ef. 12-7-11

## Department of Energy Chapter 330

**Rule Caption:** Procedures for consumer-owned utility power purchases to comply with the greenhouse gas emissions standard.

**Adm. Order No.:** DOE 9-2011

**Filed with Sec. of State:** 11-22-2011

# ADMINISTRATIVE RULES

**Certified to be Effective:** 11-22-11

**Notice Publication Date:** 8-1-2011

**Rules Adopted:** 330-180-0010, 330-180-0020, 330-180-0030, 330-180-0040, 330-180-0050, 330-180-0060, 330-180-0070

**Subject:** The purpose of the ODOE rules is to provide procedures for consumer-owned utilities to implement Oregon's greenhouse gas emissions standard of ORS 757.528 AND 757.533 for power purchases. The proposed rules provide guidance for:

An output-based methodology for calculating greenhouse gases; how electricity with no identified generation source will be addressed; and

A process for determining how facilities would be designated as a "low-carbon resource" in the future and be eligible for meeting the greenhouse gas standards.

**Rules Coordinator:** Kathy Stuttaford—(503) 373-2127

## 330-180-0010

### Purpose and Scope

These rules provide procedures to assist the governing boards of consumer-owned utilities to comply with the greenhouse gas emissions performance standard for electricity established in ORS 757.522 to 757.536.

Stat. Auth.: ORS 757.522 - 757.538, 469.040

Stats. Implemented: ORS 757.522 - 757.538

Hist.: DOE 9-2011, f. & cert. ef. 11-22-11

## 330-180-0020

### Definitions

(1) "Cogeneration facility" means a facility where the sequential generation of electric energy and the production of steam or other forms of useful energy (such as heat) from the same primary energy source or fuel are used for industrial, commercial, heating, or cooling purposes.

(2) "Department" means the Oregon Department of Energy pursuant to ORS 469.020(5).

(3) "Director" means the director of the department pursuant to ORS 469.020(6).

(4) "Low-Carbon Emissions Resource" means a generating facility that is capable of meeting the greenhouse gas emissions standard through the use of technologies, fuels, or feedstocks that work together to result in an emissions rate at or below the emissions standard, or by sequestering a sufficient portion of greenhouse gas emissions such as the net greenhouse gas emissions at the generating facility are maintained at or below the standard.

(5) "Useful thermal energy" is the net thermal energy made available by a cogeneration facility for processes or applications other than for the generation of electricity, taking into account any portion of the total thermal energy produced that is used as part of the cogeneration process or that is discharged as waste.

Stat. Auth.: ORS 757.522 - 757.538, 469.040

Stats. Implemented: ORS 757.522 - 757.538

Hist.: DOE 9-2011, f. & cert. ef. 11-22-11

## 330-180-0030

### Greenhouse Gas Emissions Standard

(1) The greenhouse gas emissions standard is 1,100 pounds (0.5 metric tons) of greenhouse gases per megawatt-hour (MWh) of electricity for a generating facility as specified by ORS 757.528(1).

(2) The greenhouse gas emissions standard includes only carbon dioxide (CO<sub>2</sub>) emissions.

(3) A governing board of a consumer-owned utility entering into a long-term financial commitment as defined at ORS 757.522(10)(a) demonstrates compliance with these rules by making a written determination that baseload electricity acquired under the long-term financial commitment entered into by the utility's governing board is produced by a generating facility that complies with the greenhouse gas emissions standard established in this rule.

Stat. Auth.: ORS 757.522 - 757.538, 469.040

Stats. Implemented: ORS 757.522 - 757.538

Hist.: DOE 9-2011, f. & cert. ef. 11-22-11

## 330-180-0040

### Low-Carbon Emissions Resource Plan

(1) The governing board of a consumer-owned utility, or entity acting on behalf of one or more governing boards, may submit a plan for a generating facility to become a low-carbon emissions resource to the department. The department will make a determination as to whether the plan includes sufficient technical documentation to demonstrate that the generating facility is capable of becoming a low-carbon emissions resource within seven

years of commencing operations at the generating facility. The plan must contain sufficient technical documentation to demonstrate:

(a) The net greenhouse gas emissions from the generating facility taking into account any greenhouse gas emissions that are captured, sequestered, or otherwise prevented from being released into the atmosphere – will be at or below the greenhouse gas emissions standard established in this rule;

(b) Additional capacity or capability exists to lower net greenhouse gas emissions over time to meet potential reductions in the greenhouse gas emissions standard;

(c) To the extent that maintenance of the low-carbon emissions resource requires one or more feedstocks, that sufficient supply of the feedstock(s) will be available for use by the generating facility;

(d) How other conditions identified by the governing board(s) to meet and maintain the low-carbon emissions resource status over time can and will be met by the generating facility.

(2) The department determination that the plan includes sufficient technical documentation to demonstrate that the generating facility is capable of becoming a low-carbon emissions resource within seven years of commencing operations must be obtained prior to entering into a long-term commitment with that generating facility.

(3) The department will begin a review within 90 days of receipt of a plan and provide a determination to the governing board(s) as to whether the plan includes sufficient technical documentation to demonstrate that the generating facility is capable of becoming a low-carbon emissions resource within seven years of commencing operations. A plan may be re-submitted to the department for reconsideration if additional technical documentation is available.

(4) If the Oregon Public Utility Commission makes a determination pursuant to ORS 757.531(2)(c) that a plan for a generating facility to become a low-carbon emissions resource is sufficient then the governing board of a consumer-owned utility may consider that determination to provide a sufficient demonstration for purposes of ORS 757.533(2)(c) to consider the same generating facility, utilizing the same plan and under the same time frame, as a low-carbon emissions resource in lieu of a review of that plan by the department.

(5) The department may waive the need or alter the timeline to submit a plan to become a low-carbon emissions resource for good cause shown.

Stat. Auth.: ORS 757.522 - 757.538, 469.040

Stats. Implemented: ORS 757.522 - 757.538

Hist.: DOE 9-2011, f. & cert. ef. 11-22-11

## 330-180-0050

### Unspecified Emissions

(1) Long-term financial commitments consisting of contracts for electricity where the greenhouse gas emissions cannot readily be determined with any specificity are those in which:

(a) The contract does not allow for the identification of one or more generating facilities from which the contracted energy is derived; or,

(b) The contract does not provide sufficient detail about the resource mix from which the contracted energy is derived to determine the greenhouse gas emissions associated with the contracted energy.

(2) Emissions to be attributed to such contracts for purposes of determining compliance with the emissions standard in this rule are to be derived as follows:

(a) By utilizing data from greenhouse gas emissions reports or otherwise submitted to the Oregon Department of Environmental Quality or the US Environmental Protection Agency characterizing the emissions profile of the baseload electricity if that electricity is anticipated to be representative of the contracted energy in the long-term financial commitment; or,

(b) By utilizing the greenhouse gas emissions reporting protocols and emissions factors required by the Oregon Department of Environmental Quality or the US Environmental Protection Agency to estimate the expected emissions profile of the baseload electricity in the long-term financial commitment; or,

(c) If unable to use the greenhouse gas reporting data, procedures, or protocols utilized by the Oregon Department of Environmental Quality or the US Environmental Protection Agency to assign emissions to the baseload electricity by multiplying the amount of energy for which emissions cannot be determined with specificity by an emissions factor of 1,100 pounds of greenhouse gases per megawatt hour to determine the greenhouse gas emissions.

Stat. Auth.: ORS 757.522 - 757.538, 469.040

Stats. Implemented: ORS 757.522 - 757.538

Hist.: DOE 9-2011, f. & cert. ef. 11-22-11

# ADMINISTRATIVE RULES

## 330-180-0060

### Methodology for Calculating Greenhouse Gas Emissions

(1) A generating facility's annual average electricity production in megawatt-hours (MWh) is the sum of the electricity available for all of the following:

- (a) Use onsite;
- (b) Use at a host site in a commercial or industrial process;
- (c) Sale; or
- (d) Transmission from the generating facility.

(2) The greenhouse gases for cogeneration facilities must include the total usable energy output of the process and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy.

(a) A cogeneration facility's annual average electricity production is the sum of the MWh of electricity produced and the useful thermal energy output expressed in MWh.

(b) The useful thermal energy output must be converted into a MWh equivalent using the standard engineering conversion factor of 3.413 MMBtu per MWh (or 3,413 Btu per kWh).

(3) In determining whether a generating facility complies with the emissions standard, the total emissions associated with producing energy at the generating facility must be included in determining the rate of emissions of greenhouse gases. The total emissions associated with producing electricity at the generating facility do not include emissions associated with transportation, fuel extraction or other life-cycle emissions associated with obtaining the fuel for the facility.

Stat. Auth.: ORS 757.522 - 757.538, 469.040  
Stats. Implemented: ORS 757.522 - 757.538  
Hist.: DOE 9-2011, f. & cert. ef. 11-22-11

## 330-180-0070

### Exemptions

The requirement for a governing body to report exemptions to the department as required by ORS 757.528(7) must be in writing and may be submitted electronically or by regular mail.

Stat. Auth.: ORS 757.522 - 757.538, 469.040  
Stats. Implemented: ORS 757.522 - 757.538  
Hist.: DOE 9-2011, f. & cert. ef. 11-22-11

.....

**Rule Caption:** Amendments to Business Energy Tax Credit rules to implement Oregon Laws 2011, Chapter 730 (HB 3672).

**Adm. Order No.:** DOE 10-2011

**Filed with Sec. of State:** 11-30-2011

**Certified to be Effective:** 11-30-11

**Notice Publication Date:** 10-1-2011

**Rules Adopted:** 330-090-0160

**Rules Amended:** 330-090-0133

**Subject:** These permanent rule amendments implement changes made by Oregon Laws 2011, Chapter 730 (house Bill 3672) to the Business Energy Tax Credit program. These amendments implement statutory changes to the sunset of the program, and provide a process for participants to demonstrate "beginning construction before April 15, 2011" for the purpose of extending the time allowed to receive final certification of their facility.

**Rules Coordinator:** Kathy Stuttaford—(503) 373-2127

## 330-090-0133

### How ODOE Processes a Final Application

(1) Processing the Final Certification: To qualify for a Final Certification, the facility must be completed as described in the Application for Preliminary Certification and the Preliminary Certificate. Any changes to the Preliminary Certificate and/or Application for Preliminary Certification must complete the amendment process outlined in these rules prior to the project completion date. Failure to obtain approval through the amendment process may result in denial of the Final Certification Application.

(a) Applications shall be considered received for the purposes of ORS 469.220 on the date marked received by the department, unless the application is incomplete. If the application for final certification is not complete, the date marked received by the department on the complete application containing all of the required information shall be considered the received date.

(A) When a facility owner chooses to transfer the tax credit under ORS 469.206, the Department may hold the application for final certification until pass-through partner(s) information is received by the

Department. Except for a facility using or producing renewable energy resources with a certified cost that exceeds \$10 million, any application in which the facility owner has indicated a choice to transfer the tax credit under ORS 469.206 is not a "completed application" until the Department receives both the completed final certification application form from the facility owner and the completed pass-through partner agreement form for the tax credit, or portion of the tax credit, being transferred to that pass-through partner. The receipt of the completed application by the Department begins the certification period, as provided in ORS 469.220.

(B) As provided in Oregon Laws, 2011, Chapter 693, Section(2)(c), a facility using or producing renewable energy resources with a certified cost that exceeds \$10 million and that receives final certification under ORS 469.215 after January 1, 2010, a final certification application shall be considered complete without the identification of a transferee for purposes of ORS 469.206 or 469.208.

(C) If more than one pass-through partner is being transferred the credit, facility owners may have up to 18 months from the date the first pass-through partner agreement form is received by the Department to begin each certification period of the tax credit. For pass-through partner(s) agreement forms received by the Department after the 18-month period, the certification period begins 18 months from the date the first pass-through partner agreement form was received by the Department.

(D) For purposes of administering the sunset of the program, the Department may issue a Final Certificate to a facility owner who previously indicated a choice to transfer a tax credit to a pass-through partner under ORS 469.206, 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 BETC program provided under ORS 315.357. The Final Certificate will be issued to a facility owner if the only piece causing the application for final certification to be incomplete is the pass-through partner(s) agreement form.

(b) Within 30 days after a final certification application is received, the Director will determine whether the application is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards and preliminary certification conditions adopted by the Director. If it is not complete, the applicant will be provided a written explanation describing deficiencies. If it is complete, the Director will process the application. Within 60 days after a completed final certification application is received the director will either approve or deny the final certification.

(c) If the Director approves the application, the Director will issue final certification, which will state the amount of certified costs and the amount of the tax credit approved. The final certification may contain additional criteria and conditions that must be met in order to retain tax credit benefits or the tax credit certificate may be subject to revocation. If the facility fails to meet any of the criteria, conditions and requirements established in the final certification, the facility owner must notify the Department within 30 days.

(d) For efficient truck technology facilities the department may, upon the request of the applicant, issue no more than two final certificates for each preliminary certification, up to the amount of the preliminary certification.

#### (2) Basis for Denying Tax Credit Benefits

(a) If the Director does not approve the application, the Director will provide written notice of the action, including a statement of the findings and reasons for the denial by regular and certified mail.

(b) A final certification application that is denied can be submitted again. A final certification application can be amended or withdrawn by the applicant. If an application is submitted again or amended, the time within which final certification review occurs starts over.

(c) If the Director does not issue a final certification within 60 days after an application is filed, the application is denied pursuant to ORS 469.215(4).

#### (d) The Director may deny a final certificate if:

(A) The applicant does not provide information about the facility in a reasonable time after the Director requests it;

(B) The facility is significantly different than the proposed facility for which the preliminary certification was issued;

(C) The applicant misrepresents or fails to construct or operate the facility;

(D) The applicant fails to demonstrate that the facility described in the application is separate and distinct from previous or current applications reviewed by the Department;



# ADMINISTRATIVE RULES

(E) The facility does not meet all of the conditions and requirements contained in the preliminary certificate; or

(F) The applicant is unable to demonstrate that the facility complies with all applicable provisions of ORS Chapter 469 and the rules adopted thereunder.

## (3) Basis for Revoking Tax Credit Benefits

(a) The Director may revoke certificates as provided in ORS 469.225 and ORS 315.354 (5). For the purposes of this section, "fraud or misrepresentation" means any misrepresentation made by an applicant for a preliminary or final certification, including but not limited to, misrepresentations as to the applicant's financial viability, facility construction and operation, or any other information provided as part of an application for a preliminary or final certification.

(b) After the Director issues a final certificate, an applicant must notify the director in writing of any of the following conditions:

- (A) The facility has been moved;
- (B) Title to the facility has been conveyed;
- (C) The facility is subject to or part of a bankruptcy proceeding;
- (D) The facility is not operating; or
- (E) The term of a leased facility has ended.

(c) Pursuant to ORS 469.225, upon receiving information that a BETC certification was obtained by fraud or misrepresentation, or that the facility has not been constructed or operated in compliance with the requirements in the certificate, the Director shall revoke the certificate for the facility.

(d) A revocation of the final certification or portion of a certification due to fraud or misrepresentation results in the loss of all prior and future tax credits in connection with that facility. If all or a part of the tax credit certificate has been transferred to a Pass-through partner under ORS 469.206, the certificate is not considered revoked as to the Pass-through partner, but the facility owner is liable for the amount of tax credits claimed or that could be claimed.

(e) The revocation of a certificate due to failure to construct or operate the facility in compliance with the certificate results in the loss of any tax credits not yet claimed by the facility owner. If all or a part of the tax credit certificate has been transferred to a Pass-through partner under ORS 469.206, the certificate is not considered revoked as to the Pass-through partner, but the facility owner is liable for the amount of tax credits claimed or that could be claimed.

## (4) Sale or Disposition of the Facility after Final Certification:

(a) Pursuant to ORS 315.354(5), upon receiving notice that the facility has been sold or otherwise transferred, the Director will revoke the final certificate, as of the date of the disposition of the facility, unless the BETC for the facility has already been transferred under ORS 468.206.

(b) The new owner or new or renewed lessee of a facility may apply for a final certificate. The request must comply with OAR 330-090-0130(10) and include information to allow the Director to determine the amount of tax credit not claimed by the former owner or former lessee. If the facility continues to comply with the requirements set out in these rules and any applicable conditions imposed by the Director, the Director will issue a new final certification consistent with the provisions of ORS 315.354(5).

(5) Request for Reconsideration: No later than 60 days after the Director issues an order on a preliminary certification, amendment to a preliminary certification, final certification, or canceling or revoking a final certificate under these rules, the applicant or certificate holder may request reconsideration in writing.

(6) Inspections: After an application is filed under ORS 469.205 or ORS 469.215 or a tax credit is claimed under these rules, the Department may inspect the facility. The Department will schedule the inspection during normal working hours, following reasonable notice to the facility operator.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 3-2011(Temp), f. 4-15-11, cert. ef. 4-18-11 thru 10-14-11; DOE 6-2011, f. & cert. ef. 9-29-11; DOE 7-2011, f. & cert. ef. 10-25-11; DOE 10-2011, f. & cert. ef. 11-30-11

## 330-090-0160

### Sunset of the Business Energy Tax Credit Program

(1) Oregon Laws 2011, chapter 730, amends the sunset of the Business Energy Tax Credit Program and implements dates by which final certification must be issued for an applicant to be allowed a credit under ORS 315.354. Applicants must meet the deadlines that apply to their project:

(a) Applicants with a preliminary certification for a facility that uses or produces renewable energy resources that are unable to demonstrate evidence of beginning construction before April 15, 2011 must file a complete application for final certification before the expiration of the preliminary certification and receive final certification before January 1, 2013. The Director does not guarantee that a complete final certification application received on or after November 1, 2012 will be processed prior to January 1, 2013. Applicants that have not already extended their preliminary certification may file for an extension under OAR 330-090-0130.

(b) Applicants with a preliminary certification for a facility that uses or produces renewable energy resources that are able to demonstrate evidence of beginning construction before April 15, 2011 must file a complete application for final certification before the expiration of the preliminary certification. Applicants that have not already extended their preliminary certification may file for an extension under OAR 330-090-0130.

(c) Applicants with a preliminary certification for a facility other than a facility that uses or produces renewable energy resources that are unable to demonstrate evidence of beginning construction before April 15, 2011 must receive final certification before January 1, 2013. The Director does not guarantee that a complete final certification application received on or after November 1, 2012 will be processed before January 1, 2013.

(d) Applicants with a preliminary certification for a facility other than a facility that uses or produces renewable energy resources that are able to demonstrate evidence of beginning construction before April 15, 2011 must file a complete application for final certification on or before July 1, 2014.

(2) Applicants with a preliminary certification may apply to the department to demonstrate that construction of the facility began before April 15, 2011.

(a) An application must include at least these items:

- (A) A brief update on the progress of the facility.
- (B) A construction schedule showing the anticipated completion date.
- (C) A statement that the facility will be completed as approved in the preliminary certification.

(D) Evidence of beginning construction, including but not limited to:

(i) A copy of an approved building, grading or other permit issued for the facility, dated prior to April 15, 2011.

(ii) Evidence of site-specific construction activity, for the period on or after the later of preliminary certification or building permit approval and before April 15, 2011.

(iii) Evidence of facility-specific construction activity, for the period on or after preliminary certification and before April 15, 2011.

(b) Evidence of site-specific construction activity may include, but is not limited to:

- (A) Paid invoices for completed construction activity.
- (B) Timesheets for construction activities linked to the facility site.
- (C) Paid rental documentation for construction equipment.
- (D) A written report from the project engineer or installer signed under penalties of perjury describing the work that had commenced before April 15, 2011.

(c) Evidence of facility-specific construction activity may include, but is not limited to:

- (A) Paid invoices for facility-specific assembly or manufacturing activity.
- (B) Timesheets for assembly or manufacturing activities linked to the facility.

(C) A written report from the project engineer or manufacturer signed under penalties of perjury describing the work that had commenced before April 15, 2011.

(d) Applications must be received by the department before July 1, 2012.

(e) The Department will review the provided information and respond to the application within 60 days. As part of its determination, the department may request additional information from the applicant and may perform inspections.

(A) The department will issue a written acceptance letter to applicants who are able to demonstrate evidence of beginning construction. The acceptance letter will state the date by which the applicant must receive final certification to be allowed a credit under ORS 315.354.

(B) The department will issue a letter to applicants who have not provided sufficient evidence of beginning of construction providing reasons for the denial.

Stat. Auth.: ORS 469.040 & 469.165, 469.185-469.225, OL 2011, Ch. 730(HB 3672)

Stats. Implemented: OL 2011, Ch. 730(HB 3672)

Hist.: DOE 10-2011, f. & cert. ef. 11-30-11

# ADMINISTRATIVE RULES

## Department of Environmental Quality Chapter 340

**Rule Caption:** Revise “Initiation Level” rule for persistent pollutants in wastewater.

**Adm. Order No.:** DEQ 17-2011

**Filed with Sec. of State:** 11-18-2011

**Certified to be Effective:** 11-18-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 340-045-0100

**Subject:** The amended rule suspends the requirement to develop pollutant reduction plans for cholesterol and coprostanol, and allows for DEQ to focus the list of pollutants for which permittees that become subject to the rule in the future must monitor. These revisions to the rule also provide clarity regarding the circumstances under which a permittee has met the requirements and no longer needs to have a reduction plan in place.

**Rules Coordinator:** Maggie Vandehey—(503) 229-6878

### 340-045-0100

#### Initiation Level Rule

(1) Definitions. The definitions in ORS 468B.138 are adopted by reference. In addition, for purposes of this rule, the following definitions apply:

(a) “Persistent Pollutants” are substances that are toxic and that either persist in the environment or accumulate in the tissues of humans, fish, wildlife or plants, and are listed in Column 2 of Table A.

(b) “Permittee” means a municipality in possession of a National Pollutant Discharge Elimination System or water pollution control facility permit issued by the DEQ pursuant to ORS 468B.050 for a sewage treatment facility that has a dry weather design flow capacity of one million gallons per day or more.

(c) “Initiation level” is the concentration of a persistent pollutant in a permittee’s effluent that, if exceeded, necessitates the preparation of a persistent pollutant reduction plan under ORS 468B.140.

(2) Initiation levels.

(a) Initiation levels for persistent pollutants are those values contained in Table A, or the analytical quantitation limit (concentration at which quantitative results can be reported with a high degree of confidence), whichever is higher.

(b) Initiation levels are not standards of quality and purity for the waters of this state for the purposes of ORS 468B.048 or the federal Clean Water Act.

(c) Except as specified in subsection (f), each permittee must measure the concentration of the persistent pollutants listed in Table A in its effluent, compare the results of these measurements to the initiation levels, determine whether any persistent pollutant exceeds its initiation level, and document this proposed determination in a report to DEQ. For existing permittees, the report must be filed no later than 60 calendar days after receipt of laboratory results. For permittees that first become subject to this rule after its effective date, the report must be filed within 18 months after the permittee becomes subject to the rule, unless the permittee requests and is granted a longer period by DEQ.

(d) DEQ will review this report to verify that the proposed determination is based on reliable information. If DEQ finds that the proposed determination is not based on reliable information, DEQ will make an independent determination of whether an initiation level has been exceeded.

(e) Except as specified in subsection (g), each permittee must prepare and submit to DEQ a written persistent pollutant reduction plan in accordance with ORS 468B.140(1)(a) addressing persistent pollutants that exceed the initiation level. For existing permittees, the plan must be submitted no later than July 1, 2011. For permittees that first become subject to this rule after the effective date of this rule, the plan must be submitted to DEQ within six months after the determination report required by subsection (c) is submitted, or, if DEQ makes an independent determination, six months from the date of DEQ’s independent determination or within a timeframe established by DEQ.

(f) DEQ may suspend, by written order, the requirement to measure or develop a persistent pollutant reduction plan for a listed persistent pollutant under the following circumstances:

(A) If DEQ determines it is not technically practicable to measure the pollutant in effluent or if DEQ removes a pollutant from the Priority Persistent Pollutant List; or

(B) If, based on additional monitoring done pursuant to a persistent pollutant reduction plan, DEQ determines that it is unlikely that a pollutant exists in a permittee’s effluent; or

(C) If sampling of a permittee’s effluent demonstrates that the pollutant concentration is lower than the initiation level; or

(D) If DEQ determines that there are no available laboratories capable of performing the analysis for the pollutant; or

(E) If a permittee is subject to duplicative or more stringent requirements addressing the same pollutant; or

(F) For permittees that become subject to this rule after this effective date, if DEQ determines a pollutant is unlikely to be present in effluent based on a review of available effluent data at the facility or similar facilities in the state.

(g) Permittees are not required to develop a persistent pollutant reduction plan to address cholesterol or coprostanol.

Stat. Auth.: ORS 468.020 & 468B.141

Stats. Implemented: ORS 468B.138 - 468B.144

Hist.: DEQ 6-2010, f. & cert. ef. 7-6-10; DEQ 3-2011(Temp), f. & cert. ef. 3-15-11 thru 9-11-11; Administrative correction 9-23-11; MHS 9-2011(Temp), f. & cert. ef. 11-22-11 thru 5-18-12; DEQ 17-2011, f. & cert. ef. 11-18-11

## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Regulations for the Commercial Dungeness Crab Fishery in the Pacific Ocean and Columbia River.

**Adm. Order No.:** DFW 154-2011(Temp)

**Filed with Sec. of State:** 11-18-2011

**Certified to be Effective:** 12-1-11 thru 5-28-12

**Notice Publication Date:**

**Rules Amended:** 635-005-0055, 635-006-1010, 635-006-1015, 635-006-1065

**Subject:** The amended rules make two distinct regulatory changes or clarifications for the 2011/2012 commercial Dungeness crab fishery in the Pacific Ocean and Columbia River. The first allows vessels to land crab found in recovered derelict gear during the regular ocean Dungeness crab season if the recovering vessel holds a valid Dungeness crab permit, rather than requiring that crab so taken be returned to the water. The second clarifies that buoy tags are required on both crab pots and crab rings.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

### 635-005-0055

#### Fishing Gear

It is unlawful for commercial purposes to:

(1) Take crab by any means other than crab rings or crab pots (ORS 509.415). For the purposes of this rule, the following definitions apply:

(a) “Crab pot” means any portable, enclosed device with one or more gates or entrances that allows crab restricted entry and exit, and has a line attached to surface floats.

(b) “Crab ring” means any fishing device that allows crab unrestricted entry or exit while fishing, and has a line attached to surface floats.

(c) “Dungeness crab gear” means crab pots, crab rings or a combination thereof used for taking Dungeness crab in the Pacific Ocean and Columbia River.

(2) Possess on a vessel, use, control, or operate any crab pot which is greater than thirteen cubic feet in volume, calculated using external dimensions.

(3) Possess on a vessel, use, control, or operate any crab pot which does not include a minimum of two circular escape ports of at least 4-1/4 inches inside diameter located on the top or side of the pot. If escape ports are placed on the side of the pot, they shall be located in the upper half of the pot.

(4) Possess on a vessel, use, control, or operate any crab pot which does not have a release mechanism. Acceptable release mechanisms are:

(a) A single loop of untreated cotton not heavier than 120 thread size between pot lid tiedown hooks and the tiedown straps; or

(b) Any modification of the wire mesh on the top or upper half of the side of the pot, secured with a single strand of untreated cotton not heavier than 120 thread size, which, when removed, will create a minimum opening of at least 5 inches in diameter and will meet the following:

(A) The minimum opening may have not more than a single wire mesh (described as a “V”) that protrudes into the opening provided that mesh extends into the opening a distance of not more than 2.5 inches, as measured from the perimeter of the opening along either edge of the pro-

# ADMINISTRATIVE RULES

truding wire mesh, to serve as an anchor for the securing cotton. The panel containing the opening and the wire mesh acting as an anchor for the securing cotton must be constructed of a single wire no greater than 0.050 inches in diameter.

(B) Cotton must not be wrapped multiple times around wire mesh and may use no more than one knot securing the wire mesh at each end.

(5) Place, operate, or leave Dungeness crab gear in the Pacific Ocean and Columbia River or in any bay or estuary during the closed season, except that in only the Pacific Ocean and Columbia River, Dungeness crab gear may be placed no more than 64 hours immediately prior to the date the Dungeness crab season opens. In addition, unbaited crab rings or pots with open release mechanisms may be left in the Pacific Ocean (not including the Columbia River) for a period not to exceed 14 days following the closure of the Dungeness crab season.

(6) Have Dungeness crab gear deployed in the Pacific Ocean or Columbia River more than 14 days without making a landing of Dungeness crab.

(7) Use commercial Dungeness crab gear in the Columbia River or Pacific Ocean unless the pots and rings are individually marked with a surface buoy bearing, in a visible, legible and permanent manner, the brand of the owner and the Department buoy tag, provided that:

(a) The brand is a number registered with and approved by the Department;

(b) Only one unique buoy brand shall be registered to any one permitted vessel;

(c) All Dungeness crab gear fished by a permitted vessel must use only the Oregon buoy brand number registered to that vessel in the area off of Oregon;

(d) The Department shall issue crab buoy tags to the owner of each commercial crab permit in the amount determined by OAR 635-006-1015(1)(g)(E);

(e) All buoy tags eligible to a permit holder must be purchased from the Department at cost and attached to the gear prior to setting gear; and

(f) Buoys attached to Dungeness crab gear must have the buoy tag securely attached to the buoy closest to the gear, at the end away from the buoy line;

(g) Additional buoy tags to replace lost tags will be issued by the Department as follows:

(A) As of the first business day after 30 days following the season opening in the area fished, up to ten percent of the tags initially issued for that season; or

(B) For a catastrophic loss, defined as direct loss of non-deployed gear in the event of a vessel being destroyed due to fire, capsizing, or sinking. Documentation of a catastrophic loss may include any information the Department considers appropriate, such as fire department or US Coast Guard reports; or

(C) If the Director finds that the loss of the buoy tags was:

(i) Due to an extraordinary event; and

(ii) The loss was minimized with the exercise of reasonable diligence; and

(iii) Reasonable efforts were taken to recover lost buoy tags and associated fishing gear.

(D) Upon receipt of the declaration of loss required by subsection (7)(g)(E) of this rule, and a request for replacement tags under subsection (7)(g)(C) of this rule, the Director or the Director's designee may provide an opportunity for the permit holder requesting the replacement tags to describe why the buoy tag loss meets the criteria for replacement under subsection (7)(g)(C). The Director or the Director's designee shall provide the Director's order to the permit holder and to the Department's License Services. The permit holder may appeal the Director's findings to the Fishery Permit Review Board under OAR 635-006-1065(1)(g).

(E) Permit holders (or their alternative designated on the buoy tag order form) must obtain, complete, and sign a declaration of loss under penalty of perjury in the presence of an authorized Department employee. The declaration shall state the number of buoy tags lost, the location and date where lost gear or tags were last observed, and the presumed cause of the loss.

(8) Remove, damage, or otherwise tamper with crab buoy, pot, or ring tags except when lawfully applying or removing tags on the vessel's buoys and pots.

(9) Possess on a vessel, use, control, or operate any Dungeness crab gear which does not have a tag affixed to the individual pot or ring identifying the gear as that vessel's, a surface buoy bearing the Department buoy brand registered to that vessel and a Department buoy tag issued by the Department to that vessel, except:

(a) To set gear as allowed under OAR 635-006-1015; or

(b) To retrieve from the ocean, including the Columbia River, and transport to shore commercial Dungeness crab gear of another vessel which was lost, forgotten, damaged, abandoned or otherwise derelict; provided that:

(A) The retrieving vessel holds a valid boat license and the captain and crew of that vessel hold valid commercial fishing license(s); and

(B) No more than twenty-five (25) such pots and rings in aggregate may be retrieved per trip during December 1 until the second Monday in June of the following year and no more than fifty (50) such pots or rings in aggregate may be retrieved per trip during the second Monday in June through August 28; and

(C) Upon retrieval from the ocean or Columbia River, the pot(s) must be un-baited; and

(D) Crab from the retrieved pot(s) may only be retained by a crab permitted vessel during the Ocean Dungeness crab fishing season; and

(E) Immediately upon retrieval of Dungeness crab gear, the retrieving vessel operator must document in the retrieving vessel's logbook the date and time of pot retrieval, number of retrieved crab pots or rings in aggregate, location of retrieval, and retrieved Dungeness crab gear owner identification information; and

(F) Any retrieved Dungeness crab gear must be transported to shore during the same fishing trip that retrieval took place; or that:

(G) During August 29 through October 31, an unlimited number of such pots or rings in aggregate may be retrieved per trip and transported to shore during the same fishing trip; or

(c) Under a waiver granted by the Department to allow one time retrieval of permitted crab gear to shore by another crab permitted vessel provided that:

(A) Vessel is incapacitated due to major mechanical failure or destroyed due to fire, capsizing, or sinking;

(B) Circumstances beyond the control of the permit holder created undue hardship as defined by OAR 635-006-1095(7)(d);

(C) A Request must be in writing and a waiver approved and issued prior to retrieval.

(D) A copy of the waiver must be on board the vessel making the retrieval. (Contact Oregon Department of Fish and Wildlife License Services, Salem for guidelines.)

(d) Under a waiver granted by the Department to allow one time change of buoy tags associated with a Dungeness crab permit transfer under OAR 635-006-1095(7) provided that:

(A) A request must be in writing and a waiver approved and issued prior to change of buoy tags.

(B) A copy of the waiver must be on board the vessel making the change of buoy tags. (Contact Department of Fish and Wildlife License Services, Salem for guidelines.)

(e) A vessel may transit through the Columbia River and the Pacific Ocean adjacent to Oregon while possessing Dungeness crab gear not bearing Oregon buoy tags or Oregon buoy branded surface buoys, provided that the vessel is authorized to participate in the Dungeness crab fishery of an adjacent state.

(10) Attach one crab pot or ring to another crab pot or ring by a common groundline or any other means that connects Dungeness crab gear together.

(11) Take crabs for commercial purposes by crab pots from any bay or estuary except the Columbia River.

(12) Operate more than 15 crab rings from any one fishing vessel in bays or estuaries, except the Columbia River.

(13) Take or fish for Dungeness crab for commercial purposes in the Columbia River or Pacific Ocean adjacent to the state of Oregon unless a Dungeness crab gear allocation has been issued to the permit required under OAR 635-006-1015(1)(g).

(14) Deploy or fish more Dungeness crab gear than the number of pots and rings in aggregate assigned by the Dungeness crab gear allocation certificate or to use any vessel other than the vessel designated on the Dungeness crab gear allocation, except to set gear as allowed under OAR 635-006-1015.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74, Renumbered from 625-010-0160; FWC 49-1978, f. & ef. 9-27-78, Renumbered from 635-036-0130; FWC 56-1982, f. & ef. 8-27-82; FWC 81-1982, f. & ef. 11-4-82; FWC 82-1982(Temp), f. & ef. 11-9-82; FWC 13-1983, f. & ef. 3-24-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (5) per FWC 45-1984, f. & ef. 8-30-84; FWC 72-1984, f. & ef. 10-22-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986 (Temp), f. & ef. 12-1-86; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 107-1990, f. & cert. ef. 10-1-90; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 84-1994, f. 10-31-94, cert. ef. 12-1-94; FWC 68-1996(Temp), f. & cert. ef. 12-5-96; FWC 2-1997, f. 1-27-97, cert. ef. 2-1-97;



# ADMINISTRATIVE RULES

DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 123-2006(Temp), f. 11-28-06, cert. ef. 12-1-06 thru 3-7-06; DFW 135-2006(Temp), f. & cert. ef. 12-26-06 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 41-2007, f. & cert. ef. 6-8-07; DFW 82-2007(Temp), f. 8-31-07, cert. ef. 9-1-07 thru 10-31-07; DFW 113-2007, f. & cert. ef. 10-25-07; DFW 127-2007(Temp), f. & cert. ef. 12-11-07 thru 6-7-08; DFW 129-2007(Temp), f. & cert. ef. 12-14-07 thru 6-7-08; DFW 29-2008(Temp), f. & cert. ef. 3-25-08 thru 8-31-08; DFW 59-2008(Temp), f. & cert. ef. 6-11-08 thru 8-28-08; DFW 98-2008(Temp), f. 8-19-08, cert. ef. 8-29-08 thru 10-31-08; Administrative correction 11-18-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 145-2008(Temp), f. 11-24-08, cert. ef. 12-1-08 thru 5-29-09; DFW 54-2009(Temp), f. 5-19-09, cert. ef. 5-29-09 thru 8-28-09; DFW 101-2009(Temp), f. 8-27-09, cert. ef. 8-29-09 thru 10-31-09; DFW 126-2009, f. & cert. ef. 10-7-09; DFW 114-2010, f. & cert. ef. 8-10-10; DFW 21-2011(Temp), f. 3-14-11, cert. ef. 3-15-11 thru 4-15-11; Administrative correction, 4-25-11; DFW 154-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 5-28-12

## 635-006-1010

### Definitions

- (1) For the purpose of OAR 635-006-1015 through 635-006-1210:
- (2) "Bay clam dive fishery" shall mean the commercial fishery for bay clams (including: cockle clams, *Clinocardium nuttallii*; butter clams, *Saxidomus giganteus*; gaper clams, *Tresus capax*, *nuttallii*; native littleneck clams, *Protothaca staminea*; and softshell clams, *Mya arenaria*) from subtidal areas in Oregon estuaries using dive gear.
- (3) "Black rockfish/blue rockfish/nearshore fishery" shall mean the commercial fishery for black rockfish, blue rockfish and nearshore fish.
- (4) "Brine shrimp fishery" shall mean the commercial fishery for adult *Artemia* spp. from Lake Abert (Lake County).
- (5) "Completion" of a vessel for the purposes of initial eligibility for an Oregon ocean Dungeness crab permit pursuant to ORS 508.931 is defined as:
  - (a) A date identified in a contract document as the proposed or actual date of completion; or
  - (b) The date an insurance policy was in effect covering the vessel for loss or liability; or
  - (c) The date of inspection for certification by the U.S. Coast Guard; or
  - (d) Other written document acceptable to the Department that establishes the actual date the vessel was completed for the purposes of entering the Oregon ocean Dungeness crab fishery.
- (6) "Crab fishing season" is the period from December 1 of one year through August 14 of the next year.
- (7) "Crab pot" means any portable, enclosed device with one or more gates or entrances that allows crab restricted entry and exit, and has a line attached to surface floats.
- (8) "Crab ring" means any fishing device that allows crab unrestricted entry or exit while fishing, and has a line attached to surface floats.
- (9) "Dungeness crab gear" means crab pots, crab rings or a combination thereof used for taking Dungeness crab in the Pacific Ocean and Columbia River.
- (10) "Length" or "Overall Length" of a vessel means the manufacturer's specification of overall length, United States Coast Guard or Marine Board registered length documentation stating overall length or overall length as surveyed by a certified marine surveyor. In determining overall length, marine surveyors shall measure in a straight line parallel to the keel from the foremost part of the vessel to the aftermost part, excluding sheer and excluding bow sprits, boomkins, rudders aft of the transom, outboard motor brackets, or transom extensions as in a dive step or platform. For the purpose of initial ocean Dungeness crab permit issuance, length of the vessel is overall length of the vessel on September 9, 1995.
- (11) "Ocean Dungeness crab fishery" for the purposes of ORS 508.926, means all fishing for Dungeness crab in Oregon waters of the Columbia River and all other ocean water seaward of Oregon's coastline and river mouths.
- (12) "Owner" is any ownership interest in a vessel, including interests arising from partnerships, corporations, limited liability corporations, or limited liability partnerships. Owner does not include a leasehold interest.
- (13) "Replacement vessel" is a vessel purchased to replace a permitted vessel which has been lost due to fire, capsizing, sinking or other event. For the ocean Dungeness crab fishery, a replacement vessel shall be no more than 10 feet greater than the vessel which it replaces.
- (14) "Sardine fishery" shall mean the commercial fishery for Pacific sardines (*Sardinops sagax*) in all ocean waters seaward of Oregon's coastline and river mouths.
- (15) "Sea urchin fishery" shall mean the commercial fishing for *Strongylocentrotus franciscanus*, *S. purpuratus*, and *S. droebachiensis*.
- (16) "Under construction" for the purposes of initial eligibility for an Oregon ocean Dungeness crab permit pursuant to ORS 508.931, means that between December 1, 1988, and August 14, 1991, a contract was signed

and earnest money paid equaling at least 10% of the value of the contract, or invoices have been paid for 10% or more of the total construction cost, to produce a newly constructed vessel, including, but not limited to, the laying of the new vessel's keel.

(17) "Yaquina Bay Roe-herring fishery" shall mean the commercial net fishery for Pacific herring (*Clupea harengus pallasii*) which occurs annually between January 1 and April 15 in Yaquina Bay pursuant to OAR 635-004-0027.

(18) "Initial eligibility for vessels to participate" for the purposes of application for an Ocean Dungeness crab permit pursuant to ORS 508.931 means eligibility of a vessel on which to make permit application is confined to vessels which have never obtained an initial permit.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129 & 508.921 - 508.941

Hist.: FWC 76-1995, f. 9-13-95, cert. ef. 9-19-95; FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 11-2003(Temp), f. & cert. ef. 2-10-03 thru 6-30-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 154-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 5-28-12

## 635-006-1015

### Requirement for Permit

- (1) The following provide general requirements for permits:
  - (a) Gillnet salmon – see ORS 508.775;
  - (b) Troll salmon – see ORS 508.801 and 508.828;
  - (c) Shrimp – see ORS 508.880 and 508.883;
  - (d) Scallop – see ORS 508.840 and 508.843;
  - (e) Roe-herring:
    - (A) It is unlawful for an individual to operate a vessel in the Yaquina Bay roe-herring fishery without first obtaining a vessel permit issued pursuant to OAR 635-006-1035 through 635-006-1095;
    - (B) It is unlawful for a wholesaler, canner or buyer to buy or receive roe-herring taken in the Yaquina Bay roe-herring fishery from a vessel for which the permit required by section (1)(e) of this rule has not been issued.
    - (f) Sea Urchin:
      - (A) It is unlawful for an individual to take or attempt to take sea urchins for commercial purposes without first obtaining a permit issued pursuant to OAR 635-006-1035 through 635-006-1095;
      - (B) It is unlawful for a wholesaler, canner, or buyer to buy or receive sea urchins taken in the sea urchin fishery from a person for which the permit required by section (1)(f) of this rule has not been issued.
    - (g) Ocean Dungeness crab:
      - (A) Except as provided under the reciprocity provisions of ORS 508.941(3), it is unlawful for an individual to operate a vessel in the ocean Dungeness crab fishery without first obtaining a vessel permit issued pursuant to ORS 508.931 or 508.941. A Dungeness crab vessel permit is not required for vessels that are engaged solely in setting gear for a permitted vessel and which do not retrieve, retain or possess Dungeness crab.
      - (B) If the Oregon Fish and Wildlife Commission (Commission) establishes a vessel crab pot limitation or allocation system beyond the 2002-03 ocean crab season, August 14, 2001 is the control date for eligibility criteria related to past participation in the ocean fishery.
      - (C) In addition to certifying that the vessel is free of crab before fishing in the ocean Dungeness crab fishery each year, as required by OAR 635-005-0045(1), each vessel operator must declare and certify on the Oregon hold inspection certification form the maximum number of pots and rings in aggregate that will be used in that season's fishery before fishing.
      - (D) A single delivery license may not be substituted for an ocean Dungeness crab permit. Once a vessel has obtained an ocean Dungeness crab permit, Dungeness crab may be landed by the vessel using a combination of an ocean Dungeness crab permit and a single delivery permit in lieu of a commercial fishing and boat license. However, crab may not be landed more than twice in any one crab season using single delivery permits.
      - (E) Effective December 1, 2006, the amount of Dungeness crab gear allocated to a permit required under section (g)(A) above will be determined as follows:
        - (i) The allocation will be based on documented landings of Ocean Dungeness crab into Oregon, Washington (excluding landings from the Puget Sound Fishery), or California, using valid Oregon fish receiving tickets, or equivalent valid documents from the states of Washington or California, from December 1, 1995 through August 14, 2001;
        - (ii) The Dungeness crab gear allocation will be the highest number of pots and rings in aggregate the vessel qualifies for during the six qualifying seasons, December 1 of one year through September 15 of the next year (except through August 14, in 2001);

# ADMINISTRATIVE RULES

(iii) A Dungeness crab gear allocation of 200 shall be assigned to a permit with landings less than 15,020 pounds in the 1995 to 1996 season, and 4,010 pounds in the 1996 to 1997 season, and 5,170 pounds in the 1997 to 1998 season, and 7,083 pounds in the 1998 to 1999 season, and 13,160 pounds in the 1999 to 2000 season, and 8,940 pounds in the 2000 to 2001 season;

(iv) A Dungeness crab gear allocation of 300 shall be assigned to a permit with minimum landings of 15,020 pounds in the 1995 to 1996 season, or 4,010 pounds in the 1996 to 1997 season, or 5,170 pounds in the 1997 to 1998 season, or 7,083 pounds in the 1998 to 1999 season, or 13,160 pounds in the 1999 to 2000 season, or 8,940 pounds in the 2000 to 2001 season; and

(v) A Dungeness crab gear allocation of 500 shall be assigned to a permit with minimum landings of 89,020 pounds in the 1995 to 1996 season, or 35,180 pounds in the 1996 to 1997 season, or 39,350 pounds in the 1997 to 1998 season, or 49,450 pounds in the 1998 to 1999 season, or 78,400 pounds in the 1999 to 2000 season, or 37,030 pounds in the 2000 to 2001 season.

(h) Developmental Fisheries: See ORS 506.450 through 506.465 and OAR 635-006-0800 through 635-006-0950.

(i) July 1, 2001 is the control date to establish eligibility criteria for the purpose of future limited entry programs for the commercial groundfish fishery.

(j) Black rockfish/blue rockfish/nearshore fishery – see ORS 508.945.

(k) Brine Shrimp:

(A) It is unlawful to take or attempt to take brine shrimp for commercial purposes without first obtaining a brine shrimp fishery permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is unlawful for a wholesaler, canner, or buyer to buy or receive brine shrimp taken in the brine shrimp fishery from a person for which the permit required by this rule has not been issued.

(C) The Oregon Department of Fish and Wildlife (Department) may issue no more than three permits required by section (1)(k) of this rule.

(l) Bay clam dive fishery:

(A) It is unlawful:

(i) To take or attempt to take bay clams, using dive gear, for commercial purposes from subtidal areas in any Oregon estuary without first obtaining a coast-wide bay clam dive fishery permit issued pursuant to OAR 635-006-1025 through 635-006-1095;

(ii) To take or attempt to take bay clams, using dive gear, for commercial purposes from subtidal areas in Oregon estuaries south of Heceta Head without first obtaining a south-coast bay clam dive fishery permit issued pursuant to OAR 635-006-1025 through 635-006-1095;

(iii) For a wholesaler, canner, or buyer to buy or receive bay clams taken in the bay clam dive fishery from a vessel or person not issued the permit required by this rule.

(iv) To take or attempt to take bay clams where more than two divers operating from any one boat were in the water at the same time or where more than two persons without permits, excluding persons authorized by the Department for the performance of official duties, were on board any boat while harvesting, possessing, or transporting bay clams.

(B) The Department may not issue more than ten coast-wide permits required by section (1)(l)(A)(i) of this rule and five south-coast permits required by (1)(l)(A)(ii) of this rule.

(C) Permits may be issued to individuals or to vessels, designated at the beginning of the year. Designation may not change during the year.

(m) Sardine fishery:

(A) It is unlawful for an individual to operate a vessel in the Sardine fishery without first obtaining a vessel permit issued pursuant to OAR 635-006-1035 through 635-006-1095. The sardine fishery permit is not required for vessels to retain sardines as incidental catch in other fisheries.

(B) It is unlawful for a wholesaler, canner or buyer to buy or receive sardines taken in the Sardine fishery from a vessel for which the permit required by section (1)(m)(A) of this rule has not been issued.

(C) The Department may issue not more than 26 permits required by section (1)(m)(A) of this rule.

(D) The Sardine Advisory Group as defined under OAR 635-006-1065 may advise the Commission on increasing the number of permits, developing criteria for issuing the new permits, and other regulations concerning the sardine fishery.

(2) The permits required by section (1) of this rule are in addition to and not in lieu of the commercial fishing and boat license required by ORS 508.235 and 508.260.

(3) No vessel may hold more than one vessel permit for a given fishery at any one time.

(4) If permits are issued on an individual basis, no individual may hold more than one permit for a given fishery at any one time.

(5) Unless otherwise provided, permits must be purchased by December 31 of the year the permit is sought for renewal.

(6) No vessel permit may be transferred away from a vessel without the lien holder's written permission.

(7) Applications for permits shall be in such form and contain such information as the Department may prescribe. Proof of length of a vessel may be required at the time of application.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129 & 508.921–508.941

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 103-2001, f. & cert. ef. 10-23-01; DFW 95-2002, f. & cert. ef. 8-27-02; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DFW 74-2006, f. & cert. ef. 8-7-06; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 2-2007, f. & cert. ef. 1-12-07; DFW 135-2006(Temp), f. & cert. ef. 12-26-06 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 114-2007, f. & cert. ef. 10-25-07; DFW 3-2008, f. & cert. ef. 1-15-08; DFW 38-2009, f. & cert. ef. 4-22-09; DFW 154-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 5-28-12

## 635-006-1065

### Review of Denials (Restricted Participation Systems)

(1) An individual whose application for issuance or renewal of a limited entry permit is denied by the Oregon Department of Fish and Wildlife (Department) may request review of the Department's decision by doing so in writing to the Commercial Fishery Permit Board (Board). The procedure for requesting review and the applicable standard of review shall be as follows:

(a) Gillnet salmon – see ORS 508.796;

(b) Troll salmon – see ORS 508.825;

(c) Shrimp – see ORS 508.910;

(d) Scallop – see ORS 508.867;

(e) Roe-herring – see ORS 508.765. For the roe-herring fishery, the Board may waive requirements for permits if the Board finds that:

(A) The individual for personal or economic reasons chose to actively commercially fish the permit vessel in some other ocean fishery during the roe-herring season; or

(B) The Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(f) Sea Urchin – see ORS 508.760. For the sea urchin fishery, the Board may waive requirements for permits if the Board finds that failure to meet the requirements was due to illness, injury or circumstances beyond the control of the permittee;

(g) Ocean Dungeness crab – see ORS 508.941. For the Ocean Dungeness crab fishery, a permit holder may request review of the Department's initial Dungeness crab gear allocation, the Department's denial of replacement of lost buoy tags, or denial of permit renewal by doing so in writing to the Commercial Fishery Permit Board. The Board may adjust the number of crab pots allocated to a permit or approve replacement of lost buoy tags as follows:

(A) The Board may adjust the amount of Dungeness crab gear allocated to a permit:

(i) Based on additional landings documentation supplied by permit holder according to criteria under OAR 635-006-1015(1)(g)(E); or

(ii) The Dungeness crab gear allocation may be increased by one tier as described under OAR 635-006-1015(1)(g)(E) based on circumstances during the qualifying seasons described in OAR 635-006-1015(1)(g)(E) beyond the control of the permit holder which created undue hardship as defined by OAR 635-006-1095(7)(d).

(B) The Board may approve replacement of lost buoy tags due to a catastrophic loss as defined under OAR 635-005-0055(1)(6)(g)(B).

(C) The Board may waive the permit renewal date requirement if the Board finds that strict adherence to this requirement would create undue hardship to the individual seeking to renew a permit. For this purpose, undue hardship has the same meaning as in OAR 635-006-1095(7)(d).

(h) Black rockfish/blue rockfish/nearshore fishery – see ORS 508.960.

(2) The Board may delegate to the Department its authority to waive requirements for renewal of permits in all fisheries in such specific instances as the Board sets forth in a letter of delegation to the Department.

(3) For those fisheries requiring a \$75 application fee for Board review, the fee is nonrefundable. However, if the Board grants the applicant's request, the nonrefundable fee shall apply toward the permit fee.

# ADMINISTRATIVE RULES

(4) Orders issued by the Board are not subject to review by the Oregon Fish and Wildlife Commission (Commission), but may be appealed as provided in ORS 183.480 to 183.550.

(5) Bay clam dive fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a permit established pursuant to OAR 635-006-1075 through 635-006-1095 is denied may make written request to the Board for review of the denial. The review provided in this subsection is in lieu of any such review by the Department or the Commission. The request shall be in such form and shall contain such information as the Board considers appropriate.

(b) The Board shall review a denial of an application for issuance, renewal or request to transfer a permit according to the applicable provisions of ORS chapter 183. Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.500. The Board may waive requirements for renewal of permits if the Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(c) A party must petition for Board review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants the proposed order changed. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(d) The Board may delegate to the Department its authority to waive requirements for renewal of permits.

(6) Sardine fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a permit established pursuant to 635-006-1075 and 635-006-1095 is denied may make written request to the Board for review of the denial. The review provided in this subsection is in lieu of any such review by the Department or the Commission. The request shall be in such form and shall contain such information as the Board considers appropriate.

(b) The Board shall review a denial of an application for renewal or request to transfer a permit according to the applicable provisions of ORS chapter 183. Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.500. The Board may waive requirements for renewal of permits if the Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(c) A party, including the Department, must petition for Board review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants to file an exception to the proposed order. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(d) The Board may delegate to the Department its authority to waive requirements for renewal of permits.

(e) The Sardine Advisory Group:

(A) Shall consist of members appointed by the Commission as follows:

- (i) Three members shall be chosen to represent the sardine industry.
- (ii) Two members shall be chosen to represent the public.

(B) Is subject to requirements of OAR 635-006-1200 sections (1) and (2).

(7) Brine shrimp fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a permit established pursuant to 635-006-1075 through 635-006-1095 is denied may make written request to the Board for review of the denial. The review provided in this subsection is in lieu of any such review by the Department or the Commission. The request shall be in such form and shall contain such information as the Board considers appropriate.

(b) The Board shall review a denial of an application for issuance, renewal or request to transfer a permit according to the applicable provisions of ORS chapter 183. Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.500. The Board may waive requirements for renewal of permits if the Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(c) A party must petition for Board review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants the proposed order changed. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(d) The Board may delegate to the Department its authority to waive requirements for renewal of permits.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 4-2007(Temp), f. & cert. ef. 1-12-07 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 3-2008, f. & cert. ef. 1-15-08; DFW 126-2009, f. & cert. ef. 10-7-09; DFW 154-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 5-28-12

\*\*\*\*\*

**Rule Caption:** Season Openings for the Ocean Commercial and Recreational Dungeness Crab Fisheries Delayed.

**Adm. Order No.:** DFW 155-2011(Temp)

**Filed with Sec. of State:** 11-18-2011

**Certified to be Effective:** 12-1-11 thru 12-31-11

**Notice Publication Date:**

**Rules Amended:** 635-005-0045, 635-039-0090

**Rules Suspended:** 635-039-0090(T)

**Subject:** Amend rules to delay the openings of: 1) The 2011-2012 ocean commercial Dungeness crab fishery; and 2) The recreational fishery for Dungeness crab in the ocean; until further notice. Recreational fishing for Dungeness crab in bays and estuaries, including the Columbia River, remains open.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-005-0045

### Closed Season in Pacific Ocean and Columbia River

(1) It is unlawful to take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River from August 15 through December 15.

(2) It is unlawful to land or to receive, or to buy, Dungeness crab the first 30 days of the Ocean Dungeness crab fishery from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab before fishing in the Ocean Dungeness crab fishery. Hold inspections shall begin the day prior to the opening of Ocean Dungeness crab fishery.

(3) Upon a determination by the Department that catch in Oregon's Pacific Ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the Director shall adopt a temporary rule closing the commercial season until the following December 1.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74; FC 293(75-6), f. 6-23-75, ef. 7-11-75; FWC 30, f. & ef. 11-28-75; FWC 132, f. & ef. 8-4-77; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 625-010-0155, Renumbered from 635-036-0125; FWC 56-1982, f. & ef. 8-27-82; FWC 13-1983, f. & ef. 3-24-83; FWC 39-1983(Temp), f. & ef. 8-31-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (1) per FWC 45-1984, f. & ef. 8-30-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 36-1987, f. & ef. 7-1-87; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 119-1989(Temp), f. 11-29-89, cert. ef. 12-1-89; FWC 135-1991(Temp), f. 12-10-91, cert. ef. 12-11-91; FWC 136-1991(Temp), f. & cert. ef. 12-19-91; FWC 112-1992, f. 10-26-92, cert. ef. 11-1-92; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 88-1994(Temp), f. 11-30-94, cert. ef. 12-1-94; FWC 89-1994(Temp), f. & cert. ef. 12-1-94; FWC 89-1995(Temp), f. 11-28-95, cert. ef. 12-1-95; FWC 1-1996(Temp), f. 1-11-96, cert. ef. 1-13-96; DFW 51-1998(Temp), f. 6-29-98, cert. ef. 7-1-98 thru 9-15-98; DFW 54-1998(Temp), f. & cert. ef. 7-24-98 thru 9-15-98; DFW 40-1999, f. & cert. ef. 5-26-99; DFW 70-2000, f. & cert. ef. 10-23-00; DFW 77-2000(Temp), f. 11-27-00, cert. ef. 12-1-00 thru 12-14-00; DFW 39-2002, f. & cert. ef. 4-26-02; DFW 128-2002(Temp), f. & cert. ef. 11-15-02 thru 1-31-03; DFW 129-2002(Temp), f. & cert. ef. 11-20-02 thru 1-31-03; DFW 132-2002(Temp), f. & cert. ef. 11-25-02 thru 1-31-03 (Suspended by DFW 133-2002(Temp)); DFW 133-2002(Temp), f. & cert. ef. 12-6-02 thru 1-31-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; Administrative correction 10-26-04; DFW 113-2004(Temp), f. 11-23-04, cert. ef. 12-1-04 thru 3-1-05; DFW 116-2004(Temp), f. & cert. ef. 12-8-04 thru 3-1-05; DFW 126-2004(Temp), f. & cert. ef. 12-21-04 thru 3-1-05; DFW 132-2004(Temp), f. & cert. ef. 12-30-04 thru 3-1-05; Administrative correction, 3-18-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 140-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 5-31-06; Administrative correction 7-20-06; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 161-2010(Temp), f. 12-9-10, cert. ef. 12-10-10 thru 2-16-11; Administrative correction, 3-29-11; DFW 155-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 12-31-11

## 635-039-0090

### Inclusions and Modifications

(1) The 2011 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 2011 Oregon Sport Fishing Regulations.



# ADMINISTRATIVE RULES

(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.

(a) For 2011, the sport harvest cap for black rockfish is 440.8 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 treefish (*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 2011 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) Cabezon, 15.8 metric tons.

(d) Greenling, 5.2 metric tons.

(5) Effective Wednesday, July 20, 2011 at 11:59 p.m. retention of cabezon, as identified in subsection (4)(c) above, is prohibited in the ocean boat and estuary boat fisheries. Angling for and retention of shore-based cabezon is permitted.

(6) In addition to the regulations for Marine Fish in the 2011 Oregon Sport Fishing Regulations, the following apply for the sport fishery in the Marine Zone in 2011:

(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 2011 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 yelloweye rockfish and canary rockfish is prohibited.

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species except Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).

(d) Retention of all marine fish listed under the category of Species Name, Marine Fish, except 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 (6)(a), (6)(b) and (6)(c) including the following:

(A) Minimum length for lingcod, 22 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (6)(a), (6)(b) and (6)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except that ocean waters are closed for these species during April 1 through July 20, outside of the 40-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 384 Vol. 71, No. 189, dated September 29, 2006. A 20-fathom, 25-fathom, or 30-fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 Section 391 Vol. 71, No. 189, dated September 29, 2006 may be implemented as the management line as in-season modifications necessitate. Ocean waters are closed for species in subsections (6)(a), (6)(b) and (6)(c) during July 21 through September 30, outside of the 20 fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 391 Vol. 71, No. 189, dated September 29, 2006.

(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, 2010 ed.). Within the YRCA, it is unlawful to fish for, take, or retain species listed in subsections (6)(a), (6)(b) and (6)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in

subsections (6)(a), (6)(b) and (6)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (6)(a), (6)(b) and (6)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

(7) Razor clams may be taken by hand, shovel, or cylindrical gun or tube. The opening of the gun/tube must be either circular or elliptical with the circular gun/tube opening having a minimum outside diameter of 4 inches and the elliptical gun/tube opening having minimum outside diameter dimensions of 4 inches long and 3 inches wide.

(8) It is unlawful to take Dungeness crab or red rock crab from the ocean from October 16 through December 15.

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

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 10-2007, f. & cert. ef. 2-14-07; DFW 66-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 73-2008(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

.....

**Rule Caption:** Season Openings for the Ocean Commercial and Recreational Dungeness Crab Fisheries.

**Adm. Order No.:** DFW 156-2011(Temp)

**Filed with Sec. of State:** 12-9-2011

**Certified to be Effective:** 12-15-11 thru 1-31-12

**Notice Publication Date:**

**Rules Amended:** 635-005-0045, 635-039-0090

**Rules Suspended:** 635-005-0045(T), 635-039-0090(T)

**Subject:** Amend rules to open the 2011-2012 ocean commercial and recreational Dungeness crab fisheries from the Columbia River southward to just north of Gold Beach (42°26'00" N. Lat.) on December 15, 2011. Both commercial and recreational Dungeness crab fisheries will remain closed from just north of Gold Beach (42°26'00" N. Lat.) southward to the California border until January 15, 2012. Recreational fishing for Dungeness crab in bays and estuaries, including the Columbia River, remains open.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

**635-005-0045**

**Closed Season in Pacific Ocean and Columbia River**

(1) It is *unlawful* to:

(a) Take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean, in the area from just north of Gold Beach (42°26'00" N. Lat.) northward to the Columbia River, or Columbia River from August 15 through December 14, 2011;

(b) Take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean, in the area from just north of Gold Beach (42°26'00" N. Lat.) southward to the California border, from August 15, 2011 through January 14, 2012; and

# ADMINISTRATIVE RULES

(c) Take, land or possess Dungeness crab for commercial purposes south of 42°26'00" before February 14, 2012 for vessels that take, land, or possess Dungeness crab for commercial purposes north of Point Arena between December 14, 2011 and January 15, 2012.

(2) It is unlawful to land or to receive, or to buy, Dungeness crab the first 30 days of the Ocean Dungeness crab fishery from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab before fishing in the Ocean Dungeness crab fishery. Hold inspections shall begin the day prior to the opening of Ocean Dungeness crab fishery.

(3) Upon a determination by the Department that catch in Oregon's Pacific Ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the Director shall adopt a temporary rule closing the commercial season until the following December 1.

(4) Notwithstanding OAR 635-006-1095(7), the transfer of a permit from one vessel to another is suspended until February 15, 2012, except in the event a vessel is unintentionally destroyed due to fire, capsizing, sinking, or other event.

(5) Notwithstanding OAR 635-005-1055(9)(b), it is unlawful to retrieve from the ocean, including the Columbia River, and transport to shore commercial Dungeness crab gear of another vessel which was lost, forgotten, damaged, abandoned or otherwise derelict in such areas and during such times that commercial fishing for Dungeness crab is closed.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74; FC 293(75-6), f. 6-23-75, ef. 7-11-75; FWC 30, f. & ef. 11-28-75; FWC 132, f. & ef. 8-4-77; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 625-010-0155, Renumbered from 635-036-0125; FWC 56-1982, f. & ef. 8-27-82; FWC 13-1983, f. & ef. 3-24-83; FWC 39-1983(Temp), f. & ef. 8-31-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (1) per FWC 45-1984, f. & ef. 8-30-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 36-1987, f. & ef. 7-1-87; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 119-1989(Temp), f. 11-29-89, cert. ef. 12-1-89; FWC 135-1991(Temp), f. 12-10-91, cert. ef. 12-11-91; FWC 136-1991(Temp), f. & cert. ef. 12-19-91; FWC 112-1992, f. 10-26-92, cert. ef. 11-1-92; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 88-1994(Temp), f. 11-30-94, cert. ef. 12-1-94; FWC 89-1994(Temp), f. & cert. ef. 12-1-94; FWC 89-1995(Temp), f. 11-28-95, cert. ef. 12-1-95; FWC 1-1996(Temp), f. 1-11-96, cert. ef. 1-13-96; DFW 51-1998(Temp), f. 6-29-98, cert. ef. 7-1-98 thru 9-15-98; DFW 54-1998(Temp), f. & cert. ef. 7-24-98 thru 9-15-98; DFW 40-1999, f. & cert. ef. 5-26-99; DFW 70-2000, f. & cert. ef. 10-23-00; DFW 77-2000(Temp), f. 11-27-00, cert. ef. 12-1-00 thru 12-14-00; DFW 39-2002, f. & cert. ef. 4-26-02; DFW 128-2002(Temp), f. & cert. ef. 11-15-02 thru 1-31-03; DFW 129-2002(Temp), f. & cert. ef. 11-20-02 thru 1-31-03; DFW 132-2002(Temp), f. & cert. ef. 11-25-02 thru 1-31-03 (Suspended by DFW 133-2002(Temp)); DFW 133-2002(Temp), f. & cert. ef. 12-6-02 thru 1-31-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; Administrative correction 10-26-04; DFW 113-2004(Temp), f. 11-23-04, cert. ef. 12-1-04 thru 3-1-05; DFW 116-2004(Temp), f. & cert. ef. 12-8-04 thru 3-1-05; DFW 126-2004(Temp), f. & cert. ef. 12-21-04 thru 3-1-05; DFW 132-2004(Temp), f. & cert. ef. 12-30-04 thru 3-1-05; Administrative correction, 3-18-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 140-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 5-31-06; Administrative correction 7-20-06; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 161-2010(Temp), f. 12-9-10, cert. ef. 12-10-10 thru 2-16-11; Administrative correction, 3-29-11; DFW 155-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 12-31-11; DFW 156-2011(Temp), f. 12-9-11, cert. ef. 12-15-11 thru 1-31-12

## 635-039-0090

### Inclusions and Modifications

(1) The 2011 and 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 2011 and 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.

(a) For 2011, the sport harvest cap for black rockfish is 440.8 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 treefish (*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 2011 the sport landing caps are:

- Black rockfish and blue rockfish combined, 481.8 metric tons.
- Other nearshore rockfish, 13.6 metric tons.
- Cabezon, 15.8 metric tons.
- Greenling, 5.2 metric tons.

(5) Effective Wednesday, July 20, 2011 at 11:59 p.m. retention of cabezon, as identified in subsection (4)(c) above, is prohibited in the ocean boat and estuary boat fisheries. Angling for and retention of shore-based cabezon is permitted.

(6) In addition to the regulations for Marine Fish in the 2011 and 2012 Oregon Sport Fishing Regulations, the following apply for the sport fishery in the Marine Zone in 2011 and 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 2011 and 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 yelloweye rockfish and canary rockfish is prohibited.

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species except Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).

(d) Retention of all marine fish listed under the category of Species Name, Marine Fish, except 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 (6)(a), (6)(b) and (6)(c) including the following:

(A) Minimum length for lingcod, 22 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (6)(a), (6)(b) and (6)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except that ocean waters are closed for these species during April 1 through July 20, outside of the 40-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 384 Vol. 71, No. 189, dated September 29, 2006. A 20-fathom, 25-fathom, or 30-fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 Section 391 Vol. 71, No. 189, dated September 29, 2006 may be implemented as the management line as in-season modifications necessitate. Ocean waters are closed for species in subsections (6)(a), (6)(b) and (6)(c) during July 21 through September 30, outside of the 20 fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 391 Vol. 71, No. 189, dated September 29, 2006.

(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, 2010 ed.). Within the YRCA, it is unlawful to fish for, take, or retain species listed in subsections (6)(a), (6)(b) and (6)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (6)(a), (6)(b) and (6)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (6)(a), (6)(b) and (6)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

(7) Razor clams may be taken by hand, shovel, or cylindrical gun or tube. The opening of the gun/tube must be either circular or elliptical with the circular gun/tube opening having a minimum outside diameter of 4 inches and the elliptical gun/tube opening having minimum outside diameter dimensions of 4 inches long and 3 inches wide.

(8) It is *unlawful* to:

(a) Take Dungeness crab or red rock crab from the ocean, in the area from just north of Gold Beach (42°26'00" N. Lat.) northward to the Columbia River, through December 14, 2011; and

(b) Take Dungeness crab or red rock crab from the ocean, in the area from just north of Gold Beach (42°26'00" N. Lat.) southward to the California border, through January 14, 2012.

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

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

# ADMINISTRATIVE RULES

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. 7-11-06, 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

\*\*\*\*\*

**Rule Caption:** Marine Reserve Administrative Rules Effective Dates Postponed Until January 1, 2012.

**Adm. Order No.:** DFW 157-2011(Temp)

**Filed with Sec. of State:** 12-13-2011

**Certified to be Effective:** 12-25-11 thru 12-31-11

**Notice Publication Date:**

**Rules Amended:** 635-012-0020

**Rules Suspended:** 635-012-0020(T), 635-012-0030, 635-012-0040, 635-012-0050, 635-012-0060

**Subject:** This amended rule delays the effective date for the Division 012 rules for Marine Reserves and Protected Areas that will regulate hunting and fishing activities in the Otter Rock and Redfish Rocks Marine Reserves and the Redfish Rocks Marine Protected Area. The suspended rules prohibit take or attempts to take, including fishing or hunting, any fish or wildlife species in the marine reserves; and allow for removing crab pots and other fishing gear; and allow scientific take for research with valid permit. In the marine protected area, the suspended rules prohibit and allow the same activities as in the marine reserves, with additional allowances for commercial or recreational troll and take of salmon and fishing for and take of crab in authorized fisheries.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-012-0020

### Purpose

(1) The purpose of the regulations in this section are to implement Oregon House Bill 3013 (2009) by regulating activities in areas of Oregon's territorial sea designated as marine reserves or marine protected areas.

(2) These rules are effective January 1, 2012.

Stat. Auth.: ORS 506.119, 506.129

Stats. Implemented: HB 3013 (2009)

Hist.: DFW 157-2009, f. 12-30-09, cert. ef. 6-30-11; DFW 6-2010, f. 1-22-10, cert. ef. 6-30-11; DFW 78-2011(Temp), f. 6-28-11, cert. ef. 6-29-11 thru 12-25-11; DFW 157-2011(Temp), f. 12-13-11, cert. ef. 12-25-11 thru 12-31-11

## 635-012-0030

### Definitions

For the purposes of OAR 635, division 12 the following definitions apply:

(1) "Commission" means the Oregon Fish and Wildlife Commission.

(2) "Department" means the Oregon Department of Fish and Wildlife.

(3) "Fish" means all game fish as defined by ORS 496.009 and food fish as defined by 506.036.

(4) "Fishing gear" has the meaning given in OAR 635-004-0020.

(5) "Take" means to kill or obtain possession or control.

(6) "Wildlife" means all wild birds, amphibians, reptiles, and wild mammals.

Stat. Auth.: ORS 506.119, 506.129

Stats. Implemented: HB 3013 (2009)

Hist.: DFW 157-2009, f. 12-30-09, cert. ef. 6-30-11; DFW 6-2010, f. 1-22-10, cert. ef. 6-30-11; Suspended by DFW 78-2011(Temp), f. 6-28-11, cert. ef. 6-29-11 thru 12-25-11; Suspended by DFW 157-2011(Temp), f. 12-13-11, cert. ef. 12-25-11 thru 12-31-11

## 635-012-0040

### Marine Reserve and Marine Protected Area Boundaries

(1) The Otter Rock Marine Reserve encompasses the area bounded by the points described in OAR 141-142-0030.

(2) The Redfish Rocks Marine Reserve encompasses the area bounded by the points described in OAR 141-142-0035.

(3) The Redfish Rocks Marine Protected Area encompasses the area bounded by the points described in OAR 141-142-0040.

Stat. Auth.: ORS 506.119, 506.129

Stats. Implemented: HB 3013 (2009)

Hist.: DFW 157-2009, f. 12-30-09, cert. ef. 6-30-11; Suspended by DFW 78-2011(Temp), f. 6-28-11, cert. ef. 6-29-11 thru 12-25-11; Suspended by DFW 157-2011(Temp), f. 12-13-11, cert. ef. 12-25-11 thru 12-31-11

## 635-012-0050

### Marine Reserve Prohibitions and Allowances

(1) Except as specified in section (2) below, the following activities are prohibited within the Otter Rock and Redfish Rocks marine reserve areas: Take or attempt to take, including fishing or hunting, of any fish or wildlife species.

(2) Notwithstanding the prohibitions in section (1) above, person(s) may:

(a) Remove fishing gear from within the marine reserve boundary, provided that the retrieving vessel operator must notify the Oregon State Police at 1-800-452-7888 and receive permission before retrieving the gear and no fish or wildlife species from the retrieved gear shall be retained. Specific to commercial crab pots:

(A) If the pot(s) do not belong to the retrieving vessel, the vessel operator must follow the retrieval requirements set forth in OAR 635-005-0055(9)(b).

(B) If the pot(s) do belong to the retrieving vessel, the vessel operator may re-set the pot(s) outside of the reserve area.

(b) Take fish and wildlife species if authorized by a valid scientific taking permit as required by OAR divisions 635-007 and 635-043.

(c) Have catch onboard while transiting or anchoring in the marine reserve area. Except as allowed by subsection (2)(b) above, fishing gear shall not be deployed in the water at any time within the marine reserve.

(3) Nothing in this rule supersedes the Agreement between the Siletz Tribe, the United States and the State of Oregon, recorded at OAR 635-041-0500, defining specified tribal hunting, fishing, trapping and gathering rights by the Siletz Tribe and its members.

Stat. Auth.: ORS 506.119, 506.129

Stats. Implemented: HB 3013 (2009)

Hist.: DFW 157-2009, f. 12-30-09, cert. ef. 6-30-11; DFW 6-2010, f. 1-22-10, cert. ef. 6-30-11; Suspended by DFW 78-2011(Temp), f. 6-28-11, cert. ef. 6-29-11 thru 12-25-11; Suspended by DFW 157-2011(Temp), f. 12-13-11, cert. ef. 12-25-11 thru 12-31-11

## 635-012-0060

### Marine Protected Area Prohibitions and Allowances

(1) Except as specified in section (2) below, the following activities are prohibited within the Redfish Rocks marine protected areas:

(a) Take or attempt to take any fish species.

(2) Notwithstanding the prohibitions in section (1) above, person(s) may:

(a) Commercially or recreationally troll for and take salmon in fisheries otherwise authorized by Commission rule.

(b) Commercially or recreationally fish for and take crab in fisheries otherwise authorized by Commission rule.

(c) Take fish and wildlife species if authorized by a valid scientific taking permit as required by OAR divisions 635-007 and 635-043.

(d) Have catch onboard while transiting or anchoring in the marine protected area. Except as allowed by subsections (2)(a), (2)(b), and (2)(c) above, fishing gear shall not be deployed in the water at any time within the marine protected area.

(3) It is *unlawful* to fish for or take any legal species in the marine protected area while possessing onboard any species not allowed to be taken in the marine protected area.



# ADMINISTRATIVE RULES

Stat. Auth.: ORS 506.119, 506.129  
Stats. Implemented: HB 3013 (2009)  
Hist.: DFW 157-2009, f. 12-30-09, cert. ef. 6-30-11; DFW 6-2010, f. 1-22-10, cert. ef. 6-30-11; Suspended by DFW 78-2011(Temp), f. 6-28-11, cert. ef. 6-29-11 thru 12-25-11; Suspended by DFW 157-2011(Temp), f. 12-13-11, cert. ef. 12-25-11 thru 12-31-11

\*\*\*\*\*

**Rule Caption:** Corrections to 2012 Recreational Fisheries Rules for the Willamette Zone.

**Adm. Order No.:** DFW 158-2011(Temp)

**Filed with Sec. of State:** 12-14-2011

**Certified to be Effective:** 1-1-12 thru 4-30-12

**Notice Publication Date:**

**Rules Amended:** 635-017-0090

**Subject:** This amended rule corrects errors found in the 2012 *Oregon Sport Fishing Regulations* for the Willamette Zone. The regulation for retention of steelhead in the Sandy River mainstem and tributaries upstream from ODFW markers at the mouth of the Salmon River, including the Salmon River, is amended from “open the entire year” to “open July 1 to August 31.” The regulation for Henry Hagg Lake (Washington Co.) is amended to open the fishery on March 3 instead of March 4.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 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.

(f) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

(3) Sandy River (Multnomah/Clackamas Co.) Mainstem and tributaries upstream from ODFW markers at the mouth of the Salmon River, including the Salmon River:

(a) Open for adipose fin-clipped steelhead and non-adipose fin-clipped steelhead harvest July 1-August 31.

(b) Angling restricted to artificial flies and lures with a single point hook no larger than 1/2 inch gap (size 1) and multiple point hook no larger than 3/8 inch gap (size 4).

(c) No limit on size or number of brook trout taken. Catch limits on other trout species do not apply to brook trout.

(4) Henry Hagg Lake (Washington Co.):

(a) Closed January 1-March 2 and November 19-December 31.

(b) Open March 3-November 18

(c) One bass per day.

[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

\*\*\*\*\*

**Rule Caption:** Establishes 2012 Seasons and Regulations for Game Mammals.

**Adm. Order No.:** DFW 159-2011

**Filed with Sec. of State:** 12-14-2011

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

**Notice Publication Date:** 9-1-2011

**Rules Amended:** 635-008-0123, 635-008-0135, 635-008-0155, 635-065-0001, 635-065-0015, 635-065-0090, 635-065-0401, 635-065-0625, 635-065-0635, 635-065-0733, 635-065-0740, 635-065-0760, 635-066-0000, 635-066-0010, 635-067-0000, 635-067-0004, 635-067-0030, 635-067-0040, 635-072-0000

**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

## 635-008-0123

### Lower Deschutes Wildlife Area

The Lower Deschutes Wildlife Area is open to wildlife-oriented public use compatible with the goals and objectives contained in the 2009 Lower Deschutes Wildlife Area Management Plan unless otherwise excluded or restricted by the Deschutes River Scenic Waterway Rules and the following additional rules:

(1) The Lower Deschutes Wildlife Area is open to the hunting of big game, game birds and waterfowl during authorized seasons and by permit; except that discharge of firearms is prohibited within the scenic waterway boundary from the third Saturday in May through August 31.

(2) Unauthorized motor vehicle use is prohibited.

# ADMINISTRATIVE RULES

(3) Horses and horseback riding are prohibited except by permit.

(4) Open fires are prohibited except as specified under the Scenic Waterway rules.

(5) Running or training of dogs is prohibited except during authorized bird hunting seasons.

(6) Camping is prohibited on river islands, areas posted "camping prohibited" within the Deschutes River Scenic Waterway and on state lands outside the Deschutes River Scenic Waterway in the Lower Deschutes Wildlife Area (Deschutes Scenic Waterway is an area extending 1/4-mile away from each bank of the river).

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162

Hist.: FWC 71-1984, f. & ef. 10-12-84; FWC 53-1994, f. & cert. ef. 8-25-94; DFW 40-2009, f. & cert. ef. 4-27-09; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

## 635-008-0135

### Prineville Reservoir Wildlife Area

The Prineville Reservoir Wildlife Area is open to wildlife-oriented public use unless otherwise excluded or restricted by the following rules:

(1) The area is closed to motorized vehicle access from November 15 or December 1 (as posted at each gate) through April 15 annually for resource protection.

(2) Motorized vehicle travel is restricted to designated open roads.

(3) Discharging firearms is prohibited except as authorized during game bird and game mammal seasons, or by permit.

(4) Camping is prohibited except in designated areas.

(5) Campfires or open burning is prohibited except in designated campsites.

(6) Open fires are prohibited during designated fire closures.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162

Hist.: GC 64, f. 4-3-57; GC 232, f. 8-13-70, ef. 9-11-70; GC 252, f. 5-11-72, ef. 6-1-72, Renumbered from 630-010-0500, Renumbered from 635-015-0005; FWC 63-1980, f. & ef. 11-4-80; FWC 2-1981(Temp), f. & ef. 1-20-81; FWC 30-1982, f. & ef. 5-18-82, Renumbered from 635-008-0005(14); FWC 53-1994, f. & cert. ef. 8-25-94; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

## 635-008-0155

### Summer Lake Wildlife Area

The Summer Lake Wildlife Area is open to wildlife-oriented public use compatible with the goals and objectives contained in the 2007 Summer Lake Wildlife Area Management Plan unless otherwise excluded or restricted by the following rules:

(1) Posted Refuges are closed to all entry during authorized game bird and game mammal hunting seasons, except to retrieve lawfully taken wildlife, or by permit.

(2) Entering any portion of the Wildlife Area south of Thousand Springs Lane (Lake County Road 4-17), except the Foster Place unit and open roads and campgrounds, between October 1, 2011 through 4 a.m. on October 8, 2011 is prohibited.

(3) Discharging firearms is prohibited except as authorized during game bird and game mammal hunting seasons, or by permit.

(4) Motor vehicles and other motor driven modes of transportation are prohibited except on parking areas and open roads, or by permit.

(5) Camping or leaving vehicles unattended is prohibited except on areas designated for that use, and may not exceed 14 days per stay, except by permit.

(6) Running or training of dogs is prohibited except by permit.

(7) No person shall possess or use any shot other than federally-approved nontoxic shot at any time, except for big game hunters using buckshot.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162 & 496.992

Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162 & 496.992

Hist.: GC 64, f. 4-3-57; GC 232, f. 8-13-70, ef. 9-11-70; GC 252, f. 5-11-72, ef. 6-1-72, Renumbered from 630-010-0500, Renumbered from 635-015-0005; FWC 63-1980, f. & ef. 11-4-80; FWC 2-1981(Temp), f. & ef. 1-20-81; FWC 30-1982, f. & ef. 5-18-82, Renumbered from 635-008-0005(17); FWC 53-1994, f. & cert. ef. 8-25-94; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 93-2009, f. & cert. ef. 8-12-09; DFW 117 2010, f. & cert. ef. 8-13-10; DFW 108-2011, f. & cert. ef. 8-5-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

## 635-065-0001

### Purpose and General Information

(1) The purpose of these rules is to establish license and tag requirements, limits, areas, methods and other restrictions for hunting game mammals pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 065 incorporates, by reference, the requirements for hunting game mammals set out in the document entitled "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 game mammals. 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.

[Publications referenced are available from the agency.]

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

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

Hist.: FWC 38-1988, f. & cert. ef. 6-13-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 88-2003(Temp), f. & cert. ef. 9-3-03 thru 12-31-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

## 635-065-0015

### General Tag Requirements and Limits

(1) Big Game Tags: Any person hunting game mammals for which a tag is required must have on their person a valid tag for the dates, area and species being hunted.

(2) Any person 12 years of age or older may purchase game mammal tags if they possess an adult hunting license.

(3) A person may obtain and possess during an annual hunting season only:

(a) One valid general season black bear tag;

(b) One valid additional general black bear tag valid in management units 20-30;

(c) One valid controlled black bear tag in addition to general season bear tags issued under subsection (a) and (b) above;

(d) One valid 700 series "leftover" controlled bear tag;

(e) One valid cougar (mountain lion) tag;

(f) One valid eastern additional general cougar (mountain lion) tag;

(g) One valid pronghorn antelope tag.

(4) Except as provided in OAR chapter 635, division 090, and except as provided in OAR 635-075-0010, a person may obtain and possess only one of the following tags during an annual hunting season:

(a) One valid deer bow tag;

(b) One valid western Oregon deer tag;

(c) One valid 100 series controlled buck hunt tag;

(d) One valid 600 series controlled antlerless deer tag in addition to one of (4)(a)-(4)(c) and (4)(e);

(e) One valid 100 series "left over" controlled deer tag;

(f) One valid 600 series "left over" controlled deer tag;

(5) Except as provided in OAR chapter 635, division 090, a person may obtain and possess only one of the following tags during an annual hunting season:

(a) One valid Cascade elk tag;

(b) One valid Coast First Season elk tag;

(c) One valid Coast Second Season elk tag;

(d) One valid Rocky Mountain elk – first season tag,

(e) One valid Rocky Mountain elk – second season tag;

(f) One valid elk bow tag;

(g) One valid controlled elk hunt tag;

(6) In addition to the tags described in OAR 635-065-0015(5), a person during an annual hunting season may obtain or possess only one valid 200 series "leftover" controlled elk tag.

(7) In addition to the tags described in OAR 635-065-0015(3), (4), and (5), a person during an annual hunting season may obtain or possess only one valid "Mandatory Hunter Reporting Incentive Tag" per annual hunting season. If the Department awards a hunter such a tag through the controlled hunt draw authorized by OAR 635-060-0030(5), the following requirements will apply:

(a) On or before July 15, 2012 the hunter must inform the Department which species the tag is to be issued for (pronghorn antelope, deer, or elk) and purchase the tag. Tags not purchased by July 15 will be offered to an alternate hunter with a tag sale deadline of July 31, 2012.

(b) Hunting hours, hunt dates, bag limit and hunt area for Mandatory Hunter Reporting Incentive Tags will be the same as those listed in OAR 635-090-0150(3) for deer or (4) for elk, or 635-067-0028(2) for pronghorn.

(c) Bag limit: one pronghorn antelope or one deer or one elk.

(d) Oregon Department of Fish and Wildlife employees are not eligible for a Mandatory Hunter Reporting Incentive Tag.

(8) Except as provided in OAR 635-067-0032 thru 635-067-0034, a person may obtain and possess only one bighorn sheep ram tag in a lifetime.

# ADMINISTRATIVE RULES

(9) A person may obtain and possess only one Rocky Mountain goat tag in a lifetime.

(10) It is *unlawful* for any person to issue or to possess any game mammal tag which has been backdated.

(11) Any game mammal tag having an issue date subsequent to the last day authorized for issue of such tag as listed in "Oregon Big Game Regulations" for the current season is a void tag. Exception:

(a) Members of the armed forces returning to the state after the deadline shall be permitted to purchase general season tags for themselves at the Salem headquarters and regional offices of the Department.

(b) Notwithstanding the deadlines for tag purchases provided by rule and in the hunting regulation synopses, any person who qualifies to purchase a tag but fails to make the purchase by the deadline, may purchase the tag late if the person:

(A) Submits a written affidavit certifying that the person has not yet hunted during the season for which the tag is sought to the Department's Licensing Services Office;

(B) The request must be received by the Department before the end of the season for the particular tag; and

(C) Pays the Department the fee for a duplicate tag, in addition to the usual tag fee.

(D) A tag purchased for a season that has not begun may be canceled and replaced with a tag for an ongoing season using the process outlines in 635-065-0015(b)(A & B) provided the original tag is surrendered with the affidavit and the fee for a duplicate tag is paid to the Department.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 63-1989, f. & cert. ef. 8-15-89, Renumbered from 635-65-780; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 18-1994, f. & cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 7-1996, f. & cert. ef. 2-12-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 6-17-97, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 54-2000(Temp), f. & cert. ef. 8-28-00 thru 12-31-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 52-2001(Temp), f. & cert. ef. 6-27-01 thru 12-24-01; DFW 34-2002, f. & cert. ef. 4-18-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 106-2009(Temp), f. & cert. ef. 9-2-09 thru 3-1-10; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 26-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10; DFW 58-2010(Temp), f. & cert. ef. 5-12-10 thru 11-8-10; DFW 70-2010(Temp), f. & cert. ef. 5-18-10 thru 11-10-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

## 635-065-0090

### Disabled Hunter Seasons and Bag Limits

(1) ORS 496.018 provides that in order to be considered a person with a disability under the wildlife laws, a person shall provide to the Fish and Wildlife Commission either written certification from a licensed physician, certified nurse practitioner, or licensed physician assistant of certain specified disabilities or written proof that the U.S. Department of Veterans Affairs or the Armed Forces shows the person to be at least 65 percent disabled. To implement that statute, this rule provides for the issuance of an "Oregon Disabilities Hunting and Fishing Permit" by the Department.

(2) To obtain an "Oregon Disabilities Hunting and Fishing Permit," a person shall submit to the Department a completed form specified by the Department. If the completed form accurately provides all required information, the Department shall issue an "Oregon Disabilities Hunting and Fishing Permit". Permits are valid for two calendar years. To renew a permit, the holder must submit a new, updated application form.

(3) The Department may revoke, suspend or decline to issue or renew an "Oregon Disabilities Hunting and Fishing Permit" for failure to submit accurate information. The holder or applicant may request a contested case hearing to appeal such an action.

(4) A person who possesses an Oregon Disabilities Hunting and Fishing Permit issued by the Department is qualified for expanded bag limits as follows:

#### Season/Tag – Bag Limit

##### General or controlled buck deer – One deer

In the following units: 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 on 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, Indigo, Maupin, McKenzie, Melrose, Santiam, Willamette.

##### General or controlled bull elk – Legal bull or antlerless elk

In the following units: Alsea, Applegate, 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.), Dixon, Evans Creek, East Fort Rock (that portion east of Hwy 97), Fossil, Grizzly, Hood, Imnaha, Indigo, Juniper, Lookout Mountain, Malheur River, Maupin, McKenzie, Melrose, Murderers Creek, Northside, Ochoco, Owyhee, Paulina, Pine Creek, Rogue, Saddle Mountain, Santiam (within the exterior boundary of Mt. Hood National Forest, antlerless elk cannot be harvested), Scappoose, Silvies, Siuslaw, Sixes, Sled Springs, Steens Mountain, Stott Mountain, South Sumpter (that part of Unit 51 south of Burnt Rvr Canyon Rd from Durkee to junction State Hwy 245 and Hwy 245 from junction Burnt Rvr Canyon Rd to Unity), Trask, Wagonfire, White River, Whitehorse, Willamette, Wilson.

##### Controlled pronghorn antelope

##### Buck only hunts – One pronghorn

In the following units: Beatys Butte, Biggs, Columbia Basin, Fort Rock, Grizzly, Juniper, Keating, Lookout Mountain, Malheur River, Maupin, Maury, Murderers Creek, Northside, Ochoco, Paulina, Silver Lake, Silvies, Steens Mountain, Sumpter, Wagonfire, Warner. For hunts with bag limits other than one buck or one bull, the bag limit remains as shown in the Oregon Big Game Regulations.

(5) The Oregon Disabilities Hunting and Fishing Permit is valid only with a general season or controlled bull elk, buck deer, or pronghorn antelope tag for the area and time period being hunted. The permit must be carried on the person while hunting.

(6) An able-bodied companion may accompany a person with an Oregon Disabilities Hunting and Fishing Permit and kill any animal wounded by the permit holder. The wounded animal must be killed using a legal weapon for the season and species designated on the tag. The companion must immediately attach the permit holder's tag to the carcass of the animal. The companion is not required to possess a hunting license or tag.

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

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

Hist.: FWC 29-1987, f. & ef. 6-19-87; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 142-2005, f. & cert. ef. 12-16-05; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, c cert. ef. 1-1-08; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

## 635-065-0401

### Deadline for Purchase of General Season Tags

(1) No western Oregon deer rifle tag shall be issued after 11:59 pm, Pacific Time, September 28, 2012.

(2) No deer bow tag shall be issued after 11:59 pm, Pacific Time, August 24, 2012.

(3) No General Season bear tag shall be issued after 11:59 pm, Pacific Time, September 28, 2012.

(4) SW Additional Bear Tags may be purchased anytime during the bear hunting season, after a General Season Bear tag has been purchased. An unused bear tag must be in the hunter's position at the time they are hunting.

(5) No General Season cougar tag shall be issued after 11:59 pm, Pacific Time, September 28, 2012.

(6) Additional Cougar Tags may be purchased anytime during the cougar hunting season, after a General Season Cougar tag has been purchased. An unused cougar tag must be in the hunter's position at the time they are hunting.

(7) No Rocky Mountain Elk Rifle First Season Tag shall be issued after 11:59 pm, Pacific Time, October 23, 2012.

(8) No Rocky Mountain Elk Rifle Second Season Tag shall be issued after 11:59 pm, Pacific Time, November 2, 2012.

(9) No Coast First Season Elk Tag shall be issued after 11:59 pm, Pacific Time, November 9, 2012.

(10) No Coast Second Season Elk Tag shall be issued after 11:59 pm, Pacific Time, November 16, 2012.

(11) No Cascade Elk Rifle Tag shall be issued after 11:59 pm, Pacific Time, October 12, 2012.

(12) No elk bow tag shall be issued after 11:59 pm, Pacific Time, August 24, 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 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 41-1987, f. & ef. 7-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 38-1989, f. & cert. ef. 6-13-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; Renumbered from 635-065-0010; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 108-2002(Temp), f. & cert. ef. 9-26-02 thru 12-31-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05;



# ADMINISTRATIVE RULES

DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 70-2007(Temp), f. & cert. ef. 8-13-07 thru 2-9-08; DFW 103-2007(Temp), f. & cert. ef. 9-27-07 thru 3-24-08; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

## 635-065-0625

### Regulations on State Wildlife Areas, Refuges and Special Areas

State wildlife areas, refuges and special areas shall be open to hunting during authorized seasons, subject to the following special regulations and exceptions:

(1) Bear Valley National Wildlife Refuge (Klamath County): Closed to all public entry except walk-in deer hunting prior to November 1.

(2) Bridge Creek Wildlife Area (Umatilla County): Open to public access and hunting. Motorized vehicle travel restricted to open roads. Entry is by permit only December 1 through April 14.

(3) Cascade Head – Lincoln City Area: The Cascade Head – Lincoln City Area is closed to hunting with centerfire rifles, muzzleloaders, or handguns. Hunting is restricted to archery and shotguns only during authorized seasons, except for Department approved emergency hunts. Hunters using shotguns for elk shall use slugs (single projectile) only. The Cascade Head – Lincoln City Area boundaries shall be defined as follows: Beginning at the Pacific Ocean and Siletz River mouth, east along the north shoreline of the Siletz River to Drift Cr. Rd. (mile post 1 on Hwy 229); north on Drift Cr. Rd. to Anderson Cr. Rd.; north on Anderson Cr. Rd. to Schooner Cr. Rd.; west on Schooner Cr. Rd. to Forest Rd. 2200; north and east on FR 2200 to FR 1726; west on FR 1726 to FR 2100; northeast on FR 2100 to the power line crossing; north along the power line to State Hwy. 18; west on Hwy 18 to Old Scenic Hwy 101; north on Old Scenic Hwy 101 to Three Rocks Rd.; west on Three Rocks Rd. to U.S. Hwy 101; north on Hwy 101 to FR 1861; west on FR 1861 to Harts Cove trailhead; west on Harts Cove trail to the Pacific Ocean; south along the coastline to the Siletz River, point of beginning.

(4) Cold Springs Refuge (Umatilla County): The Cold Springs Refuge shall be closed to deer and elk hunting.

(5) Dean Creek Elk Viewing Area (Douglas County): All Bureau of Land Management lands within or contiguous to BLM lands within T22S R11W (including Spruce Reach Island located adjacent to Hwy. 38 and between the outlets of Koapke and Hinsdale Sloughs) are closed to hunting. Also, other lands located within the following boundary are closed to hunting during all elk and deer seasons that pertain to this area: beginning at the intersection of Schofield Rd. and Hwy. 38, south on Schofield Rd. to its intersection with Hakki Ridge Rd., east on Hakki Ridge Rd. to the crest of Hakki Ridge, east along the crest of Hakki Ridge to its intersection with the BLM boundary located in T22S, R11W Section 4, easterly along the BLM boundary to Hwy. 38, west on Hwy 38 to point of beginning.

(6) Denman Wildlife Area (Jackson County): The Denman Wildlife Area shall be open to hunting only during game mammal and game bird seasons. Use of rifles and handguns is prohibited at all times.

(7) Dunes National Recreational Area: Use of rifles and handguns is prohibited for all hunting in that portion of the Siuslaw Unit west of Highway 101 and north of Tahkenitch Creek.

(8) North Bank Habitat Management Area (NBHMA; previously known as the Dunning Ranch Area in Douglas County): 6,500 acres located approximately eight miles northeast of Roseburg. Area: All BLM lands located in T25S, R5W, Sections 35,36; T26S, R5W, Sections 1,2,11,12,13,14; T25S, R4W, Sections 31,32,33; T26S, R4W, Sections 4,5,6,7,8,18. This area is closed to all big game hunting except for and during controlled hunts specific to the management area NBHMA by hunters possessing a controlled hunt tag for the area. Elk hunting will be allowed by hunters who possess a valid NBHMA controlled hunt tag in addition to a valid elk tag. The use of bait for hunting game mammals is prohibited on NBHMA. All BLM lands located in T25S, R5W, Sections 35, 36; T26S, R5W, Sections 1, 2, 11, 12, 13, 14; T25S, R4W, Sections 31,32, 33; T26S, R4W, Sections 4, 5, 6, 7, 8, 18 (6,500 acres located approximately 8 miles northeast of Roseburg).

(9) E.E. Wilson Wildlife Area (Benton County): This area is open to deer hunting during authorized seasons, except closed to bowhunting for deer when juvenile pheasant hunts are in progress. Rabbit hunting is permitted from November 1 through February each year. Hunting is by permit only. Permits are available at area headquarters and shall be filled out and returned each day hunted. Use of rifles, handguns, and crossbows shall be prohibited at all times.

(10) Elkhorn Wildlife Area (Baker/Union counties): Closed to all entry December 1 through April 10 annually. The Roth Tract is closed to all hunting. The Roth Tract is closed to public entry except by entry permit; an entry permit is required at all times of the year.

(11) Enterprise Wildlife Area (Wallowa County): Open to hunting seven days a week. No entry permit is required. Posted portions of the area lying south of the Union Pacific Railroad line and the entire Marr Tract are closed to all hunting.

(12) Fern Ridge Wildlife Area (Lane County): Open to black-tailed deer hunting during authorized seasons; see current Oregon Game Bird Regulations for open areas. A free daily hunting permit is required for East Coyote, West Coyote, Fisher Butte, Royal Amazon and Kirk Park units. Permits are available at check stations located at area access points. Hunters are limited to shotguns and archery equipment only. The discharging of rifles and handguns within the wildlife area is prohibited.

(13) William Finley National Wildlife Refuge (Benton County):

(a) Portions of the refuge shall be open to deer hunting August 25 through September 23, 2012 under the regulations for bowhunting seasons.

(b) Portions of the refuge are open to deer hunting by hunters with a 615 controlled hunt tag using only archery equipment during September 1–September 23, 2012 and using shotguns or archery from September 24–October 31, 2012.

(c) Portions of the refuge shall be open to deer hunting September 29 through October 31, 2012 under regulations for the general western Oregon deer buck season. Use of rifles or muzzleloaders is prohibited.

(d) All hunters shall obtain a refuge permit and check in and out of the refuge daily. Information on open areas and special regulations are available at the refuge.

(14) Gods Valley Wildlife Area (Clatsop County): Vehicles shall be restricted to travel only on county roads.

(15) Government Island State Recreation Area (Multnomah County): Use of rifles, handguns, and shotguns with slugs or buckshot, and bows is prohibited at all times.

(16) Irrigon, Coyote Springs, Power City, and Boardman wildlife management areas (Morrow and Umatilla counties): Use of rifles and handguns is prohibited at all times.

(17) Hart Mountain National Antelope Refuge (Lake County): Portions of the refuge shall be open for hunting as prescribed under chukar season, controlled pronghorn antelope and bighorn sheep hunts, deer bowhunting season, and muzzleloader deer season. The refuge is open for pronghorn antelope Mandatory Reporting Incentive tag holders, and pronghorn antelope and bighorn sheep auction and raffle tag holders but is closed for Access and Habitat deer and elk auction and raffle and Mandatory Reporting Incentive tag holders.

(18) Heppner Regulated Hunt Area: bowhunting; open fires and camping prohibited in posted areas. Approximately 63 square miles in Townships 2, 3, 4, and 5 South, Ranges 25, 26, 27 and 28 East;

(19) Jewell Meadows Wildlife Area (Clatsop County): The Beneke Tract and the Humbug Tract shall be open to hunting only during authorized game mammal and game bird seasons. The Beneke Tract is closed to all public entry during any open Saddle Mountain elk season, except that a hunter may enter that tract for black-tailed deer hunting only during the general western Oregon firearms season if the hunter holds a valid unused tag. It is unlawful to shoot rifles and bows from or across open fields during any open Wilson Unit elk seasons. The Fishhawk Tract is closed to public access. Posted lands of Cavenham Forest Industries, Inc., in T5N, R7W, Sections 2, 3 and 4, 9, 10 and 11 and T6N, R7W, Sections 33 and 34, are closed to all hunting. All areas posted as Refuge are closed to public access. Entry for other purposes is only by permit obtained at the Jewell Wildlife Area Headquarters.

(20) John Day Fossil Beds National Monument: Those parts of the National Monument in the Grizzly, Biggs, Fossil, and Northside Units are closed to all hunting and trapping.

(21) John Day River Refuge: Includes all land within 1/4 mile of the John Day River mean high water line from the Columbia River upstream to Thirty Mile Creek. Within this area, from the Columbia Rvr upstream to Rock Cr, the area shall be open to hunting of upland game birds during authorized seasons only between September 1 and October 31 annually but closed to all waterfowl hunting. The remaining area from Rock Cr upstream to Thirty Mile Cr is open to the hunting of all game birds during authorized seasons. Hunting of big game is allowed during authorized seasons.

(22) Klamath Wildlife Area (Klamath County): This area is closed to all deer hunting.

(23) Klamath Marsh National Wildlife Refuge: This area is closed to all deer and elk hunting.

(24) Ladd Marsh Wildlife Area (Union County): All land north and east of Foothill Road is closed to all deer and elk hunting except during controlled youth deer hunts and closed to all rifle and handgun shooting. All

# ADMINISTRATIVE RULES

lands west of Foothill Road shall be closed to all entry February 1–March 31, except by permit.

(25) Long Ranch (Linn County): Forty-eight acres in T13S, R4E, and S32 are closed to all hunting.

(26) Lost Valley Ranch RHA: Open to public access and hunting from August 1 to March 31. Camping, horseback riding, and open fires are prohibited. Closed to all motor vehicle use unless posted otherwise. (Approximately 9 square miles in T5 and 6S, and R22 and 23E).

(27) Lower Deschutes Wildlife Area: Open to hunting big game, game birds and waterfowl during authorized seasons and by permit; except that discharge of firearms is prohibited within the scenic waterway boundary from the third Saturday in May through August 31. Discharge of firearms prohibited the remainder of the year. Access by foot, boat or bicycle only.

(28) Malheur National Wildlife Refuge (Harney County): Portions of the refuge in Blitzen Valley lying west of State Highway 205 is open during authorized rifle and bow deer and pronghorn antelope seasons.

(29) McDonald Forest-Dunn Forest Area (Benton County): The area is closed to all hunting except during controlled hunts as authorized by the commission.

(30) McKay Creek Refuge (Umatilla County): This refuge is closed to deer and elk hunting.

(31) Metolius Wildlife Refuge (Jefferson County): All hunting, injuring, taking, killing, or destroying any wild bird or mammal on public land is prohibited on public lands within T12 and T13S, R9E, bounded by USFS road 1420 and 1419 on the west; road 1400 on the south and east; and road 1420-400, Metolius River, and posted boundary from the Metolius River to road 1400 on the north (approximately five square miles). 36 CFR 261.58(v).

(32) Mill Creek Watershed (Umatilla County): This watershed is closed to all access and hunting except by holders of a Mill Creek Watershed controlled elk tag and a Forest Service entry permit.

(33) Newberry Crater Wildlife Refuge (Deschutes County): All hunting, injuring, taking, killing, or destroying any wild bird or mammal is prohibited on public lands within the rim of Newberry Crater in: T21S, R12E; T22S, R12E; T21S, R13E; T22S, R13E (approximately 15 square miles).

(34) Prineville Reservoir Wildlife Area: Open to hunting (big game, game birds, waterfowl) and trapping (furbearers) during authorized seasons. Discharge of firearms is prohibited the remainder of the year. Motorized vehicle travel restricted to designated open roads. All roads closed seasonally from November 15 or December 1 (as posted at each gate) through April 15 annually.

(35) Rimrock Springs Wildlife Area (Grizzly Unit): This area is closed to all hunting.

(36) Rogue River Area:

(a) All land within one mile of the Rogue River between Grave Creek and Lobster Creek is closed to bear hunting.

(b) All land within 1/4 mile of the Rogue River in the wild river section from Grave Creek downstream to Watson Creek is closed to all hunting except during authorized seasons.

(37) Saddle Mountain Unit (White-tailed Deer Area): That portion of Saddle Mountain Wildlife Unit north of Burlington Northern railroad tracks to Astoria is closed to all deer hunting.

(38) Sauvie Island Wildlife Area (Multnomah-Columbia counties): This area shall be open to bowhunting for black-tailed deer August 25 through September 23, 2012, except Oak Island (Multnomah-Columbia Cos) is closed to deer hunting and Sturgeon LK Refuge is closed to all hunting. Daily permits are required. Hunters shall check in and out daily. This area shall be closed to deer hunting after September 23, 2012. Closed to hunting for furbearers, predators, unprotected and protected wildlife (except black-tail deer, rabbit, and game birds). Use of rifles, handguns and crossbows shall be prohibited at all times. Parking permits are required.

(39) Phillip W. Schneider Wildlife Area (Grant County): Open to public access and hunting April 15 through January 31. Motorized vehicle travel restricted to open roads. Some roads closed seasonally from December 1 through April 14. Entry by permit only February 1 through April 14 including BLM land within the exterior boundaries of the Wildlife Area.

(40) Snake River Islands (Malheur County): Closed to hunting with centerfire rifles and centerfire handguns.

(41) South Slough National Estuarine Reserve: Specific areas are closed to hunting due to public health and safety. Contact reserve headquarters office for specific closures.

(42) Starkey Experimental Forest Enclosure (Union County): That portion of The Starkey Experimental Forest within the eight foot high elk-proof fence enclosure is closed to all hunting during deer and elk season except for persons possessing a controlled hunt tag for the area. A posted

1/4 mile buffer zone on the National Forest lands surrounding the enclosure is closed to all hunting with a centerfire rifle or bow. The enclosure is open to deer and elk hunting only by permit during controlled hunts. The main study area is open to hunting of other species during authorized seasons. The 12-foot right-of-way along each side of all eight foot-high perimeter and internal game fences is closed to all motorized travel. Public entry is allowed only through the main gate. The Experimental Forest is closed to all public entry during the winter closure, which runs from the day after the controlled antlerless elk hunt until May 1 annually. Access and Habitat auction or raffle tag holders are not eligible to hunt in the Starkey Experimental Forest enclosure.

(43) Summer Lake Wildlife Area (Lake County): Open to public access and hunting during authorized mule deer and game bird hunting seasons. Closed to deer hunting during any pheasant, quail or waterfowl hunting seasons east of state Hwy 31 and posted refuge areas are closed to hunting. Motorized vehicle travel restricted to open roads. Some roads may be closed seasonally from March 15–August 15 and seven days prior to and during waterfowl hunting seasons. Hunters must obtain a daily hunting permit and check out at the end of the day. Permits and Area maps are available at Headquarters (1.3 mi. south of the town of Summer Lake). It is unlawful to discharge firearms except during deer and game bird hunting seasons or by permit. Centerfire rifles and handguns are prohibited for deer hunting.

(44) Umatilla Refuge (Morrow County): This refuge is closed to deer and elk hunting except during controlled hunts specific to the refuge and emergency hunts as provided in OAR chapter 635, division 078.

(45) Wallowa Lake (Wallowa County): All land on or within 1/4 mile of the Wallowa River from Wallowa Lake upstream to the falls and within 1/4 mile along the west side of Wallowa Lake from the Wallowa Lake State Park to the Wallowa River outlet is closed to all big game hunting.

(46) Wenaha Wildlife Area (Union County): Open to public access and hunting. Motorized vehicle travel restricted to open roads.

(47) Willamette River Greenway Corridor: Hunting is permitted with shotguns or bows and arrows only during authorized season on Willamette River Greenway parcels, except in those parcels where hunting is prohibited.

(48) White River Wildlife Area: Open to hunting during authorized seasons.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 41-1987, f. & ef. 7-6-87; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 94-1988(Temp), f. & cert. ef. 9-19-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

## 635-065-0635

### Winter Range Closure Areas

The following winter closures shall be effective during the specified periods each year:

(1) Tumalo Winter Range: December 1 through March 31, — That part of the Upper Deschutes Unit as follows: 125 square miles in Townships 15, 16, 17, 18, and 19 South, Ranges 10 and 11 East.

(2) Bear Valley: Closed to motor vehicle use year round — That part of the Keno Unit as follows: six square miles in Township 40 South, Ranges 7 and 8 East.

(3) Lost River: December 1 through April 15 — That part of the Klamath Falls Unit as follows: 6 square miles in Township 39 South, Ranges 11, 11-1/2, and 12 East.

(4) Lost River: December 1 through April 15 — That part of the Interstate Unit as follows: 6 square miles in Township 41 South, Range 14 East.

(5) Cabin Lake-Silver Lake: December 1 through March 31 — That part of the Paulina Unit as follows: 342 square miles in Townships 23, 24, 25, 26, 27, 28, and 29 South, Ranges 11, 12, 13, 14, 15, and 16 East.

# ADMINISTRATIVE RULES

(6) Spring Creek Winter Range: December 15 through April 30 – That part of the Starkey Unit as follows: 14 square miles in Townships 2 and 3 South, Range 36 East.

(7) McCarty Winter Range: December 15 through March 31 – That part of the Starkey Unit as follows: 12 square miles in Townships 4 and 5 South, Ranges 34 and 35 East.

(8) Metolius Winter Range: December 1 through March 31 – That part of the Metolius Unit as follows: 101 square miles in Townships 11, 12, 13, and 14 South and Ranges 11 and 12 East.

(9) Bryant Mountain: November 1 through April 15 – That part of the Klamath Falls Unit as follows: 50 square miles in Townships 39, 40, and 41 South and Ranges 12 and 13 East.

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

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

Hist.: FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

## 635-065-0733

### Decoys

Except for purposes of law enforcement or wildlife management, the use of decoys with moving parts is prohibited. This prohibition includes, but is not limited to, decoys with parts that are powered by a motor, battery, human action (for example, cable or pull-string) or the wind. Flexible or adjustable parts that permit placement or adjustment of a decoy but do not otherwise move do not constitute “moving parts” for the purpose of this rule. This rule is intended to ban decoys that attract game mammals via movement.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162 & 498.002

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

Hist.: DFW 123-2002, f. 10-25-02, cert. ef. 7-1-03; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

## 635-065-0740

### Hunting Prohibited

It is *unlawful*:

(1) To hunt with a centerfire or muzzleloading rifle during the standard eastern Oregon controlled deer buck season (September 29 – October 10, 2012) Cascade bull elk season, Coast bull elk seasons, Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit’s antlerless elk seasons (November 17–November 25, 2012) without a valid, unused tag for that species, time period and area on their person. EXCEPTIONS:

(a) Landowners, or their agent, hunting predators on lands they own or lease may use centerfire or muzzleloading rifles to hunt on such lands.

(b) Hunters may use .22 caliber or smaller centerfire rifles for hunting coyotes (*Canis latrans*) in the Juniper, Beatys Butte, East Beulah, Whitehorse and Owyhee units and in the Wagontire Unit south of the Lake County Road 5-14 during Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit’s antlerless elk seasons (November 17–November 25, 2012).

(c) Hunters who have a tag for one of the hunts listed in this paragraph may hunt bear and/or cougar within the time period and area for which their deer or elk tag is valid (used or unused) provided they have a valid unused bear and/or cougar tag.

(d) Hunters are not required to have an elk tag to hunt bear or cougar in the Applegate WMU during elk seasons.

(2) To hunt on any refuge closed by the state or federal government.

(3) To hunt within the corporate limits of any city or town, public park or cemetery, or on any campus or grounds of a public school, college, or university or from a public road, road right-of-way, or railroad right-of-way.

(4) Notwithstanding section (3) of this rule, controlled antlerless elk hunts are permitted within the south city limits of Seaside if the herd should become a serious problem.

(5) To hunt game mammals outside any area designated by a controlled hunt tag when such tag is required for that hunt season.

(6) To hunt in any Safety Zones created and posted by the Department.

(7) To hunt protected wildlife except:

(a) By a permit or during an authorized season established by the commission.

(b) That crow, blackbirds, cowbirds, and magpies may be taken under Federal regulations for reason of depredation or health hazards as described in the Code of Federal Regulations.

(8) To pursue or assist another to pursue a cougar (mountain lion) during an authorized cougar (mountain lion) season unless in possession of an unused cougar (mountain lion) tag or accompanied by the holder of an unused cougar (mountain lion) tag which is valid for that area and time period.

(9) To engage in computer-assisted hunting (Internet hunting) or provide or operate facilities for computer-assisted hunting in Oregon. As used in this act, “computer-assisted hunting” (Internet hunting) means the use of a computer or any other device, equipment, or software to remotely control the aiming and discharge of a firearm, bow, or any other weapon to hunt any game bird, wildlife, game mammal, or other mammal, and “facilities for computer-assisted remote hunting” means real property and improvements on the property associated with hunting, including hunting blinds, offices and rooms equipped to facilitate computer-assisted remote hunting. Nothing in subsection (9) of this section prohibits the use computer-assisted hunting by employees or agents of county, state or federal agencies while acting in their official capacities.

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

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

Hist.: FWC 123, f. & cert. ef. 6-9-77; FWC 28-1979, f. & cert. ef. 8-2-79; FWC 33-1980, f. & cert. ef. 6-30-80; FWC 6-1981, f. & cert. ef. 1-23-81; FWC 11-1981, f. & cert. ef. 3-31-81; FWC 20-1981, f. & cert. ef. 6-19-81; FWC 37-1982, f. & cert. ef. 6-25-82; FWC 41-1987, f. & cert. ef. 7-6-87; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

## 635-065-0760

### Other Restrictions

It is *unlawful*:

(1) To take or hold in captivity the young of any game mammal.

(2) To hold in captivity any wildlife of this state for which a permit is required without first securing a permit.

(3) To release without a permit any wildlife brought from another state or country, or raised in captivity in this state.

(4) To resist game law enforcement officers.

(5) To refuse inspection of any license, tag or permit by an employee of the Department; any person authorized to enforce the wildlife laws; or a landowner or agent of the landowner on his or her land while on that property.

(6) To take or attempt to take any game mammals, game birds, migratory waterfowl or any protected wildlife species of any size or sex or amount, by any method or weapon, during any time or in any area not prescribed in these rules.

(7) To disturb, damage, remove, alter or possess any official Department signs.

(8) To sell, lend, or borrow any big game tag.

(9) It is unlawful to operate or to be transported in a motor-propelled vehicle in violation of Cooperative Travel Management Areas. “Motor-propelled vehicle” includes aircraft not landing on designated airstrips. Through cooperative agreement, motor vehicle use is limited to specific roads during the dates for the areas listed below. There are two methods of posting road access information; negative marking in which closed roads are marked by signs, gates, berms, or other similar indicators, or positive marking in which open roads are marked by round green reflectors, orange carsonite posts, or similar indicators. Unit descriptions may be found in OAR 635-080-0000 through 635-080-0077. The following closures shall be effective during the specified periods each year:

(a) North Coast Access Area: Three days prior to opening of general archery season through the close of all bull elk rifles seasons. – Applies to all gated, posted, and/or barrier closed roads within the Saddle Mountain, Scappoose, Trask and Wilson wildlife management units. Cooperators require: day use only on private lands, no ATV use on private and designated state lands, no vehicle may block any road gate.

(b) Upper Tualatin-Trask: Three days prior to the opening of controlled buck deer rifle season through the close of all bull elk rifle seasons – That part of the Trask Unit as follows: 60 square miles in Townships 1 and 2 North and 1 South, and Ranges 5 and 6 West;

(c) Rickreall Regulated Hunt Area: November 1 through November 30 annually – That part of Stott Mt. Unit as follows: 12 square miles in Townships 7 and 8 South, Ranges 6 and 7 West;



## ADMINISTRATIVE RULES

(d) Luckiamute: Permanent Closure – Those parts of the Stott Mt. /Alsea Units as follows: 9 square miles in Townships 8 and 9 South, Ranges 7 and 8 West.

(e) Mid-Coast: Permanent Closure – That part of the Alsea Unit as follows: Open roads in the Siuslaw NF lands south of US Hwy 20 and north of State Hwy 126 are designated on the Siuslaw NF Motor Vehicle Use Map. However; additional roads may be posted as closed as part of the Cooperative TMA or for administrative purposes.

(f) Smith Ridge: Permanent Closure – That part of the McKenzie Unit as follows: 8 square miles in Townships 13 and 14 South, Ranges 6 and 7 East;

(g) Chucksney Mountain: September 1 through November 30 annually – That part of the McKenzie Unit as follows: 6 square miles in Township 19 South, Range 5 1/2 East;

(h) Skookum Flat: Permanent Closure – That part of the McKenzie Unit as follows: 8 square miles in Townships 19 and 20 South, Range 6 East;

(i) Eagle Creek: Three days prior to opening of general Cascade elk season through close of general Cascade elk season. That part of the McKenzie Unit as follows: 66 square miles in Townships 21 and 22 South, Ranges 5, 5 1/2 and 6 East;

(j) Scott Creek: Permanent Closure – That part of the McKenzie Unit as follows: 51 square miles in Townships 14, 15, and 16 South, Ranges 6 and 7 East;

(k) Wendling: opening of archery season through the end of the general firearms buck deer season including the youth weekend – That part of the McKenzie Unit as follows: approximately 130 square miles NE of Springfield (north of Hwy 126, east of Marcola Rd, and south of the Mohawk River Mainline).

(l) Coos Bay BLM: Permanent Closure – That part of the Tioga Unit as follows: Individual posted roads on lands administered by BLM, Coos Bay District.

(m) Upper Rogue: Three days prior to the general Cascade elk season through the end of the general Cascade elk season – That part of the Rogue Unit as follows: High Cascades Ranger District, Rogue River National Forest;

(n) Jackson: Three days prior to the general Cascade elk season through April 30 annually – That part of the Rogue, Dixon, and Evans Creek units as follows: 104 square miles in Townships 32, 33, 34, and 35 South, Ranges 1 and 2 West and 1 and 2 East; off-road motor vehicle travel is prohibited at all times;

(o) Pokegama: November 20 through March 31 annually – That part of the Keno Unit as follows: 97 square miles in Townships 40 and 41 South, Ranges 4, 5, and 6 East;

(p) Lower Klamath Hills: Permanent Closure – That part of the Klamath Unit as follows: 3 square miles in Township 40 South, Range 9 East;

(q) Goodlow Mountain Area Closure: December 1 through March 31 annually – That part of the Klamath Unit as follows: 17 square miles in Townships 38 and 39 South, Ranges 12 and 13 East;

(r) Sun Creek: November 1 through June 30 annually – That part of the Sprague Unit as follows: 14 square miles in Township 32 South, Ranges 6 and 7 1/2 East;

(s) Fox Butte: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season – That part of the Paulina Unit as follows: 230 square miles in Townships 20, 21, 22, 23, and 24 South, Ranges 14, 15, and 16 East;

(t) Timbers: Permanent Closure – That part of the Paulina Unit as follows: 25 square miles in Townships 23 and 24 South, Ranges 9 and 10 East;

(u) Rager: Three days prior to the opening of controlled buck deer rifle season through the close of antlerless elk rifle season – That part of the Ochoco Unit as follows: 352 square miles south of U.S. Highway 26 and west of the South Fork John Day River.

(v) White River Wildlife Area: December 1 through March 31 annually – That part of the White River Unit as follows: 59 square miles along the eastern edge of the Mt. Hood National Forest in the southern half of the White River Unit;

(w) Lower Deschutes: Permanent Closure – That part of the Biggs Unit as follows: 12 square miles along lower 17 miles of Deschutes River except the county access road to Kloan;

(x) Murderers Creek-Flagtail: Three days prior to the opening of the archery deer and elk seasons through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season – That part

of the Murderers Creek Unit as follows: 185 square miles in Townships 13, 14, 15, 16, and 17 South, Ranges 26, 27, 28, and 29 East;

(y) Camp Creek: Three days prior to opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season – That part of the Northside Unit as follows: 54 square miles in Townships 10, 11, and 12 South, Ranges 31, 32, and 33 East.

(z) Heppner Regulated Hunt Area: Year-round, unless posted otherwise. That part of the Heppner Unit as follows: Approximately 63 square miles in Townships 2, 3, 4, and 5 South, Ranges 25, 26, 27, and 28 East;

(aa) Bridge Creek Wildlife Area: December 1 through April 14 annually except by permit-- That part of the Ukiah Unit as follows: 20 square miles in Townships 5 and 6 south, Ranges 31 and 32 East in the Southwest corner of Ukiah Unit;

(bb) Dark Canyon: Three days prior to the opening of controlled buck deer season through the close of the last elk season encompassing this travel management area. That part of the Sumpter Unit as follows: 20 square miles in Townships 11 and 12 South, Ranges 40 and 41 East;

(cc) Patrick Creek: Three days prior to the opening of controlled buck deer season through the close of the last elk season and May 1 through June 30 encompassing this travel management area. That part of the Sumpter Unit as follows: 8 square miles in Townships 10 and 11 South, Ranges 35 1/2 and 36 East;

(dd) Dry Beaver/Ladd Canyon: Permanent Closure – That part of the Starkey Unit as follows: 125 square miles in Townships 4, 5 and 6 South, Ranges 35, 36, 37 and 38 East;

(ee) Clear Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season – That part of the Starkey Unit as follows: 21 square miles in Township 5 South, Ranges 37 and 38 East;

(ff) Trail Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season – That part of the Starkey Unit as follows: 29 square miles in Townships 6 and 7 South, Ranges 35 1/2 and 36 East;

(gg) Indian Creek-Gorham Butte: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season – That part of the Starkey Unit as follows: 24 square miles in Townships 6 and 7 South, Ranges 36 and 37 East;

(hh) Elkhorn Wildlife Area: Permanent Closure – Those parts of the Starkey and Sumpter units as follows: 7 square miles in Township 6 South, Range 38 East;

(ii) Starkey Experimental Forest Enclosure: Permanent Closure – That part of the Starkey Unit as follows: 40 square miles in Townships 3 and 4 South, Range 34 East;

(jj) Hall Ranch: Three days prior to the opening of Rocky Mountain bull elk first season through April 30 – that part of the Catherine Creek Unit as follows: 3 square miles in Township 5 South, Range 41 East;

(kk) Little Catherine Creek: Three days prior to opening of archery season through May 31 – That part of the Catherine Creek Unit as follows: 22 square miles in Townships 3, 4 and 5 South, Ranges 40 and 41 East;

(ll) Walla Walla: Permanent Closure – Those parts of Walla Walla, Wenaha, and Mt. Emily units as follows: All gated, posted, and closed roads within the Walla Walla Ranger District of the Umatilla National Forest.

(mm) Wenaha Wildlife Area: Permanent Closure – That part of the Wenaha Unit as follows: 17 square miles in Townships 5 and 6 North, Ranges 42 and 43 East along eastern edge of Umatilla Forest in northeast corner of Wenaha Unit;

(nn) Noregaard: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. That part of the Sled Springs Unit as follows: 175 square miles in west one-third of Sled Springs Wildlife Unit.

(oo) Shamrock: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. – That part of the Sled Springs Unit as follows: 20 square miles in Township 4 North, Range 44 East;

(pp) Chesnimnus: Three days prior to Chesnimnus rifle bull season through end of Chesnimnus rifle bull season – That portion of the Chesnimnus Wildlife Unit within the boundaries of the Wallowa-Whitman National Forest;

(qq) Cemetery Ridge Road: Permanent Closure – That part of the Chesnimnus Unit as follows: Cemetery Ridge Road north of the south boundary of Section 4, Township 3 North, and Range 48 East.

# ADMINISTRATIVE RULES

(rr) Lord Flat Trail (#1774): Three days prior to archery season through the end of all elk rifle seasons – 15 miles of road in Townships 1 South and 1 and 2 North, Ranges 49 and 50 East;

(ss) Grouse-Lick Creeks: Three days prior to opening of Rocky Mountain bull elk first season through the close of Rocky Mountain bull elk second season- That part of the Imnaha Unit as follows: 100 square miles in Townships 2, 3, 4, and 5 South, Ranges 46, 47 and 48 East;

(tt) Clear Lake Ridge: Three days prior to opening of archery season through December 1 annually – That part of the Imnaha Unit as follows: Five square miles in Township 2 South, Range 47 East, Sections 3 and 4 and Township 1 South, Range 47 East, Sections 28, 15, 33, 34 and 22.

(uu) Mehlor: Permanent Closure: That part of the Pine Creek and Keating Units as follows: 26 square miles in Township 6 South, Ranges 45 and 46 East;

(vv) Lake Fork-Dutchman: Three days prior to opening of archery season to the end of all elk rifle seasons and from May 1 to July 1 – That part of the Pine Creek Unit as follows: 42 square miles in Townships 6 and 7 South, Ranges 46 and 47 East;

(ww) Okanogan-Fish: Three days prior to the opening of buck deer rifle season to the end of elk rifle seasons and from May 1 to July 1 – That part of the Pine Creek Unit as follows: 20 square miles in Township 6 and 7 South, Ranges 46 and 47 East;

(xx) Summit Point: Permanent Closure: That part of the Keating Unit as follows: 14 square miles in Townships 6 and 7 South, Ranges 44 and 45 East.

(yy) Eagle Creek: December 1 – April 15: That part of the Keating Unit as follows: 17 square miles in Townships 7 and 8 South, Range 44 and 45 East;

(zz) Conroy Cliff: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season – That part of the Malheur River Unit as follows: 46 square miles in Townships 16, 17, and 18 South, Ranges 32 1/2, 34, and 35 East;

(aaa) Devine Ridge-Rattlesnake: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season – That part of the Malheur River Unit as follows: 59 square miles in Townships 20 and 21 South, Ranges 31, 32, 32 1/2 East;

(bbb) Dairy Creek: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season – That part of the Silvies Unit as follows: 98 square miles in Townships 19, 20, 21, and 22 South, Ranges 24, 25, and 26 East;

(ccc) Burnt Cabin: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season – That part of the Silvies Unit as follows: 22 square miles in Townships 18 and 19 South, Ranges 26 and 27 East;

(ddd) Walker Rim: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season – That part of the Fort Rock Unit as follows: 113 square miles in Townships 24, 25, and 26 South, Ranges 8, 9, and 10 East;

(eee) North Paulina: Permanent Closure – That part of the Fort Rock Unit as follows: 12 square miles in Townships 25 and 26 South; Range 8 East;

(fff) Sugarpine Mountain: Permanent Closure – That part of the Fort Rock Unit as follows: 40 square miles in Township 28, Ranges 9 and 10 East;

(ggg) Stott Mt.-North Alsea: One day prior to opening of archery season through the bull elk rifle seasons – All gated and/or barrier closed roads within the Alsea Unit north of US Hwy 20 and west of State Hwy 233 (Kings Valley Hwy); and in the Stott Mt. Unit. Cooperators require: day use only on private lands, no ATV use on private lands and designated state lands, and no vehicle may block any road or gate. Access may be closed during extreme fire danger;

(hhh) Spring Butte: Permanent Closure – That part of the Paulina Unit as follows: 30 square miles in Township 23 South, Range 11 East;

(iii) Wildhorse Ridge/Teepee Butte: Three days prior to archery season through the end of all elk rifle seasons. Posted and gated roads north of 46 roads in Chesnimnus Unit are closed;

(jjj) Hells Canyon National Recreation Area: Permanent Closure – Those parts of the Chesnimnus, Imnaha, Snake River, and Pine Creek Units in Eastern Wallowa County that are closed by the National Recreation Area;

(kkk) PO Saddle Road – Three days prior to opening of archery season through June 15th, annually – Three miles of road in Townships 3 and 4 South, Range 48 East.

(lll) Whiskey Creek – Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the last antlerless elk season. That part of the Sled Springs unit as follows – 45 square miles in Townships 2 and 3 North, Ranges 43, 44, and 45 East.

(mmm) South Boundary: Permanent Closure – That part of the Ochoco Unit as follows: 47 square miles in Townships 15 and 16 South, Ranges 20, 21, and 22 East.

(nnn) Wendling: One day prior to opening of archery season through Western Oregon General Firearms Deer Season including youth days. – That part of the Mckenzie Unit as follows: approximately 130 square miles NE of Springfield (north of Hwy 126, east of Marcola Rd, and south of the Mohawk River Mainline).

(ooo) JWTR: Permanent Closure – Applies to all gated, posted, or barrier-closed roads within the Rogue, Keno, Klamath Falls, Sprague, Interstate, Silver Lake, and Fort Rock Units within the land holdings of JWTR, LLC.

(ppp) Prineville Reservoir Wildlife Area: From November 15 or December 1 (as posted at each gate) through April 15 annually – That part of the Ochoco and Maury Units as follows: 5 square miles in Township 16 South, Range 17 East.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 30-1995, f. & cert. ef. 4-17-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 5-2003, f. 1-17-03, cert. ef. 7-1-03; DFW 116-2003(Temp), f. & cert. ef. 11-25-03 thru 3-31-04; DFW 120-2003, f. 12-4-03, cert. ef. 6-16-04; DFW 125-2004, f. 12-21-04, cert. ef. 6-1-05; DFW 133-2005, f. 12-1-05, cert. ef. 6-1-06; DFW 128-2006, f. 12-7-06, cert. ef. 6-1-07; DFW 118-2007, f. 10-31-07, c cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

## 635-066-0000 Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting black bear pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 066 incorporates, by reference, the requirement for black bear hunting set out in the document entitled “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 the hunting of black bear. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

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

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 64-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, c cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

## 635-066-0010 General Season Regulations

(1) Pursuant to ORS 497.112, annual black bear tag sales to nonresident black bear hunters for the general fall season shall be limited to no more than three percent of the total tag sales based on previous year's hunter densities.

(a) Tags shall be available at any authorized license agent and through the Salem Headquarters office on a first-come, first-served basis.

(b) The application procedure shall be as follows:

# ADMINISTRATIVE RULES

(A) An applicant may purchase a nonresident general black bear tag at any hunting license agent or;

(B) An applicant shall mail or fax copies, through the Salem Headquarters only, of his/her nonresident driver's license, adult nonresident hunting license, juvenile nonresident hunting license, or provide documentation which includes the following information:

- (i) Applicant's full name and current address;
- (ii) Applicant's date of birth;
- (iii) Applicant's Social Security number;
- (iv) Applicant's telephone number;

(c) An applicant shall include a fee of \$180.50 (plus a \$2.00 license agent fee) with the application.

(d) The applicant shall state the areas for which he/she is applying in order of choice.

(2) Open Area: The entire state is open, except that lands within one mile of the Rogue River between Grave Creek and Lobster Creek are closed to all black bear hunting. Nonresidents shall be restricted to hunting black bear only in specific areas as described below. Nonresident black bear tags shall be distributed by areas as described in the Black Bear Management Plan. These areas are described as follows:

(a) Northwest: All of wildlife management units: 10, 11, 12, 14, 15, 17, and 18.

(b) Southwest: All of wildlife management units: 20, 23, 24, 25, 26, 27, 28, and 29.

(c) Cascades: All of wildlife management units: 16, 19, 21, 22, 30, 31, 34, 39, 41, and 42 and those portions of wildlife management units 33 and 77 lying west of Highway 97.

(d) Eastern: All of wildlife management units: 32, 35, 38, 40, and 43 and those portions of wildlife management units 33 and 77 lying east of Highway 97; and all other wildlife management units to the east of these units.

(3) No person shall use dogs to hunt or pursue black bear.

(4) No person shall use bait to attract or hunt black bear.

(5) The skull of any bear taken must be presented to an ODFW office or designated collection site. The person who took the animal is responsible to have it presented, within 10 days of the kill, to be checked and marked. Skull must be unfrozen when presented for check-in. Check-in at ODFW offices must occur during normal business hours (8-5, Mon-Fri.). Hunters are required to check in the skull only, for the purpose of inspection, tagging and removal of a tooth for aging.

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

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

Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

## 635-067-0000

### Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 067 incorporates, by reference, the requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat set out in the document entitled "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 pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

(3) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. Permitted weapons and ammunition are established in OAR chapter 635, division 065. Controlled hunt tag numbers for 2012 are listed in Tables 1, 2, and 3 and are adopted and incorporated into OAR chapter 635, division 067 by reference.

[ED. NOTE: Tables referenced are available from the agency.]

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

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

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

Hist.: FWC 65-1989, f. & cert. ef. 8-15-89; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-

1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 85-2010(Temp), f. & cert. ef. 6-21-10 thru 12-17-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

## 635-067-0004

### Cougar Hunting Regulations

(1) Tag Requirement: Any person hunting cougar shall have on his/her person a general season cougar tag or an additional cougar tag. General season cougar tags may be purchased through any authorized license agent;

(2) Hunt Area: Hunt zones, and harvest quotas for each hunt zone, are established in OAR 635-067-0015;

(a) Hunters may hunt within all hunt zones;

(b) Hunt zones will be closed to hunting when individual zone harvest quotas are reached.

(3)(a) The person who took the animal is responsible to have it presented for check-in, within ten days of harvest, the hide with skull and proof of sex attached in any cougar killed at a Department of Fish and Wildlife office. Check-in must occur during normal business hours (8 a.m. to 5 p.m., Monday through Friday.) Hide and skull must be unfrozen when presented for check-in.

(b) Hunters are also required to submit the reproductive tract of any female cougar taken.

(4) No person shall hunt or assist another to hunt a cougar during an authorized cougar season unless in possession of an unused cougar tag or accompanied by the holder of a cougar tag which is valid for that area and time period.

(5) No person shall use dogs to hunt or pursue cougar.

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

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

Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

## 635-067-0030

### Controlled Bighorn Sheep Hunts

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

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

Hist.: FWC 32-1978, f. & ef. 6-30-78; FWC 12-1979, f. & ef. 3-28-79; FWC 29-1979, f. & ef. 8-2-79; FWC 14-1980, f. & ef. 4-8-80; FWC 10-1981, f. & ef. 3-31-81; FWC 22-1981, f. & ef. 6-29-81; FWC 21-1982, f. & ef. 3-31-82, Renumbered from 635-060-0610; FWC 15-1983, f. & ef. 4-19-83; FWC 16-1984, f. 4-6-84, ef. 4-15-84; FWC 21-1985, f. & ef. 5-7-85; FWC 29-1986, f. & ef. 7-23-86; FWC 11-1987, f. & ef. 3-6-87; FWC 14-1988, f. & cert. ef. 3-10-88; FWC 16-1989, f. & cert. ef. 3-28-89; FWC 65-1989, f. & cert. ef. 8-15-89; FWC 25-1990, f. & cert. ef. 3-21-90; FWC 21-1991, f. & cert. ef. 3-12-91; FWC 45-1992, f. & cert. ef. 7-15-92; FWC 61-1992, f. & cert. ef. 7-30-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 6-1995, f. 1-23-95, cert. ef. 4-1-95; FWC 54-1995, f. & cert. ef. 6-20-95; FWC 17-1996, f. 4-10-96, cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 99-2006(Temp), f. & cert. ef. 9-11-06 thru 9-30-06; Administrative correction 10-16-06; DFW 109-2009(Temp), f. & cert. ef. 9-9-09 thru 9-30-09; Administrative correction 10-22-09; DFW 81-2011, f. 6-29-11, cert. ef. 8-20-11; DFW 115-2011(Temp), f. & cert. ef. 8-16-11 thru 2-11-12; DFW 116-2011(Temp), f. & cert. ef. 8-19-11 thru 10-1-11; Administrative correction 10-27-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

## 635-067-0040

### Controlled Rocky Mountain Goat Hunt Regulations

Rocky Mountain goat taken by hunters shall be inspected by department personnel prior to the hunter leaving the hunt area. Party applications are not allowed. All hunters are required to attend an orientation class with department personnel prior to hunting and to check out through the local district office of ODFW within 72 hours of completion of their hunt.

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

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

Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 81-2011, f. 6-29-11, cert. ef. 8-20-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12



# ADMINISTRATIVE RULES

635-072-0000

## Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, and other restrictions for hunting western gray squirrels pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 072 incorporates, by reference, the requirements for hunting western gray squirrel set out in the document entitled "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 western gray squirrel. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

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

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

Hist.: FWC 43-1988, f. & cert. ef. 6-13-88; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12

\*\*\*\*\*

## Department of Forestry Chapter 629

**Rule Caption:** Adopts the 2011 Elliott State Forest Management Plan as an Administrative Rule.

**Adm. Order No.:** DOF 3-2011

**Filed with Sec. of State:** 12-7-2011

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

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 629-035-0105

**Subject:** Amended OAR 629-035-0105 will adopt and incorporate by reference the 2011 Elliott State Forest Management Plan ("Forest Management Plan" or "Plan") as required by OAR 629-035-0030(6)(a). The rule adopts the Forest Management Plan by reference due to the voluminous nature of the Plan. Copies of the Plan may be viewed on the Department's web page at: [http://egov.oregon.gov/ODF/STATE\\_FORESTS/elliott.shtml](http://egov.oregon.gov/ODF/STATE_FORESTS/elliott.shtml) or at the office of the State Forester, and are available upon request.

**Rules Coordinator:** Sabrina Perez—(503) 945-7210

629-035-0105

## Adopted Forest Management Plan Documents

(1) The following forest management plan documents have been adopted and incorporated by reference into this division:

(a) Northwest Oregon State Forests Management Plan, Revised Plan, April 2010;

(b) Southwest Oregon State Forest Management Plan, Revised Plan, April 2010; and

(c) Elliott State Forest Management Plan, November 2011, effective January 1, 2012.

(2) The forest management plan documents which have been incorporated by reference into this division are maintained by the State Forester at the Oregon Department of Forestry's headquarters in Salem, Oregon.

Stat. Auth.: ORS 526.016(4) & 526.041

Stats Implemented: ORS 530.050

Hist.: DOF 2-2001, f. & cert. ef. 1-19-01; DOF 2-2010, f. & cert. ef. 6-22-10; DOF 3-2011, f. 12-7-11, cert. ef. 1-1-12

\*\*\*\*\*

## Department of Geology and Mineral Industries Chapter 632

**Rule Caption:** Adopt rules for contracts for geoscientific surveys and analysis.

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

**Filed with Sec. of State:** 12-14-2011

**Certified to be Effective:** 12-14-11

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

**Rules Adopted:** 632-001-0020

**Subject:** OAR 632-001-0020 Contracts for Geoscientific Surveys and Analysis.

(1) Prior to entering into an agreement authorized under ORS 516.035(6), the State Geologist shall consider whether the scope of the agreement is consistent with the department's mission statement and applicable objectives of the strategic plan and the extent to which the agreement will benefit the citizens of Oregon.

(2) The State Geologist shall report annually to the Governing Board on the number and dollar value of agreements that were executed under the authority of ORS 516.035(6).

**Rules Coordinator:** Gary Lynch—(541) 967-2053

632-001-0020

## Contracts for Geoscientific Surveys and Analysis

(1) Prior to entering into an agreement authorized under ORS 516.035(6), the State Geologist shall consider whether the scope of the agreement is consistent with the department's mission statement and applicable objectives of the strategic plan and the extent to which the agreement will benefit the citizens of Oregon.

(2) The State Geologist shall report annually to the Governing Board on the number and dollar value of agreements that were executed under the authority of ORS 516.035(6).

Stat. Auth.: ORS 516.090

Stats. Implemented: ORS 516.035

Hist.: DGMI 1-2011, f. & cert. ef. 12-14-11

\*\*\*\*\*

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

**Rule Caption:** Abuse of Mistreatment Reporting and Protective Services in Community Programs for Adults with Developmental Disabilities.

**Adm. Order No.:** DHSD 9-2011

**Filed with Sec. of State:** 12-1-2011

**Certified to be Effective:** 12-5-11

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

**Rules Amended:** 407-045-0250, 407-045-0260, 407-045-0280, 407-045-0290, 407-045-0320

**Subject:** These rules remove references to "mental illness" in community programs serving adults with mental illness. The mental health portion of the program has moved under the Oregon Health Authority as part of HB 2009 which created the Oregon Health Authority and transferred to the Authority the Department of Human Services' divisions responsible for health and health care. Amendments were also made to align the rules with current practice and to clarify language.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

407-045-0250

## Purpose

These rules, OAR 407-045-0250 to 407-045-0370, prescribe standards and procedures for the investigation of, assessment for and provision of protective services in community programs and community facilities for adults with developmental disabilities, and the nature and content of the abuse investigation and protective services report.

Stat. Authority: ORS 179.040 & 409.050

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0200, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0050, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10; DHSD 9-2011, f. 12-1-11, cert. ef. 12-5-11

407-045-0260

## Definitions

As used in OAR 407-045-0250 to 407-045-0370, the following definitions apply:

(1) "Abuse of an adult with developmental disabilities" means:

(a) "Abandonment" including desertion or willful forsaking of an adult or the withdrawal or neglect of duties and obligations owed an adult by a caregiver or other person.

(b) Death of an adult caused by other than accidental or natural means or occurring in unusual circumstances.

(c) "Financial exploitation" including:

## ADMINISTRATIVE RULES

(A) Wrongfully taking the assets, funds or property belonging to or intended for the use of an adult.

(B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult would reasonably believe that the threat conveyed would be carried out.

(C) Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by an adult.

(D) Failing to use the income or assets of an adult effectively for the support and maintenance of the adult. "Effectively" means use of income or assets for the benefit of the adult.

(d) "Involuntary seclusion" means the involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult. Involuntary seclusion may include placing restrictions on an adult's freedom of movement by restriction to his or her room or a specific area, or restriction from access to ordinarily accessible areas of the facility, residence or program, unless agreed to by the Individual Support Plan (ISP) team included in an approved Behavior Support Plan (BSP) or included in a brokerage plan's specialized support. Restriction may be permitted on an emergency or short term basis when an adult's presence would pose a risk to health or safety to the adult or others.

(e) "Neglect" including:

(A) Active or passive failure to provide the care, supervision or services necessary to maintain the physical and mental health of an adult that may result in physical harm or significant emotional harm to an adult. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other services essential to the well-being of the adult.

(B) Failure of a caregiver to make a reasonable effort to protect an adult from abuse.

(C) Withholding of services necessary to maintain the health and well-being of an adult which leads to physical harm of an adult.

(f) "Physical abuse" means:

(A) Any physical injury by other than accidental means or that appears to be at variance with the explanation given for the injury.

(B) Willful infliction of physical pain or injury.

(C) Physical abuse is presumed to cause physical injury, including pain, to adults otherwise incapable of expressing pain.

(g) "Sexual abuse" including:

(A) An act that constitutes a crime under ORS 163.375 (rape in the first degree), 163.405 (sodomy in the first degree), 163.411 (unlawful sexual penetration in the first degree), 163.415 (sexual abuse in the third degree), 163.425 (sexual abuse in the second degree), 163.427 (sexual abuse in the first degree), 163.456 (public indecency) or 163.467 (private indecency).

(B) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315.

(C) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language including requests for sexual favors. Sexual harassment or exploitation includes but is not limited to any sexual contact or failure to discourage sexual contact between an employee of a community facility or community program, provider or other caregiver and an adult. For situations other than those involving an employee, provider or other caregiver and an adult, sexual harassment or exploitation means unwelcome physical sexual contact and other physical conduct directed toward an adult.

(D) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver. Sexual abuse does not mean consensual sexual contact between an adult and a paid caregiver who is the spouse or partner of the adult.

(E) Any sexual contact that is achieved through force, trickery, threat or coercion.

(F) Any sexual contact between an adult with a developmental disability and a relative of the person with a developmental disability other than a spouse or partner. "Relative" means a parent, grandparent, children, brother, sister, uncle, aunt, niece, nephew, half-brother, half-sister, stepparent or stepchild.

(G) As defined in ORS 163.305, "sexual contact" means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(h) "Wrongful restraint" means:

(A) A wrongful use of a physical or chemical restraint, excluding an act of restraint prescribed by a licensed physician, by any adult support team approved plan, or in connection with a court order.

(B) "Wrongful restraint" does not include physical emergency restraint to prevent immediate injury to an adult who is in danger of physically harming himself or herself or others, provided only that the degree of force reasonably necessary for protection is used for the least amount of time necessary.

(i) "Verbal abuse" includes threatening significant physical or emotional harm to an adult through the use of:

(A) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule.

(B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

(C) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other services essential to the well-being of an adult.

(D) For purposes of this section, verbal conduct includes but is not limited to the use of oral, written or gestured communication that is directed to an adult or within their hearing distance, or sight if gestured, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard.

(E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress or fear.

(j) An adult who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner shall for this reason alone not be considered subjected to abuse.

(2) "Abuse Investigation and Protective Services Report" means a completed report.

(3) "Adult" means an individual who is 18 years of age or older who:

(a) Has a developmental disability and is currently receiving services from a community program or facility or was previously determined eligible for services as an adult by a community program or facility;

(b) Receives services from a community program or facility or care provider which is licensed or certified by or contracts with the Department; and

(c) Is the alleged abuse victim.

(4) "Adult protective services" means the necessary actions taken to prevent abuse or exploitation of an adult to prevent self-destructive acts and to safeguard an allegedly abused adult's person, property or funds.

(5) "Brokerage" or "Support service brokerage" means an entity, or distinct operating unit within an existing entity, that performs the functions listed in OAR 411-340-0120(1)(a) to (g) associated with planning for and implementation of support services for an adult with developmental disabilities.

(6) "Caregiver" means an individual or facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.

(7) "Community facility" means a community residential treatment home or facility, community residential facility or adult foster home.

(8) "Community program" means the community developmental disabilities program as established in ORS 430.610 to 430.695.

(9) "Designee" means the community program.

(10) "Department" means the Department of Human Services.

(11) "Inconclusive" means there is insufficient evidence to conclude the alleged abuse occurred or did not occur by a preponderance of the evidence. The inconclusive determination may be used only in the following circumstances:

(a) After diligent efforts have been made, the protective services investigator is unable to locate the person alleged to have committed the abuse or cannot locate the alleged victim or another individual who might have information critical to the investigation; or

(b) Relevant records or documents are unavailable or there is conflicting or inconsistent information from witnesses, documents or records with the result that after the investigation is complete, there is insufficient evidence to support a substantiated or not substantiated conclusion.

(12) "Law enforcement agency" means any city or municipal police department, county sheriff's office, the Oregon State Police or any district attorney.

(13) "Mandatory reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an adult has suffered abuse or that any individual with whom the official comes in contact while acting in an official capacity has abused an adult. Pursuant to ORS 430.765(2), psychiatrists, psy-

# ADMINISTRATIVE RULES

chologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(14) "Not substantiated" means the preponderance of evidence establishes the alleged abuse did not occur.

(15) "OIT" means the Department's Office of Investigations and Training.

(16) "Provider agency" means an entity licensed or certified to provide services or which is responsible for the management of services to clients.

(17) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor or podiatrist, including any intern or resident;

(b) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an in-home health services organization;

(c) Employee of the Department, Oregon Health Authority, county health department, community mental health program or community developmental disabilities program or private agency contracting with a public body to provide any community mental health service;

(d) Peace officer;

(e) Member of the clergy;

(f) Licensed clinical social worker;

(g) Physical, speech or occupational therapist;

(h) Information and referral, outreach or crisis worker;

(i) Attorney;

(j) Licensed professional counselor or licensed marriage and family therapist;

(k) Firefighter or emergency medical technician; or

(l) Any public official who comes in contact with adults in the performance of the official's duties.

(18) "Substantiated" means that the preponderance of evidence establishes the abuse occurred.

(19) "Unbiased investigation" means an investigation that is conducted by a community program that does not have an actual or potential conflict of interest with the outcome of the investigation.

Stat. Authority: ORS 179.040 & 409.050

Stats. Implemented: ORS 430.735 - 430.765, 443.400 - 443.460 & 443.705 - 443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0210, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0060, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 12-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-29-10; DHSD 4-2010, f. & cert. ef. 6-29-10; DHSD 7-2010(Temp), f. & cert. ef. 8-5-10 thru 1-31-11; DHSD 11-2010, f. 12-30-10, cert. ef. 1-1-11; DHSD 9-2011, f. 12-1-11, cert. ef. 12-5-11

## 407-045-0280

### Training for Adults Investigating Reports of Alleged Abuse

(1) The Department shall provide sufficient and timely training and consultation to community programs to ensure that the community program is able to conduct a thorough and unbiased investigation and reach a conclusion about the abuse. Training shall include initial and continuing education of any individual designated to conduct protective services investigations.

(2) The training shall address the cultural and social diversity of the State of Oregon.

Stat. Authority: ORS 179.040 & 409.050

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0080, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10; DHSD 9-2011, f. 12-1-11, cert. ef. 12-5-11

## 407-045-0290

### General Duties of the Community Program and Initial Action on Report of Alleged Abuse

(1) For the purpose of carrying out these rules, community programs are Department designees.

(2) If mandatory reporters have reasonable cause to believe abuse of an adult has occurred, the reporter must report the abuse to the community program, the Department, or a local law enforcement agency within the county where the individual making the report is at the time of contact.

(3) Each community program shall designate at least one employee to conduct protective services investigations. Community programs shall require their designated protective services investigators to participate in training and to demonstrate an understanding of investigative core competencies.

(4) If the Department or community program has reasonable cause to believe abuse occurred, it must immediately notify the appropriate public licensing or certifying agency and provide a copy of the abuse investigation and completed protective services report.

(5) If the Department or community program has reasonable cause to believe that an individual licensed or certified by any state agency to provide care has committed abuse, it must immediately notify the appropriate state licensing or certifying agency and provide that agency with a copy of the abuse investigation and completed protective services report.

(6) The Department or community program may share information prior to the completion of the abuse investigation and protective services report if the information is necessary for:

(a) The provision of protective services; or

(b) The function of licensing and certifying agencies or law enforcement agencies.

(7) Each community program must establish an after hours reporting system.

(8) Upon receipt of any report of alleged abuse or upon receipt of a report of a death that may have been caused by other than accidental or natural means, the community program must begin:

(a) Investigation into the nature and cause of the alleged abuse within one working day of receipt of the report to determine if abuse occurred or whether a death was caused by abuse;

(b) Assessment of the need for protective services; and

(c) Provision of protective services, if protective services are needed.

(9) The community program receiving a report alleging abuse must document the information required by ORS 430.743(1) and any additional reported information. The community program must attempt to elicit the following information from the individual making a report:

(a) The name, age and present location of the adult;

(b) The names and addresses of the adult's programs or facilities responsible for the adult's care;

(c) The nature and extent of the alleged abuse, including any evidence of previous abuse of the adult or evidence of previous abuse by the person alleged to have committed the abuse;

(d) Any information that led the individual making the report to suspect abuse had occurred;

(e) Any information that the individual believes might be helpful in establishing the cause of the abuse and the identity of the person alleged to have committed the abuse; and

(f) The date of the incident.

(10) The community program shall maintain all reports of abuse in a confidential location.

(11) If there is reason to believe a crime has been committed, the community program must contact the law enforcement agency with jurisdiction in the county where the report is made.

(12) Upon receipt of a report of abuse, the community program must notify the case manager providing primary case management services to the adult. The community program must also notify the guardian of the adult unless doing so would undermine the integrity of the abuse investigation or a criminal investigation because the guardian or case manager is suspected of committing abuse.

(13) If there is reasonable cause to believe that abuse has occurred, the community program must determine if the adult is in danger or in need of immediate protective services and shall provide those services immediately. Under these circumstances, the community program must also advise the provider agency, brokerage or guardian about the allegation and must include any information appropriate or necessary for the health, safety and best interests of the adult in need of protection.

(14) The community program shall immediately, but no later than one working day, notify the Department it has received a report of abuse, in the format provided by the Department.

(15) In addition to the notification required by section (12) of these rules, if the community program determines that a report will be assigned for investigation, the community program must notify the provider agency, brokerage, guardian and any other individual with responsibility for providing services and protection, unless doing so would compromise the safety, health or best interests of the adult in need of protection, or would compromise the integrity of the abuse investigation or a criminal investigation. The notice shall include information that the case shall be assigned for investigation, identify the investigator and provide information regarding how the assigned investigator may be contacted. The notice must be provided within five working days from the date the report was received.

(16) If the community program determines from the report that there is no reasonable cause to believe abuse occurred, the community program shall notify the provider agency or brokerage within five working days that a protective services investigation shall not commence and explain the reasons for that decision. The community program shall document the notice and maintain a record of all notices.



# ADMINISTRATIVE RULES

(17) The community program or law enforcement agency shall notify the appropriate medical examiner in cases where the community program or law enforcement agency finds reasonable cause to believe that an adult has died as a result of abuse or where the death occurred under suspicious or unknown circumstances.

Stat. Authority: ORS 179.040 & 409.050  
Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825  
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0230, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0090, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 12-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-29-10; DHSD 4-2010, f. & cert. ef. 6-29-10; DHSD 9-2011, f. 12-1-11, cert. ef. 12-5-11

## 407-045-0320

### Abuse Investigation and Protective Services Report

(1) The Department shall provide abuse investigation and protective services report formats.

(2) Upon completion of the investigation and within 45 calendar days of the date the community program assigns a report alleging abuse for investigation, the community programs shall prepare an abuse investigation and protective services report. The 45-day time period does not include an additional five working day period allowing OIT to review and approve the report. The protective services report shall include:

(a) A statement of the allegations being investigated, including the date, location and time;

(b) A list of protective services provided to the adult;

(c) An outline of steps taken in the investigation, a list of all witnesses interviewed and a summary of the information provided by each witness;

(d) A summary of findings and conclusion concerning the allegation of abuse;

(e) A specific finding of "substantiated," "inconclusive," or "not substantiated";

(f) A plan of action necessary to prevent further abuse of the adult;

(g) Any additional corrective action required by the community program and deadlines for completing these actions;

(h) A list of any notices made to licensing or certifying agencies;

(i) The name and title of the individual completing the report; and

(j) The date the report is written.

(3) In cases where, for good cause shown, the protective services investigator cannot complete the report within 45 days, the investigator shall submit a request for time extension to OIT.

(a) An extension may be granted for good cause shown which includes but is not limited to:

(A) When law enforcement is conducting an investigation;

(B) A material party or witness is temporarily unavailable;

(C) New evidence is discovered;

(D) The investigation is complex (e.g., large numbers of witnesses need to be interviewed taking into account scheduling difficulties and limitations, consultation with experts or a detailed review of records over an extended period of time is required); or

(E) For some other mitigating reason.

(b) When granting an extension, OIT shall consult with the program about the need for an extension and determine the length of the extension as necessary.

(c) The community program shall notify the provider agency, brokerage and guardian when an extension is granted and advise them of the new report due date.

(4) A copy of the final abuse investigation and protective services report shall be provided to the Department within five working days of the report's completion and approval by OIT.

(5) The community program must provide notice of the outcome of the investigation or assure that notice is provided to the alleged victim, guardian, provider agency and brokerage, accused person and to any law enforcement agency which previously received notice of the initial report. Notice of outcome shall be provided to a reporter upon the reporter's request. Notice of outcome must be made within five working days after the date the case is completed and approved by OIT. The community program must document how the notice was provided.

(6) A centralized record of all abuse investigation and protective services reports shall be maintained by community programs for all abuse investigations conducted in their county and by the Department for all abuse investigations in the state.

Stat. Authority: ORS 179.040 & 409.050  
Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825  
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0260, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0120, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10; DHSD 9-2011, f. 12-1-11, cert. ef. 12-5-11

**Rule Caption:** Amendment and Repeal of Abuse of Individuals in State Hospitals and Residential Training Centers.

**Adm. Order No.:** DHSD 10-2011

**Filed with Sec. of State:** 12-1-2011

**Certified to be Effective:** 12-1-11

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

**Rules Amended:** 407-045-0400

**Rules Repealed:** 407-045-0400(T), 407-045-0410, 407-045-0420, 407-045-0430, 407-045-0440, 407-045-0450, 407-045-0460, 407-045-0470, 407-045-0480, 407-045-0490, 407-045-0500, 407-045-0510, 407-045-0520

**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, a temporary rule was filed to move these rules (OAR 407-045-0400 to 407-045-0520) to the Authority's rule chapter, OAR 943-045-0400 to 943-0400, as part of the operational transfer from functions previously performed by the Department as a result of HB 2009 (2009). Effective December 1, 2011, the chapter 943 rules become permanent. With the creation of this new agency, the administration of state hospitals has moved to the Authority. These rules are needed to reflect the separation of the Department and the Authority. With this rulemaking, the current temporary rules will be amended and repealed.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

## 407-045-0400

### Purpose

These rules (OAR 407-045-0400 to 407-045-0520), which establish a policy prohibiting abuse and define procedures for reporting, investigating, and resolving alleged incidents of abuse of individuals in state hospitals and residential training centers, have been moved to the Oregon Health Authority rule chapter (OAR 943-045-0400 to 943-0520).

Stat. Auth.: ORS 179.040 & 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.765

Hist.: MHD 23, f. 8-5-74, ef. 8-25-74; MHD 19-1982(Temp), f. & ef. 9-10-82; MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(1) and (2); MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0000, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0000, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 4-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; DHSD 10-2011, f. & cert. ef. 12-1-11

\*\*\*\*\*

## 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 31-2011(Temp)

**Filed with Sec. of State:** 12-1-2011

**Certified to be Effective:** 12-1-11 thru 1-11-12

**Notice Publication Date:**

**Rules Amended:** 461-155-0575

**Rules Suspended:** 461-155-0575(T)

**Subject:** OAR 461-155-0575 sets out policy for providing special need in-home supplementary payments to certain Oregon Supplemental Income Program Medical (OSIPM) clients who receive specified in-home services. Payments authorized by the rule were suspended by temporary rule effective July 15, 2011. That temporary rule is being suspended, reinstating the payments authorized by the rule effective December 1, 2011.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-155-0575

### Special Need; In-home Supplement; OSIPM

In the OSIPM program:

(1) The Department may provide a monthly supplementary payment for a client who meets the requirements of all of the following subsections:

(a) The client must receive SSI as his or her only source of income.

(b) The client must receive in-home services authorized by:

(A) The Independent Choices Program (covered under the State Medicaid Plan);

# ADMINISTRATIVE RULES

- (B) A 1915(c) Home and Community-Based Service Waiver; or
- (C) State Plan Personal Care Services authorized under chapter 411, division 034 of Oregon Administrative Rules.

(2) The amount and duration of payments authorized under this rule are subject to availability of funding as determined by the Department and are considered reimbursement for uncovered assistance needs.

(3) All eligible clients will receive the same monthly payment amount.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706  
Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706  
Hist.: SSP 11-2011(Temp), f. 3-31-11, cert. ef. 4-1-11 thru 9-28-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 21-2011(Temp), f. & cert. ef. 7-15-11 thru 1-11-12; SSP 31-2011(Temp), f. & cert. ef. 12-1-11 thru 1-11-12

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

**Rule Caption:** AFH-DD: Emergency Plan Summary and Notice of Exit or Transfer.

**Adm. Order No.:** SPD 25-2011(Temp)

**Filed with Sec. of State:** 12-1-2011

**Certified to be Effective:** 12-1-11 thru 5-29-12

**Notice Publication Date:**

**Rules Amended:** 411-360-0130, 411-360-0170, 411-360-0190

**Subject:** The Department of Human Services (Department) is temporarily amending:

OAR 411-360-0130 to remove the requirement that providers of adult foster homes for individuals with developmental disabilities (AFH-DD) submit a one page Emergency Plan Summary to the Department annually each January 15th; and

OAR 411-360-0170 and 411-360-0190 to correctly implement the standards for AFH-DD transfers and exits to assure compliance with ORS 443.738 to 443.739.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-360-0130

### Facility Standards

In order to qualify for or renew a license, an AFH-DD must meet the following provisions.

#### (1) GENERAL CONDITIONS.

(a) Each AFH-DD must maintain up-to-date documentation verifying they meet applicable local business license, zoning, building and housing codes, and state and local fire and safety regulations for a single-family residence. It is the duty of the provider to check with local government to be sure all applicable local codes have been met. A current floor plan of the house must be on file with the local CDDP.

(b) The building and furnishings must be clean and in good repair and grounds must be maintained. Walls, ceilings, and floors must be of such character to permit frequent washing, cleaning, or painting. There must be no accumulation of garbage, debris, rubbish, or offensive odors.

(c) Stairways (interior and exterior) must have handrails and be adequately lighted. Yard and exterior steps must be accessible and appropriate to the needs of individuals.

(d) Adequate lighting must be provided in each room, internal and external stairways, and internal and external exit ways. Incandescent light bulbs and florescent tubes must be protected and installed per manufacturer's directions.

(e) The heating system must be in working order. Areas of the AFH-DD used by individuals must be maintained at no less than 68 degrees F during the day (when individuals are home) and 60 degrees F during sleeping hours. During times of extreme summer heat, the provider must make every reasonable effort to make the individuals comfortable and safe using ventilation, fans, or air conditioners.

(f) There must be at least 150 square feet of common space, and sufficient comfortable furniture in the AFH-DD to accommodate the recreational and socialization needs of the occupants at one time. Common space may not be located in the basement or garages unless such space was constructed for that purpose or has otherwise been legalized under permit. Additional space may be required if wheelchairs are to be accommodated.

(g) Providers may not permit individuals to access or use swimming or other pools, hot tubs, saunas, or spas on the premise without supervision. Swimming pools, hot tubs, spas, or saunas must be equipped with sufficient safety barriers or devices designed to prevent accidental injury or unsupervised access.

(h) Interior doorways used by individuals must be wide enough to accommodate wheelchairs and walkers if used by individuals.

(i) Marijuana must not be grown in or on the premises of the AFH-DD. Individuals with Oregon Medical Marijuana Program (OMMP) registry cards must arrange for and obtain their own supply of medical marijuana from a designated grower as authorized by OMMP. The licensed provider, the caregiver, other employee, or any occupant in or on the premises must not be designated as the individual's grower and must not deliver marijuana from the supplier.

#### (2) SANITATION.

(a) A public water supply must be utilized if available. If a non-municipal water source is used, it must be tested for coliform bacteria by a certified agent yearly, and records must be retained for two years. Corrective action must be taken to ensure potability.

(b) If a septic tank or other non-municipal sewage disposal system is used, it must be in good working order.

(c) Garbage and refuse must be suitably stored in readily cleanable, rodent proof, covered containers, pending weekly removal.

(d) Prior to laundering, soiled linens and clothing must be stored in containers in an area separate from food storage, kitchen, and dining areas. Special pre-wash attention must be given to soiled and wet bed linens.

(e) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards. Proof of rabies or other vaccinations as required by a licensed veterinarian must be maintained on the premises for household pets. Pets not confined in enclosures must be under control and must not present a danger to individuals or guests.

(f) There must be adequate control of insects and rodents, including screens in good repair on doors and windows used for ventilation.

(g) Universal precautions for infection control must be followed in care to individuals. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids.

(h) All caregivers must take precautions to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. After they are used, disposable syringes and needles, scalpel blades, and other sharp items must be placed in puncture-resistant containers for disposal. The puncture-resistant containers must be located as close as practical to the use area. Disposal must be according to local regulations and resources (ORS 459.386 to 459.405).

#### (3) BATHROOMS.

(a) Must provide for individual privacy and have a finished interior, a mirror, an openable window or other means of ventilation, and a window covering. No person must have to walk through another person's bedroom to get to a bathroom;

(b) Must be clean and free of objectionable odors;

(c) Must have tubs or showers, toilets, and sinks in good repair, and hot and cold water. A sink must be located near each toilet. A toilet and sink must be provided on each floor where rooms of non-ambulatory individuals or individuals with limited mobility are located. There must be at least one toilet, one sink, and one tub or shower for each six household occupants, including the provider and family;

(d) Must have hot and cold water in sufficient supply to meet the needs of individuals for personal hygiene. Hot water temperature sources for bathing areas may not exceed 120 degrees F;

(e) Must have shower enclosures with nonporous surfaces. Glass shower doors must be tempered safety glass. Shower curtains must be clean and in good condition. Non-slip floor surfaces must be provided in tubs and showers;

(f) Must have grab bars for toilets, tubs, and showers for individual's safety as required by individual's disabilities;

(g) Must have barrier-free access to toilet and bathing facilities with appropriate fixtures if there are non-ambulatory individuals. Alternative arrangements for non-ambulatory individuals must be appropriate to individual needs for maintaining good personal hygiene; and

(h) Must have adequate supplies of toilet paper for each toilet and soap for each sink. Individuals must be provided with individual towels and wash cloths that are laundered in hot water at least weekly or more often if necessary. Individuals must have appropriate racks or hooks for drying bath linens. If individual hand towels are not provided, individuals must be provided with individually dispensed paper towels.

#### (4) BEDROOMS.

(a) Bedrooms for all household occupants must:

(A) Have been constructed as a bedroom when the home was built or remodeled under permit;

(B) Be finished, with walls or partitions of standard construction that go from floor to ceiling, and a door that opens directly to a hallway or com-

## ADMINISTRATIVE RULES

mon use room without passage through another bedroom or common bathroom;

(C) Be adequately ventilated, heated, and lighted with at least one openable window that meets fire regulations subsection (7)(a) of this rule;

(D) Have at least 70 square feet of usable floor space for each individual or 120 square feet for two individuals; and

(E) Have no more than two persons per room.

(b) Providers, resident managers, or family members must not sleep in areas designated as common use living areas, nor share bedrooms with service recipients.

(c) There must be an individual bed for each individual consisting of a mattress and box springs at least 36 inches wide. Cots, rollaways, bunks, trundles, couches, futons, and folding beds must not be used for individuals. Each bed must have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Sheets and pillowcases must be laundered at least weekly, and more often if necessary. Waterproof mattress covers must be used for incontinent individuals. Individual's beds must not be used by day care persons.

(d) Each bedroom must have sufficient separate, private dresser and closet space for each individual's clothing and personal effects, including hygiene and grooming supplies. Individuals must be allowed to keep and use reasonable amounts of personal belongings, and to have private, secure storage space. Drapes or shades for windows must be in good condition and allow privacy for individuals.

(e) Bedrooms must be on ground level for individuals who are non-ambulatory or have impaired mobility.

(f) Individual bedrooms must be in close enough proximity to provider to alert provider to nighttime needs or emergencies, or be equipped with an intercom, or audio monitor as approved by the ISP team.

(g) Bedrooms must have at least one window or exterior door that readily opens from the inside without special tools and that provides a clear opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 22 inches in height or 20 inches in width. Sill height must not be more than 44 inches from the floor level or there must be approved steps or other aids to window egress that may be used by individuals. Windows with a clear opening of not less than 5.0 square feet or 720 square inches with sill heights of 48 inches may be accepted when approved by the State Fire Marshal or designee.

(h) For AFH-DD homes with one or more employees, smoking regulations in compliance with Oregon's Smokefree Workplace Law must be adopted to allow smoking only in designated areas. Smoking is not permitted in any bedroom including that of an individual, provider, resident manager, caregiver, boarder, or family member.

### (5) MEALS.

(a) Three nutritious meals must be served daily at times consistent with those in the community. Each daily menu must include food from the four basic food groups and fresh fruit and vegetables in season unless otherwise specified in writing by the physician. There must be no more than a 14-hour span between the evening meal and breakfast, unless snacks and liquids are served as supplements. Consideration must be given to cultural and ethnic backgrounds, as well as, food preferences of individuals in food preparation. Special consideration must be given to individuals with chewing difficulties and other eating limitations. Food may not be used as an inducement to control the behavior of an individual.

(b) Menus for the coming week that consider individual preferences must be prepared and posted weekly in a location that is accessible to individuals and families. Menu substitutions in compliance with subsection (5)(a) of this rule are acceptable.

(c) MODIFIED OR SPECIAL DIETS. For individuals with physician or health care provider ordered modified or special diets, the provider must:

(A) Have menus for the current week that provide food and beverages that consider the individual's preferences and are appropriate to the modified or special diet; and

(B) Maintain documentation that identifies how modified texture or special diets are prepared and served to individuals.

(d) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator. Food storage must be such that food is protected from dirt and contamination and maintained at proper temperatures to prevent spoilage.

(e) Utensils, dishes, glassware, and food supplies must not be stored in bedrooms, bathrooms, or living areas.

(f) Meals must be prepared and served in the AFH-DD where individuals live. Payment for meals eaten away from the AFH-DD for the convenience of the provider (e.g. restaurants, senior meal sites) is the respon-

sibility of the provider. Meals and snacks as part of an individual recreational outing are the responsibility of the individual.

(g) Utensils, dishes, and glassware must be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with sanicycle is recommended.

(h) Food storage and preparation areas and equipment must be clean, free of obnoxious odors, and in good repair.

(i) Home-canned foods must be processed according to the current guidelines of the Oregon Extension Service. Freezing is the most acceptable method of food preservation. Milk must be pasteurized.

### (6) TELEPHONE.

(a) A telephone must be provided in the AFH-DD that is available and accessible for individuals' use for incoming and outgoing calls. Telephone lines must be unblocked to allow for access.

(b) Emergency telephone numbers for the local CDDP, police, fire, medical if not served by 911, an emergency number to reach a provider who does not live in the AFH-DD, and any emergency physician and additional persons to be contacted in the case of an emergency, must be posted in close proximity to all phones utilized by the licensee, resident manager, individuals, and caregivers.

(c) Telephone numbers for making complaints or a report of alleged abuse to the Department, the local CDDP, and Disability Rights Oregon must also be posted.

(d) Limitations on the use of the telephone by individuals are to be specified in the written house rules. Individual restrictions must be specified in the ISP. In all cases, a telephone must be accessible to individuals for outgoing calls (emergencies) 24 hours a day.

(e) AFH-DD telephone numbers must be listed in the local telephone directory.

(f) The licensee must notify the Department and the Department's designee, individuals, individuals' families, legal representatives, and service coordinators, as applicable, of any change in the adult foster home's telephone number within 24 hours of the change.

### (7) SAFETY.

(a) Buildings must meet all applicable state and local building, mechanical, and housing codes for fire and life safety. The AFH-DD may be inspected for fire safety by the State Fire Marshall's office at the request of the Department using the standards in these rules as appropriate.

(b) Heating in accordance with manufacturer's specifications and electrical equipment, including wood stoves, must be installed in accordance with all applicable fire and life safety codes. Such equipment must be used and maintained properly and be in good repair. Providers who do not have a permit verifying proper installation of an existing wood stove must have the wood stove inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth Products Association member and follow their recommended maintenance schedule. Protective glass screens or metal mesh curtains attached top and bottom are required on fireplaces. The installation of a non-combustible heat resistant safety barrier may be required to be installed 36 inches around wood stoves to prevent individuals with ambulation or confusion problems from coming in contact with the stove. Un-vented portable oil, gas, or kerosene heaters are prohibited. Sealed electric transfer heaters or electric space heaters with tip-over shut-off capability may be used when approved by the authority having jurisdiction.

(c) Extension cord wiring must not be used in place of permanent wiring.

(d) Hardware for all exit doors and interior doors used for exit purposes must have simple hardware that cannot be locked against exit and must have an obvious method of single action operation. Hasps, sliding bolts, hooks and eyes, and double key deadbolts are not permitted. Homes with one or more individuals who have impaired judgment and are known to wander away from their place of residence must have a functional and activated alarm system to alert a caregiver of an unsupervised exit by an individual.

### (e) EMERGENCY PROCEDURES.

(A) GENERAL FIRE DRILL REQUIREMENTS. The provider must conduct unannounced evacuation drills when individuals are present, once every quarter with at least one drill per year occurring during the hours of sleep. Drills must occur at different times of the day, evening, and night, with exit routes being varied based on the location of a simulated fire. All residents must participate in the evacuation drills.

(B) WRITTEN FIRE DRILL DOCUMENTATION REQUIRED. Written documentation must be made at the time of the fire drill and kept by the provider for at least two years following the drill. Fire drill documentation must include:



# ADMINISTRATIVE RULES

- (i) The date and time of the drill or simulated drill;
- (ii) The location of the simulated fire and exit route;
- (iii) The last names of all individuals and providers present on the premises at the time of the drill;
- (iv) The type of evacuation assistance provided by providers to individuals;
- (v) The amount of time required by each individual to evacuate; and
- (vi) The signature of the provider conducting the drill.

(C) The ISP must document that, within 24 hours of arrival, each new individual receives an orientation to basic safety and is shown how to respond to a fire alarm, and how to exit from the AFH-DD in an emergency.

(D) The provider must demonstrate the ability to evacuate all individuals from the AFH-DD within three minutes. If there are problems in demonstrating this evacuation time, the licensing authority may apply conditions to the license that include but are not limited to reduction of individuals under care, additional staffing, increased fire protection, or revocation of the license.

(E) The provider must provide, keep updated, and post a floor plan on each floor containing room sizes, location of each individual's bed, window, exit doors, resident manager or provider's sleeping room, smoke detectors, fire extinguishers, escape routes, and wheelchair ramps. A copy of the floor plan must be submitted with the application and updated to reflect any change.

(F) There must be at least one plug-in rechargeable flashlight available for emergency lighting in a readily accessible area on each floor including basement.

(f) **SMOKE DETECTORS.** Battery operated smoke alarms with a 10-year battery life and hush feature must be installed in accordance with the manufacturer's listing, in each bedroom, adjacent hallways, common living areas, basements, and in two-story homes, at the top of each stairway. Ceiling placement of smoke alarms is recommended. If wall mounted, smoke alarms must be between 6 inches and 12 inches from the ceiling and not within 12 inches of a corner. Alarms must be equipped with a device that warns of low battery condition when battery operated. All smoke alarms are to be maintained in functional condition.

(g) **PORTABLE FIRE FIGHTING EQUIPMENT.** At least one 2A-10BC rated fire extinguisher must be in a visible and readily accessible location on each floor, including basements, and must be inspected at least once a year by a qualified worker that is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose and documentation maintained.

## (h) SPECIAL HAZARDS

(A) Flammable and combustible liquids and hazardous materials must be safely and properly stored in original, properly labeled containers, or safety containers, and secured to prevent tampering by individuals and vandals. To protect the safety of an individual in an AFH-DD, the provider must store hunting equipment and weapons in a safe and secure manner inaccessible to the individuals in the home.

(B) Smoking regulations must be adopted to allow smoking only in designated areas in compliance with Oregon's Smokefree Workplace Law. Smoking is prohibited in sleeping rooms. Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted.

(C) Cleaning supplies, medical sharps containers, poisons, and insecticides must be properly stored in original, properly labeled containers in a safe area away from food, preparation and storage, dining areas, and medications.

## (8) EMERGENCY PLANNING.

(a) **EFFECTIVE DATE.** The emergency planning requirements listed in section (8) of this rule shall be effective January 1, 2011.

(b) If an individual accesses the community independently, the provider must provide the individual information about appropriate steps to take in an emergency, such as emergency contact telephone numbers, contacting police or fire personnel, or other strategies to obtain assistance.

(c) **WRITTEN EMERGENCY PLAN.** Providers must develop, maintain, update, and implement a written Emergency Plan for the protection of all the individuals in the event of an emergency or disaster. The Emergency Plan must:

(A) Be practiced at least annually. The Emergency Plan practice may consist of a walk-through of the duties or a discussion exercise dealing with the hypothetical event, commonly known as a tabletop exercise.

(B) Consider the needs of the individuals being served and address all natural and human-caused events identified as a significant risk for the home such as a pandemic or an earthquake.

(C) Include provisions and sufficient supplies, such as sanitation and food supplies, to shelter in place, when unable to relocate, for a minimum of three days under the following conditions:

- (i) Extended utility outage;
- (ii) No running water;
- (iii) Inability to replace food supplies; and
- (iv) Caregivers unable to report as scheduled.

(D) Include provisions for evacuation and relocation that identifies:

(i) The duties of caregivers during evacuation, transporting, and housing of individuals including instructions to caregivers to notify the Department or the Department's designee and local CDDP of the plan to evacuate or the evacuation of the home as soon as the emergency or disaster reasonably allows;

(ii) The method and source of transportation;

(iii) Planned relocation sites that are reasonably anticipated to meet the needs of the individuals in the home;

(iv) A method that provides persons unknown to the individual the ability to identify each individual by the individual's name, and to identify the name of the individual's supporting provider; and

(v) A method for tracking and reporting to the Department, or the Department's designee, and the local CDDP the physical location of each individual until a different entity resumes responsibility for the individual.

(E) Address the needs of the individuals including provisions to provide:

(i) Immediate and continued access to medical treatment with the evacuation of the individual summary sheet and the individual's emergency information identified in OAR 411-360-0170, and other information necessary to obtain care, treatment, food, and fluids for individuals;

(ii) Continued access to life sustaining pharmaceuticals, medical supplies, and equipment during and after an evacuation and relocation;

(iii) Behavior support needs anticipated during an emergency; and

(iv) Adequate staffing to meet the life-sustaining and safety needs of the individuals.

(d) Providers must instruct and provide training to all caregivers about the caregivers' duties and responsibilities for implementing the Emergency Plan.

(A) Documentation of caregiver training must be kept on record by the provider.

(B) The provider must re-evaluate the Emergency Plan at least annually or when there is a significant change in the home.

(e) Applicable parts of the Emergency Plan must coordinate with each applicable Employment, Alternative to Employment, or Day Program provider to address the possibility of an emergency or disaster during day time hours.

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

Stat. Auth.: ORS 409.050, 410.070, & 443.450

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

## 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;

## ADMINISTRATIVE RULES

(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 medications 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 mismanage-

ment 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

(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

## ADMINISTRATIVE RULES

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 and the opportunity for a hearing as provided in ORS 443.738.

(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 410.070 & 409.050  
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

### 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.
- (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 and the individual's right to a hearing as provided in ORS 443.738, 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:



# ADMINISTRATIVE RULES

(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. 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.

(7) **RESPITE.** 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 410.070 & 409.050

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

\*\*\*\*\*

## Department of Justice Chapter 137

**Rule Caption:** Amends Attorney General's Legal Sufficiency Rules, Division 45.

**Adm. Order No.:** DOJ 9-2011

**Filed with Sec. of State:** 11-29-2011

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

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 137-045-0030, 137-045-0090

**Subject:** Rules concerning the Attorney General's review of state contracts for legal sufficiency are being amended to clarify review requirements. The amendments confirm that legal sufficiency approval is required for a contract calling for the state to receive or pay value over \$150,000 even if the value is other than money, services or goods.

**Rules Coordinator:** Carol Riches—(503) 947-4700

### 137-045-0030

#### Review of Public Contracts

(1) Except as described in section (2), before a Public Contract is binding on the State of Oregon, and before any service may be performed or payment may be made under the Public Contract, the Attorney General must approve for legal sufficiency in accordance with these rules:

(a) Any Public Contract calling for or providing for payment in excess of \$150,000.

(b) An amendment to a Public Contract described in subsection (1)(a).

(c) An amendment that makes the amended Public Contract subject to legal sufficiency approval under subsection (1)(a).

(2) The legal sufficiency approval requirement described in section (1) does not apply to Public Contracts that are exempt from legal sufficiency approval under these division 045 rules.

(3) For purposes of determining whether a Public Contract exceeds the amounts set forth in section (1), a Public Contract calls for or provides for payments in excess of the applicable amount if one of the following applies:

(a) The Public Contract expressly provides that the Agency will make or receive payments in money, services or goods over the term of the Public Contract with a value that will, in aggregate, exceed the applicable thresh-

# ADMINISTRATIVE RULES

old, whether or not the total amount or value of the payments is expressly stated. For purposes of this subsection, when an agency is lending money, and the only payment to the Agency is in money, "payments" receivable by the Agency mean principal, only.

(b) The Public Contract expressly provides for a guaranteed maximum price or a maximum not to exceed amount payable or receivable by the Agency with a value that exceeds the applicable threshold.

(c) Based on historical or other data available to the contracting Agency at the time of entering into the Public Contract, the contracting Agency determines that the value of the benefit, loss or detriment to the Agency that is called for by the Public Contract will likely exceed the applicable threshold.

(4) An Agency shall not fragment or segregate transactions for purposes of circumventing the legal sufficiency approval requirement.

(5) A program or activity of a recipient of a Grant that is financed by the Grant does not constitute a service performed under a Public Contract for purposes of this rule.

Stat. Auth.: ORS 291.047(3)

Stats. Implemented: ORS 291.047

Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0030(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 9-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-045-0090

### Ratification of Public Contracts

Before ratifying a Public Contract under ORS 291.049, an Agency shall do all of the following:

(1) Submit to the Attorney in Charge, Business Transactions Section, a copy of the Public Contract and the proposed ratification document. The ratification document is to be executed, after approval for legal sufficiency, by an executive officer of an Agency who is responsible for oversight of the Public Contract. The ratification document must contain:

(a) An explanation of why performance began or payment was made before the Public Contract was approved by the Attorney General for legal sufficiency;

(b) A description of the steps being taken to prevent similar occurrences in the future; and

(c) A proposed ratification of the Public Contract.

(2) Obtain approval of the Public Contract for legal sufficiency from the Attorney General, through the Attorney in Charge, Business Transactions Section;

(3) Obtain all other approvals required for the Public Contract.

Stat. Auth.: ORS 291.049(3)

Stats. Implemented: ORS 291.049

Hist.: DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 9-2011, f. 11-29-11, cert. ef. 1-1-12

\*\*\*\*\*

**Rule Caption:** Amends Attorney General's Model Public Contract Rules, Divisions 46–49.

**Adm. Order No.:** DOJ 10-2011

**Filed with Sec. of State:** 11-29-2011

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

**Notice Publication Date:** 10-1-2011

**Rules Adopted:** 137-048-0270

**Rules Amended:** 137-046-0110, 137-046-0300, 137-047-0257, 137-047-0260, 137-047-0261, 137-047-0310, 137-047-0430, 137-047-0460, 137-047-0600, 137-047-0620, 137-047-0800, 137-048-0100, 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, 137-049-0380, 137-049-0650, 137-049-0860

**Rules Repealed:** 137-047-0262, 137-047-0263

**Subject:** The rule changes amend the Attorney General's model public contract rules applicable to state and local contracting agencies to respond to 2011 legislative changes and clarify and improve procurement processes. Revisions to divisions 46 and 47: add a discretionary preference for goods fabricated or processed in Oregon or services or personal services performed in Oregon, under amendments to ORS 279A.128 made by HB 3000 (2011); provide more flexibility in selection processes for multistep and multi-tiered bidding and proposals; clarify when contracts may be amended; and clarify requirements related to inclusion of contractual terms and conditions in solicitation documents. Revisions to division 48: add

"Photogrammetric Mapping, Transportation Planning or" to any references to "Architectural, Engineering and Land Surveying Services" to address the expansion of qualifications-based selection processes under HB 3316 (2011); clarify defined terms; clarify selection procedures applicable to local contracting agencies as well as state contracting agencies under HB 3316; clarify the procurement procedures for "mixed" contract situations; add provisions for procurement of services in the context of expert testimony for a claim, lawsuit or alternative dispute resolution proceeding; clarify provisions pertaining to contracting agencies' public disclosure of proposals; modify direct appointment, informal and formal selection procedures; and clarify that the process for breaking ties cannot be based on pricing information. A new rule describes use of price agreements and work orders. The revisions to Division 49: clarify when discussions with proposers are permitted; clarify when negotiations or discussions with proposers may be terminated; and incorporate changes to ORS 279C.830 made by SB 178 (2011) relating to prevailing rate of wage.

**Rules Coordinator:** Carol Riches—(503) 947-4700

## 137-046-0110

### Definitions for the Model Rules

Unless the context of a specifically applicable definition in the Code requires otherwise, capitalized terms used in the Model Rules have the meaning set forth in the division of the Model Rules in which they appear, and if not defined there, the meaning set forth in these division 46 rules, and if not defined here, the meaning set forth in the Code. The following terms, when capitalized in these Model Rules, have the meaning given below:

(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.

(2) "Administering Contracting Agency" has the meaning set forth in ORS 279A.200(1)(a) and for Interstate Cooperative Procurements includes the entities specified in ORS 279A.220(4).

(3) "Award" means, as the context requires, either identifying or the Contracting Agency's identification of the Person with whom the Contracting Agency intends to enter into a Contract following the resolution of any protest of the Contracting Agency's selection of that Person and the completion of all Contract negotiations.

(4) "Bid" means a Written response to an Invitation to Bid.

(5) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

(6) "Code" means the Public Contracting Code.

(7) "Competitive Range" means the Proposers with whom the Contracting Agency will conduct discussions or negotiations if the Contracting Agency intends to conduct discussions or negotiations in accordance with OAR 137-047-0261 or 137-049-0650.

(8) "Contract" means a contract for sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Contract" does not include grants.

(9) "Contract Price" means, as the context requires, the maximum monetary obligation that a Contracting Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.

(10) "Contract Review Authority" means:

(a) For State Contracting Agencies, generally the Director of the Oregon Department of Administrative Services;

(b) For Local Contracting Agencies, the Local Contracting Agency's Local Contract Review Board determined as specified in ORS 279A.060; and

(c) Where specified by statute, the Director of the Oregon Department of Transportation.

(11) "Contractor" means the Person, including a Consultant as defined in OAR 137-048-0110(1), with whom a Contracting Agency enters into a Contract.

(12) "DBE Disqualification" means a disqualification, suspension or debarment pursuant to ORS 200.065, 200.075 or 279A.110.

(13) "Descriptive Literature" means Written information submitted with the Offer that addresses the Goods and Services included in the Offer.

(14) "Electronic Advertisement" means a Contracting Agency's Solicitation Document, Request for Quotes, request for information or

# ADMINISTRATIVE RULES

other document inviting participation in the Contracting Agency's Procurements made available over the Internet via:

- (a) The World Wide Web or some other Internet protocol; or
- (b) A Contracting Agency's Electronic Procurement System.

(15) "Electronic Offer" means a response to a Contracting Agency's Solicitation Document or Request for Quotes submitted to a Contracting Agency via:

- (a) The World Wide Web or some other Internet protocol; or
- (b) A Contracting Agency's Electronic Procurement System.

(16) "Electronic Procurement System" means an information system that Persons may access through the Internet using the World Wide Web or some other Internet protocol or that Persons may otherwise remotely access using a computer, that enables Persons to send Electronic Offers and a Contracting Agency to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a Procurement.

(17) "Invitation to Bid" or "ITB" means the Solicitation Document issued to invite Offers from prospective Contractors pursuant to either ORS 279B.055 or 279C.335.

(18) "Model Rules" means the Attorney General's model rules of procedure for Public Contracting as required under ORS 279A.065.

(19) "Offer" means a Written offer to provide Goods or Services in response to a Solicitation Document.

(20) "Offeror" means a Person who submits an Offer.

(21) "Opening" means the date, time and place specified in the Solicitation Document for the public opening of Offers.

(22) "Person" means any of the following with legal capacity to enter into a Contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(23) "Personal Services" as used in division 47 and as used in division 46 when applicable to division 47 means the services performed under a Personal Services Contract. "Personal Services" as used in division 48 and division 49, and as used in this division 46 when applicable to division 48 or division 49, or both, has the meaning set forth in ORS 279C.100.

(24) "Personal Services Contract" means:

(a) For a Local Contracting Agency, a Contract or member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), that the Local Contracting Agency's Local Contract Review Board has designated as a personal services contract pursuant to ORS 279A.055; or

(b) For a State Contracting Agency, a Contract, or member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, consultant, broadcaster or artist (including a photographer, filmmaker, painter, weaver or sculptor).

(25) "Product Sample" means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

(26) "Proposal" means a Written response to a Request for Proposals.

(27) "Recycled Materials" means recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as defined in ORS 279A.010(1)(ii)).

(28) "Request for Qualifications" or "RFQ" means a Written document issued by a Contracting Agency to which Contractors respond in Writing by describing their experience with and qualifications for the Services, Personal Services or Architectural, Engineering or Land Surveying Services, or Related Services, described in the document.

(29) "Request for Quotes" means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Goods or perform Services, Personal Services or Public Improvements described in the request.

(30) "Responsible" means meeting the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and not debarred or disqualified by the Contracting Agency under OAR 137-047-0575 or 137-049-0370.

(31) "Responsible Offeror" means, as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and who has not been debarred or disqualified by the Contracting Agency under OAR 137-047-0575 or 137-049-0370.

(32) "Responsive" means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(33) "Responsive Offer" means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable solicitation requirements.

(34) "Signature" means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a Written document to which the Person intends to be bound.

(35) "Signed" means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(36) "Solicitation Document" means an Invitation to Bid, Request for Proposals, Request for Quotes, or other similar document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or 279C. The following are not Solicitation Documents unless they invite Offers from prospective Contractors: a Request for Qualifications, a prequalification of bidders, a request for information, a sole source notice, an approval of a Special Procurement, or a request for product prequalification. A project-specific selection document under a Price Agreement that has resulted from a previous Solicitation Document is not itself a Solicitation Document.

(37) "Writing" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intended to represent or convey particular ideas or meanings. "Writing," when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(38) "Written" means existing in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-046-0300

### Preference for Oregon Goods and Services

(1) Tiebreaker Preference and Award When Offers Are Identical. Under ORS 279A.120, when a Contracting Agency receives Offers identical in price, fitness, availability and quality, and chooses to Award a Contract, the Contracting Agency shall Award the Contract based on the following order of precedence:

(a) The Contracting Agency shall Award the Contract to the Offeror among those submitting identical Offers who is offering Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon.

(b) If two or more Offerors submit identical Offers, and they all offer Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon, the Contracting Agency shall Award the Contract by drawing lots among the identical Offers. The Contracting Agency shall provide the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn.

(c) If the Contracting Agency receives identical Offers, and none of the identical Offers offer Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon, then the Contracting Agency shall award the Contract by drawing lots among the identical Offers. The Contracting Agency shall provide to the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn.

(2) Determining if Offers are Identical. A Contracting Agency shall consider Offers identical in price, fitness, availability and quality as follows:

(a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services, or both, or Personal Services, described in the Invitation to Bid at the same price.

(b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.

(c) Offers received in response to a Special Procurement conducted under ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the Contract Review Authority, the Contracting Agency determines, in Writing, that two or more Proposals are equally advantageous to the Contracting Agency.



# ADMINISTRATIVE RULES

(d) Offers received in response to an intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the Contracting Agency in accordance with 279B.070(4).

(3) Determining if Goods or Services or Personal Services are Manufactured or Produced in Oregon. In applying Section 1 of this rule, Contracting Agencies shall determine whether a Contract is predominantly for Goods, Services or Personal Services and then use the predominant purpose to determine if the Goods, Services or Personal Services are manufactured, produced, or performed in Oregon. Contracting Agencies may request, either in a Solicitation Document, following Closing, or at any other time the Contracting Agency determines is appropriate, any information the Contracting Agency may need to determine if the Goods, Services or Personal Services are manufactured or produced in Oregon. A Contracting Agency may use any reasonable criteria to determine if Goods, Services or Personal Services are manufactured, produced, or performed in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Contracting Agency applies those criteria equally to each Offer.

(4) Procedure for Drawing Lots. When this rule calls for the drawing of lots, the Contracting Agency shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of selection and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

(5) Discretionary Preference and Award. Under ORS 279A.128, a Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than ten percent for Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon. When the Contracting Agency provides for a preference under this Section, and more than one Offeror qualifies for the preference, the Contracting Agency may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon. A Contracting Agency may establish a preference percentage higher than ten percent by written order that finds good cause to establish the higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage. A Contracting Agency may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320.

Stat. Auth.: ORS 279A.065; OL 2011, ch 237  
Stats. Implemented: ORS 279A.065; 279A.120 & 279A.128; OL 2011, ch 237  
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-047-0257

### Multistep Sealed Bidding

(1) Generally. A Contracting Agency may procure Goods or Services by using multistep sealed bidding under ORS 279B.055(12).

(2) Phased Process. Multistep sealed bidding is a phased Procurement process that seeks information or unpriced submittals in the first phase combined with regular competitive sealed bidding, inviting Bidders who submitted technically eligible submittals in the first phase to submit competitive sealed price Bids in the second phase. The Contract must be Awarded to the lowest Responsible Bidder.

(3) Public Notice. When a Contracting Agency uses multistep sealed bidding, the Contract Agency shall give public notice for the first phase in accordance with OAR 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the second phase to all Bidders, inform Bidders of the right to protest Addenda issued after the initial Closing under OAR 137-047-0430, and inform Bidders excluded from the second phase of the right, if any, to protest their exclusion under OAR 137-047-0720.

(4) Procedures Generally. In addition to the procedures set forth in OAR 137-047-0300 through 137-047-0490, a Contracting Agency shall employ the procedures set forth in this rule for multistep sealed bidding and in the Invitation to Bid.

(5) Procedure for Phase One of Multistep Sealed Bidding.

(a) Form. A Contracting Agency shall initiate multistep sealed bidding by issuing an Invitation to Bid in the form and manner required for competitive sealed Bids except as provided in this Rule. In addition to the requirements set forth OAR 137-047-0255(2), the multistep Invitation to Bid must state:

(A) That the solicitation is a multistep sealed Bid Procurement and describe the process the Contracting Agency will use to conduct the Procurement;

(B) That the Contracting Agency requests unpriced submittals and that the Contracting Agency will consider price Bids only in the second phase and only from those Bidders whose unpriced submittals are found eligible in the first phase;

(C) Whether Bidders must submit price Bids at the same time as unpriced submittals and, if so, that Bidders must submit the price Bids in a separate sealed envelope;

(D) The criteria to be used in the evaluation of unpriced submittals;

(b) Evaluation. The Contracting Agency shall evaluate unpriced submittals in accordance with the criteria set forth in the Invitation to Bid.

(6) Procedure for Phase Two of Multistep Sealed Bidding.

(a) After the completion of phase one, if the Contracting Agency does not cancel the Solicitation, the Contracting Agency shall invite each eligible Bidder to submit a price Bid.

(b) A Contracting Agency shall conduct phase two as any other competitive sealed Bid Procurement except:

(A) As specifically set forth in this rule or the Invitation to Bid;

(B) No public notice need be given of the invitation to submit price Bids because such notice was previously given.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.055

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-047-0260

### Competitive Sealed Proposals

(1) Generally. A Contracting Agency may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060. A Contracting Agency shall use a Request for Proposal to initiate a competitive sealed Proposal solicitation. The Request for Proposal must contain the information required by 279B.060(2) and by section (2) of this rule. The Contracting Agency shall provide public notice of the Request for Proposal as set forth in OAR 137-047-0300.

(2) Request for Proposal. In addition to the provisions required by ORS 279B.060(2), the Request for Proposal must include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means. (See OAR 137-047-0330 for required provisions of electronic Proposals);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 137-046-0210(2)); and

(F) How the Contracting Agency will notify Proposers of Addenda and how the Contracting Agency will make Addenda available. (See OAR 137-047-0430).

(b) Contracting Agency Need to Purchase. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by ORS 279B.060(2)(c), the Contracting Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, transportation planning, or land surveying services, or related services that are subject to ORS 279C.100 to 279C.125, or the Contracting Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely

# ADMINISTRATIVE RULES

involved in providing the Goods or Services that the Contracting Agency is purchasing.

(c) Proposal and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Contracting Agency shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(3)(e). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, the factors shall be reasonable estimates of actual future costs based on information available to the Contracting Agency;

(C) If the Contracting Agency's solicitation process calls for the Contracting Agency to establish a Competitive Range, the Contracting Agency shall generally describe, in the Solicitation Document, the criteria or parameters the Contracting Agency will apply to determine the Competitive Range. The Contracting Agency, however, subsequently may determine or adjust the number of Proposers in the Competitive Range in accordance with OAR 137-047-0262(1)(a)(B).

(d) Applicable Preferences, including those described in ORS 279A.120, 279A.125(2) and 282.210.

(e) For Contracting Agencies subject to ORS 305.385, the Proposers' certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) All contractual terms and conditions the Contracting Agency determines are applicable to the Procurement. The Contracting Agency's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the Contracting Agency will not include in the Request for Proposal because the Contracting Agency either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions. (See OAR 137-047-0260(3)).

(g) As required by ORS 279B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Contracting Agency's reduction or withholding of payment under the Contract;

(B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the scope of work or to meet the performance standards established by the resulting Contract; and

(C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) The Contracting Agency may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract. Further, the Contracting Agency may specify that it will include or use Proposer's terms and conditions that have been pre-negotiated under OAR 137-047-0550(3), but the Contracting Agency may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under OAR 137-047-0420.

(4) For multiple Award Contracts, the Contracting Agency may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under OAR 137-047-0420.

(5) Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services under the Contract, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency shall document in the Procurement file the basis for the determination of Good Cause for specifying otherwise. A Contracting Agency will have Good Cause to specify otherwise when the Contracting Agency determines:

(a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software, components, equipment, parts, or on-going Services with which the Goods or Services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) That other circumstances exist in which the Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279B.060, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06;

DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-047-0261

### Multi-tiered and Multistep Proposals

(1) Generally. A Contracting Agency may use one or more, or any combination, of the methods of Contractor selection set forth in ORS 279B.060(7), 279B.060(8) and this rule to procure Goods or Services. In addition to the procedures set forth in OAR 137-047-0300 through 137-047-0490 for methods of Contractor selection, a Contracting Agency may provide for a multi-tiered or multistep selection process that permits award to the highest ranked Proposer at any tier or step, calls for the establishment of a Competitive Range, or permits either serial or competitive simultaneous discussions or negotiations with one or more Proposers.

(2) When conducting a multi-tiered or multistep selection process, a Contracting Agency may use any combination or series of Proposals, discussions, negotiations, demonstrations, offers, or other means of soliciting information from Proposers that bears on the selection of a Contractor or Contractors. In multi-tiered and multistep competitions, a Contracting Agency may use these means of soliciting information from prospective Proposers and Proposers in any sequence or order, and at any stage of the selection process, as determined in the discretion of the Contracting Agency.

(3) When a Contracting Agency's Request for Proposals prescribes a multi-tiered or multistep Contractor selection process, a Contracting Agency nevertheless may, at the completion of any stage in the competition and on determining the Most Advantageous Proposer (or, in multiple-award situations, on determining the awardees of the Public Contracts), award a Contract (or Contracts) and conclude the Procurement without proceeding to subsequent stages. The Contracting Agency also may, at any time, cancel the Procurement under ORS 279B.100.

(4) Exclusion Protest. A Contracting Agency may provide, before the notice of an intent to Award, an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multistep sealed Proposals as set forth in OAR 137-047-0720.

(5) Award Protest. A Contracting Agency shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and OAR 137-047-0740. An Affected Offeror may protest, for any of the bases set forth in 137-047-0720(2), its exclusion from the Competitive Range or from any phase of a multi-tiered or multistep sealed Proposal process, or may protest an Addendum issued following initial Closing, if the Contracting Agency did not previously provide Proposers the opportunity to protest the exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Contracting Agency.

(6) Competitive Range. When a Contracting Agency's solicitation process conducted under ORS 279B.060(8) calls for the Contracting Agency to establish a Competitive Range at any stage in the Procurement process, the Contracting Agency may do so as follows:

(a) Determining Competitive Range.

(A) The Contracting Agency may establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria in the Request for Proposals, the Contracting Agency may determine and rank the Proposers in the Competitive Range.

## ADMINISTRATIVE RULES

Notwithstanding the foregoing, however, in instances in which the Contracting Agency determines that a single Proposer has a reasonable chance of being determined the most Advantageous Proposer, the Contracting Agency need not determine or rank Proposers in the Competitive Range. In addition, notwithstanding the foregoing, a Contracting Agency may establish a Competitive Range of all Proposers to enter into discussions to correct deficiencies in Proposals.

(B) The Contracting Agency may establish the number of Proposers in the Competitive Range in light of whether the Contracting Agency's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most Advantageous Proposer, or whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive or have a reasonable chance of being determined the most Advantageous Proposer.

(b) **Protesting Competitive Range.** The Contracting Agency must provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Contracting Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with OAR 137-047-0720.

(7) **Discussions.** The Contracting Agency may initiate oral or written discussions with all "eligible Proposers" on subject matter within the general scope of the Request for Proposals. In conducting discussions, the Contracting Agency:

(a) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(b) May disclose other eligible Proposers' Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);

(c) May adjust the evaluation of a Proposal as a result of discussions. The conditions, terms, or price of the Proposal may be changed during the course of the discussions provided the changes are within the scope of the Request for Proposals.

(d) At any time during the time allowed for discussions, the Contracting Agency may:

(A) Continue discussions with a particular eligible Proposer;

(B) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or

(C) Conclude discussions with all remaining eligible Proposers and provide, to the then-eligible Proposers, notice requesting best and final Offers.

(8) **Negotiations.** A Contracting Agency may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers. A Contracting Agency may negotiate:

(a) The statement of work;

(b) The Contract Price as it is affected by negotiating the statement of work and other terms and conditions authorized for negotiation in the Request for Proposals or Addenda thereto; and

(c) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals or Addenda thereto. Proposers shall not submit for negotiation, and a Contracting Agency shall not accept, alternative terms and conditions that are not reasonably related to those authorized for negotiation in the Request for Proposals or any Addendum.

(9) **Terminating Negotiations.** At any time during discussions or negotiations a Contracting Agency conducts under this rule, the Contracting Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the Contracting Agency reasonably believes that:

(a) The eligible Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a Contract in a timely manner.

(c) **Continuing Serial Negotiations.** If the Contracting Agency is conducting serial negotiations and the Contracting Agency terminates negotiations with an eligible Proposer, the Contracting Agency may then commence negotiations with the next highest scoring eligible Proposer, and continue the sequential process until the Contracting Agency has either:

(A) Determined to Award the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or

(B) Decided to cancel the Procurement under ORS 279B.100.

(d) **Competitive Simultaneous Negotiations.** If the Contracting Agency chooses to conduct competitive negotiations, the Contracting

Agency may negotiate simultaneously with competing eligible Proposers. The Contracting Agency:

(A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(B) May disclose other eligible Proposers' Proposals or the substance of negotiations with other eligible Proposers only if the Contracting Agency notifies all of the eligible Proposers with whom the Contracting Agency will engage in negotiations of the Contracting Agency's intent to disclose before engaging in negotiations with any eligible Proposer.

(e) Any oral modification of a Proposal resulting from negotiations must be reduced to Writing.

(10) **Best and Final Offers.** If a Contracting Agency requires best and final Offers, a Contracting Agency must establish a common date and time by which eligible Proposers must submit best and final Offers. If a Contracting Agency is dissatisfied with the best and final Offers, the Contracting Agency may make a written determination that it is in the Contracting Agency's best interest to conduct additional discussions, negotiations or change the Contracting Agency's requirements and require another submission of best and final Offers. A Contracting Agency must inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offers will be considered their best and final Offers. The Contracting Agency shall evaluate Offers as modified by the best and final Offers. The Contracting Agency shall conduct the evaluations as described in OAR 137-047-0600. The Contracting Agency may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

(11) **Multistep Sealed Proposals.** A Contracting Agency may procure Goods or Services by using multistep competitive sealed Proposals under ORS 279B.060(8)(b)(g). Multistep sealed Proposals is a phased Procurement process that seeks necessary information or unpriced technical Proposals in the first phase and, in the second phase, invites Proposers who submitted technically qualified Proposals to submit competitive sealed price Proposals on the technical Proposals. The Contracting Agency must award the Contract to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the second phase.

(a) **Public Notice.** When a Contracting Agency uses multistep sealed Proposals, the Contracting Agency shall give public notice for the first phase in accordance with OAR 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the second phase of the right, if any, to protest exclusion under OAR 137-047-0720.

(b) **Procedure for Phase One of Multistep Sealed Proposals.** A Contracting Agency may initiate a multistep sealed Proposals Procurement by issuing a Request for Proposals in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements required for competitive sealed Proposals, the multistep Request for Proposals must state:

(A) That unpriced technical Proposals are requested;

(B) That the solicitation is a multistep sealed Proposal Procurement and that, in the second phase, priced Proposals will be accepted only from those Proposers whose unpriced technical Proposals are found qualified in the first phase;

(C) The criteria for the evaluation of unpriced technical Proposals; and

(D) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposals.

(c) Addenda to the Request for Proposals. After receipt of unpriced technical Proposals, Addenda to the Request for Proposals shall be distributed only to Proposers who submitted unpriced technical Proposals.

(d) **Receipt and Handling of Unpriced Technical Proposals.** Unpriced technical Proposals need not be opened publicly.

(e) **Evaluation of Unpriced Technical Proposals.** Unpriced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposals.

(f) **Discussion of Unpriced Technical Proposals.** The Contracting Agency may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the Contracting Agency shall not disclose any information derived from one unpriced technical Proposal to any other Proposer.



# ADMINISTRATIVE RULES

(g) Methods of Contractor Selection for Phase One. In conducting phase one, a Contracting Agency may employ any combination of the methods of Contractor selection that call for the establishment of a Competitive Range or include discussions, negotiations, or best and final Offers as set forth in this rule.

(h) Procedure for Phase Two. On the completion of phase one, the Contracting Agency shall invite each qualified Proposer to submit price Proposals. A Contracting Agency shall conduct phase two as any other competitive sealed Proposal Procurement except as set forth in this rule.

(j) No public notice need be given of the request to submit price Proposals because such notice was previously given.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279B.060  
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-047-0310

### Bids or Proposals are Offers

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract.

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e. the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in OAR 137-047-0480. The Contracting Agency may elect to accept the Offer at any time during the specified period, and the Contracting Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in OAR 137-047-0480, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that the rules or the Solicitation Document have reserved for negotiation.

(2) Contingent Offers. Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to OAR 137-047-0262, a Proposer shall not make its Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(3) Offeror's Acknowledgment. By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits Proposers to propose alternative terms or conditions under OAR 137-047-0261, the Offeror's Offer includes any non-negotiable terms and conditions, any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing, and Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279A.065, 279B.055 & 279B.60  
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-047-0430

### Addenda to Solicitation Document

(1) Issuance; Receipt. The Contracting Agency may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the Contracting Agency otherwise specifies in the Addenda.

(2) Notice and Distribution. The Contracting Agency shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available before Closing, and at each subsequent step or tier of evaluation if the Contracting Agency will engage in a multistep competitive sealed Bid process in accordance with OAR 137-047-0257, or a multi-tiered or multistep competitive sealed Proposal process in accordance with 137-047-0261. The following is an example of how a Contracting Agency may specify how it will provide notice of Addenda: "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's web site. Addenda may be downloaded off the Contracting Agency's web site. Offerors should frequently check the Contracting Agency's web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) Timelines; Extensions.

(a) The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent justified by a countervailing public interest, the Contracting Agency shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(b) Notwithstanding subsection 3(a) of this rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multistep sealed Bid or a multi-tiered or multistep sealed Proposal issued in accordance with ORS 279B.060(6)(d) and OAR 137-047-0261 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the Contracting Agency determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The Contracting Agency shall document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in OAR 137-047-0730, by the close of the Contracting Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under 137-047-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with 137-047-0730, then the Contracting Agency may consider an Offeror's request for change or protest to the Addendum only, and the Contracting Agency shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this section (4) of this rule, a Contracting Agency is not required to provide a protest period for Addenda issued after initial Closing during a multi-tier or multistep Procurement process conducted pursuant to ORS 279B.055 or 279B.060.

Stat. Auth.: ORS 279A.065 & 279B.060  
Stats. Implemented: ORS 279B.060  
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-047-0460

### Late Offers, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. An Agency shall not consider late Offers, withdrawals or modifications except as permitted in OAR 137-047-0470 or 137-047-0261.

Stat. Auth.: ORS 279A.065 & 279B.055  
Stats. Implemented: ORS 279B.055  
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-047-0600

### Offer Evaluation and Award

(1) Contracting Agency Evaluation. The Contracting Agency shall evaluate Offers only as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Contracting Agency shall not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids.

(A) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall apply the reciprocal preference set forth in ORS 279A.120(2)(b) and OAR 137-046-0310 for Nonresident Bidders.

(B) Public Printing. The Contracting Agency shall for the purpose of evaluating Bids apply the public printing preference set forth in ORS 282.210.

(C) Award When Bids are Identical. If the Contracting Agency determines that one or more Bids are identical under OAR 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in OAR 137-046-0300.

(b) Evaluation of Proposals.

(A) Award When Proposals are Identical. If the Contracting Agency determines that one or more Proposals are identical under OAR 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in OAR 137-046-0300.

# ADMINISTRATIVE RULES

(B) Public Printing. The Contracting Agency shall for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) Recycled Materials. When procuring Goods, the Contracting Agency shall give preference for recycled materials as set forth in ORS 279A.125 and OAR 137-046-0320.

(2) Clarification of Bids or Proposals. After Opening, a Contracting Agency may conduct discussions with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Bids or Proposals. All Bids or Proposals, in the Contracting Agency's sole discretion, needing clarification must be accorded such an opportunity. The Contracting Agency shall document clarification of any Bidder's Bid in the Procurement file.

(3) Negotiations.

(a) Bids. A Contracting Agency shall not negotiate with any Bidder. After Award of the Contract the Contracting Agency and Contractor may only modify the Contract in accordance with OAR 137-047-0800.

(b) Requests for Proposals. A Contracting Agency may conduct discussions or negotiate with Proposers only in accordance with ORS 279B.060(6)(b) and OAR 137-047-0261. After Award of the Contract, the Contracting Agency and Contractor may only modify the Contract in accordance with OAR 137-047-0800.

(4) Award.

(a) General. If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a "market basket" of items representative of the Contracting Agency's expected purchases, or grand total of all items.

(c) Multiple Awards – Bids.

(A) Notwithstanding subsection (4)(a) of this rule, a Contracting Agency may Award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service, or product compatibility. A multiple Award may be made if Award to two or more Bidders of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility and skills. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be Awarded for any Invitation to Bid shall not preclude the Contracting Agency from Awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the Contracting Agency shall specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

(d) Multiple Awards – Proposals.

(A) Notwithstanding subsection 4(a) of this rule, a Contracting Agency may Award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service or product compatibility. A multiple Award may be made if Award to two or more Proposers of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to prospective Proposers that multiple Contracts may be Awarded for any Request for Proposals shall not preclude the Contracting Agency from Awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the Contracting Agency shall specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services, which may include consideration and evaluation of the Contract terms and conditions agreed to by the Contractors.

(e) Partial Awards. If after evaluation of Offers, the Contracting Agency determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The Contracting Agency may Award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The Contracting Agency may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) All or none Offers. A Contracting Agency may Award all or none Offers if the evaluation shows an all or none Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

Stat. Auth.: ORS 279A.065 & 279B.060

Stats. Implemented: ORS 279B.055 & 279B.060

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-047-0620

### Documentation of Award

(1) Basis of Award. After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Procurement file.

(2) Contents of Award Record. The Contracting Agency's record shall include:

(a) For Bids:

(A) Bids;

(B) Completed Bid tabulation sheet; and

(C) Written justification for any rejection of lower Bids.

(b) For Proposals:

(A) Proposals;

(B) The completed evaluation of the Proposals;

(C) Written justification for any rejection of higher scoring Proposals;

and

(D) If the Contracting Agency engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and OAR 137-047-0261, Written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures the Contracting Agency used to select a Proposer to which the Contracting Agency Awarded a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-047-0800

### Amendments to Contracts and Price Agreements

(1) Generally. A Contracting Agency may amend a Contract without additional competition in any of the following circumstances:

(a) The amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special Procurement or the Contract, if any. An amendment is not within the scope of the Procurement if the Agency determines that if it had described in the Procurement the changes to be made by the amendment, it would likely have increased competition or affected award of the Contract.

(b) These Model Rules otherwise permit the Contracting Agency to Award a Contract without competition for the goods or services to be procured under the Amendment.

(c) The amendment is necessary to comply with a change in law that affects performance of the Contract.

(d) The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is Advantageous to the Contracting Agency, subject to all of the following conditions:

(A) The Goods or Services to be provided under the amended Contract are the same as the Goods or Services to be provided under the unamended Contract.

(B) The Contracting Agency determines that, with all things considered, the amended Contract is at least as favorable to the Contracting Agency as the unamended Contract.

(C) The amended Contract does not have a total term greater than allowed in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special Procurement, if any, after combining the initial and extended terms. For example, a one-year Contract described as renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years.

(2) Small or Intermediate Contract. A Contracting Agency may amend a Contract Awarded as a small or intermediate Procurement pursuant to section (1) of this rule, provided that the total increase in Contract price

# ADMINISTRATIVE RULES

does not exceed the amount set forth in OAR 137-047-0265 for small Procurements or 137-047-0270 for intermediate Procurements.

(3) Price Agreements. A Contracting Agency may amend a Price Agreement as follows:

- (a) As permitted by the Price Agreement;
- (b) If the circumstances set forth in ORS 279B.140(2) exist; or
- (c) As permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-048-0100

### Application

(1) The Attorney General is required to prepare and maintain model rules of procedure that govern Public Contracting under the Public Contracting Code and that are appropriate for use by all Contracting Agencies. These division 48 rules apply to the screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services, under Contracts and set forth the following procedures:

(a) Procedures through which Contracting Agencies select Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and

(b) Two-tiered procedures for selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services for certain public improvements owned and maintained by a Local Government.

(2) These division 48 rules apply to any Contracting Agency with independent contracting authority that is seeking the services of a Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, if the Contracting Agency has not adopted its own rules of procedure for the screening and selection of Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, as provided in ORS 279A.065(a).

(3) The dollar threshold amounts that are applicable to the Direct Appointment Procedure, 137-048-0200, the Informal Selection Procedure, 137-048-0210, and the Formal Selection Procedure, 137-048-0220, are independent from and have no effect on the dollar threshold amounts that trigger the legal sufficiency review requirement for State Contracting Agencies under ORS 291.047.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-048-0110

### Definitions

In addition to the definitions set forth in ORS 279A.010, 279C.100, and OAR 137-046-0110, the following definitions apply to these division 48 rules:

(1) “**Consultant**” means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing. Provided, however, when a Contracting Agency is entering into a direct Contract under OAR 137-048-0200(1)(c) or (d), the “Consultant” must be an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor, as required by ORS 279C.115(1).

(2) “**Estimated Fee**” means Contracting Agency’s reasonably projected fee to be paid for a Consultant’s services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract. The Estimated Fee shall not be used as a basis to resolve other Public Contracting issues, including without limitation, direct purchasing authority or Public Contract review and approval under ORS 291.047.

(3) “**Price Agreement**,” for purposes of this Division 48, is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed-upon terms and conditions, including, but not limited to terms and conditions of later work

orders or task orders for Project-specific Services, and which may include Consultant compensation information, with:

(a) No guarantee of a minimum or maximum purchase; or

(b) An initial work order, task order or minimum purchase, combined with a continuing Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which the Contracting Agency does not guarantee a minimum or maximum additional purchase.

(4) “**Project**” means all components of a Contracting Agency’s planned undertaking that gives rise to the need for a Consultant’s Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under a Contract.

(5) “**Transportation Planning Services**” are defined in ORS 279C.100. Transportation Planning Services include only Project-specific transportation planning involved in the preparation of categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not directly associated with an individual Project that will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-048-0120

### List of Interested Consultants; Performance Record

(1) Consultants who are engaged in the lawful practice of their profession and who are interested in providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, may annually submit a statement describing their qualifications and related performance information to Contracting Agencies’ office addresses. Contracting Agencies shall use this information to create a list of prospective Consultants and shall update this list at least once every two years.

(2) Contracting Agencies may compile and maintain a record of each Consultant’s performance under Contracts with the particular Contracting Agency, including information obtained from Consultants during an exit interview. Upon request and in accordance with the Oregon Public Records Law (ORS 192.410 through 192.505), Contracting Agencies may make available copies of the records.

(3) State Contracting Agencies shall keep a record of all Contracts with Consultants and shall make these records available to the public, consistent with the requirements of the Oregon Public Records Law (ORS 192.410 through 192.505). State Contracting Agencies shall include the following information in the record:

(a) Locations throughout the state where the Contracts are performed;

(b) Consultants’ principal office address and all office addresses in the State of Oregon;

(c) Consultants’ direct expenses on each Contract, whether or not those direct expenses are reimbursed. “Direct expenses” include all amounts that are directly attributable to Consultants’ services performed under each Contract, including personnel travel expenses, and that would not have been incurred but for the services being performed. The record must include all personnel travel expenses as a separate and identifiable expense on the Contract; and

(d) The total number of Contracts awarded to each Consultant over the immediately preceding 10-year period from the date of the record.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065 & 279C.110, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-048-0130

### Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest

(1) When selecting the most qualified Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Contracting Agencies shall follow the applicable selection procedure under either OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or



## ADMINISTRATIVE RULES

137-048-0220 (Formal Selection Procedure). Contracting Agencies subject to this section (1) may solicit or use pricing policies and pricing proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, to determine a Consultant's compensation only after the Contracting Agency has selected the most qualified Consultant in accordance with the applicable selection procedure. In following the Direct Appointment Procedure under OAR 137-048-0200, a Contracting Agency may base its initial selection of a Consultant on any information available to the Agency prior to beginning the Direct Appointment Procedure for the Project involved.

(2) Contracting Agencies selecting Consultants to perform Related Services shall follow one of the following selection procedures:

(a) When selecting a Consultant on the basis of qualifications alone, Contracting Agencies shall follow the applicable selection procedure under either OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure);

(b) When selecting a Consultant on the basis of price competition alone, Contracting Agencies shall follow either the provisions under OAR chapter 137, division 47 for obtaining and evaluating Bids, or 137-048-0200 (Direct Appointment Procedure) if the requirements of 137-048-0200(1) apply; and

(c) When selecting a Consultant on the basis of price and qualifications, Contracting Agencies shall follow either the provisions under OAR chapter 137, division 47 for obtaining and evaluating Proposals, or 137-048-0200 (Direct Appointment Procedure) if the requirements of 137-048-0200(1) apply. Contracting Agencies subject to this section (2) may request and consider a Proposer's pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, submitted with a Proposal.

(3) A Contracting Agency is not required to follow the procedures in Section (1) or Section (2) of this rule, when the Contracting Agency has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order or task order. Provided, however, the criteria and procedures the Contracting Agency uses to select a single Consultant, when the Contracting Agency has established Price Agreements with more than one Consultant, must meet the requirements of OAR 137-048-0270 (Price Agreements).

(4) Contracting Agencies may use electronic methods to screen and select a Consultant in accordance with the procedures described in sections (1) and (2) of this rule. If a Contracting Agency uses electronic methods to screen and select a Consultant, the Contracting Agency shall first promulgate rules for conducting the screening and selection procedure by electronic means, substantially in conformance with OAR 137-047-0330 (Electronic Procurement).

(5) For purposes of these division 48 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. A Contracting Agency's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. A Contracting Agency will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the Contracting Agency shall comply with the requirements of ORS 279C.110 and section (1) of this rule. If majority of the total Estimated Fee to be paid under the Contract is for Related Services, the Contracting Agency shall comply with the requirements of ORS 279C.120 and section (2) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, the Contracting Agency shall comply with the applicable provisions of the Public Contracting Code and divisions 46, 47 and 49 of the Model Rules that match the predominant purpose of the Contract.

(6) Where a Consultant will be performing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for the Contracting Agency by providing analysis, testing services, testimony or similar services for a Project that is, or is reasonably anticipated to be, the subject of a claim, lawsuit, mediation, arbitration or other form of action or alternative dispute resolu-

tion process, whether legal, equitable, administrative or otherwise, the Contracting Agency shall comply with these division 48 rules in procuring those Services.

(7) In applying these rules, State Contracting Agencies shall support the state's goal of promoting a sustainable economy in the rural areas of the state.

(8) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by a Contracting Agency for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:

(a) The term "competitive proposal," for purposes of ORS 279C.107, includes proposals under OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure), 137-048-0220 (Formal Selection Procedure) or 137-048-0130(2)(c) (selection based on price and qualifications) and any proposals submitted in response to a selection process for a work order or task order under 137-048-0270 (Price Agreements).

(b) For purposes of proposals received by a Contracting Agency under OAR 137-048-0200 (Direct Appointment Procedure), a formal notice of intent to award is not required. As a result, while a Contracting Agency may make proposals under 137-048-0200 (Direct Appointment Procedure) open for public inspection following the Contracting Agency's decision to begin Contract negotiations with the selected Consultant, 137-048-0200 proposals are not required to be open for public inspection until after the Contracting Agency has executed a Contract with the selected Consultant.

(c) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the Contracting Agency is conducting discussions or negotiations with proposers who submit proposals that the Contracting Agency has determined to be closely competitive or to have a reasonable chance of being selected for award, the Contracting Agency may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, Contracting Agencies may open proposals in such a way as to avoid disclosure of the contents until after the Contracting Agency executes a Contract with the selected Consultant. If the Contracting Agency determines that it is in the best interest of the Contracting Agency to do so, the Contracting Agencies may make proposals available for public inspection following the Contracting Agency's issuance of a notice of intent to award a Contract to a Consultant; and

(d) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

(9) As required by ORS 279C.307, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, Contracting Agencies may not:

(a) Procure the Personal Services identified in ORS 279C.307 from a Contractor or an affiliate of a Contractor who is a party to the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services; or

(b) Procure the Personal Services identified in ORS 279C.307 through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services.

(10) The requirements of ORS 279C.307 and section (9) of this rule apply in the following circumstances, except as provided in section (11) of this rule:

(a) A Contracting Agency requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS chapter 279C.

(b) The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, which involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

# ADMINISTRATIVE RULES

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a Project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C; and

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (10)(a) of this rule.

(11) The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

(a) To a Contracting Agency's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in OAR 137-049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement; and

(b) To a Contracting Agency's Procurement of both pre-construction services and construction services through a single "Construction Manager/General Contractor" Procurement, as defined in OAR 137-049-0610. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Contract or performance under such a Contract resulting from a Construction Manager/General Contractor Procurement.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065, 279C.100-279C.125, OL 2009, ch. 880, sec. 11, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-048-0200

### Direct Appointment Procedure

(1) Contracting Agencies may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these rules if:

(a) Emergency. Contracting Agency finds that an Emergency exists; or

(b) Small Estimated Fee. The Estimated Fee to be paid under the Contract does not exceed \$100,000; or

(c) Continuation of Project With Intermediate Estimated Fee. For Contracting Agencies where a Project is being continued, as more particularly described below, and where the Estimated Fee will not exceed \$250,000, the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The Estimated Fee to be made under the Contract does not exceed \$250,000; and

(C) The Contracting Agency used either the formal selection procedure under OAR 137-048-0220 (Formal Selection Procedure) or the formal

selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract; or

(d) Continuation of Project With Extensive Estimated Fee. For Contracting Agencies where a Project is being continued, as more particularly described below, and where the Estimated Fee is expected to exceed \$250,000, the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied under an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The Contracting Agency used either the formal selection procedure under OAR 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract; and

(C) The Contracting Agency makes written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:

(i) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency; and,

(ii) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(2) Contracting Agencies may select a Consultant for a Contract under this rule from the following sources:

(a) The Contracting Agency's list of Consultants that is created under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(b) Another Contracting Agency's list of Consultants that the Contracting Agency has created under OAR 137-048-0120 (List of Interested Consultants; Performance Record), with written consent of that Contracting Agency; or

(c) All Consultants offering the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that the Contracting Agency reasonably can identify under the circumstances.

(3) The Contracting Agency shall direct negotiations with a Consultant selected under this rule toward obtaining written agreement on:

(a) The Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279C.110 & 279C.115, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-048-0210

### Informal Selection Procedure

(1) Contracting Agencies may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed \$250,000.

(2) Contracting Agencies using the informal selection procedure shall:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

# ADMINISTRATIVE RULES

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) The date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which the most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:

(i) The amount and type of resources and number of experienced staff the Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;

(ii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals;

(iii) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, including but not limited to quality of work, ability to meet schedules, cost control methods and Contract administration practices;

(iv) A Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals and design philosophy, if applicable;

(v) A Consultant's geographic proximity to and familiarity with the physical location of the Project;

(vi) Volume of work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;

(vii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(viii) If the Contracting Agency is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.

(F) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP; and

(G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules.

(b) Provide a Request for Proposals to a minimum of five (5) prospective Consultants drawn from:

(A) The Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that the Contracting Agency reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, or any combination of the foregoing.

(c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals, and select the three highest ranked Proposers.

(3) If Contracting Agency does not cancel the RFP after it reviews and ranks each Proposer, Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. Contracting Agency shall direct negotiations toward obtaining written agreement on:

(a) The Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural,

Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

(4) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer, if the Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with section (3) of this rule, until negotiations result in a Contract. If negotiations with any of the top three Proposers do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under OAR 137-048-0220 (Formal Selection Procedure).

(5) The Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under OAR 137-048-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$250,000.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279C.110, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-048-0220

### Formal Selection Procedure

(1) Subject to OAR 137-048-0130 (Applicable Selection Procedures; Pricing Information; Disclosure of Proposals), Contracting Agencies shall use the formal selection procedure described in this rule to select Consultants if the Consultants cannot be selected under either 137-048-0200 (Direct Appointment Procedure) or under 137-048-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at Contracting Agencies' discretion.

(2) Contracting Agencies using the formal selection procedure shall obtain Contracts through public advertisement of Requests for Proposals, or Requests for Qualifications followed by Requests for Proposals.

(a) Except as provided in subsection (b) of this section, a Contracting Agency shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.

(A) A Contracting Agency shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.

(B) A Contracting Agency shall include a brief description of the following items in the advertisement:

(i) The Project;

(ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;

(iii) How and where Consultants may obtain a copy of the RFQ or RFP; and

(iv) The deadline for submitting a Proposal or response to the RFQ or RFP.

(b) In the alternative to advertising in a newspaper as described in subsection (2)(a) of this rule, the Contracting Agency shall publish each RFP and RFQ by one or more of the electronic methods identified in OAR 137-046-0110(14). The Contracting Agency shall comply with subsections (2)(a)(A) and (2)(a)(B) of this rule when publishing advertisements by electronic methods.

(c) A Contracting Agency may send notice of the RFP or RFQ directly to all Consultants on the Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record).

(3) Request for Qualifications Procedure. Contracting Agencies may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the Contracting Agency may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ.



# ADMINISTRATIVE RULES

(a) A Contracting Agency shall include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which the Contracting Agency is seeking Consultants;

(B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks for the Project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) The deadline for submitting a response to the RFQ;

(E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;

(F) The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion;

(G) A statement whether or not the Contracting Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(H) A Statement that Consultants responding to the RFQ do so solely at their expense, and that the Contracting Agency is not responsible for any Consultant expenses associated with the RFQ.

(b) A Contracting Agency may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultants' general qualifications and related performance information;

(B) A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ including Consultants' committed resources and recent, current and projected workloads;

(C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

(D) A copy of all records, if any, of Consultants' performance under Contracts with any other Contracting Agency;

(E) The number of Consultants' experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;

(F) Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;

(G) Consultants' geographic proximity to and familiarity with the physical location of the Project;

(H) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(I) If the Contracting Agency is selecting a Consultant to provide Related Services, Consultants' pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;

(J) Consultants' ability to assist a State Contracting Agency in complying with art acquisition requirements, pursuant to ORS 276.073 through 276.090;

(K) Consultants' ability to assist a State Contracting Agency in complying with State of Oregon energy efficient design requirements, pursuant to ORS 276.900 through 276.915;

(L) Consultants' ability to assist a Contracting Agency in complying with the solar energy technology requirements of ORS 279C.527; and

(M) Any other information the Contracting Agency deems reasonably necessary to evaluate Consultants' qualifications.

(c) RFQ Evaluation Committee. The Contracting Agency shall establish an RFQ evaluation committee of at least two (2) individuals to review, score and rank the responding Consultants according to the evaluation criteria. The Contracting Agency may appoint to the evaluation committee

Contracting Agency employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Related Services, construction services or Public Contracting. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, photogrammetry, transportation planning, land surveying or related professions. The Contracting Agency shall designate one member of the evaluation committee as the evaluation committee chairperson.

(d) A Contracting Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following:

(A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ.

(e) After the evaluation committee reviews, scores and ranks the responding Consultants, the Contracting Agency shall establish a short list of at least three qualified Consultants, if feasible; provided however, if four or fewer Consultants responded to the RFQ or if fewer than three Consultants fail to meet the Contracting Agency's minimum requirements, then:

(A) The Contracting Agency may establish a short list of fewer than three qualified Consultants; or

(B) The Contracting Agency may cancel the RFQ and issue an RFP.

(f) No Consultant will be eligible for placement on a Contracting Agency's short list established under subsection (3)(d) of this rule if Consultant or any of Consultant's principals, partners or associates are members of the Contracting Agency's RFQ evaluation committee.

(g) Except when the RFQ is cancelled, a Contracting Agency shall provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants Through Request for Proposals. Contracting Agencies shall use the procedure described in section (4) of this rule when issuing an RFP for a Contract described in section (1) of this rule.

(a) RFP Required Contents. Contracting Agencies using the formal selection procedure shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought will be performed.

(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If the Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

(i) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(iv) The recent, current and projected workloads of the staff and resources referenced in section (4)(a)(B)(iii), above;

(v) The proportion of time Proposers estimate that the staff referenced in section (4)(a)(B)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

# ADMINISTRATIVE RULES

(vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and contract administration;

(ix) Status and quality of any required license or certification;

(x) Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(xiii) If the Contracting Agency is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead; and

(xiv) Any other criteria that the Contracting Agency deems relevant to the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;

(E) The date and time Proposals are due, and the delivery location for Proposals;

(F) Reservation of the right to seek clarifications of each Proposal;

(G) Reservation of the right to negotiate a final Contract that is in the best interest of the Contracting Agency;

(H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at anytime if doing either would be in the public interest as determined by the Contracting Agency;

(I) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;

(J) A statement directing Proposers to the protest procedures set forth in these division 48 rules;

(K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;

(L) A statement whether or not the Contracting Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;

(M) A request for any information the Contracting Agency deems reasonably necessary to permit the Contracting Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP; and

(N) A sample form of the Contract.

(b) RFP Evaluation Committee. The Contracting Agency shall establish a committee of at least three individuals to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Contracting Agency may include the same members who served on the RFQ evaluation committee. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting. At least one member of the evaluation committee must be a Contracting Agency employee. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. The Contracting Agency shall designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of the Contracting Agency's RFP evaluation committee for the Contract;

(B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall award weights, points or other classifications indicated in the RFP for the anticipated interview; and

(C) The evaluation committee shall provide to the Contracting Agency the results of the scoring and ranking for each Proposer.

(c) If the Contracting Agency does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, the Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. The Contracting Agency shall direct negotiations toward obtaining written agreement on:

(A) The Consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(C) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

(d) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with section (4)(c) of this rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular formal solicitation. Nothing in this rule precludes a Contracting Agency from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279C.110, 279C.527, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-048-0230

### Ties Among Proposers

(1) If a Contracting Agency is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the Contracting Agency may select a candidate through any process that the Contracting Agency believes will result in the best value for the Contracting Agency taking into account the scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services. Provided, however, the tie breaking process established by the Contracting Agency under this section (1) cannot be based on the Consultant's pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required,

# ADMINISTRATIVE RULES

expenses, hourly rates and overhead. The process must be designed to instill public confidence through ethical and fair dealing, honesty and good faith on the part of the Contracting Agency and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the Contracting Agency and the selected Proposer shall proceed with negotiations under OAR 137-048-0210(3) or 137-048-0220(4)(c), as applicable.

(2) If a Contracting Agency is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the Contracting Agency shall follow the procedure set forth in OAR 137-046-0300, (Preferences for Oregon Goods and Services), to select the Consultant.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458  
Stats. Implemented: ORS 279C.110, OL 2011, ch 458  
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-048-0240

### Protest Procedures

(1) **RFP Protest and Request for Change.** Consultants may submit a written protest of anything contained in an RFP and may request a change to any provision, specification or Contract term contained in an RFP, no later than seven (7) calendar days prior to the date Proposals are due, unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or Contract terms. The Contracting Agency may not consider any protest or request for change that is submitted after the submission deadline.

#### (2) Protest of Consultant Selection.

(a) **Single Award.** In the event of an award to a single Proposer, the Contracting Agency shall provide to all Proposers a copy of the selection notice that the Contracting Agency sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(b) **Multiple Award.** In the event of an award to more than one Proposer, the Contracting Agency shall provide to all Proposers copies of the selection notices that the Contracting Agency sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers, are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(c) **Effect of Protest Submission Deadline.** A Contracting Agency may not consider any protest that is submitted after the submission deadline.

(3) **Resolution of Protests.** A duly authorized representative of the Contracting Agency shall resolve all timely submitted protests within a reasonable time following the Contracting Agency's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the Contracting Agency shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458  
Stats. Implemented: ORS 279A.065 & 279C.110, OL 2011, ch 458  
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-048-0250

### Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility For Costs

A Contracting Agency may cancel, delay or suspend a solicitation, RFQ or other preliminary Procurement document, whether related to a Direct Appointment Procedure (OAR 137-048-0200), the Informal Selection Procedure (OAR 137-048-0210), and the Formal Selection Procedure (OAR 137-048-0220), or reject all Proposals, responses to RFQs, responses to other preliminary Procurement documents, or any combination of the foregoing, if the Contracting Agency believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the Contracting Agency is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection. Consultants responding to either solicitations, RFQs or other preliminary Procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs or responses to other preliminary Procurement documents.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279A.065, 279C.110  
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-048-0260

### Two-Tiered Selection Procedure for Local Contracting Agency Public Improvement Projects

(1) If a Local Contracting Agency requires an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for a public improvement owned and maintained by that Local Contracting Agency, and a State Agency will serve as the lead Contracting Agency and will enter into Contracts with Architects, Photogrammetrists, Transportation Planners, Engineers or Land Surveyors for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for that public improvement, the State Contracting Agency shall utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors.

(2) **Tier One.** A State Contracting Agency shall, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP that was issued under the applicable selection procedures described in OAR 137-048-0210 (Informal Selection Procedure) and 137-048-0220 (Formal Selection Procedure), or from among Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors identified under 137-048-0200 (Direct Appointment Procedure), and shall notify the Local Contracting Agency of the Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors selected.

(3) **Tier Two.** In accordance with the qualifications based selection requirements of ORS 279C.110, the Local Contracting Agency shall either:

(a) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor from the State Contracting Agency's list of Proposers to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement; or

(b) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement through an alternative process adopted by the Local Contracting Agency, consistent with the provisions of the applicable RFP, if any, and these division 48 rules. The Local Contracting Agency's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of the particular Local Contracting Agency and may include provisions to allow the Local Contracting Agency to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The Local Contracting Agency's alternative process may include, but is not limited to, one or more of the following methods:

(A) A general written direction from the Local Contracting Agency to the State Contracting Agency, prior to the advertisement of a Procurement or series of Procurements or during the course of the Procurement or series of Procurements, that the Local Contracting Agency's tier two selection shall be the highest-ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with the Local Contracting Agency is required. However, the Local



# ADMINISTRATIVE RULES

Contracting Agency may provide written notice to the State Contracting Agency that the Local Contracting Agency's general written direction is not to be applied for a particular Procurement and describe the process that the Local Contracting Agency will utilize for the particular Procurement. In order for a written direction from the Local Contracting Agency consistent with this subsection to be effective for a particular Procurement, it must be received by the State Contracting Agency with adequate time for the State Contracting Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the Procurement. In the event of a multiple award under the terms of the applicable Procurement, the written direction from the Local Contracting Agency may apply to the highest ranked firms that are selected under the terms of the Procurement document.

(B) An intergovernmental agreement between the Local Contracting Agency and the State Contracting Agency outlining the alternative process that the Local Contracting Agency has adopted for a Procurement or series of Procurements.

(C) Where multiple Local Government Agencies are involved in a two-tiered selection procedure, the Local Government Agencies may name one or more authorized representative(s) to act on behalf of all the Local Government Agencies, whether the Local Government Agencies are acting collectively or individually, to select the Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the tier two selection process. In the event of a multiple award under the terms of the applicable Procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the Local Contracting Agencies to select the highest ranked firms that are required under the terms of the Procurement document, as part of the tier two selection process.

(4) The State Contracting Agency shall thereafter begin Contract negotiations with the selected Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor in accordance with the negotiation provisions in OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure) as applicable.

(5) Nothing in these division 48 rules should be construed to deny or limit a Local Contracting Agency's ability to enter into a Contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4), through a selection process established by that Local Contracting Agency.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458  
Stats. Implemented: ORS 279C.110, 279C.125, OL 2011, ch 458  
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-048-0270 Price Agreements

(1) A Contracting Agency may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, when the Contracting Agency cannot determine the precise quantities of those Services which the Contracting Agency will require over a specified time period.

(2) When establishing Price Agreements under this rule, a Contracting Agency shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with OAR 137-048-0130(1) or 137-048-0130(2), as applicable. Contracting Agencies may select a single Consultant, when a Price Agreement is awarded to obtain services for a specific Project or a closely-related group of Projects.

(3) In addition to any other applicable solicitation requirements set forth in these division 48 rules, solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services must:

(a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a prospective bidder or Proposer to decide whether to submit a bid or proposal;

(b) Specify whether the Contracting Agency intends to award a Price Agreement to one Consultant or to multiple Consultants. If the Contracting Agency will award a Price Agreement to more than one Consultant, the solicitation document and Price Agreement shall describe the criteria and procedures the Contracting Agency will use to select a Consultant for each individual work order or task order. Subject to the requirements of ORS

279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at the Contracting Agency's sole discretion; provided, however, in circumstances where a direct contract is not permitted under OAR 137-048-0200, the selection criteria cannot be based on pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the Services required, expenses, hourly rates and overhead. In accordance with OAR 137-048-0130(2) applicable to Related Services procurements, the selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information may include the number of hours proposed for the Related Services required, expenses, hourly rates, overhead and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of OAR 137-048-0200; and

(c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.

(4) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services assigned under a Price Agreement require a written work order or task order issued by the Contracting Agency. Any work orders or task orders assigned under a Price Agreement must include, at a minimum, the following:

(a) The Consultant's performance obligations and performance schedule;

(b) The payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the work order or task order that is fair and reasonable to the Contracting Agency, as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;

(c) Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order; and

(d) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest.

Stat. Auth.: ORS 279A.065 & OL 2011, ch 458  
Stats. Implemented: ORS 279A.065, 279C.110, 279C.120 & OL 2011, ch 458  
Hist.: DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-048-0300 Prohibited Payment Methodology; Purchase Restrictions

(1) Except as otherwise allowed by law, a Contracting Agency shall not enter into any Contract which includes compensation provisions that expressly provide for payment of:

(a) Consultant's costs under the Contract plus a percentage of those costs; or

(b) A percentage of the Project construction costs or total Project costs.

(2) Except as otherwise allowed by law, a Contracting Agency shall not enter into any Contract in which:

(a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel working on the Project and reimbursable expenses incurred during the performance of work on the Project (sometimes referred to as a "time and materials" Contract); and

(b) The Contract does not include a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract.

(3) Except in cases of Emergency or in the particular instances noted in the subsections below, a Contracting Agency shall not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for the Contracting Agency from any Consultant under a Contract with Contracting Agency to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:

(a) The Consultant is providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under a Contract with a Contracting Agency

# ADMINISTRATIVE RULES

to perform Design-Build services or Energy Savings Performance Contract services (see OAR 137-049-0670 and 137-049-0680); or

(b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to the Consultant pursuant to applicable law governing the award of such a Contract.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-048-0310

### Expired or Terminated Contracts; Reinstatement

(1) If a Contracting Agency enters into a Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and that Contract subsequently expires or is terminated, the Contracting Agency may proceed as follows, subject to the requirements of subsection (2) of this rule:

(a) Expired Contracts. If the Contract has expired as the result of Project delay caused by the Contracting Agency or caused by any other occurrence outside the reasonable control of the Contracting Agency or the Consultant, and if no more than one year has passed since the Contract expiration date, the Contracting Agency may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the amendment, the Contracting Agency and the Consultant shall continue performance under the Contract as amended; or

(b) Terminated Contracts. If the Contracting Agency or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the Contracting Agency may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering and Land Surveying Services, or Related Services not completed under the original Contract, or to perform any remaining Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services not completed under the Contract as adjusted to reflect a material alteration of the Project.

(2) The Contracting Agency may proceed under either subsection (1)(a) or subsection (1)(b) of this rule only after making written findings that amending the existing Contract or entering into a new Contract with the Consultant will:

(a) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency;

(b) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement process by not encouraging favoritism or substantially diminishing competition in the award of Contracts; and

(c) Result in a Contract that is still within the scope of the final form of the original Procurement document.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065 & 279C.110, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-048-0320

### Contract Amendments

(1) A Contracting Agency may amend any Contract if the Contracting Agency, in its sole discretion, determines that the amendment is within the scope of the Solicitation Document and that the amendment would not materially impact the field of competition for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the final form of the original Procurement document. In making this determination, the Contracting Agency shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the Solicitation Document, if the Contracting Agency reasonably believes that the number of Proposers would not significantly increase if the Procurement document were re-issued to include the additional services.

(2) The Contracting Agency may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, which affect performance of the original Contract.

(3) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and the Contracting Agency and must receive all required approvals before the amendments will be binding on the Contracting Agency.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065, 279C.110, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-049-0380

### Bid or Proposal Evaluation Criteria

(1) General. A Public Improvement Contract, if Awarded, must be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. (See OAR 137-049-0390, and Rules for Alternative Contracting Methods at 137-049-0600 to 137-049-0690.)

(2) Bid Evaluation Criteria. Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.

(a) Lump Sum. If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the Contracting Agency elects not to award additive or deductive alternates, Bids must be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price must be calculated by adding to or deducting from the base Bid those alternates selected by the Contracting Agency, for the purpose of comparing Bids.

(b) Unit Price. If the Bid includes unit pricing for estimated quantities, the total Bid price must be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the Contracting Agency, for the purpose of comparing Bids. Contracting Agencies shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price governs. (See OAR 137-049-0350(2)(b).)

(3) Proposal Evaluation Criteria. If the Contracting Agency's Contract Review Authority has exempted the Procurement of a Public Improvement from the competitive bidding requirements of ORS 279C.335(1), and has directed the Contracting Agency to use an Alternative Contracting Method under ORS 279C.335(4), the Contracting Agency shall set forth the evaluation criteria in the Solicitation Documents. (See OAR 137-049-0640, 137-049-0650, ORS 279C.335 and 279C.405.)

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279C.335, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-049-0650

### Requests for Proposals (RFP)

(1) Generally. The use of competitive Proposals must be specially authorized for a Public Improvement Contract under the competitive bidding requirement of ORS 279C.335 (1), OAR 137-049-0130 and 137-049-0600 to 137-049-0690. Also see ORS 279C.400 to 279C.410 for statutory requirements regarding competitive Proposals, and OAR 137-049-0640 regarding competitive Proposal procedures.

(2) Solicitation Documents. In addition to the Solicitation Document requirements of OAR 137-049-0200, this rule applies to the requirements for Requests for Proposals. RFP Solicitation Documents shall conform to the following standards:

(a) The Contracting Agency shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions. See OAR 137-049-0640. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors must be reasonable estimates based on information available to the Contracting Agency. Subject to ORS 279C.410(4), the Solicitation Document may provide for discussions with Proposers to be conducted for the purpose of Proposal evaluation prior to award or prior to establishing any Competitive Range;

(b) When the Contracting Agency is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following discussions, the Contracting Agency shall identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to negotiation or discussion and authorize Offerors to propose certain

## ADMINISTRATIVE RULES

alternative terms and conditions in lieu of the terms and conditions the Contracting Agency has identified as authorized for negotiation. The Contracting Agency shall describe the evaluation, discussion and negotiation processes, including how the Contracting Agency will establish the Competitive Range, if any;

(c) The anticipated size of any Competitive Range must be stated in the Solicitation Document, but may be decreased if the number of Proposers that submit responsive Proposals is less than the specified number, or may be increased as provided in OAR 137-049-0650(4)(a)(B);

(d) When the Contracting Agency intends to Award Contracts to more than one Proposer, the Contracting Agency shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The Contracting Agency shall also include the criteria it will use to determine how the Contracting Agency will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide Personal Services or Work from those Contractors Awarded Contracts.

### (3) Evaluation of Proposals.

(a) Evaluation. The Contracting Agency shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Contracting Agency shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) Clarifications. In evaluating Proposals, a Contracting Agency may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer shall submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.

(B) Limited Negotiation. If the Contracting Agency did not permit negotiation in its Request for Proposals, the Contracting Agency may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

(i) Statement of Work; and

(ii) Contract Price as it is affected by negotiating the statement of Work. The process for discussions or negotiations that is outlined and explained in subsections (5)(b) and (6) of this rule does not apply to this limited negotiation.

(b) Discussions; Negotiations. If the Contracting Agency permitted discussions or negotiations in the Request for Proposals, the Contracting Agency shall evaluate Proposals and establish the Competitive Range, and may then conduct discussions and negotiations in accordance with this rule.

(A) If the Solicitation Document provided that discussions or negotiations may occur at Contracting Agency's discretion, the Contracting Agency may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.

(B) If the Contracting Agency proceeds with discussions or negotiations, the Contracting Agency shall establish a negotiation team tailored for the acquisition. The Contracting Agency's team may include legal, technical and negotiating personnel.

(c) Cancellation. Nothing in this rule shall restrict or prohibit the Contracting Agency from canceling the solicitation at any time.

(4) Competitive Range; Protest; Award.

(a) Determining Competitive Range.

(A) If the Contracting Agency does not cancel the solicitation, after the Opening the Contracting Agency will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Contracting Agency will determine and rank the Proposers in the Competitive Range.

(B) The Contracting Agency may increase the number of Proposers in the Competitive Range if the Contracting Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the best Proposer after the Contracting Agency's evaluation of revised Proposals submitted in accordance with the process described in this rule.

(b) Protesting Competitive Range. The Contracting Agency shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with OAR 137-049-0450.

(c) Intent to Award; Discuss or Negotiate. After the protest period provided in accordance with these rules expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may either:

(A) Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.

(i) An unsuccessful Proposer may protest the Contracting Agency's intent to Award in accordance with OAR 137-049-0450.

(ii) After the protest period provided in accordance with OAR 137-049-0450 expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency shall commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or

(B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations with the Proposers in the Competitive Range.

(5) Discussions; Revised Proposals. If the Contracting Agency chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the Contracting Agency shall proceed as follows:

(a) Initiating Discussions. The Contracting Agency shall initiate oral or Written discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the Contracting Agency identified in the RFP as the subject of discussions. The Contracting Agency may conduct discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the Contracting Agency would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the Contracting Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Contracting Agency may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The Contracting Agency may terminate discussions with any Proposer in the Competitive Range at any time. However, the Contracting Agency shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with Contracting Agency before the Contracting Agency notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.

(A) In conducting discussions, the Contracting Agency:

(i) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(ii) Shall not discuss other Proposers' Proposals;

(iii) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal.

(B) At any time during the time allowed for discussions, the Contracting Agency may:

(i) Continue discussions with a particular Proposer;

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or

(iii) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) Revised Proposals. If the Contracting Agency does not cancel the solicitation at the conclusion of the Contracting Agency's discussions with all remaining Proposers in the Competitive Range, the Contracting Agency shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the Contracting Agency's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the Contracting Agency's notice.

(A) Upon receipt of the revised Proposals, the Contracting Agency shall score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the Contracting Agency's scoring.

(B) The Contracting Agency may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.

(d) Intent to Award; Protest. The Contracting Agency shall provide Written notice to all Proposers in the Competitive Range of the Contracting Agency's intent to Award the Contract. An unsuccessful Proposer may protest the Contracting Agency's intent to Award in accordance with OAR 137-049-0450. After the protest period provided in accordance with that rule expires, or after the Contracting Agency has provided a final response



# ADMINISTRATIVE RULES

to any protest, whichever date is later, the Contracting Agency shall commence final Contract negotiations.

(6) Negotiations.

(a) Initiating Negotiations. The Contracting Agency may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:

(A) Initial determination of the Competitive Range; or

(B) Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.

(b) Conducting Negotiations.

(A) Scope. The Contracting Agency may negotiate:

(i) The statement of Work;

(ii) The Contract Price as it is affected by negotiating the statement of Work; and

(iii) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals. Accordingly, Proposers shall not submit, and Contracting Agency shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals.

(c) Continuing Negotiations. If the Contracting Agency terminates negotiations with a Proposer, the Contracting Agency may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this rule until the Contracting Agency has:

(A) Determined to Award the Contract to the Proposer with whom it is currently negotiating; or

(B) Completed one round of negotiations with all Proposers in the Competitive Range, unless the Contracting Agency provided for more than one round of discussions or negotiations in the Request for Proposals, in which case the Contracting Agency may proceed with any authorized further rounds of discussions or negotiations.

(7) Terminating Discussions or Negotiations. At any time during discussions or negotiations conducted in accordance with this rule, the Contracting Agency may terminate discussions or negotiations with the Proposer with whom it is currently conducting discussions or negotiations if the Contracting Agency reasonably believes that:

(a) The Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.400 - 279C.410

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

## 137-049-0860

### Public Works Contracts

(1) Generally. ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in 279C.800(6), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR chapter 839.

(2) Required Contract Conditions. As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:

(a) Contracting Agency authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

(b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).

(c) Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).

(d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.

(e) A requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1). If both state and federal prevailing rates of wage apply, the contract and every subcontract must provide that all workers must be paid the higher of the applicable state or federal prevailing rate of wage.

(f) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).

(3) Requirements for Specifications. The Specifications for every Public Works Contract, consisting of the procurement package (such as the project manual, Bid or Proposal booklets, request for quotes or similar procurement Specifications), must contain the following provisions:

(a) The state prevailing rate of wage, and, if applicable, the federal prevailing rate of wage, as required by ORS 279C.830(1)(a):

(A) Physically contained within or attached to hard copies of procurement Specifications;

(B) Included by a statement incorporating the applicable wage rate publication into the Specifications by reference, in compliance with OAR 839-025-0020; or, (iii) when the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.

(b) If both state and federal prevailing rates of wage apply, a requirement that the contractor shall pay the higher of the applicable state or federal prevailing rate of wage to all workers. See BOLI rules at OAR 839-025-0020 and 0035.

(c) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.800 - 279C.870, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

\*\*\*\*\*

**Rule Caption:** Clarifies other state agency access to child support records.

**Adm. Order No.:** DOJ 11-2011(Temp)

**Filed with Sec. of State:** 12-1-2011

**Certified to be Effective:** 12-5-11 thru 5-29-12

**Notice Publication Date:**

**Rules Amended:** 137-055-1140

**Rules Suspended:** 137-055-1145

**Subject:** OAR 137-055-1140 is amended to remove a reference to the partner access rule (OAR 137-055-1145), which is suspended because it is no longer needed.

**Rules Coordinator:** Vicki Tungate—(503) 986-6086

## 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;

## ADMINISTRATIVE RULES

(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.

(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

# ADMINISTRATIVE RULES

(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

## 137-055-1145

### Access to Child Support Records

(1) When information may be shared pursuant to ORS 25.260, this rule clarifies the type of information which may be accessed through automation or contact and who is authorized to access the information.

(2)(a) Information which may be accessed from the Child Support Enforcement Automated System (CSEAS) records by an agency administering programs under Title IV-A of the Social Security Act may include:

(A) Obligor name, social security number, date of birth, address and phone number;

(B) Obligee name, social security number, date of birth and address;

(C) Title IV-A case number;

(D) Whether the case carries identifiers indicating:

(i) There is a finding or determination of good cause under OAR 137-055-1090, 413-100-0830, 461-120-0350, 461-120-0360, 461-135-1200 or 461-135-1205;

(ii) There is an order for nondisclosure of information pursuant to OAR 137-055-1160; or

(iii) There is a contact address;

(E) Obligor employer name, address, federal identification number and wages;

(F) Obligor unemployment compensation benefits;

(G) Obligor's gross quarterly compensation;

(H) The name of any jurisdiction with a child support case or order;

(I) Child's name, date of birth and social security number;

(J) The date(s) and amount(s) of any support payment distributed and to whom or where it was distributed; and

(K) Any information which is not considered confidential, including but not limited to the child support case number, caseload assignment and Child Support Program (CSP) employee roster.

(b) Information which may be accessed from CSEAS records by an agency administering programs under Title XIX of the Social Security Act may include:

(A) Obligor name, social security number, date of birth, address and phone number;

(B) Obligee name, social security number, date of birth and address;

(C) Title IV-A case number;

(D) Whether the case carries identifiers indicating:

(i) There is a finding or determination of good cause under OAR 137-055-1090, 413-100-0830, 461-120-0350, 461-120-0360, 461-135-1200 or 461-135-1205;

(ii) There is an order for nondisclosure of information pursuant to OAR 137-055-1160; or

(iii) There is a contact address;

(E) Obligor's employer name, address, federal identification number and wages;

(F) Obligor's unemployment compensation benefits;

(G) Obligor's gross quarterly compensation;

(H) The name of any jurisdiction with a child support case or order;

(I) Child's name, date of birth and social security number;

(J) Whether health care coverage is ordered;

(K) Whether health care coverage is provided;

(L) Insurer name, address and health insurance policy number;

(M) The date(s) and amount(s) of any support payment made to the obligee; and

(N) Any information which is not considered confidential, including but not limited to the child support case number, caseload assignment and CSP employee roster.

(c) Information which may be accessed from CSEAS records by an agency administering programs under Title I, X, XIV or XVI of the Social Security Act, an agency administering the Food Stamp program, the State Employment Services Agency (including agencies which administer the unemployment compensation program), and agencies administering workers' compensation programs is limited to obligor name, social security number and address and employer name, address and federal identification number.

(A) Notwithstanding the provisions of subsection (2)(c), if an agency identified in that subsection receives a written consent to release information as provided in OAR 137-055-1140(12), the agency may have access to information that may be released to a party.

(B) In addition to the information listed in subsection (2)(c), the State Employment Services Agency (including agencies which administer the unemployment compensation program) may have access to the history of the obligor's employers' names, addresses and federal identification numbers.

(d) Information which may be accessed from CSEAS records by a private industry council, as defined in OAR 137-055-1140, is limited to obligor name, address, phone number and Title IV-A case number.

(3) An agency administering a program identified in section (2) of this rule may obtain access for its employees to CSEAS records by entering into an interagency agreement with the Child Support Program (CSP). Any agreement must include provisions under which the agency seeking access agrees to put into place a process that ensures:

(a) Each employee given access has read and understands the CSP rules and Division of Child Support conflict of interest policy;

(b) Each employee given access agrees to abide by the terms of the CSP rules and policy;

(c) Each employee given access agrees to access and use information only for the purposes for which access is allowed as described in this rule;

(d) Employees can identify and be screened from conflict of interest cases;

(e) The agency, on a regular basis, audits access by employees, including verification of the purpose for which information is accessed and provides the CSP with the results of the audit;

(f) Violations are reported to the CSP, including the steps taken by the agency to prevent future violation;

(g) Access is revoked as provided in section (4) of this rule; and

(h) Access rights are updated, including notifying the CSP when an employee terminates or is transferred.

(4) If an employee of an agency described in section (2) of this rule discloses or inappropriately uses the information covered by this rule:

(a) The CSP Director, after consulting with the employee's agency, will determine whether the disclosure or usage occurred or likely occurred; and

(b) The employee's access to information from CSEAS records will be revoked:

(A) Temporarily, if a determination by the CSP Director is pending; or

(B) Permanently, if a determination by the CSP Director is made that disclosure or usage occurred or likely occurred.

(c) The provisions of this section are in addition to any other penalty for disclosure or usage of confidential information imposed by the employee's agency or by any other provision of law.

(5) CSP staff may disclose case information to an employee of an agency described in subsection (2)(a) when:

(a) That agency's employee requests specific information from a branch office;

(b) The employee's agency has entered into an agreement as provided in section (3) of this rule; and

(c) The source of the information is not the Internal Revenue Service.

(6) CSP staff may disclose information to an employee of an agency described in subsection (2)(b) when:

(a) That agency's employee requests specific information from a branch office;

(b) The employee's agency has entered into an agreement as provided in section (3) of this rule; and

(c) The source of the information is not:

(A) The Internal Revenue Service;

(B) The National Directory of New Hires; or

(C) The Federal Case Registry.



# ADMINISTRATIVE RULES

- (7) Information for which disclosure is allowed under section (5) or (6) of this rule may be accessed from CSEAS records if feasible.

Stat. Auth.: ORS 25.260, 180.345 & 180.380

Stats. Implemented: ORS 25.260

Hist.: DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; 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; Suspended by DOJ 11-2011(Temp), f. 12-1-11, cert. ef. 12-5-11 thru 5-29-12

\*\*\*\*\*

## Department of Oregon State Police Chapter 257

**Rule Caption:** Adopts rules allowing OSP to gather, access, maintain, and transmit mental health info to NICS.

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

**Filed with Sec. of State:** 12-13-2011

**Certified to be Effective:** 12-15-11 thru 6-12-12

**Notice Publication Date:**

**Rules Adopted:** 257-010-0060

**Subject:** The federal Brady Handgun Violence Prevention Act of 1993 (Brady Act), the United States Attorney General is required to establish the National Instant Criminal Background Check System (NICS), which allows federal firearm licensees to instantly contact the Federal Bureau of Investigation and determine whether a prospective firearm transfer would violate federal or state law. The federal NICS Improvement Amendment Act of 2007 (NIAA) became effective January 8, 2008 and requires states to transmit to NICS all state records of individuals who are subject to a federal firearm ban under 18 USC §922(d) and (g), including those individuals with mental health issues or state mental health commitments. The NIAA also requires states to adopt procedures whereby persons with mental health issues or state mental health commitments and who are prohibited from purchasing, possessing, transporting or receiving a firearm under 18 USC §922(d)(4) and (g)(4), may petition to have their federal firearm rights restored. Oregon Laws 2009, chapter 826 (House Bill 2853) implements the requirements of the NIAA by not only requiring certain state agencies in possession of records of individuals with mental health issues or state mental health commitments to transmit "minimum information" of those persons to the department for maintenance of that information, but requires the department to transmit that "minimum information" to NICS. Oregon Laws 2009, chapter 826 (House Bill 2853) further implements the NIAA by allowing the Psychiatric Security Review Board (PSRB) to conduct contested case administrative hearings to determine whether a person subject to either a federal firearm prohibition under 18 USC §922(d)(4) and (g)(4), a state firearm prohibition under ORS 166.250(1)(c)(D) or (E), or a state firearm prohibition under ORS 166.470(1)(e) or (f), should be granted relief and their gun rights restored.

This administrative rule creates the means and manner by which "minimum information" of persons prohibited under 18 U.S.C. §922(d)(4) and (g)(4) from purchasing, possessing, transporting or receiving a firearm is received and maintained, as well as transmitted to the federal government for inclusion in the NICS database, by the department. It creates the means and manner by which "minimum information" of persons prohibited from possessing a firearm under ORS 166.250 (1)(c)(D) or (E), or prohibited from receiving a firearm under ORS 166.470 (1)(e) or (f), is received and maintained by the department. Creates the means and manner by which the department processes, maintains, updates, and transmits to the federal government, records of relief from firearm prohibitions granted by either the Psychiatric Security Review Board or an appellate court. Specifically defines "designated agencies" for purposes of the rule to mean the Oregon Department of Human Services (DHS), the Oregon Health Authority (OHA), the PSRB, and the Oregon Judicial Department (OJD). Defines "minimum information" to mean only those data elements or identifying information that is minimally or nominally required under federal law to accurately identify a person prohibited under 18 U.S.C. §922(d)(4) and (g)(4) from purchasing, possessing, transporting or receiving a firearm, and includes the person's name, date of birth, gender and reference information that identifies

the originating agency or court. Defines "PPF" to mean a Prohibited Persons File created by the department and to which "minimum information" from designated agencies is deposited and maintained by the department, and from which "minimum information" is transmitted to NICS for persons prohibited under 18 U.S.C. §922(d)(4) and (g)(4) from purchasing, possessing, transporting or receiving a firearm. Requires designated agencies to send to the department all current and former client "minimum information" in a single file as required under ORS 181.740 in order for the department to enter that information into the PPF and transmit the PPF to NICS. Requires designated agencies to provide subsequent "minimum information" for their clients to the department immediately to OSP or as soon as such client "minimum information" becomes available, in an electronic format approved by the department. Requires the department to transmit subsequent "minimum information" obtained from designated agencies contained in the PPF to NICS on a daily basis through a secure electronic message via the Law Enforcement Message Switch (LEMS). Requires the department to request NICS to send the department a report every 3 months that details Oregon's mental health prohibited person record data located in NICS for comparison with the data contained in the department's PPF. Requires the department to refer any discrepancies between NICS and the PPF back to the agency that originally created the mental health record of the prohibited person for resolution, and requires designated agencies to include any updates made to previously submitted "minimum information" by originating agencies in their subsequent electronic transmissions of "minimal information" to the department. Requires the PSRB to send an electronic notification alerting the department to update the PPF if the PSRB grants relief from the prohibitions under 18 U.S.C. §922(d)(4) and (g)(4) for the purchase, possession, transportation or receipt of a firearm, and requires the department to transmit the record of relief to NICS on the day the department receives the electronic notification, either in its daily PPF transmission to NICS or in a separate transmission to NICS. Requires the department to transmit an appellate judgment granting relief from the prohibitions under 18 U.S.C. §922(d)(4) and (g)(4) for the purchase, possession, transportation or receipt of a firearm to NICS on the day OSP receives the appellate judgment, either in its daily PPF transmission to NICS or in a separate transmission to NICS. Specifies that when the PSRB grants relief from the prohibitions under 18 U.S.C. §922(d)(4) and (g)(4) for the purchase, possession, transportation or receipt of a firearm, or grants additional or alternative relief from either the prohibition on possessing a firearm under ORS 166.250 (1)(c)(D) or (E), or the prohibition on receiving a firearm under ORS 166.470 (1)(e) or (f), the PSRB shall send the minimum information of the person for whom relief is granted electronically to OSP and that OSP, upon receipt of the minimum information from the PSRB, shall then update the PPF and transmit the minimum information and notification of relief to NICS on the same day that OSP receives the minimum information from the PSRB. Requires that when a person files a petition for judicial review with an appellate court following a final order of the PSRB that denies relief, and an appellate court subsequently grants the person relief from the prohibitions under 18 U.S.C. §922(d)(4) and (g)(4) for the purchase, possession, transportation or receipt of a firearm, or grants additional or alternative relief from either the prohibition on possessing a firearm under ORS 166.250 (1)(c)(D) or (E), or the prohibition on receiving a firearm under ORS 166.470 (1)(e) or (f), the Oregon Judicial Department (OJD) shall send the minimum information of the person for whom relief is granted electronically to OSP and that OSP, upon receipt of the minimum information from OJD, shall update the PPF and transmit the minimum information and notification of relief to NICS on the same day OSP receives the minimum information from OJD. Requires a person granted relief under the following situations to provide OSP with a certified copy of either the PSRB written order or appellate judgment granting relief and a copy of the person's fingerprint card: a) the person granted relief was found responsible except for insanity for an act under ORS 419C.411, b) the person

## ADMINISTRATIVE RULES

granted relief was found guilty except for insanity of a crime under ORS 161.295 to 161.370 and the person has an existing criminal history, or c) the person granted relief was found by a court to lack fitness to proceed under ORS 161.370 and the person has an existing criminal history.

**Rules Coordinator:** Cort Dokken—(503) 934-0228

### 257-010-0060

#### Mental Health Information Reporting to NICS

(1) Definitions. As used in this administrative rule:

(a) “Designated Agencies” means the Oregon Department of Human Services (DHS), the Oregon Health Authority (OHA), the Psychiatric Review Board (PSRB), and the Oregon Judicial Department (OJD).

(b) “Minimum Information” means only those data elements or identifying information that is minimally or nominally necessary to accurately identify a person listed under ORS 181.740(1) and who is prohibited under either 18 U.S.C. §922(d)(4) and (g)(4) from purchasing, possessing, transporting or receiving a firearm, ORS 166.250(1)(c)(D) or (E) from possessing a firearm, or ORS 166.470(1)(e) or (f) from receiving a firearm. “Minimum information” includes at least the person’s name, date of birth, gender and ORI number of the designated agency or originating court that originally created the underlying record or file of the person. “Minimum information” does not include any medical, psychiatric or psychological information, case histories or files of a person, or any record or file of a designated agency or originating court.

(c) “NICS” means the National Instant Criminal Background Check System mandated by the Brady Handgun Violence Prevention Act of 1993 (Pub. L. 103-159, 107 Stat. 1536).

(d) “ORI” means the Law Enforcement Data System (LEDS) and FBI National Crime Information Center (NCIC) originating agency identifier code.

(e) “Originating court” means the Oregon county circuit court that transmits a mental health record to OSP as required under either ORS 426.160 or 427.293.

(f) “Prohibited Persons File” (PPF) means a data table created by OSP that contains minimum information, as reported to OSP by the designated agencies or originating courts responsible for maintaining Oregon mental health records, for individuals that are prohibited under either 18 U.S.C. §922(d)(4) and (g)(4) from purchasing, possessing, transporting or receiving a firearm, ORS 166.250(1)(c)(D) or (E) from possessing a firearm, or ORS 166.470(1)(e) or (f) from receiving a firearm. This file will be maintained by OSP in LEDS. The agencies contributing to the file will be responsible for ensuring the data is accurate. Information in this file is confidential and not to be accessed for any purpose other than:

(A) Maintaining the minimum information in the PPF;

(B) Reporting minimum information to NICS as required by federal and state law; or

(C) Conducting instant firearm criminal history checks as defined under ORS 166.432.

(2) Transmission of Existing Minimum Information to OSP and NICS.

(a) As soon as a designated agency is capable of electronically transmitting existing minimum information to OSP, the designated agency shall provide OSP with all current and former client minimum information as required under ORS 181.740.

(b) Each designated agency shall provide all of its current and former client information to OSP in one single electronic file. The single electronic file shall contain all minimum information data elements in an electronic format that is capable of being individually searched and copied.

(c) Notwithstanding subsection (2)(b) of this rule, designated agencies may provide minimum information to OSP in a non-electronic format, on a client-by-client basis and only as approved by OSP.

(d) Given the current limitations of the Oregon Judicial Department’s information systems, OJD shall continue working with OSP and designated agencies to accomplish reconciliation of its records to those records of the other designated agencies. OJD shall continue its efforts to upgrade its information systems in order for OJD to provide minimum information to OSP as required under ORS 181.740. Upon OJD having the capability of providing minimum information to OSP from its information systems, OJD shall provide all of its current and former minimum information to OSP in one single electronic file, as provided in section (2)(b) of this rule.

(e) Upon receipt of any designated agency’s minimum information, OSP may search, use, copy, and maintain that minimum information. OSP shall enter the minimum information into the PPF and electronically transmit it from the PPF to NICS.

(3) Transmission of Subsequent Minimum Information to OSP and NICS.

(a) Upon providing OSP with minimum information as provided under subsection 2 of this rule, designated agencies shall thereafter provide subsequent client information to OSP in electronic format, in a format approved by OSP. Designated agencies and originating courts shall electronically transmit subsequent minimum information to OSP as soon as such client minimum information becomes available for transmission and inclusion into the PPF. Designated agencies shall not delay in transmitting minimum information to OSP and shall transmit minimum information to OSP immediately upon such information becoming available to the designated agency.

(b) Designated agencies shall provide minimum information data elements to OSP in an electronic format that is capable of being individually searched and copied.

(c) Upon OJD having the capability of providing minimum information to OSP from its information systems, OJD shall thereafter provide subsequent minimum information to OSP, including information from originating courts, as provided in section (3)(a) of this rule.

(d) Upon receipt of any designated agency’s minimum information, OSP may search, use, copy, and maintain that minimum information. OSP shall enter the minimum information into the PPF and electronically transmit it from the PPF to NICS on a daily basis through a secure electronic message via the Law Enforcement Message Switch (LEMS).

(e) Notwithstanding subsection (3)(b) of this rule, designated agencies may provide minimum information to OSP in a non-electronic format, on a client-by-client basis and only as approved by OSP. In the event that OSP accepts minimum information from a designated agency in a non-electronic format, OSP shall electronically enter the minimum information for that particular person into the PPF, and return the non-electronically formatted minimum information to the designated agency.

(4) PPF and Minimum Information Maintenance. OSP shall request a report from NICS every 3 months that details Oregon’s mental health prohibited person record data located in NICS for comparison with the data in the PPF. OSP shall send data discrepancies to the submitting designated agency for resolution. Based on ORI number, designated agencies may further re-direct challenges to the court of original jurisdiction for resolution. Designated agencies shall include any changes or amendments to previously submitted minimum information in their subsequent electronic transmissions of minimum information to OSP.

(5) Challenges to Minimum Information. All minimum information and data elements maintained by OSP in the PPF is the minimum information and data elements directly submitted to OSP by designated agencies. Any and all challenges to minimum information data elements submitted to OSP by a designated agency and that are contained or maintained by OSP in the PPF and transmitted to NICS will be re-directed to the submitting designated agency for resolution. Based on ORI number, designated agencies may further re-direct challenges to the court of original jurisdiction for resolution.

(6) Relief Maintenance.

(a) When the PSRB grants relief from the prohibitions under 18 U.S.C. §922(d)(4) and (g)(4) for the purchase, possession, transportation or receipt of a firearm, or grants additional or alternative relief from either the prohibition on possessing a firearm under ORS 166.250(1)(c)(D) or (E), or the prohibition on receiving a firearm under ORS 166.470(1)(e) or (f), the PSRB shall send the minimum information of the person for whom relief is granted electronically to OSP. Upon receipt of the minimum information from the PSRB, OSP shall update the PPF and transmit the minimum information and notification of relief to NICS on the same day OSP receives the minimum information from the PSRB.

(b) When a person files a petition for judicial review with an appellate court following a final order of the PSRB that denies relief, and the appellate court subsequently grants the person relief from the prohibitions under 18 U.S.C. §922(d)(4) and (g)(4) for the purchase, possession, transportation or receipt of a firearm, or grants additional or alternative relief from either the prohibition on possessing a firearm under ORS 166.250(1)(c)(D) or (E), or the prohibition on receiving a firearm under ORS 166.470(1)(e) or (f), OJD shall send the minimum information of the person for whom relief is granted electronically to OSP as provided in subsection 3(b) of this rule. Upon receipt of the minimum information from OJD, OSP shall update the PPF and transmit the minimum information and notification of relief to NICS on the same day OSP receives the minimum information from OJD.

(c) In addition to the requirements set forth in 6 (a), whenever the PSRB or an appellate court grants relief under the following circumstances, the person granted relief shall provide a certified copy of either the PSRB

# ADMINISTRATIVE RULES

written final order or appellate judgment and the person's fingerprint card to OSP for the purposes of updating the petitioner's Computerized Criminal History:

(A) The person granted relief was found responsible except for insanity for an act under ORS 419C.411;

(B) The person granted relief was found guilty except for insanity of a crime under ORS 161.295 to 161.370 and the person has an existing criminal history; or

(C) The person granted relief was found by a court to lack fitness to proceed under ORS 161.370 and the person has an existing criminal history.

Stat. Auth.: ORS 181.740, 426.130, 426.160, 427.290, 427.293, 161.370, 161.295-161.370, 419C.411, 161.327, 161.336-161.351, & 419C.529-419C.544 & 192.440

Stats. Implemented: ORS 181.740, OL 2009 Ch 826

Hist.: OSP 5-2011(Temp), f. 12-13-11, cert. ef. 12-15-11 thru 6-12-12

\*\*\*\*\*

## Department of Public Safety Standards and Training Chapter 259

**Rule Caption:** Implements the regulation of tribal law enforcement units and the certification of tribal police officers.

**Adm. Order No.:** DPSST 16-2011(Temp)

**Filed with Sec. of State:** 11-28-2011

**Certified to be Effective:** 11-28-11 thru 3-28-12

**Notice Publication Date:**

**Rules Amended:** 259-008-0069

**Subject:** SB 412 was enacted during the 2011 Legislative Session and relates to the regulation of tribal law enforcement units and the certification of tribal police officers. This temporary rule language has been updated to reflect recent legal analysis of the Department's proposed rule language. The rule has been re-sequenced to clarify the responsibility of tribal governments.

**Rules Coordinator:** Linsay Hale—(503) 378-2431

### 259-008-0069

#### Tribal Law Enforcement

(1) In order for individuals employed as public safety professionals by a tribal government to be eligible for certification as a public safety professional:

(a) The tribal government must comply with all requirements found in ORS 181.610 to 181.712 and OAR 259, Section 8 applicable to law enforcement units.

(b) Tribal law enforcement units must submit an Applicant Disclosure of Convictions in Tribal Jurisdiction (Form F-8) when:

(A) Reporting individuals hired into certified positions as prescribed in OAR 259-008-0020 (Personnel Action Report Form F-4); and

(B) Upon application for certification (Application for Certification Form F-7).

(c) Tribal law enforcement units must annually complete an Annual Affidavit for Tribal Law Enforcement Units (Form F-8a).

(d) A certified public safety professional employed by a tribal government must comply with all requirements found in ORS 181.610 to 181.712 and OAR 259, Section 8 applicable to public safety professionals.

(2) Failure of a tribal government to comply with any requirements of section (1) of this rule will result in the lapse of certification of all certified public safety professionals employed with the affected tribal government. Upon reemployment as a public safety professional, or upon compliance with requirements by a tribal government, a person whose certification has lapsed may apply for recertification in the manner provided in 2011 OR SB 412 and this rule.

(3) Tribal governments choosing to comply with the provisions of OR Laws Chapter 644 regarding authorized tribal police officers must submit a resolution to the Department that includes the following:

(A) A declaration of compliance with all requirements of 2011 OR SB 412;

(B) Proof of insurance. Acceptable proof of insurance consists of:

(i) A full copy of the public liability and property damage insurance for vehicles operated by the tribal government's authorized tribal police officers and a full copy of the police professional liability insurance policy from a company licensed to sell insurance in the state of Oregon; or

(ii) A description of the tribal government's self-insurance program which is in compliance with 2011 OR SB 412.

(c) Tribal governments must file a written description of all material changes to insurance policies or the tribal government's self-insurance program with the Department within 30 days of the change.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: 2011 OL Ch. 644

Stats. Implemented: 2011 OL Ch. 644

Hist.: DPSST 15-2011(Temp), f. & cert. ef. 10-27-11 thru 3-28-12; DPSST 16-2011(Temp), f. & cert. ef. 11-28-11 thru 3-28-12

\*\*\*\*\*

## Department of Revenue Chapter 150

**Rule Caption:** Remove date-specific language to allow more than one auction per year.

**Adm. Order No.:** REV 3-2011(Temp)

**Filed with Sec. of State:** 11-29-2011

**Certified to be Effective:** 11-29-11 thru 3-11-12

**Notice Publication Date:**

**Rules Adopted:** 150-315.HB 3672

**Rules Suspended:** 150-315.HB 3672(T)

**Subject:** This rule gives guidance to taxpayers wanting to purchase renewable energy tax credits. It sets the requirements for submission of a qualified bid in the credit auction. The amendment removes date-specific language to allow the department to facilitate more than one auction per year, if needed.

**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



# ADMINISTRATIVE RULES

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 post-marks 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 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. & cert. ef. 11-29-11 thru 3-11-12

\*\*\*\*\*

## Department of State Lands Chapter 141

**Rule Caption:** Amendment of one AUM compensation rate value used by the department to assess grazing fees.

**Adm. Order No.:** DSL 5-2011

**Filed with Sec. of State:** 12-13-2011

**Certified to be Effective:** 12-13-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 141-110-0080

**Subject:** In 1994, the department developed a grazing fee formula that uses a number of values, including calf prices, weight gains, average mortality rates and an assigned state share. A 2004 Secretary of State's audit of the rangeland program recommended re-evaluation of the grazing fee formula/factors to ensure the department was meeting its fiduciary responsibilities. A Grazing Fee Advisory Committee concluded work in November of 2008, and their recommendations as adopted by the State Land Board are currently being implemented in a series of progressive adjustments to the grazing rates. All of the values in the current formula are now set with the exception of the calf prices, which have been based on monthly prices listed in the Oregon Agri-Facts publication by USDA NASS (National Agricultural Statistics Service). As of March 2011, NASS is no longer collecting and publishing the Oregon specific data. Range staff compared the relationship between the two prices and determined the Oregon price had averaged a little less than 90% of the national price over the past ten years. The differential has ranged from a low of 86% to a high of 94%.

141-110-0080 (3) (d) Average weighted calf price (P) shall be based on [USDA Oregon agriculture] (90% of the USDA National) price data indicating the average [statewide] sales price of calves for the preceding one year period based on an October through September year.

[Deleted language]; (added language).

**Rules Coordinator:** Elizabeth Bolden—(503) 986-5239

## 141-110-0080

### Compensation

(1) The annual compensation for livestock forage is the greatest of:

- (a) \$250;
- (b) \$4.25 per AUM; or

(c) The carrying capacity of the leasehold in AUMs multiplied by the annual AUM rate (expressed in dollars per AUM). The Department will establish the carrying capacity for each leasehold, which will be periodically reviewed. For those leaseholds that have highly variable annual forage production, their carrying capacity may be determined based on reliable actual grazing use records for a given year. As a result, the annual rental rate may vary from year to year for such leaseholds.

(2) Each year the Department will calculate the annual AUM compensation rate using the following formula:

AUM Compensation Rate = G x CC x S x P

G = Animal gain per month

CC = Marketable calf crop

S = State share

P = Average weighted calf price

(3) For the purpose of determining the base AUM compensation rate, the following formula factors shall be used:

(a) Pounds of gain per animal unit month (G) shall be fixed at 30 pounds through 2009, increasing on January 1, 2010 to 35 pounds.

(b) Marketable calf crop (CC) shall be fixed at 80 percent.

(c) State share of calf gain (S) shall be fixed at 20 percent through 2010, increasing on January 1, 2011 to 22.5 percent, then increasing on January 1, 2012 to 25 percent.

(d) Average weighted calf price (P) shall be based on 90% of the USDA National price data indicating the average sales price of calves for the preceding one year period based on an October through September year.

(4) The compensation due to the Department for a livestock trailing permit will be based on the total number of animals crossing the state land in a single "round trip" per year as follows:

- (a) For 500 animal units or less the required compensation is \$150;
- (b) For 501 to 999 animal units the required compensation is \$250;

and

(c) For 1,000 or more animal units the required compensation is \$350.

(5) In addition to any other remedies available, the Department will impose the legal rate of interest and any applicable late fees on unpaid balances owed the Department pursuant to ORS 82.010.

(6) Unless otherwise authorized by the Department, annual compensation due must be paid to the Department each year within 30 calendar days of the date of the Department's billing notice.

Stat. Auth.: ORS 274.045, 273.051 & 273.805 - 273.825

Stats. Implemented: ORS 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94; DSL 1-1999, f. & cert. ef. 3-2-99; DSL 7-2009, f. & cert. ef. 10-20-09; DSL 5-2011, f. & cert. ef. 12-13-11

\*\*\*\*\*

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

**Rule Caption:** Action Taken Upon Failure to Establish Identity when Committing an Act in ORS 809.310(a) through (h).

**Adm. Order No.:** DMV 11-2011

**Filed with Sec. of State:** 11-23-2011

**Certified to be Effective:** 11-23-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 735-062-0016, 735-070-0004

**Subject:** Before issuing a driver license or identification card (ID card), a person must submit to collection of biometric data in order to establish the person's identity. This means DMV takes a digital photograph of an applicant for an original, renewal or replacement driver license or ID card, which is then compared to all other digital photos in the DMV database using facial recognition software. Based on this new technology, DMV has identified many cases where a person was issued a driver license or ID card in a false name. Often this occurred many years before when the person obtained identification because he or she was under 21 years of age.

It has been DMV's policy to suspend a person's driving privileges and cancel any driver license or identification card, and to suspend the person's right to apply for driving privileges and an identification card for one year when it is determined the person has committed an act listed in ORS 809.310(3). These acts include submitting false information to DMV, using an invalid license obtained by

# ADMINISTRATIVE RULES

fraud, or giving false information to a police officer. DMV recently reviewed this policy and determined the sanction is too harsh in most instances, particularly since the majority of these situations arise because the person applied for a false driver license or ID card several years ago in order to misrepresent his or her age. State issued identification, either in the form of a driver license or ID card, is a necessity in today's world. Taking both a driver license and ID card away from a person for a year can have a devastating effect on the person's ability to maintain a job, complete financial transactions and travel. DMV has therefore changed its policy and will not suspend an identification card and a person's right to apply for an identification card under these circumstances, although DMV will cancel an ID card that has been issued in a false name.

DMV amended OAR 735-062-0016 and 735-070-0004 to delete the requirement that DMV suspend an ID card or the right to apply for an ID card when the person commits an act set forth in ORS 809.310(3). The rule amendments also correct a statutory citation in OAR 735-062-0016. The amendments to OAR 735-070-0004 also clarify that DMV will suspend driving privileges and the right to apply for driving privileges in all cases where DMV has determined that the person has knowingly committed an act listed in ORS 809.310(3)(a) through (h).

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-062-0016

### Requirements for Establishing Identity Under ORS 807.024 and Consequences of Applicant's Failure to Establish Identity

(1) An applicant for an original, renewal or replacement driver license, driver permit or identification card must submit to the collection of biometric data, as provided in ORS 807.024, for the purpose of establishing identity, unless the applicant meets the requirements of OAR 735-062-0120 or 735-062-0125.

(2) To collect biometric data DMV will take a digital photograph of the applicant which must:

- (a) Be full-faced;
- (b) Clearly show the iris and pupil of each eye; and
- (c) Capture the applicant's natural appearance in accordance with the requirements set forth in section (3) of this rule.

(3) To comply with Section (2) of this rule, DMV will require the applicant to:

- (a) Remove any eyeglasses;
- (b) Remove any contact lens that significantly changes the appearance of the applicant's eye;
- (c) Remove any clothing or similar material that partially or completely covers the applicant's face;
- (d) Remove any head covering, including a hat or cap, unless the head covering is for medical or religious reasons. A head covering worn for medical or religious reasons must not cover or distort the applicant's face; and
- (e) Remove makeup, face paint, jewelry, sticker or other temporary substance that covers or distorts all or part of the face so as to significantly alter the applicant's natural appearance and which DMV determines is likely to affect the biometric measurements of the digital photograph.

(4) Except as provided in OAR 735-062-0120 and 735-062-0125, if an applicant's identity is not established by the biometric data submitted pursuant to subsection (1) of this rule, the applicant must provide documentation or other evidence sufficient to establish the applicant's identity to the satisfaction of DMV. The documents or other evidence may include, but are not limited to, one or more of the following:

- (a) Documents listed in OAR 735-062-0020 that provide proof of the applicant's identity and date of birth to the satisfaction of DMV.
- (b) The applicant's SSN and proof and verification of the SSN as provided in OAR 735-062-0005.
- (c) A letter from a treating physician that identifies the person and states a medical reason for the person's change in appearance.
- (d) A document or letter from a law enforcement agency verifying identity.
- (e) A court document verifying identity.

(5) Except as provided in OAR 735-062-0120 and 735-062-0125, DMV will not issue a driver license, driver permit or identification card, if the applicant's identity is not established under this rule.

(6) Pursuant to ORS 809.310(3) and OAR 735-070-0004, DMV will suspend an applicant's driving privileges and the person's right to apply for driving privileges if the person fails to establish his or her identity as

required by this rule and the failure to establish identity is the result of the applicant's committing any of the acts identified in ORS 809.310(3)(a) through (h).

(7) Pursuant to ORS 809.310(1), 807.400(15), and OAR 735-070-0004, DMV will cancel a driver license, driver permit or identification card issued to an applicant who fails to establish his or her identity as required by this rule when applying for the license, permit or identification card.

(8) Pursuant to ORS 809.310(2), 807.400(15), and OAR 735-070-0004, DMV will cancel a driver license, driver permit or identification card issued to an applicant who fails to establish his or her identity as required by this rule when applying for the license, permit or identification card, and the failure to establish identity is the result of the applicant's providing false information to DMV.

(9) If, based on the identification procedures required under section (1) or section (2) of this rule, DMV determines that an applicant has used different names to identify himself or herself in different applications submitted to DMV and the different names are not the result of the applicant's having legally changed his or her name, DMV may take the actions authorized by ORS 809.135.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.021 & 807.024

Stats. Implemented: ORS 807.021, 807.024, 807.400, 809.135, 809.310, 807.400 & 809.411

Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 13-2010, f. & cert. ef. 7-30-10; DMV 6-2011, f. & cert. ef. 6-21-11; DMV 11-2011, f. & cert. ef. 11-23-11

## 735-070-0004

### Cancellation and Suspension Actions Under ORS 809.310

(1) Pursuant to ORS 809.310(1) and (2) and 807.400(15), DMV will cancel any driver license, driver permit or identification card when DMV determines that it was issued on the basis of false information given to DMV or determines that the person is not entitled to driving privileges or the identification card. The cancellation action may be taken in addition to the suspension actions authorized by section (3) of this rule.

(2) When DMV cancels a person's driver license, driver permit or identification card under section (1) of this rule, DMV may cancel any other driver license, driver permit or identification card issued to the person to which the person is not entitled or which was issued on the basis of false information given to DMV.

(3) Pursuant to ORS 809.310(3) and 809.415(5), DMV will suspend driving privileges and the right to apply for driving privileges if DMV determines that a person has knowingly committed any of the acts identified in ORS 809.310(3)(a) through (h). The suspension will be imposed regardless of when the act occurred.

(4) When DMV suspends a person's driving privileges pursuant to ORS 809.411(9) because the person has been convicted of any of the acts identified in 809.310(3) (a) through (h), or because DMV has determined the person knowingly committed any of the acts identified in 809.310(3)(a) through (h), DMV will suspend any other driving privileges issued to the person and the person's right to apply for driving privileges.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stat. Imp.: ORS 809.310 & 809.320

Hist.: MV 8-1989, f. & cert. ef. 2-1-89; MV 18-1993, f. 12-17-93, cert. ef. 1-1-94; DMV 16-1994, f. & cert. ef. 12-20-94; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 11-2011, f. & cert. ef. 11-23-11

.....

**Rule Caption:** Police Reports for Implied Consent Suspension.

**Adm. Order No.:** DMV 12-2011

**Filed with Sec. of State:** 11-23-2011

**Certified to be Effective:** 11-23-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 735-070-0054

**Subject:** OAR 735-070-0054 establishes the information required on the form police send to DMV to suspend driving privileges under the Implied Consent Laws following a driving under the influence arrest and the driver either fails or refuses a chemical test. DMV has removed the requirement that the form indicate if the person holds a commercial driver license, as DMV is also able to determine that information from the person's driving record and amend the form accordingly. DMV has also removed the requirement that the form contain "a suspension period that conforms to the type of suspension in accordance with ORS 813.404 or 813.420." At times the form received by DMV will not indicate the length of suspension. However, the form does include the person's rights and consequences and that section of the form must be read by the police officer to the driver. The rights and consequences clearly state the suspension will be substantially longer if the person refuses a test. The rights and con-

# ADMINISTRATIVE RULES

sequences also state: "if you fail or refuse a test, the suspension period will be longer and the wait time for a hardship permit increased if, within the last five years, you have been convicted of DUII, you have had your driving privileges suspended under the Motorist Implied Consent Law, or you have participated in a DUII diversion or similar program." In *Basile v. DMV*, the Oregon Court of Appeals ruled that a specific box indicating suspension length need not be marked on the front of the form for the person to understand that his or her driving privileges are suspended and that the time is longer if he or she refused the test rather than failed the test. Further, the person can understand whether he or she will serve the minimum time or the longer time because of some other act within the last five years as mentioned in the rights and consequences. Because of the case law, DMV enters a suspension on a record even if the form does not indicate the length of suspension.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-070-0054

### Police Reports for Implied Consent Suspension Under ORS 813.100, 813.120, 813.132 and 813.410

(1) A police report required by ORS 813.100 must be submitted to the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) on forms approved and distributed by the department.

(2) For the Driver Suspensions Unit to suspend a person's non-commercial Class C driving privileges, commercial driver license, or both or right to apply for driving privileges or a commercial driver license under ORS 813.410 for failure of a breath test or for refusal of a breath, blood or urine test, the implied consent form(s) must:

(a) Be received by DMV on or before the 30th day after the date of arrest; and

(b) Contain the following information:

(A) Specify all of the following that apply:

(i) The person failed a breath test;

(ii) The person refused a breath test;

(iii) The person refused a blood test;

(iv) The person refused a urine test;

(v) The person was operating a commercial motor vehicle;

(vi) The person was operating a vehicle transporting hazardous materials.

(B) A date of arrest; and

(C) The reporting officer's signature below the statement, "I affirm by my signature that the foregoing events occurred." The officer's signature will be considered acceptable if located anywhere on the line of the form directly below the statement.

(3) For the Driver Suspensions Unit to suspend a person's non-commercial Class C driving privileges, commercial driver license, or both or right to apply for driving privileges or a commercial driver license under ORS 813.410 for failure of a blood test, the police report form must be received by DMV on or before the 45th day after the date of arrest and must indicate that the person failed a blood test and whether the person was operating a commercial motor vehicle, as well as the information required in paragraphs (2)(b)(B) and (C) of this rule.

(4) If an implied consent suspension has been posted pursuant to this rule and a timely hearing request has not been submitted as provided for in ORS 813.410(3), the driver may have the implied consent suspension withdrawn only by:

(a) Having the police agency or district attorney's office follow procedures outlined in OAR 735-070-0055;

(b) Obtaining and prevailing at a hearing under ORS 813.440; or

(c) The Driver Suspension Unit, when it withdraws the suspension pursuant to ORS 813.460 and OAR 735-070-0060.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 813.100 & 813.120.

Stats. Implemented: ORS 813.100, 813.120, 813.130 & 813.404 - 813.460

Hist.: DMV 7-1995, f. & cert. ef. 3-9-95; DMV 12-1995, f. & cert. ef. 12-14-95; DMV 9-1996, f. & cert. ef. 10-10-96; DMV 23-2004, f. & cert. ef. 11-17-04; DMV 12-2011, f. & cert. ef. 11-23-11

.....

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

**Rule Caption:** Penalties for failure to produce records.

**Adm. Order No.:** MCTD 4-2011

**Filed with Sec. of State:** 11-23-2011

**Certified to be Effective:** 11-23-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 740-055-0100, 740-300-0010

**Subject:** These rules describe requirements for maintenance and production of records, and associated penalties for failure to produce records. These amendments allow the Department to assess civil monetary penalties when records are made available for audit but are found to be inadequate. Currently, when the carrier provides inadequate records, the best available information standard is used to audit the records. Using the best available information standard, rather than a carrier's records, often results in an under assessment of taxes due. Carriers that continue to either not maintain records, or provide inadequate records have an advantage. The rule is necessary to provide a tool that can be used on a progressive scale to deter carriers from providing the department with inadequate records after they have been educated about the minimum record requirements.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 740-055-0100

### Maintenance and Production of Records and Vehicles – Penalties

(1) At the request of the Department or its authorized representative, each motor carrier must produce for inspection or audit all records required to be prepared or maintained by statute or rules of the Department and all motor vehicles subject to the Department's jurisdiction. Each succeeding day that the records or vehicles are not made available for inspection or audit will constitute a separate violation of this rule until such records or vehicles are made available at the place stated in the request.

(2) In addition to any other penalty authorized by law, the operating authority of a person who fails to prepare, maintain, or produce records required by statute or the rules of the Department or fails to produce vehicles for inspection will be subject to suspension or cancellation.

(3) The penalties authorized will not be imposed unless the Department's request to produce vehicles for inspection or records for audit gives the motor carrier a reasonable time and place to produce said vehicles for inspection or records for audit.

(4) If a motor carrier makes records available for a weight-mile tax audit, but the records made available do not meet Department requirements in OAR 740-055-0120, and the records as a whole are deemed so inadequate that they cannot be audited in the normally prescribed method, the Department may impose penalties described in OAR 740-300-0010. These penalties may be imposed even if the Department is able to complete an audit of the carrier's records by relying on any information available to the Department as described in ORS 825.490(3). The penalties are in addition to any other penalties authorized by law.

Stat. Auth.: ORS 184.616, 184.619 & 823.011

Stats. Implemented: ORS 825.210, 825.212, 825.232, 825.515

Hist.: PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); Renumbered from 860-038-0048; PUC 1-1983, f. & ef. 1-17-83 (Order No. 83-024); PUC 9-1994, f. & cert. ef. 4-21-94 (Order No. 94-637); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-068-0048; MCT 8-1997, f. & cert. ef. 11-17-97; MCTD 4-2011, f. & cert. ef. 11-23-11

## 740-300-0010

### Failure to Produce Records – Penalties

Except as otherwise ordered by the Department in a particular case, after written notice, any motor carrier who fails to produce records as required by the Department under OAR 740-055-0100, in addition to any other penalties authorized by law, will be subject to the following penalties under ORS 825.137(2)(g) and 825.950:

(1) \$100 per day for each day of failure for a period not to exceed 10 days, and except as described in subsection (3), suspension of operating authority until reinstated by the Department;

(2) \$100 per day for each day of failure from the 16th day of the entry of the order under subsection (1) of this section, for a period not to exceed 20 days, and cancellation of operating authority;

(3) Any suspension of authority imposed for failure to produce records as described in OAR 740-055-0100(4) will be held in abeyance for one year if the motor carrier has not been found in violation of OAR 740-055-0100(4) within the prior five years. A second failure to produce records subjects the motor carrier to a five day suspension of operating authority. A third failure to produce records under this section may result in cancellation of operating authority.

Stat. Auth.: ORS 183, 823 & 825

Stats. Implemented: ORS 823.029

Hist.: PUC 14-1992, f. & cert. ef. 11-9-92 (Order No. 92-1560); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-061-0020; MCTD 4-2011, f. & cert. ef. 11-23-11



# ADMINISTRATIVE RULES

## Employment Department Chapter 471

**Rule Caption:** Defines “against equity and good conscience”.

**Adm. Order No.:** ED 11-2011

**Filed with Sec. of State:** 12-5-2011

**Certified to be Effective:** 12-5-11

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

**Rules Amended:** 471-030-0053

**Rules Repealed:** 471-030-0053(T)

**Subject:** Senate Bill 725 allows for benefits overpaid under ORS 657.315 to be waived if recovery is “against equity and good conscience”. The rule change defines “against equity and good conscience” by taking into account the individual’s financial ability to repay the overpaid benefits.

The proposed change makes additional plain language and consistency updates. It removes the definition of ‘Recovery’ which is defined in statute. It also replaces in the text of the rule the Manager of Benefits with the Director as the one who authorizes employees to waive overpayments under ORS 657.317. This change is consistent with other rules in this chapter.

**Rules Coordinator:** Courtney Brooks—(503) 947-1724

### 471-030-0053

#### Waiver of Overpayments

(1) Purpose: This rule establishes policy to be used when waiving overpayments pursuant to ORS 657.317.

(2) Definitions: For purposes of ORS 657.317:

(a) “Establishment” means the issuance of an administrative decision which would result in an overpayment under ORS 657.310 or ORS 657.315.

(b) “Amount of the overpayment” means the accumulated amount of potentially overpaid benefits in a single benefit year resulting from the application of ORS 657.150(6) and/or 657.150(7).

(c) “Against equity and good conscience” means that recovery of the overpaid benefits would cause a financial hardship on the individual.

(3) In applying ORS 657.317(2):

(a) An authorized representative of the Employment Department shall determine that a financial hardship exists when the total household expenses equal or exceed 90% of the total household income less unemployment benefits.

(b) Notwithstanding the provisions of subsection (3)(a) of this section, if an individual is paid twice for the same week(s), only the amount in excess of the final entitlement is eligible to be waived.

(4) In applying ORS 657.317(4):

(a) No waiver shall be granted if the overpayment is a result of willful misrepresentation or fraud as established in ORS 657.215.

(b) No waiver shall be granted if the overpayment results from a decision which has been issued and become final under Chapter 657.

(c) No waiver shall be granted if the overpayment results from the negotiation of an original and a replacement check which were issued for the same period pursuant to OAR 471-030-0049.

(5) The determination to waive overpayments in accordance with the provisions of ORS 657.317 and this rule shall be made by employees authorized by the Director.

Stat. Auth.: ORS 105 Sec. 7, ORS 183, 657.610, 657.266, 657.317 & 657.270

Stats. Implemented: ORS 215

Hist.: ED 2-1995, f. 8-29-95, cert. ef. 9-3-95; ED 4-2011(Temp), f. & cert. ef. 6-29-11 thru 12-15-11; ED 11-2011, f. & cert. ef. 12-5-11

.....

## Land Conservation and Development Department Chapter 660

**Rule Caption:** Adopt permanent rules specifically applicable to siting photovoltaic solar power generation facilities.

**Adm. Order No.:** LCDD 9-2011

**Filed with Sec. of State:** 11-23-2011

**Certified to be Effective:** 11-23-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 660-033-0120, 660-033-0130

**Subject:** The proposed changes amend OAR Chapter 660, division 33 regarding the process for siting commercial photovoltaic solar

power generation facilities on farm and ranch lands without a Goal 2 exception.

**Rules Coordinator:** Casaria Tuttle—(503) 373-0050, ext. 322

### 660-033-0120

#### Uses Authorized on Agricultural Lands

The specific development and uses listed in the following table are allowed or may be allowed in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the schedule shall have the following meanings:

(1) A – Use is allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns only to the extent authorized by law.

(2) R – Use may be allowed, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns.

(3) \* – Use not allowed.

(4) # – Numerical references for specific uses shown on the chart refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use on the chart, this rule does not establish criteria for the use.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 197.040 & 197.245

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700 - 215.710 & 215.780

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 2-1995(Temp), f. & cert. ef. 3-14-95; LCDC 7-1995, f. & cert. ef. 6-16-95; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09; LCDD 5-2009, f. & cert. ef. 12-7-09; LCDD 6-2010, f. & cert. ef. 6-17-10; LCDD 4-2011, f. & cert. ef. 3-16-11; LCDD 9-2011, f. & cert. ef. 11-23-11

### 660-033-0130

#### Minimum Standards Applicable to the Schedule of Allowed and Conditional Uses

The following standards apply to uses listed in OAR 660-033-0120 where the corresponding section number is shown on the chart for a specific use under consideration. Where no numerical reference is indicated on the chart, this division does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the chart as authorized by law:

(1) A dwelling on farmland may be considered customarily provided in conjunction with farm use if it meets the requirements of OAR 660-033-0135.

(2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.

(b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, “tract” means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.

(c) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this rule.

(3)(a) A dwelling may be approved on a pre-existing lot or parcel if:

(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in subsection (3)(g) of this rule:

(i) Since prior to January 1, 1985; or

(ii) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.

(B) The tract on which the dwelling will be sited does not include a dwelling;

## ADMINISTRATIVE RULES

(C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;

(D) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law;

(E) The lot or parcel on which the dwelling will be sited is not high-value farmland except as provided in subsections (3)(c) and (d) of this rule; and

(F) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.

(b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;

(c) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a);

(C) A hearings officer of a county determines that:

(i) The lot or parcel cannot practically be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrate that a lot or parcel cannot be practically managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practically managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use;

(ii) The dwelling will comply with the provisions of ORS 215.296(1); and

(iii) The dwelling will not materially alter the stability of the overall land use pattern in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(D) A local government shall provide notice of all applications for dwellings allowed under subsection (3)(c) of this rule to the Oregon Department of Agriculture. Notice shall be provided in accordance with the governing body's land use regulations but shall be mailed at least 20 calendar days prior to the public hearing before the hearings officer under paragraph (3)(c)(C) of this rule.

(d) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The tract on which the dwelling will be sited is:

(i) Identified in OAR 660-033-0020(8)(c) or (d);

(ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and

(iii) Twenty-one acres or less in size; and

(C) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or

(D) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary; or

(E) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The governing body of a county must interpret the center of the subject tract as the geographic center of the flaglot if the applicant

makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary:

(i) "flaglot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.

(ii) "Geographic center of the flaglot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.

(e) If land is in a zone that allows both farm and forest uses, is acknowledged to be in compliance with both Goals 3 and 4 and may qualify as an exclusive farm use zone under ORS chapter 215, a county may apply the standards for siting a dwelling under either section (3) of this rule or OAR 660-006-0027, as appropriate for the predominant use of the tract on January 1, 1993;

(f) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under section (3) of this rule in any area where the county determines that approval of the dwelling would:

(A) Exceed the facilities and service capabilities of the area;

(B) Materially alter the stability of the overall land use pattern of the area; or

(C) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

(g) For purposes of subsection (3)(a) of this rule, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members;

(h) The county assessor shall be notified that the governing body intends to allow the dwelling.

(i) When a local government approves an application for a single-family dwelling under section (3) of this rule, the application may be transferred by a person who has qualified under section (3) of this rule to any other person after the effective date of the land use decision.

(4) A single-family residential dwelling not provided in conjunction with farm use requires approval of the governing body or its designate in any farmland area zoned for exclusive farm use:

(a) In the Willamette Valley, the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through VIII soils that would not, when irrigated, be classified as prime, unique, Class I or II soils;

(C) The dwelling will be sited on a lot or parcel created before January 1, 1993;

(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:

(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsections (3)(a) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the

## ADMINISTRATIVE RULES

distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph; and

(iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and

(E) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(b) In the Willamette Valley, on a lot or parcel allowed under OAR 660-033-0100(11), the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(C) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(c) In counties located outside the Willamette Valley require findings that:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B)(i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and

(ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel or portion of a lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or

(iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if, in Western Oregon, it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;

(C) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in paragraph (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether cre-

ation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(D) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of this rule or OAR 660-006-0027, no additional dwelling may later be sited under the provisions of section (4) of this rule;

(e) Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the standards in ORS 215.213(3) through 215.213(8) for nonfarm dwellings on lands zoned exclusive farm use that are not designated marginal or high-value farmland.

(5) Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(6) A facility for the primary processing of forest products shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period that is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.

(7) A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(8)(a) A lawfully established dwelling is a single-family dwelling which:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights; and

(D) Has a heating system.

(b) In the case of replacement, the dwelling to be replaced shall be:

(i) Removed, demolished, or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this section shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this section, including a copy of the deed restrictions and release statements filed under this section; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.



## ADMINISTRATIVE RULES

(c) An accessory farm dwelling authorized pursuant to OAR 660-033-0130(24)(a)(B)(iii), may only be replaced by a manufactured dwelling.

(9)(a) To qualify, a dwelling shall be occupied by relatives whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

(b) Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel requirements under ORS 215.780, if the owner of a dwelling described in OAR 660-033-0130(9) obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the "homesite," as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect.

(c) For the purpose of OAR 660-033-0130(9)(b), "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(9)(a).

(10) A manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building allowed under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this section is not eligible for replacement under ORS 215.213(1)(q) or 215.283(1)(p). Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

(11) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zones under this division is allowed.

(12) In order to meet the requirements specified in the statute, a historic dwelling shall be listed on the National Register of Historic Places.

(13) Roads, highways and other transportation facilities, and improvements not otherwise allowed under this rule may be established, subject to the adoption of the governing body or its designate of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.

(14) Home occupations and the parking of vehicles may be authorized. Home occupations shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located. A home occupation shall be operated by a resident or employee of a resident of the property on which the business is located, and shall employ on the site no more than five full-time or part-time persons.

(15) New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

(16)(a) A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(A) Technical and engineering feasibility;

(B) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned

for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(C) Lack of available urban and nonresource lands;

(D) Availability of existing rights of way;

(E) Public health and safety; and

(F) Other requirements of state and federal agencies.

(b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(c) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(d) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

(e) Utility facilities necessary for public service may include on-site and off-site facilities for temporary workforce housing for workers constructing a utility facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Off-site facilities allowed under this paragraph are subject to OAR 660-033-0130(5). Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall have no effect on the original approval.

(f) In addition to the provisions of subsections (16)(a) to (d) of this rule, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.

(g) The provisions of subsections (16)(a) to (d) of this rule do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

(17) A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval. Permanent features of a power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

(18)(a) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law. An existing golf course may be expanded consistent with the requirements of sections (5) and (20) of this rule, but shall not be expanded to contain more than 36 total holes.

(b) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, a use formerly allowed pursuant to ORS 215.213(1)(a) or 215.283(1)(a), as in effect before January 1, 2010, the effective date of 2009 Oregon Laws, chapter 850, section 14, may be expanded subject to:

(A) The requirements of subsection (c) of this section; and

(B) Conditional approval of the county in the manner provided in ORS 215.296.

(c) A nonconforming use described in subsection (b) of this section may be expanded under this section if:

(A) The use was established on or before January 1, 2009; and

(B) The expansion occurs on:

(i) The tax lot on which the use was established on or before January 1, 2009; or

## ADMINISTRATIVE RULES

(ii) A tax lot that is contiguous to the tax lot described in subparagraph (i) of this paragraph and that was owned by the applicant on January 1, 2009.

(19)(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.

(b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(c) of this rule.

(c) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this section, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(20) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(f), and this division means a nine or 18 hole regulation golf course or a combination nine and 18 hole regulation golf course consistent with the following:

(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;

(b) A regulation nine hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par three golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;

(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:

(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing;

(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings; and

(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and

orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.

(21) "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events. As used in this rule, a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(22) A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval. Permanent features of a power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

(23) A farm stand may be approved if:

(a) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(b) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

(c) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.

(d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.

(24) Accessory farm dwellings as defined by subsection (24)(e) of this section may be considered customarily provided in conjunction with farm use if:

(a) Each accessory farm dwelling meets all the following requirements:

(A) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator;

(B) The accessory farm dwelling will be located:

(i) On the same lot or parcel as the primary farm dwelling; or

(ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or

(iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed restriction shall be filed with the county clerk and require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules; or

## ADMINISTRATIVE RULES

(iv) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm or ranch operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A county shall require all accessory farm dwellings approved under this subparagraph to be removed, demolished or converted to a non-residential use when farm worker housing is no longer required; or

(v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(3) or (4), whichever is applicable; and

(C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.

(b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:

(A) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced in the last two years or three of the last five years the lower of the following:

(i) At least \$40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(C) On land not identified as high-value farmland in counties that have adopted marginal lands provisions under former ORS 197.247 (1991 Edition) before January 1, 1993, the primary farm dwelling is located on a farm or ranch operation that meets the standards and requirements of ORS 215.213(2)(a) or (b) or OAR 660-033-0130(24)(b)(A); or

(D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(8); and

(i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm;

(ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and

(iii) A Producer License for the sale of dairy products under ORS 621.072.

(c) The governing body of a county shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies the requirements of OAR 660-033-0135, a parcel may be created consistent with the minimum parcel size requirements in OAR 660-033-0100.

(d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4) of this rule.

(e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code.

(25) In counties that have adopted marginal lands provisions under former ORS 197.247 (1991 Edition) before January 1, 1993, an armed forces reserve center is allowed, if the center is within one-half mile of a community college. An "armed forces reserve center" includes an armory or National Guard support facility.

(26) Buildings and facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this section. The site shall not include

an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. An owner of property used for the purpose authorized in this section may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this section, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(27) Insect species shall not include any species under quarantine by the Oregon Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this section to the Oregon Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(28) The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility. A county shall not approve any division of a lot or parcel that separates a processing facility from the farm operation on which it is located.

(29)(a) Composting operations and facilities allowed on high-value farmland are limited to those that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract, and that meet the performance and permitting requirements of the Department of Environmental Quality (DEQ) under OAR 340-093-0050 and 340-096-0060. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.

(b) Composting operations and facilities allowed on land not defined as high-value farmland shall meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

(30) The County governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(31) Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.

(32) Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(a) A public right of way;

(b) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(c) The property to be served by the utility.

(33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of 3,000 or fewer persons that is not anticipated to continue for more than 120 hours in any three-month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under this division.

(34) An outdoor mass gathering of more than 3,000 persons that is anticipated to continue for more than 120 hours in any three-month planning period is subject to review by a county planning commission under the provisions of ORS 433.763.

(35)(a) As part of the conditional use approval process under ORS 215.296 and OAR 660-033-0130(5), for the purpose of verifying the existence, continuity and nature of the business described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the business may apply to the county and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies; and



## ADMINISTRATIVE RULES

(b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or 215.283(2)(y) may be altered, restored or replaced pursuant to ORS 215.130(5), (6) and (9).

(36) For counties subject to ORS 215.283 and not 215.213, a community center authorized under this section may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(37) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down areas and all other necessary appurtenances, including but not limited to on-site and off-site facilities for temporary workforce housing for workers constructing a wind power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request filed after a decision to approve a power generation facility. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval. A proposal for a wind power generation facility shall be subject to the following provisions:

(a) For high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that all of the following are satisfied:

(A) Reasonable alternatives have been considered to show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility or component to function properly or if a road system or turbine string must be placed on such soils to achieve a reasonably direct route considering the following factors:

(i) Technical and engineering feasibility;

(ii) Availability of existing rights of way; and

(iii) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under OAR 660-033-0130(37)(a)(B);

(B) The long-term environmental, economic, social and energy consequences resulting from the wind power generation facility or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands that do not include high-value farmland soils;

(C) Costs associated with any of the factors listed in OAR 660-033-0130(37)(a)(A) may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary;

(D) The owner of a wind power generation facility approved under OAR 660-033-0130(37)(a) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration; and

(E) The criteria of OAR 660-033-0130(37)(b) are satisfied.

(b) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that:

(A) The proposed wind power facility will not create unnecessary negative impacts on agricultural operations conducted on the subject property. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices;

(B) The presence of a proposed wind power facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and

county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval;

(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval; and

(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.

(c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.

(d) In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of OAR 660-033-0130(37)(b) shall apply to the entire project.

(38) A proposal to site a photovoltaic solar power generation facility shall be subject to the following definitions and provisions:

(a) "Arable land" means land in a tract that is predominantly cultivated or, if not currently cultivated, predominantly comprised of arable soils.

(b) "Arable soils" means soils that are suitable for cultivation as determined by the governing body or its designate based on substantial evidence in the record of a local land use application but do not include high-value farmland soils described at ORS 195.300(10) unless otherwise stated.

(c) "Nonarable land" means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.

(d) "Nonarable soils" means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V-VIII and no history of irrigation shall be considered nonarable in all cases. The governing body or its designate may determine other soils, including soils with a past history of irrigation, to be nonarable based on substantial evidence in the record of a local land use application.

(e) "Photovoltaic solar power generation facility" includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, transfers, or both, that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring, and storage devices and other components. Photovoltaic solar power generation facilities also include electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, all necessary grid integration equipment, new or expanded private roads constructed to serve the photovoltaic solar power generation facility, office, operation and maintenance buildings, staging areas and all other necessary appurtenances. For purposes of applying the acreage standards of this section, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities determined to be under common ownership, on lands with less than 1320-feet of separation from the tract on which the new facility is proposed to be sited. Projects connected to the same parent company or individuals shall be considered to be in common ownership regardless of the operating business structure. A photovoltaic solar power generation facility does not include a net metering project established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.

(f) For high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing body or its designate must find that:

(A) The proposed photovoltaic solar power generation facility will not create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by project components. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and

## ADMINISTRATIVE RULES

placing photovoltaic solar power generation facility project components on lands in a manner that could disrupt common and accepted farming practices;

(B) The presence of a photovoltaic solar power generation facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval;

(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval;

(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval;

(E) The project is not located on high-value farmland soils unless it can be demonstrated that:

(i) Non high-value farmland soils are not available on the subject tract;

(ii) Siting the project on non high-value farmland soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(iii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of non high-value farmland soils; and

(F) A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:

(i) If fewer than 48-acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area no further action is necessary.

(ii) When at least 48-acres of photovoltaic solar power generation have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities, within the study area the local government or its designate must find that the photovoltaic solar energy generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar energy generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

(g) For arable lands a photovoltaic solar power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing body or its designate must find that:

(A) The project is not located on high-value farmland soils or arable soils unless it can be demonstrated that:

(i) Nonarable soils are not available on the subject tract;

(ii) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(iii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of nonarable soils;

(B) No more than 12-acres of the project will be sited on high-value farmland soils described at ORS 195.300(10) unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4;

(C) A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:

(i) If fewer than 80-acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area no further action is necessary.

(ii) When at least 80-acres of photovoltaic solar power generation have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities, within the study area the local government or its designate must find that the photovoltaic solar energy generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar energy generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and

(D) The requirements of OAR 660-033-0130(38)(f)(A), (B), (C) and (D) are satisfied.

(h) For nonarable lands, a photovoltaic solar power generation facility shall not preclude more than 100-acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing body or its designate must find that:

(A) The project is not located on high-value farmland soils or arable soils unless it can be demonstrated that:

(i) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils;

(B) No more than 12-acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);

(C) No more than 20-acres of the project will be sited on arable soils unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4;

(D) The requirements of OAR 660-033-0130(38)(f)(D) are satisfied;

(E) If a photovoltaic solar power generation facility is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures; and

(F) If a proposed photovoltaic solar power generation facility is located on lands where the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive), or to wildlife species of concern identified and mapped by the Oregon Department of Fish and Wildlife (including big game winter range and migration corridors, golden eagle and prairie falcon nest sites, and pigeon springs), the applicant shall conduct a site specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife species of concern are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife species of concern as described above. If the applicant's site specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.

(G) The provisions of paragraph (F) are repealed on January 1, 2022.

(i) The county governing body or its designate shall require as a condition of approval for a photovoltaic solar power generation facility, that the project owner sign and record in the deed records for the county a document binding the project owner, and the project owner's successors in interest,

# ADMINISTRATIVE RULES

prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).

(j) Nothing in this section shall prevent a county from requiring a bond or other security from a developer or otherwise imposing on a developer the responsibility for retiring the photovoltaic solar power generation facility.

(k) The commission may re-evaluate the acreage thresholds identified in subsections (f), (g) and (h) should ORS 469.300(11)(a)(D) be amended.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.040 & 215.213

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 8-1995, f. & cert. ef. 6-29-95; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 5-1997, f. & cert. ef. 12-23-97; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 9-2000, f. & cert. ef. 11-3-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09; LCDD 5-2009, f. & cert. ef. 12-7-09; LCDD 6-2010, f. & cert. ef. 6-17-10; LCDD 7-2010(Temp), f. & cert. ef. 6-17-10 thru 11-30-10; LCDD 9-2010, f. & cert. ef. 9-24-10; LCDD 11-2010, f. & cert. ef. 11-23-10; LCDD 4-2011, f. & cert. ef. 3-16-11; LCDD 9-2011, f. & cert. ef. 11-23-11

## Oregon Board of Naturopathic Medicine Chapter 850

**Rule Caption:** Change required bring Agency in compliance with ORS 676.150.

**Adm. Order No.:** OBNM 6-2011

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 12-23-11

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 850-050-0120

**Subject:** OAR 850-050-0120 Clarifies the duty of Licensees and non-licensed person to report to the Board any violation of any law within 10 business days of the violation.

OAR 850-050-0120 Is not in compliance with statute on self-reporting: ORS 676.150676.150 Duty to report prohibited or unprofessional conduct, arrests and convictions

(2) Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a licensee who has reasonable cause to believe that another licensee has engaged in prohibited or unprofessional conduct shall report the conduct to the board responsible for the licensee who is believed to have engaged in the conduct. The reporting licensee shall report the conduct without undue delay, but in no event later than 10 working days after the reporting licensee learns of the conduct.

(3) A licensee who is convicted of a misdemeanor or felony or who is arrested for a felony crime shall report the conviction or arrest to the licensee's board within 10 days after the conviction or arrest.

**Rules Coordinator:** Anne Walsh—(971) 673-0193

### 850-050-0120

#### Illegal Practice; Duty to Self-Report

(1) No person, including a graduate of any naturopathic medicine program, other than a licensee complying with the provisions of ORS Chapter 685 shall:

(a) Practice naturopathic medicine or naturopathy in Oregon, or

(b) Advertise, hold out to the public or represent in any manner that the person is authorized to practice naturopathy or naturopathic medicine in Oregon, or

(c) Use the terms "naturopathic practitioner," "naturopathic healer," "naturopathic doctor," "naturopathic consultant" or any other terms that convey intent to practice naturopathy or naturopathic medicine.

(2) Any person convicted of practicing illegally in Oregon or any person who, without a license, makes a diagnosis shall not be admitted to examination by the Board at any time.

(3) It shall be the duty of all Board licensees, in the interests of both the public and the profession, to inform the Board, in writing, of anyone practicing naturopathy or naturopathic medicine in Oregon without a license or otherwise in violations of the law.

(4) For the purpose of this rule, naturopathic treatment shall be considered as practicing naturopathy or naturopathic medicine within the meaning of ORS 685.010(5), unless under the direct supervision of a licensee of the Board.

(5) Each Board licensee must self-report to the Board in writing as soon as possible, but no later than 10 business days after official action taken against the licensee, of any of the following:

(a) Any arrest, citation or conviction of the licensee for driving under the influence of intoxicants or reckless driving that is related to the use of an intoxicant;

(b) Any arrest or conviction of the licensee for a felony violation or criminal conduct;

(c) Any action brought against the licensee by a health regulatory agency; and

(d) Any action brought against the licensee by a patient, former patient, or health care facility, based upon allegations or findings of medical incompetence, malpractice, unprofessional conduct or licensee impairment.

Stat. Auth.: ORS 685

Stats. Implemented: ORS 685.220, 685.110 & 676.150

Hist.: NE 2, f. 6-7-59; BNE 4-2004, f. & cert. ef. 6-10-04; Renumbered from 850-010-0120, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 5-2008, f. & cert. ef. 6-11-08; OBNM 4-2010, f. & cert. ef. 6-30-10; OBNM 6-2011, f. 12-15-11, cert. ef. 12-23-11

**Rule Caption:** Necessary to assure that DEA registrations include all applicable schedules for prescribing NDs.

**Adm. Order No.:** OBNM 7-2011

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 12-23-11

**Notice Publication Date:** 12-1-2011

**Rules Amended:** 850-060-0215

**Subject:** Necessary to clarify that Schedule II non-narcotics (IIN) are within the prescribing authority of NDs.

**Rules Coordinator:** Anne Walsh—(971) 673-0193

### 850-060-0215

#### Drug Enforcement Administration Registration

(1) Licensees may register with the United States Department of Justice for the issuance of a Drug Enforcement Administration (DEA) Number.

(2) Licensees with DEA registration have authority to prescribe from Schedules II, IIN, III, IIIN, IV and V, provided those drugs are found on the Formulary compendium, OAR 850-060-0225 or 850-060-0226.

(3) Licensees shall not prescribe from Schedules II, IIN, III, IIIN, IV and V without a current DEA registration.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Hist.: NE 6-1980, f. & ef. 9-11-80; NE 2-1984, f. & ef. 2-28-84; BNE 2-2004, f. & cert. ef. 4-14-04; Renumbered from 850-010-0215, BNE 8-2005, f. & cert. ef. 10-27-05; OBNM 7-2011, f. 12-15-11, cert. ef. 12-23-11

## Oregon Business Development Department Chapter 123

**Rule Caption:** Amending rules regarding prohibition of firearms on University property.

**Adm. Order No.:** OBDD 7-2011(Temp)

**Filed with Sec. of State:** 12-8-2011

**Certified to be Effective:** 12-8-11 thru 6-5-12

**Notice Publication Date:**

**Rules Amended:** 123-011-0035, 123-011-0045

**Subject:** The Oregon Court of Appeals has held that the Board of Higher Education is not authorized to regulate firearms on campus through its rulemaking authority. The University is proposing to amend its rules to remove firearm prohibitions.

See Oregon Court of Appeals opinion in Oregon Firearms Educational Foundation v. Board of Higher Education and Oregon University System, Case No. A142974, September 28, 2011 (<http://www.publications.oid.state.or.us/A142974.pdf>)

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

### 123-011-0035

#### Determination of Eligibility

(1) The department shall review the application.

(2) The department shall make a recommendation to the Finance Committee to either approve or deny the application for eligibility for Economic Development Revenue Bonds. The review of the application will be based upon the standards set forth in this rule:



# ADMINISTRATIVE RULES

(a) The following economic activities are eligible for Economic Development Revenue Bonds, unless otherwise prohibited under subsection (b) of this section:

- (A) Manufacturing or other industrial production;
- (B) Agricultural development or food processing;
- (C) Aquaculture development or seafood processing;
- (D) Development or improved utilization of natural resources;
- (E) Research and development;
- (F) Destination facilities other than retail or food service businesses;
- (G) Convention and trade centers;
- (H) Construction of buildings for corporate headquarters;
- (I) Product distribution facilities;
- (J) Transportation or freight facilities;
- (K) Scientific testing including, but not limited to, medical, clinical or engineering testing services;

(L) Sports facilities not otherwise prohibited under paragraph (2)(b)(D) of this rule;

(M) Nonprofit entities organized under Section 501(c)(3) of the U.S. Internal Revenue Code ;

(N) Utilities, as allowed by ORS 285B.323(2).;

(O) Other activities which represent a new technology or type of economic enterprise that the Finance Committee determines are needed to diversify the economic base of an area, or any other activities allowed by Federal law.

(b) Activities or projects that will not be considered for the issuance of Oregon Economic Development Revenue Bonds include:

- (A) Retail businesses and shopping centers;
- (B) Food service not part of a convention center or destination resort;
- (C) Professional corporations for medicine, law, dentistry, or finance;
- (D) Athletic, racquetball, handball clubs, amusement parks, or similar endeavors;

(E) Commercial office buildings except for corporate headquarters, unless the office building supports the eligible economic activities listed in (2)(a) of this section;

(F) Activities that maintain private memberships; are not open to the general public; or do not serve a broad cross section of the general public;

(c) The following serve as an elaboration and clarification of activities which are eligible for Economic Development Revenue Bonds:

(A) "Destination Facility" means a project which has a significant impact on the regional tourism economy and has the capacity to be marketed to national or international markets. Incidental food service facilities may be included. Sleeping accommodations without unique attraction capabilities are not eligible;

(B) "Convention and Trade Centers" may include sleeping accommodations, but the majority of the total bond issue must be used for convention meeting facilities. Such facilities must have the capacity to seat a minimum of 300 people. However, the Finance Committee may approve financing for projects, as convention centers, consisting solely or primarily of sleeping accommodations, if the applicant sufficiently demonstrates existing sleeping accommodations are inadequate for existing meeting facility space;

(C) "Corporate Headquarters" may qualify if a minimum of 75 percent of the floor space is allocated to the corporate headquarter function. Corporate headquarters do not include professional corporations for medicine, law, dentistry, or finance or office space to be leased to others;

(D) "Transportation" is not intended to include rolling stock or other highly moveable equipment operated by a carrier for hire;

(E) In deciding whether or not to approve economic development revenue bonding for a utility project, the Finance Committee may consider all relevant factors including but not limited to the utility company's published tariff schedules and construction and extension procedures as filed with the Oregon Public Utility Commission;

(F) "Pollution Control" equipment may qualify as part of projects that otherwise qualifies under this rule. Where pollution control equipment costs are incidental to the total capital investment of the project, the Finance Committee may qualify such equipment, provided the Oregon Department of Environmental Quality concurs;

(G) "In-State Plant Relocations" not accompanied by an expansion of the applicant's business or employment, may be considered when the applicant is able to demonstrate that:

- (i) The relocation is caused by reasons beyond its control; or
- (ii) The relocation will not cause a resulting loss of employment at the former site of the business; or
- (iii) The relocation is necessary for the continued operation of the business.

(H) "Nonprofit entities" do not include religious or fraternal organizations;

(I) "Developer Project" may qualify. The Finance Committee shall have right of approval for each tenant occupying 25 percent or more of the leasable space. No more than 25 percent of the leasable space shall be leased to tenants relocating from another Oregon location, unless such relocation is accompanied by an expansion of the tenants' labor force. These conditions shall be incorporated into bond documents, shall survive closing and shall be enforceable for the term of the bond.

(d) Public Purpose. The applicant must demonstrate that a public purpose is served by the proposed economic development project through economic diversification, creation of new jobs including construction activity, construction occurring before it otherwise could or would, economic activity occurring during economic slumps, tax dollars remaining in the state, or increased productivity. The applicant is encouraged to demonstrate as many public purposes for the proposed project as can be prudently shown;

(e) Prior to determining that an economic development project is an Eligible Project, the Finance Committee shall:

(A) Determine that the action is cost effective, considering both major public expenses and major public benefits;

(B) Find that the project involved is consistent with the department's comprehensive policy and programs;

(C) Find that the project will produce goods or services which are sold in markets for which national or international competition exists, or if the project is to be constructed and operated by a not-for-profit organization, that the project will not compete significantly with local for-profit businesses;

(D) Determine that the action is the best use of the moneys involved, considering other pending applications for those moneys; and

(E) Provide for public notice of, and public comment on, the action. The public hearing is not a contested case hearing. Members of the public are invited to present written or oral testimony. Only Finance Committee members and department staff will ask questions.

(F) Notify a senior official (such as mayor or city manager) of the city or county (if in unincorporated county property) in which the project will be located about the project and the potential use of economic development revenue bonds.

(f) The Finance Committee may deny an application if the applicant does not demonstrate, to the satisfaction of the Finance Committee, that the project is financially feasible;

(g) The Finance Committee may deny an application if the applicant (or any of the principals in the applicant) is subject to any existing, pending or threatened litigation or unasserted claim, unless such litigation or claim is fully disclosed to the Finance Committee and the arrangements for the settlement thereof are acceptable to the Finance Committee. In any case where such litigation or claim is unknown to the Finance Committee at the time project eligibility is granted or if such litigation or claim arises subsequent to a grant of project eligibility, the Finance Committee may rescind the project eligibility;

(h) The Finance Committee may make any reasonable requirement of the applicant related to the administration of the Oregon Economic Development Revenue Bond Program, including requirements that would survive closing and be enforceable for the term of the bond.

(3) The Finance Committee shall issue a Resolution for Project Eligibility for each economic development project determined to be an eligible project. The term of eligibility shall last 12 months unless extended by the department or the Finance Committee.

(4) Administrative rules in effect at the time the Finance Committee determines a project to be eligible shall continue to govern the project until the bonds have been redeemed, notwithstanding any contrary provision in any subsequently adopted administrative rule.

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

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.320 - 285B.371

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 1-1985(Temp), f. & ef. 2-26-85; EDD 3-1985, f. & ef. 6-28-85; EDD 5-1985(Temp), f. & ef. 10-4-85; EDD 6-1985(Temp), f. & ef. 10-22-85; EDD 1-1986, f. 1-28-86, ef. 2-1-86; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 13-1990, f. & cert. ef. 6-7-90; EDD 14-1994(Temp), f. & cert. ef. 11-10-94; EDD 4-1995, f. 4-28-95, cert. ef. 5-3-95; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05; EDD 9-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 9-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 20-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 11-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 7-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12

**123-011-0045**

**Fees**

In addition to the application fee specified in OAR 123-011-0030(5):

# ADMINISTRATIVE RULES

(1) The applicant shall pay to the department at the time of initial bond closing a closing fee of 1/2 of one percent of the total bond issue for the project.

(2) For the Oregon Express Bond Program, the applicant shall pay to the department at the time of the initial bond closing a fee of 1/4th of one percent of the total bond issuance for the project.

(3) An applicant for a current refunding of an outstanding bond shall pay to the department a processing fee of \$250 that shall accompany the request for the refunding.

(4) The applicant shall pay to the department a closing fee of 1/10 of one percent of the amount of the refunding bond or for any additional bonds issued under a single project eligibility. This closing fee may be waived for any refunding bond issued within 18 months of the closing date of the bond issue to be refunded.

(5) The department may charge any out-of-pocket expenses, including but not limited to legal expenses, incurred by the department for processing any bond request.

(6) The commission may collect the above fees and expense reimbursements from an applicant that seeks to have an economic development project declared eligible for financing, even though the project has not been determined to be eligible for financing.

Stat. Auth.: ORS 285A.075  
Stats. Implemented: ORS 285B.262  
Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988 (Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 15-1994, f. & cert. ef. 11-10-94; EDD 10-1996(Temp), f. & cert. ef. 12-4-96; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 14-2000(Temp), f. & cert. ef. 12-14-00 thru 6-12-01; Administrative correction 6-14-01; EDD 10-2001(Temp), f. & cert. ef. 12-13-01 thru 6-1-02; Administrative correction 11-29-02; EDD 4-2005, f. & cert. ef. 5-5-05; EDD 9-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 9-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 20-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 7-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12

.....

**Rule Caption:** This filing amends the language for eligibility requirements, loan insurance programs and insurance premiums relating to the Credit Enhancement Fund.

**Adm. Order No.:** OBDD 8-2011(Temp)

**Filed with Sec. of State:** 12-8-2011

**Certified to be Effective:** 12-8-11 thru 6-5-12

**Notice Publication Date:**

**Rules Amended:** 123-021-0000, 123-021-0010, 123-021-0015, 123-021-0020, 123-021-0040, 123-021-0080, 123-021-0090, 123-021-0110, 123-021-0130

**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 Credit Enhancement Fund was identified as a program 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

## 123-021-0000

### Purpose

The purpose of these rules is to provide procedures, standards, and criteria for providing loan insurance from the Oregon Credit Enhancement Fund.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218  
Stats. Implemented: ORS 285B.200 - 285B.218  
Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 17-2009, f. 10-030-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12

## 123-021-0010

### Definitions

For the purposes of these rules, additional definitions may be found in OAR chapter 123, division 1. The following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) "Authorized loan amount" means the amount of a loan authorized by the Department to be under the CEF Program pursuant to a loan insurance authorization issued by the Department to the financial institution making the loan.

(2) "Brownfield" means any real property where expansion or redevelopment is complicated by actual or perceived environmental contamination.

(3) "CEF Program" means the Credit Enhancement Fund Insurance Program established under ORS 285B.200 to 285B.218.

(4) The "deficiency" of a loan means the amount of principal outstanding upon default, accrued interest and the financial institution's reasonable costs of collection, exclusive of costs attributable to environmental problems, remaining unpaid after liquidation of collateral and collection of guarantees.

(5) "Destination facilities other than retail or food service" means a qualified business which has a significant impact on the regional recreational or tourism economy. Incidental food service or retail facilities necessary to the operation of a destination facility are eligible. Sleeping accommodations without unique attraction capabilities are not qualified businesses.

(6) "Financial institution" has the meaning set forth in ORS 706.008.

(7) "Fund" means the Credit Enhancement Fund created by ORS 285B.215.

(8) "Loan insurance authorization" means a letter from the director or deputy director or designee to a financial institution agreeing to insure a loan to a borrower on the terms and conditions and subject to the requirements stated therein.

(9) "Loan insurance agreement" means the agreement between the financial institution and the Department required by OAR 123-021-0100.

(10) "Working capital loan" means any loan, the proceeds of which are to be used for operating, maintenance and other costs and expenses, or for purposes other than acquiring real property, production equipment, or other capital assets.

(11) "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. "Principal" in regards to a financial institution 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.

(12) "SSBCI Funds" means U.S. Treasury funds allocated to the Department under the State Small Business Credit Initiative Act of 2010 (title III of the Small Business Jobs Act of 2010, P.L. 111-240, 124 Stat. 2568, 2582).

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218  
Stats. Implemented: ORS 285B.200 - 285B.218  
Hist.: EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-030-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12

# ADMINISTRATIVE RULES

## 123-021-0015

### Qualified Business

In a distressed area, any existing or proposed business is a Qualified business. Any company that owns, occupies, operates, or has entered into an agreement to own, occupy or operate real property containing a brown-field is a Qualified business. Outside of a distressed area, a Qualified business is defined as any existing or proposed business that sells goods or services in markets for which national or international competition exists, and such sales of goods or services will result in or will aid, promote or facilitate the development of one or more of the following activities:

- (1) Manufacturing or other industrial production;
- (2) Food processing;
- (3) Aquaculture development or seafood processing;
- (4) Convention facilities or trade centers;
- (5) Destination facilities other than retail or food service;
- (6) Transportation or freight facilities;
- (7) Distribution facilities; or
- (8) Other activities, as approved by the Department that represent new technology or diversifying activity but not including:
  - (a) Construction of office buildings;
  - (b) Retail businesses, shopping centers or food service facilities;
  - (c) Motels or bed and breakfast hotels;
  - (d) Professional services for medicine, law, dentistry or finance;
  - (e) Athletic, racquetball, handball, or private membership clubs, or golf courses;
  - (f) Sand and gravel facilities;
  - (g) Newspapers;
  - (h) Lobbying activities (as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended); or,
  - (i) Acquiring or holding passive investments such as commercial real estate ownership or the purchase of securities; this does not include acquisitions of businesses through 100% stock transfer. For the Evergreen Entrants Insurance, a Qualified business includes an existing or proposed business without, or about to be without, an existing line of credit. For the Evergreen Plus Insurance, a Qualified business includes an existing or proposed business with an existing line of credit.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-030-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12

## 123-021-0020

### Eligibility

(1) In order for a Qualified business to be eligible, its project must meet one of the following purposes. Eligible purposes mean the acquisition, improvement, or rehabilitation of real or personal property, working capital for operations, export transactions, maintenance and other business costs and expenses which are used for purposes other than acquiring real or personal property. Eligible purposes do not include:

- (a) An insured loan used for any personal, family, or household expenses of the Qualified business or any owner or guarantor;
- (b) An insured loan used for construction financing; however, permanent financing after completion of construction may be insured;
- (c) An insured loan for the purchase or construction of residential housing;
- (d) An insured loan made primarily to pay off or refinance an existing debt to a creditor whose loan is inadequately secured or who is in danger of sustaining a loss;
- (e) Repayment of delinquent federal or state income taxes unless the Qualified Business has a payment plan in place with the relevant taxing authority;
- (f) Repayment of taxes held in trust or escrow;
- (g) Reimbursement of funds owed to any owner, including any equity injection or injection of business capital for the business' continuance;
- (h) (For loans insured by SSBCI Funds) Purchase of any portion of the ownership interest of any owner of the business;
- (i) An insured loan used to purchase an existing Qualified business, except for:
  - (A) Expansions where the majority of loan proceeds are used to support expansion improvements;
  - (B) Purchase of all or substantially all of the assets of a Qualified business,
  - (C) (For loans not insured by SSBCI Funds) Purchase of 100% of the stock of a Qualified business, including stock held by employee stock ownership plans, where jobs will be created or retained; provided that the

Department's liability for any loss resulting from a loan made for such purchase shall not exceed \$500,000.

(2) The Department will consider refinancing requests on a case by case basis. In evaluating such requests, the Department will consider the financial benefits to the borrower, the prospects for success, public benefits such as jobs created or retained, the extent to which financial institutions agree to extend terms or provide other favorable financing to a borrower, and the extent to which collateral securing an insured loan is improved. The Department's maximum liability for any loss resulting from a refinance that is insured under the CEF Program will be limited to no more than \$500,000 and no more than 75% of the authorized loan amount, whichever is less. Unless specifically waived by the Department, all business and personal assets securing a refinance may require an appraisal or other third party valuation to determine liquidation values at the time of application. The Department reserves the right to set the enrollment terms at the time of approval for loan insurance, including but not limited to the Department's maximum liability or the insured percentage and in its sole discretion may, when setting the Department's maximum liability or the insured percentage or both, consider whether a loan is less than fully secured, as determined by the estimated liquidation value of the collateral.

(3) The maximum term for an eligible loan insurance per borrower project is the lesser of fifteen (15) years or the useful life of the assets being financed, or one year plus four annual renewals for the Evergreen Entrants Insurance or Evergreen Plus Insurance.

(4) Eligible borrowers are Qualified businesses as defined in OAR 123-021-0015.

(5) Eligible financial institutions are financial institutions as defined by ORS 706.008.

(6) Any loans insured by SSBCI Funds will be required to meet additional U.S. Treasury requirements including, but not limited to:

(a) The loan has not been made in order to place under the protection of the CEF Program prior debt that is not covered by the CEF Program and that is or was owed by the borrower to the financial institution or to an affiliate of the financial institution.

(b) The loan is not a refinancing of a loan previously made to that borrower by the financial institution or an affiliate of the financial institution.

(c) No Principal of the borrower or the financial institution 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).

(d) The borrower, or any principal of the borrower, is not:

(A) an executive officer, director, or principal shareholder of the financial institution, or

(B) a member of the immediate family of an executive officer, director or principal shareholder of the financial institution; or

(C) a related interest of any such executive officer, director, principal shareholder or member of the immediate family. For the purposes of this OAR 123-021-0020(6)(d), the terms "executive officer", "director", "principal shareholder", "immediate family", and "related interest" refer to the same relationship to the financial institution as the relationship described in 12 C.F.R. Part 215.2 (1990), whether or not the financial institution is a member bank of the Federal Reserve System.

(e) The activities of the borrower are not activities currently prohibited by U.S. Treasury, such as but not limited to:

(A) The borrower is not 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 are part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business;

(B) The borrower is not a business that earns more than half of its annual net revenue from lending activities unless the business is a non-bank or non-bank holding company community development financial institution;

(C) The borrower is not a business engaged in pyramid sales, or engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted; or,

(D) The borrower is not a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.

(f) The financial institution is in compliance with requirements of 31 C.F.R. § 103.121.

(g) At the time of approval the borrower does not employ more than 750 employees in the United States.

(h) Total financing for the project is \$20,000,000 or less.



# ADMINISTRATIVE RULES

(i) No Principal of the borrower is a current member or delegate to the United States Congress or resident U.S. Commissioner.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 8-1999, f. & cert. ef. 10-1-99; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-030-09, cert. ef. 11-1-09; OBDD 14-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12

## 123-021-0040

### Application Contents

(1) Required Contents. Unless waived by the Department, the financial institution shall submit to the Department an application containing the following:

(a) A completed General Information Sheet provided by the Department;

(b) A written narrative by the financial institution analyzing the borrower's application (i.e. credit analysis), including an identification of the proposed amount of the loan, the requested percentage of insurance and Department insurance program, the purpose, terms and conditions of the loan, a description of the collateral and basis for its valuation, a summary of the borrower's credit standing, and a description of other sources of financing;

(c) Complete resumes of the borrower, all partners, owners, officers and guarantors, as applicable;

(d) Historical business financial statements for the prior three years, including income statements and balance sheets (income tax returns may also be required), as applicable, if an existing borrower. Income tax returns may be sufficient if accountant prepared statements are unavailable. Interim financial statements must also be included if the most recent statements are beyond 90 days;

(e) Signed current personal financial statement(s) of owners with a minimum 20% ownership interest in the borrower. Federal tax returns may be required. This information may also be required of guarantors;

(f) Pro forma balance sheet and income statement with supporting assumptions. In some instances, monthly cash flow statements may also be required. Cash flow statements are required in cases where loan repayment is dependent on projections, and for borrowers seeking working capital financing;

(g) Completion of the Department's environmental questionnaire or a comparable one provided by the financial institution and approved by the Department for loans secured in whole or part by real property and for other insured loans, if requested by the Department;

(h) Other information as the Department may require including, but not limited to, projected jobs created or jobs retained by a borrower.

(2) Supplemental Information. The Department may require, at its discretion:

(a) Appraisals of collateral or the financial institution's basis for determining collateral value;

(b) A business or marketing plan, including an analysis of competition;

(c) Certificates from the Oregon Department of Environmental Quality or any other governmental or regulatory agencies with jurisdiction, if applicable;

(d) Copies of leases or purchase agreements, as applicable;

(e) Any other information or certifications from the borrower or the financial institution deemed by the Department to be necessary or desirable in connection with an insured loan application.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-030-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12

## 123-021-0080

### Loan and Insurance Terms and Conditions

(1) Interest rate and term. The rate of interest on the insured loan and the term of the loan shall be agreed between the financial institution and a borrower provided that no term may exceed the lesser of fifteen years or the useful life of the assets being financed or one year plus four annual renewals for the Evergreen Entrants or Evergreen Plus Programs.

(2) Collateral. Repayment of an insured loan shall be secured by such collateral as the Department deems prudent.

(a) Insured loans may, at the discretion of the Department, be secured by collateral valued for collateral purposes at less than the amount of the insured loan, provided the borrower, its principals, and the guarantors, to the satisfaction of the Department, are of good character, have good credit histories, and exhibit the ability to service the proposed and existing debt;

(b) Real estate or unmovable machinery or equipment constituting a significant portion of collateral for repayment of an insured loan shall be located within the state. Mobile machinery or equipment, including vessels, constituting a significant portion of collateral for repayment of an insured loan shall be registered with and taxed by the state or municipal authorities, if the State or municipal authorities register or tax machinery or equipment of a type similar to the collateral, and shall be stored or berthed in the state when not in use.

(c) The Department may, at its sole discretion, require independent collateral valuation and appraisal of the real property assets securing the loan.

(3) Covenants. The covenants and requirements of the loan shall be established by the financial institution in accordance with prudent lending practices. The Department may require such additional covenants and requirements as may be necessary, prudent or desirable. At a minimum, the loan documents should require the borrower to:

(a) Make periodic payments of principal and interest, with the exception of short term working capital loans or evergreen working capital loans or lines of credit where periodic interest payments with a balloon principal payment and/or term options may be acceptable, as determined by the Department;

(b) Make any lease payments;

(c) Maintain adequate insurance on collateral, and maintain books and records on the business;

(d) Pay any taxes or governmental charges assessed against the collateral and comply with all applicable laws and regulations;

(e) Keep the collateral free of liens and encumbrances except for as may be expressly accepted by the financial institution and Department;

(f) Provide for periodic financial reports to the financial institution;

(g) Pay advances necessary to protect the collateral and all expenses of protecting or enforcing the rights of the financial institution and Department.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-030-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12

## 123-021-0090

### Loan Insurance Programs

The Department shall offer the following insurance programs:

(1) Conventional Insurance, under which the Department may insure

(a) Up to 80 percent of a loan in which case the Department's maximum liability for any loss under the Conventional Insurance is the lesser of \$2,000,000 or an amount equal to the insured percentage times the authorized loan amount, or

(b) Up to 90 percent of a loan in which case the Department's maximum liability for any loss under the Conventional Insurance is the lesser of \$500,000 or an amount equal to the insured percentage times the authorized loan amount. Should a borrower which receives an insured loan default or otherwise be unable to make loan payments, the Department will pay the financial institution the deficiency of a loan times the insured percentage, subject to the limitation set forth above. The balance of any loss is absorbed by the financial institution. Loan payments, the proceeds of collateral (including collection of guarantees), and any recovery after payment of a deficiency are applied pro rata to the portion of a loan insured through Conventional Insurance and the uninsured portion of the loan.

(2)(a) Evergreen Entrants Insurance, under which the Department may insure up to 75 percent of a line of credit working capital loan. Should a borrower which receives an insured loan default or otherwise be unable to make loan payments, the Department will pay the financial institution the deficiency of the line of credit working capital loan times the insured percentage; provided that the Department's maximum liability for any deficiency under the Evergreen Entrants Insurance is the lesser of \$1,500,000 or an amount equal to the insured percentage of the authorized loan amount. The balance of any loss is absorbed by the financial institution. Loan payments, the proceeds of collateral (including collection of guarantees), and any recovery after payment of a deficiency are applied pro rata to the portion of a loan insured through Evergreen Entrants Insurance and the uninsured portion of the loan.

(b) Eligible borrowers include persons or enterprises without or about to be without existing line of credit working capital loans.

(c) To obtain Evergreen Entrants Insurance, a financial institution must have the capacity to service the loan effectively, including monitoring compliance with any audit and control procedures prescribed by the Department or comparable procedures of the financial institution approved by the Department and must have in place and operating a lending program

# ADMINISTRATIVE RULES

specializing in line of credit loans secured by or with advances based upon eligible accounts receivable and inventory or other assets. The Department must be satisfied that the financial institution is sufficiently experienced and capable of operating such a lending program effectively.

(3) First Loss Insurance, under which the Department will pay 100 percent of the deficiency of a loan, but the Department's maximum liability under the First Loss Insurance shall be the lesser of (a) the insured percentage (which shall not exceed 25 percent) times the authorized loan amount, (b) the insured percentage (which shall not exceed 25 percent) times the outstanding balance of the loan, including accrued interest and reasonable costs and expenses of collection and liquidation of collateral exclusive of costs attributable to environmental problems, but not taking into account the proceeds of collateral liquidation and payments by guarantors, or (c) \$300,000. Any recovery after payment of a deficiency is applied first to the uninsured portion of the loan and then to the portion of a loan insured through First Loss Insurance.

(4)(a) Evergreen Plus Insurance, under which the Department may insure up to 90 percent of a new increment of a line of credit; provided that the Department's maximum liability under the Evergreen Plus Insurance is \$1,500,000 and the aggregate amount of the line of credit insured under any program does not exceed 80% of the total line of credit. If a financial institution makes a payment request for any deficiency, the Department will pay to the financial institution the lesser of:

(A) A ratable share of the total default charges; or

(B) the deficiency times the insured percentage. The balance of any loss is absorbed by the financial institution. Loan payments, the proceeds of collateral (including collection of guarantees), and any recovery after payment of a deficiency are applied pro rata to the portion of a loan insured through Evergreen Plus Insurance and the uninsured portion of the loan.

(b) The formula for calculating the Department's ratable share of total default charges is:

$$R = (G \div T) \times P$$

R represents the ratable share of total default charges.

G represents the amount of the new increment of the line of credit.

T represents the total credit facility made available.

P represents the principal outstanding upon default plus accrued unpaid interest and costs of collateral liquidation and collection of guarantees exclusive of costs attributable to environmental problems.

(c) To obtain the Evergreen Plus Insurance, a financial institution must have in place and operating a lending program specializing in line of credit loans secured by or with advances based upon eligible accounts receivable and inventory or other assets. The Department must be satisfied that the financial institution is sufficiently experienced and capable of operating such a lending program effectively.

(5) The Conventional Insurance and First Loss Insurance are available for all types of non-revolving loans with regular periodic payments of principal and interest no less often than annually for eligible purposes, including working capital loans that are secured by fixed assets.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 13-2002(Temp), f. & cert. ef. 6-18-02 thru 12-13-02; Administrative correction 4-15-03; EDD 6-2005(Temp), f. & cert. ef. 8-5-05 thru 1-31-06; EDD 1-2006, f. & cert. ef. 2-10-06; EDD 5-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-030-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12

## 123-021-0110

### Insurance Premiums

(1) The Department shall charge a one-time (up-front) insurance premium. Premiums are due at the time financial institutions originate loans and execute loan authorizations with the Department. The Department's insurance is not effective until premiums are paid. It is expected that financial institutions will pass along the cost of premiums to borrowers. Premiums, expressed as a percentage of the Department's maximum liability, shall be charged in accordance with the following schedule for the programs indicated: [Schedule not included. See ED. NOTE.]

(2) The fee for the Evergreen Entrants Insurance is 1.25 percent annually; the fee for the Evergreen Plus Insurance is 2.5 percent annually.

(3) For revolving lines of credit or evergreen facilities, the premium is based on the Department's maximum liability in regard to the credit facility made available to a borrower, regardless of whether or not the line of credit is fully drawn down. Examples:

(a) The premium due on a \$200,000, five year loan with 85% Conventional Insurance would be \$3,400 (\$200,000 x .85 x .02);

(b) The premium for a \$200,000 loan with 75% Evergreen Entrants Insurance is \$1,875 (\$200,000 x .75 x .0125); this amount would be due every year thereafter for up to four additional years, assuming the loan and

amount is renewed each year for the maximum term permitted under the Evergreen Entrants program (5 years);

(c) The premium for a \$200,000, eight year loan with 25% First Loss Insurance is \$2,500 (\$200,000 x .25 x .05);

(d) The premium for a \$700,000 increment to the line of credit with 25% Evergreen Plus Insurance is \$4,375 (\$700,000 x .25 x .025); this amount would be due every year thereafter for up to four additional years, assuming the loan and amount is renewed each year for the maximum term permitted under the program (5 years).

[ED. NOTE: Schedules referenced are available from the agency.]

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-030-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12

## 123-021-0130

### Delegation

With the exception of appeals, the Department may authorize and approve loan insurance authorizations and require execution of any document necessary or convenient to make effective such insurance.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-030-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12

## Oregon Department of Education Chapter 581

**Rule Caption:** Modified rules relating to Long Term Care and Treatment programs that provide educational services.

**Adm. Order No.:** ODE 15-2011

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 12-15-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 581-015-2570, 581-015-2571, 581-015-2572, 581-015-2573, 581-015-2574

**Subject:** Rule amendments implement SB 170 by expanding LTCT to include children placed by private entities, child's parent, school districts. Formerly program only included children placed by state agencies. SB 170 also expanded program to include day treatment programs.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

### 581-015-2570

#### Definitions and Purposes of Long-Term Care and Treatment (LTCT) Programs

(1) Definitions in this rule apply to OARs 581-015-2570 to 581-015-2574:

(a) "Contracting school district" means the school district, the education service district, a program operated under the auspices of the State Board of Higher Education, or a program operated under the auspices of the Oregon Health and Science University Board of Directors with which the Department of Education contracts for the provision of educational services.

(b) "Education program" means those activities provided under contract between a contracting school district and the Department of Education, which provide a public education to preschool or school-aged children placed by a public entity, private entity or by the child's parent in a Psychiatric Day Treatment program or a Psychiatric Residential Treatment Facility;

(c) "Intermediate care facility" is defined in ORS 442.015 (21);

(d) "Psychiatric Day Treatment Programs" are defined in OAR 309-032-1505(100);

(e) "Psychiatric Residential Treatment Facility" is defined in OAR 309-032-1505(101).

(f) "Resident district" means the resident district of a student as defined under ORS 339.133 and 339.134.

(g) "Public Entity" means the Oregon Department of Human Services (DHS), Oregon Health Authority (OHA), the Oregon Youth Authority (OYA), Oregon School District, or their designee.

(h) "Treatment program" means the long-term day or residential treatment services provided by a private nonprofit or public agency and provided under contract with a state agency or designee of the state agency. Intermediate care facilities are excluded from this definition.

# ADMINISTRATIVE RULES

(2) The purposes of the education program under OARs 581-015-2570 to 581-015-2574 are as follows:

(a) To serve children placed by a public entity, private entity or by the child's parent for needs other than educational;

(b) To serve children placed by a public entity, private entity or by the child's parent who require schooling in a protected environment in order to protect the health and safety of themselves and/or others; and

(c) To extend the treatment process into the school day to fully implement the treatment plans of children placed by a public entity, private entity or by the child's parent.

Stat. Auth. ORS 326.051 & 343.961

Stats. Implemented: ORS 343.961

Hist.: IEB 23-1986, f. & ef. 7-14-86; EB 7-1988, f. & cert. ef. 1-15-88; EB 22-1990, f. & cert. ef. 5-18-90; EB 10-1991(Temp), f. & cert. ef. 7-15-91; EB 31-1991, f. & cert. ef. 12-18-91; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0044, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 34-2007, f. & cert. ef. 12-12-07; ODE 14-2009, f. & cert. ef. 12-10-09; ODE 15-2011, f. & cert. ef. 12-15-11

## 581-015-2571

### Long-Term Care and Treatment (LTCT) Education Program Eligibility and Approval

(1) The Department of Education shall base education program eligibility on the following:

(a) An agency may offer several different treatment programs serving different populations. For the purposes of determining eligibility for funding and funding levels for education programs, each program will be considered separately. Temporary shelter programs, which would not otherwise meet the eligibility criteria provided in OAR 581-015-2571(1)(b), are eligible for funding only when attached to an eligible treatment program and the children served are primarily awaiting placement in such programs;

(b) To be eligible for an education program, a treatment program must submit an application to the Department's Long-Term Care and Treatment Program demonstrating that the program meets all of the following criteria:

(A) Either:

(i) A letter of approval from the Addictions and Mental Health Division certifying that the psychiatric day treatment program or psychiatric residential treatment facility meets standards applicable for intensive children's mental health services under OAR 309-032-1500; or

(ii) Documentation that the program provides long-term residential treatment of children placed by a state agency or designee of the state agency;

(B) Meet state licensing requirements for a private child-caring agency;

(C) Be operated by a nonprofit corporation or a political subdivision of the state;

(D) Demonstrate through client admissions, staff hiring practices, and client access to services that it meets requirements for ORS 659.850 relating to the prevention of discrimination; and

(E) Demonstrate through curriculum content, teaching practices, and facilities management that the constitutional requirements regarding no religious entanglement are met.

(2) The Department of Education (ODE) is responsible for approving the educational program under this rule and shall base approval on the following:

(a) The contracting school district must ensure that the education program is operated in compliance with a written agreement with the Department that specifies, at a minimum, the following services to be provided:

(A) Each child who is not a child with a disability under OAR 581-015-2130 through 581-015-2180 has a personalized educational plan that includes assessment, goals, services, and timelines;

(B) Information pertaining to students and educational programs is provided to the Department in an accurate and timely manner;

(C) Children have opportunities to be educated in the least restrictive environment;

(D) The education program is developed and implemented in conjunction with the treatment program; and

(E) Other requirements as identified by the Department.

(b) The Department must ensure that the education program is operated in compliance with a written agreement with the contracting school district.

(c) Final determinations concerning the eligibility of treatment programs for education funding are at the discretion of the State Superintendent of Public Instruction.

(3) Funding Procedures: Upon receipt of an application for funding for a program under this rule, the Department of Education will:

(a) Determine if the treatment program meets the eligibility criteria in this rule within 45 business days;

(b) If necessary, request additional funding or a limitation for funding from the State Legislature; and

(c) Fund the program according to the formula in OAR 581-015-2572 only when sufficient funds are available for the program under ORS 343.243 and an appropriation from the General Fund as determined by the Department.

Stat. Auth. ORS 326.051 & 343.961

Stats. Implemented: ORS 343.243 & 343.961

Hist.: ODE 14-2009, f. & cert. ef. 12-10-09; ODE 15-2011, f. & cert. ef. 12-15-11

## 581-015-2572

### Long-Term Care and Treatment (LTCT) Education Program Funding Formula

(1) The Department of Education shall provide funding to education programs based on the following:

(a) For the purpose of allocation of state funds under this rule, the following definitions apply:

(A) "Net operating expenditures (NOE)" means the sum of expenditures as defined in ORS 327.006(6), divided by the average daily membership of the school district, or in the case of an ESD, its districts, which contracts for education services offered in the program;

(B) "Service level factors" means:

(i) 1.75 for students in Psychiatric Day Treatment Programs; or

(ii) 2.00 for students in Psychiatric Residential Treatment Facilities.

(C) "State agency slots" means the number of slots available for students in education programs under ORS 343.961, as determined by the Department based on information received from the Oregon Department of Human Services, the Oregon Health Authority, the Oregon Youth Authority and eligible day treatment programs and eligible residential treatment programs for the school year;

(b) The Department shall use the following formula for distribution of funding: (Service level factors) x [(the contracting district's NOE in year one) x (state agency slots for year one) + (the contracting district's NOE in year two) x (state agency slots for year two)] = total state funding contract amount;

(c) If the total state funding available for all LTCT programs is less than the total state funding needed to fully fund each LTCT contract, the amount of state funding in each contract determined under paragraph (b) of this subsection will be prorated.

(d) A special needs fund is established at the Oregon Department of Education which will be up to five percent of the total state monies made available for the LTCT program during a biennium:

(A) Individual applications may be made to the Department for this fund to cover unexpected, emergency expenses;

(B) Funds not utilized under this paragraph for the first year of the biennium will be carried forward by the Department to the next fiscal year.

Stat. Auth. ORS 326.051 & 343.961

Stats. Implemented: ORS 343.243 & 343.961

Hist.: ODE 14-2009, f. & cert. ef. 12-10-09; ODE 15-2011, f. & cert. ef. 12-15-11

## 581-015-2573

### Due Process Hearings for Long-Term Care and Treatment (LTCT) Education Programs

(1) The following shall apply to Due Process Hearings involving students attending education programs:

(a) The contracting school district is the "school district" for the purposes of carrying out the procedures required by OAR 581-015-2340 through 581-015-2385;

(b) The issues of the hearing do not include the placement by the public entity, private entity or its designee or by the child's parent for long-term treatment;

(c) Costs under OAR 581-015-2385(1)(a) that are in excess of the contracted educational program budget will be paid by the Oregon Department of Education;

(d) The Oregon Department of Education is a party to such proceedings and is responsible to provide additional educational services ordered by an administrative law judge that are beyond the scope of the written agreement between the Department and the contracting school district under OARs 581-015-2570 through 581-015-2574.

(2) The Department is not responsible for paying for transportation, care, treatment or medical expenses.

Stat. Auth. ORS 326.051 & 343.961

Stats. Implemented: ORS 343.243 & 343.961

Hist.: ODE 14-2009, f. & cert. ef. 12-10-09; ODE 15-2011, f. & cert. ef. 12-15-11



# ADMINISTRATIVE RULES

## 581-015-2574

### Resident District Obligations for Students in Long-Term Care and Treatment (LTCT) Education Programs

(1) The resident district must provide or pay for the daily transportation to and from a Psychiatric Day Treatment Program in which a student placed by a public entity, private entity or by the student's parent is enrolled as follows:

(a) The resident district may directly transport or contract for transportation services with the agency, an adjacent school district, an education service district or a private carrier as long as the subcontractor is operating under the provision of ORS 801.455, 801.460, and 820.100 through 820.150, or is exempt from these regulations by operating under the Public Utility Commission, ORS Chapter 767, or city regulations included in ORS Chapter 221.

(b) Subject to agreement with the parent or guardian, the resident district may reimburse a parent or guardian for the transportation of a child at the per mile rate established by that district.

(c) Transportation must be provided by the resident district even when the education calendar of the Psychiatric Day Treatment program differs from that of the resident district.

(2) The resident district may claim reimbursement for transportation costs under ORS 327.033.

(3) The resident district must participate in all individualized education program or personalized education plan meetings involving its students.

Stat. Auth.: ORS 326.051 & 343.961

Stats. Implemented: ORS 343.961

Hist.: ODE 14-2009, f. & cert. ef. 12-10-09; ODE 15-2011, f. & cert. ef. 12-15-11

\*\*\*\*\*

**Rule Caption:** Requirements for Charter School Financial Management System.

**Adm. Order No.:** ODE 16-2011

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 12-15-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 581-020-0334

**Subject:** Changes requirements for charter school financial management system. Implements HB 3417 (2011) which changed the requirements for a charter school financial management system.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 581-020-0334

### Financial Management System

(1) A charter school applicant must include a description of a financial management system within the proposal submitted to the local school district board and the State Board of Education.

(2) A public charter school must have in place a financial management system at the time the school begins operation.

(3) A financial system used by a public charter school must include a budget and accounting system that:

(a) Is compatible with the budget and accounting system of the sponsor of the school;

(b) Complies with the requirements of the uniform budget and accounting system adopted by the State Board of Education under OAR 581-023-0035

Stat. Auth.: ORS 338.025

Stat. Implemented: ORS 338

Hist.: ODE 11-2010, f. & cert. ef. 6-30-10; ODE 16-2011, f. & cert. ef. 12-15-11

\*\*\*\*\*

**Rule Caption:** Senate Bill 800 – Mandate Relief. Removes outdated, redundant and obsolete education rules.

**Adm. Order No.:** ODE 17-2011

**Filed with Sec. of State:** 12-15-2011

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

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 581-020-0336, 581-021-0255, 581-022-1060, 581-023-0112

**Rules Repealed:** 581-021-00032, 581-021-0034, 581-021-0035, 581-021-0042, 581-021-0044, 581-022-1369, 581-022-1680, 581-023-0012, 581-023-0110

**Subject:** Implements SB 800 by eliminating redundant and obsolete mandates placed on public school system. Removes outdated, redundant and obsolete rules. Eliminates mandates relating to inter-

scholastic activities, charter schools, school and district reports, expanded options and alternative education programs.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 581-020-0336

### Annual Financial Reporting

(1) A public charter school shall have an annual audit of the accounts of the public charter school prepared in accordance with the Municipal Audit Law, ORS 297.405 to 297.555 and 297.990.

(2) After an audit, the public charter school shall forward a copy of the annual audit to the Department of Education.

(3) After an audit, the public charter school shall forward the following to the sponsor:

(a) A copy of the annual audit;

(b) Any statements from the public charter school that show the results of all operations and transactions affecting the financial status of the public charter school during the preceding annual audit period for the school; and

(c) A balance sheet containing a summary of the assets and liabilities of the public charter school as of the closing date of the preceding annual audit period for the school.

Stat. Auth.: ORS 338.025

Stat. Implemented: ORS 338.095

Hist.: ODE 11-2010, f. & cert. ef. 6-30-10; ODE 17-2011, f. 12-15-11, cert. ef. 1-1-12

## 581-021-0255

### Transfer of Student Education Records

(1) Within ten days of a student seeking enrollment in or services from a public or private school including an ESD, or when a student is placed in a state institution other than an institution of postsecondary education, or a private agency or youth care center (hereinafter referred to as the new educational agency), the new educational agency must notify the public or private school, education service district, institution, agency, or youth care center in which the student was formerly enrolled (hereinafter referred to as the former educational agency), and request the student's education records.

(2) The former educational agency must transfer all requested student education records to the new educational agency no later than 10 days after receiving the request.

(3) The education records transferred to the new educational agency must include any education records relating to the particular student retained by an education service district.

(4) The educational agency must retain originals of student education records for the time periods and under the conditions described in the record retention rule, OAR 166-400-0060, except that originals shall be transferred to a new education agency upon request.

(5) When original records have been transferred to a new educational agency as required in subsection (2) of this rule, readable photocopies of the following documents must be retained by the former educational agency or institution for the time periods and under the conditions as prescribed in the record retention rule, OAR 166-400-0060:

(a) The student's permanent record as defined in subsection (11) of OAR 581-021-0220; and

(b) Such special education records as are necessary to document compliance with state and federal audits.

(6) Notwithstanding subsections (1) and (2) of this section, for students who are in substitute care programs:

(a) A school, institution, agency, facility or center shall notify the school, institution, agency, facility or center in which the student was formerly enrolled and shall request the student's education records within five days of the student seeking initial enrollment; and

(b) Any school, institution, agency, facility or center receiving a request for a student's education records shall transfer all student education records relating to the particular student to the requesting school, institution, agency, facility or center no later than five days after the receipt of the request.

Stat. Auth.: ORS 326.565, 34 CFR § 99.6

Stats. Implemented: ORS 326.565

Hist.: ODE 8-2007, f. & cert. ef. 3-1-07; ODE 17-2011, f. 12-15-11, cert. ef. 1-1-12

## 581-022-1060

### School and District Performance Report Criteria

(1) The Superintendent of Public Instruction will annually collect data from schools and school districts on student performance, student behavior and school characteristics and will annually produce a performance report for each school and school district.

# ADMINISTRATIVE RULES

(2) The Superintendent will notify the public and the media by December 15 of each year that school and district performance reports are available at each school and school district and at the Department of Education website and office. The Superintendent will include in the notice that Consolidated District Improvement Plans and School Improvement Plans as required in ORS 329.095 are available from the school and school district offices.

(3) Each school and school district report shall contain the information required by this rule. By January 15 of each year, school districts shall make a copy of the state provided school and school district performance report available to the parent(s) or guardian(s) of each child enrolled in a public school in the school district by doing one or more of the following:

- (a) Mailing a copy;
- (b) Electronically sending a copy; or
- (c) Providing a link to a state or district web site containing the reports and also making copies available in local schools, libraries, parents centers, community centers, or other public locations easily accessible to parents and others.

(4) School performance reports will include ratings assigned by the Superintendent, based on valid scoring scales.

- (5) School ratings shall be reported as:
  - (a) Outstanding;
  - (b) Satisfactory; or
  - (c) In Need of Improvement;
- (6) Criteria for a school rating will include
  - (a) Student performance as measured by statewide assessments;
  - (b) Improvement in student performance;
  - (c) Percentage of students participating in statewide assessment; and
  - (d) Student attendance rate and
  - (e) Student graduation rate.

(7) A school that receives a rating of "Met" on its annual Adequate Yearly Progress report shall receive a rating of no lower than "Satisfactory" for that same school year.

(8) School performance reports may include information other than that listed in ORS 329.105 or sections (4), (5) and (7) of this rule. Such information will not be part of the calculation of the school rating.

(9) School district performance reports will be developed and must include the overall rating of each school in the district. The district performance report may include information other than that listed in ORS 329.105 or section (4) or this rule.

(10) School and school districts may include information in addition to that listed in ORS 329.105 or sections (4) and (5) of this rule in their locally prepared and distributed school and school district performance reports.

(11) School and school district performance reports, in conjunction with electronic supplements of the performance reports, will serve as the means by which the state meets the report card requirements of section 1111 of the No Child Left Behind Act of 2001.

Stat. Auth.: ORS 326.051  
Stats. Implemented: ORS 329.105  
Hist.: ODE 36-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 5-2007, f. & cert. ef. 2-21-07; ODE 25-2008, f. & cert. ef. 9-26-08; ODE 4-2009, f. & cert. ef. 6-29-09; ODE 17-2011, f. 12-15-11, cert. ef. 1-1-12

## 581-023-0112

### School Improvement Fund

(1) For purposes of this rule, "School Improvement Fund" means the fund established by ORS 327.294.

(2) Each fiscal year the Department of Education shall award grants from the School Improvement Fund to school districts, education service districts, the Youth Corrections Education Program and the Juvenile Detention Education Program for activities that relate to increases in student achievement, including:

- (a) Early childhood support including establishing, maintaining or expanding quality Pre-kindergarten programs and full-day kindergarten programs;
- (b) Class size reduction with an emphasis on the reduction of kindergarten through grade three class sizes;
- (c) Increases in instructional time including summer programs and before and after school programs;
- (d) Mentoring, teacher retention and professional development;
- (e) Remediation, alternative learning and student retention;
- (f) Services to at-risk youth;
- (g) Programs to improve a student achievement gap between student groups identified by culture, poverty, language and race and other student groups;

- (h) Vocational education programs;
- (i) Literacy programs;
- (j) School library programs; and
- (k) Other research-based student improvement strategies approved by the State Board of Education.

(3) Grant applications for each school district, education service district and for the Youth Corrections Education and Juvenile Detention Education Programs shall identify the goals of the district or program for increases in student performance for the year and shall outline how the district or program plans to use the resources provided from the Fund to reach the performance goals. The Department shall evaluate the grant applications based on the following criteria:

- (a) The goals set by the school districts, education service districts and programs for increases in student performance;
- (b) The evidenced-based activities identified to meet the stated goals;
- (c) Consistency with the district's Continuous Improvement Plan;
- (d) The quantifiable performance measures for demonstrating progress on one or more Key Performance Measures adopted by the 2007 Legislative Assembly and identified by the Department; and
- (e) The evaluation process identified in the application that will be used by the district or program to determine if the district or program is effective in the implementation of the activities for which the district or program is requesting funds.

(4) The amount of each grant for a school district, education service district or program shall be determined based on ORS 327.294 and 327.297. After the initial determination of the grant amount for each district or program, the Department may adjust the grant amount based on additional data and information received by the department.

(5)(a) Each school district, education service district and program shall account for the grant amounts it receives separately, and shall apply these amounts to pay for activities described in the district or program's application. School districts, education service districts and programs may only expend grant funds on approved activities identified in the grant application of the district or program.

(b) School districts and education service districts may choose to budget grant funds in the district's General Fund or a Special Revenue Fund. Programs may choose to budget these funds in a Special Revenue Fund. The Department will establish an Area of Responsibility code in the Program Budgeting and Accounting Manual for School Districts and Education Service Districts in Oregon to identify all expenditures for the School Improvement Fund. School districts and education service districts and programs shall use the Area of Responsibility code to identify all expenditures for the School Improvement Fund.

(c) School districts, education service district and programs may carry over grant funds received in a fiscal year until the end of the next fiscal year. If a district or program has not expended all of its grant funds prior to the end of the carry over period, the district or program shall return the unused portion of the grant funds to the Department.

(d) If the department determines that a school district, education service district or program did not expend grant funds in accordance with ORS 327.297 or this rule, the Department may deny a subsequent request for grant funds from the district or program and may require the district or program to repay grant funds received by the district or program for any year.

(e) The Department shall deposit any moneys it receives under this section in the School Improvement Fund and distribute those moneys as part of the grants awarded from the fund.

(6) In accordance with ORS 334.177 and the Program Budgeting and Accounting Manual for School Districts and Education Service Districts in Oregon, an education service district may transfer grant funds to component school districts for activities, as identified in the grant application of the education service district, for which the education service district received grant funds. The education service district shall report to the Department about how much grant funds were transferred and shall report improvement data relating to the activities.

(7) In accordance with ORS 327.297 and the Program Budgeting and Accounting Manual for School Districts and Education Service Districts in Oregon, a school district may transfer grant funds to a public charter school for activities, as identified in the grant application of the school district, for which the school district received grant funds. The school district shall report to the Department about how much grant funds were transferred and shall report improvement data relating to the activities.

(8) The State Superintendent of Public Instruction shall resolve any issues arising from the administration of the School Improvement Fund grants not specifically addressed by this rule and the Superintendent's determination shall be final.

Stat. Auth.: ORS 327

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 327.290, 327.294, 327.297  
Hist.: ODE 18-2001(Temp), f. & cert. ef. 8-15-01 thru 1-02-02; ODE 31-2001, f. & cert. ef. 12-20-01; ODE 24-2007(Temp), f. & cert. ef. 10-26-07 thru 4-23-08; ODE 12-2008, f. & cert. ef. 4-21-08; ODE 17-2011, f. 12-15-11, cert. ef. 1-1-12

\*\*\*\*\*

**Rule Caption:** Charter School Attendance.

**Adm. Order No.:** ODE 18-2011

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 12-15-11

**Notice Publication Date:** 10-1-2011

**Rules Repealed:** 581-020-0339

**Subject:** The rule places requirements on charter schools that offer on-line courses for calculation of percentage of students who attend charter school and reside within school district where charter school is located. HB 2301 (2011) eliminated ORS 338.125(2)(b), the so-called "50 percent" provision. OAR 581-020-0339 implemented this provision. Due to the underlying law being repealed, the rule is being repealed.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

\*\*\*\*\*

**Rule Caption:** Virtual Charter School Student Enrollment and Appeal Procedure.

**Adm. Order No.:** ODE 19-2011

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 12-15-11

**Notice Publication Date:** 10-1-2011

**Rules Adopted:** 581-020-0342, 581-020-0343

**Rules Repealed:** 581-020-0342(T), 581-020-0343(T)

**Subject:** Implements new state law relating to enrollment in virtual public charter schools. Creates appeal procedure for students who are not approved for enrollment into virtual public charter school by school district. Directs virtual public charter schools to notify districts of student enrollment.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 581-020-0342

### Virtual Public Charter School Student Enrollment

(1) As used in this rule:

(a) "Notice" means a written notice that is mailed, faxed, e-mailed or personally delivered by the party required to provide the notice.

(b) "Parent" means parent, legal guardian or person in parental relationship as defined in ORS 339.133.

(c) "Reside in a school district" means the school district in which the student's parent resides.

(d) "School district" means a school district in which more than three percent of the students who reside in the school district are enrolled in one or more virtual public charter schools.

(e) "Student" means a student who seeks to enroll in a virtual public charter school on or after August 2, 2011.

(f) "Virtual public charter school" is as that term is defined in OAR 581-020-0338.

(2) A parent must provide notice to the school district in which the parent resides that the parent intends to enroll a student in a virtual public charter school. Upon receiving the notice, a school district may choose to do nothing further until receiving notice the student is enrolled in the school or if more than three percent of the students who reside in the school district are enrolled in virtual public charter schools not sponsored by the district, the district must provide notice to the parent that the district:

(a) Approves the student for enrollment in the virtual public charter school; or

(b) Does not approve the student for enrollment in the virtual public charter school and provide a copy of this rule and OAR 581-020-0343 to the student and a list of two or more other online options available to the student.

(3) If a parent does not receive a notice of approval or disapproval from a school district under subsection (2) of this rule within 14 days of sending the notice of intent to enroll to the district, the student shall be deemed approved for enrollment by the district.

(4) A parent may appeal a decision of a school district to not approve a student for enrollment to the State Board of Education pursuant to OAR 581-020-0343.

(5) A virtual public charter school may only enroll a student if the school receives evidence the student's parent has notified the resident

school district of the student's intent to enroll in the school. A school shall consider any of the following as evidence the resident school district received adequate notice:

(a) A copy of the notice of intent to enroll sent to the district by the parent;

(b) A notice of approval for enrollment from the district; or

(c) A copy of a final order issued by the Superintendent pursuant to OAR 581-020-0343 that finds that the student is approved for enrollment in the school.

(6) A virtual public charter school shall send a list of students to each school district in which a student who is enrolled in the school resides. The list shall be sent monthly when the virtual school is in session.

(7) If a school district chooses to not approve a student for enrollment in a virtual public charter school under this section, the district must have a policy that at a minimum includes the following:

(a) The annual, semiannual or other date that the school district used to calculate whether or not three percent or more of the students who reside within the district are enrolled in a virtual public charter school.

(b) The description of the data used by the school district to calculate the number of students who reside in the district and the number of students who are enrolled in virtual public charter schools. A school district is only required to use data that is reasonably available to the district including but not limited to:

(A) The number of students enrolled in the schools of the school district;

(B) The number of students enrolled in public charter schools located in the school district;

(C) The number of students enrolled in virtual public charter schools;

(D) The number homeschooled students who reside within the district and who have registered with an education service district; and

(E) The number of students enrolled in private schools located within the school district.

Stat. Auth.: ORS 338.025

Stats. Implemented: ORS 338.125

Hist.: ODE 11-2011(Temp), f. & cert. ef. 8-23-11 thru 2-19-12; ODE 19-2011, f. & cert. ef. 12-15-11

## 581-020-0343

### Virtual Public Charter School Student Enrollment Appeal Procedure

(1) The State Board of Education delegates to the Superintendent of Public Instruction or designee all administrative functions necessary or reasonable in order to conduct a timely appeal process. This delegation includes issuing a final order. An order issued by the Superintendent or designee shall be considered an order in other than a contested case under ORS 183.484.

(2) A parent may appeal a decision of a school district to not approve enrollment of a student in a virtual public charter school under OAR 581-020-0342 by sending a notice of appeal in writing by mail, fax or e-mail or by personally delivering a copy to the Superintendent of Public Instruction. The notice must be received by the Superintendent within 10 days of the date on which the parent received notice from the district, the district did not approve enrollment of a student in a virtual public charter school. The parent must also provide a copy of the notice of appeal and any other supporting documents included with the notice to the school district prior to sending the notice of appeal to the Superintendent or within 24 hours of when the parent sent or delivered the notice of appeal to the Superintendent.

(3) The notice of appeal must include:

(a) The parent and student's name and contact information.

(b) The name of the resident school district.

(c) The name of the virtual public charter school in which the student wants to enroll.

(d) A copy of the notice of intent to enroll provided by the parent to the school district.

(e) A copy of the notice of disapproval of enrollment received by the parent from the school district.

(f) The reason for the appeal and any supporting documents including evidence the parent would like considered as part of the appeal.

(4) A school district upon receiving a notice of appeal from a parent may file a reply to the notice with the Superintendent. The reply must be received by the Superintendent within 10 days of when the school district received a copy of the notice of appeal from the parent. The school district shall provide a copy of the reply and any supporting documents included with the reply to the parent.

(5) The Superintendent shall overturn the decision of the school district to not approve the enrollment of the student if the Superintendent determines that:



# ADMINISTRATIVE RULES

(a) The school in which the student intends to enroll is not a virtual public charter school.

(b) The resident school district does not have more than three percent of the resident students of the district enrolled in virtual public charter schools not sponsored by the district.

(c) The parent did not receive the notice of disapproval from the district within 14 days of when the parent sent the district the notice of intent to enroll.

(6) The Superintendent may consider the following in deciding whether to uphold or overturn a decision of the school district to not approve the enrollment of a student:

- (a) The health and safety of the student.
- (b) The student's educational needs and interests.
- (c) The availability of other online options to the student.
- (d) Any other information that the Superintendent deems relevant to the decision.

(7) The Superintendent shall issue a final order within 30 days of receiving the notice of appeal from the parent. The Superintendent shall send a copy of the final order to the parent, the school district and the virtual public charter school.

Stat. Auth.: ORS 338.025  
Stats. Implemented: ORS 338.125  
Hist.: ODE 11-2011(Temp), f. & cert. ef. 8-23-11 thru 2-19-12; ODE 19-2011, f. & cert. ef. 12-15-11

\*\*\*\*\*

**Rule Caption:** Programs for Talented and Gifted Students.

**Adm. Order No.:** ODE 20-2011

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 12-15-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 581-022-1330

**Subject:** This rule requires plans for Talented and Gifted services to be submitted to ODE, implementing HB 2180, which was passed by the 2011 legislature.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

**581-022-1330**

**Programs and Services for Talented and Gifted Students**

(1) Each school district shall have a written plan for programs and services beyond those normally provided by the regular school program in order to realize the contribution of talented and gifted children to self and society.

(2) The written plan for programs and services for talented and gifted children shall be submitted to the Oregon Department of Education on a date and in a format provided in guidance documents provided by the Oregon Department of Education.

(3) The written plan shall include, but is not limited to:

(a) A statement of school district policy on the education of talented and gifted children;

(b) An assessment of current special programs and services provided by the district for talented and gifted children;

(c) A statement of district goals for providing comprehensive special programs and services and over what span of time the goals will be achieved;

(d) A description of the nature of the special programs and services which will be provided to accomplish the goals; and

(e) A plan for evaluating progress on the district plan including each component program and service.

(4) The instruction provided to identified students shall be designed to accommodate their assessed levels of learning and accelerated rates of learning.

(5) Assessments for the development of an appropriate academic instructional program shall include the information used by the team for identification purposes and also may include one or more of the following:

(a) An academic history which may include grades, portfolio assessment records or other progress records and achievement information that demonstrates the student's level of learning and rate of learning;

(b) Other evaluation methods such as formal tests or informal assessment methods designed by teachers to determine the student's instructional level and rate of learning related to specific academic programs;

(c) Student interest, style, and learning preferences information from inventories or interviews; and

(d) Other measures determined by the school district to be relevant to the appropriate academic instructional program for the student.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 343.391 - 343.413  
Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 6-2009, f. & cert. ef. 6-29-09; ODE 20-2011, f. & cert. ef. 12-15-11

\*\*\*\*\*

**Rule Caption:** Personnel Policies, Evaluation, Teaching and Administrative Standards.

**Adm. Order No.:** ODE 21-2011

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 12-15-11

**Notice Publication Date:** 10-1-2011

**Rules Adopted:** 581-022-1723, 581-022-1724, 581-022-1725

**Rules Amended:** 581-022-1720

**Subject:** SB 290 (2011) directed the State Board to adopt teacher and administrator standards for school districts to use. The rules base the standards on national standards. The rules specify teacher and administrator standards that must be used by districts in evaluations.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

**581-022-1720**

**Personnel Policies**

(1) The school district shall adopt and implement personnel policies which address:

- (a) Affirmative action;
- (b) Staff development;
- (c) Equal employment opportunity;
- (d) Evaluation procedures; and
- (e) Employee communication system.

(f) The requirement for releasing to Teacher Standards and Practices Commission, another district or any person upon request the disciplinary records of an employee or former school employee if the employee was convicted of one or more of the list of crimes addressed in ORS 342.143.

(2) Personnel policies shall be accessible to any school employee and notice of their availability to the general public shall be published:

(a) A current copy shall be accessible in each school office and library; and

(b) Any organization which represents employees of the district shall be furnished a copy and revisions as they are made.

(3) Bonded Employees: All employees responsible for funds, fees or cash collections shall be bonded in compliance with Oregon Revised Statutes and Oregon Administrative Rules.

(4) Employees for whom a teaching certificate is not required: The school district shall give to each such employee an individual written notice of reasonable assurance of continued employment as required by ORS 332.554.

Stat. Auth.: ORS 326.051  
Stats. Implemented: ORS 326.051  
Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 25-2008, f. & cert. ef. 9-26-08; ODE 21-2011, f. & cert. ef. 12-15-11

**581-022-1723**

**Teacher and Administrator Evaluation**

(1) A school district board shall include the core teaching standards and administrator standards adopted by the State Board for all evaluations of teachers and administrators of the school district occurring on or after July 1, 2013. The standards shall be customized based on the collaborative efforts of the teachers and administrators of the school district and the exclusive bargaining representative of the employees of the school district.

(2) The core teaching standards and administrator standards must:

(a) Take into consideration multiple measures of teacher and administrator effectiveness that encompass a range of appropriate teaching and administrative behaviors that use multiple evaluation methods;

(b) Take into consideration evidence of student academic growth and learning based on multiple measures of student progress, including performance data of students, schools, and school districts;

(c) Be research-based;

(d) Be separately developed for teachers and administrators; and

(e) Be customized for each school district, which may include individualized weighting and application of standards.

(3) Evaluations using the core teaching and administrative standards must attempt to:

(a) Strengthen the knowledge, skills, disposition and classroom and administrative practices of teachers and administrators in public schools;

(b) Refine the support, assistance and professional growth opportunities offered to a teacher or an administrator, based on the individual needs of the teacher and administrator and the needs of the students, the school and the school district;

# ADMINISTRATIVE RULES

(C) Allow each teacher or administrator to establish a set of classroom or administrative practices and student learning objectives that are based on the individual circumstances of the teacher or administrator, including the classroom or other assignments of the teacher or administrator:

(d) Establish a formative growth process for each teacher and administrator that supports professional learning and collaboration with other teachers and administrators; and

(e) Use evaluation methods and professional development, support and other activities that are based on curricular standards and that are targeted to the needs of each teacher and administrator.

Stat. Auth: ORS 342.805–342.937

Stats. Implemented: OL 2011 § 2, Ch 729 (SB 290)

Hist.: ODE 21-2011, f. & cert. ef. 12-15-11

## 581-022-1724

### Core Teaching Standards

School districts shall use the core teaching standards to evaluate teacher effectiveness outlined in OAR 581-022-1723. Performances, essential knowledge and critical dispositions for each standard are contained within the Interstate Teacher Assessment and Support Consortium (InTASC) core teaching standards published at: [http://www.ccsso.org/Documents/2011/InTASC\\_Stds\\_MS\\_Word\\_version\\_4\\_24\\_11.doc](http://www.ccsso.org/Documents/2011/InTASC_Stds_MS_Word_version_4_24_11.doc). The core teaching standards are the same standards adopted by the Teacher Standards and Practices Commission (TSPC) for initial and advanced teacher preparation. The standards include:

(1) The Learner and Learning

(a) Learner Development: The teacher understands how learners grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, and physical areas, and designs and implements developmentally appropriate and challenging learning experiences. (InTASC Standard #1)

(b) Learning Differences: The teacher uses understanding of individual differences and diverse cultures and communities to ensure inclusive learning environments that enable each learner to meet high standards. (InTASC Standard #2)

(c) Learning Environments: The teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction, active engagement in learning, and self motivation. (InTASC Standard #3)

(2) Content

(a) Content Knowledge: The teacher understands the central concepts, tools of inquiry, and structures of the discipline(s) he or she teaches and creates learning experiences that make these aspects of the discipline accessible and meaningful for learners to assure mastery of the content. (InTASC Standard # 4)

(b) Application of Content: The teacher understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues. (InTASC Standard #5)

(3) Instructional Practice

(a) Assessment: The teacher understands and uses multiple methods of assessment to engage learners in their own growth, to monitor learner progress, and to guide the teacher's and learner's decision making. (InTASC Standard #6)

(b) Planning for Instruction: The teacher plans instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills, and pedagogy, as well as knowledge of learners and the community context. (InTASC Standard #7)

(c) Instructional Strategies: The teacher understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways. (InTASC Standard # 8)

(4) Professional Responsibility

(a) Professional Learning and Ethical Practice: The teacher engages in ongoing professional learning and uses evidence to continually evaluate his/her practice, particularly the effects of his/her choices and actions on others (learners, families, other professionals, and the community), and adapts practice to meet the needs of each learner. (InTASC Standard #9)

(b) Leadership and Collaboration: The teacher seeks appropriate leadership roles and opportunities to take responsibility for student learning, to collaborate with learners, families, colleagues, other school professionals, and community members to ensure learner growth, and to advance the profession. (InTASC Standard #10)

Stat. Auth: ORS 342.805–342.937

Stats. Implemented: OL 2011 § 2, Ch 729 (SB 290)

Hist.: ODE 21-2011, f. & cert. ef. 12-15-11

## 581-022-1725

### Educational Leadership – Administrator Standards

School districts shall use the educational leadership–administrator standards to evaluate administrator effectiveness outlined in OAR 581-022-1723. These standards align with the Educational Leadership Constituents Council (ELCC) 2009 standards for Educational Leadership published at: <http://www.npbea.org/ncate.php>. The knowledge and skill abilities required for each program standard are found within the full document of the 2009 standards. These standards are aligned with the Interstate School Leaders Licensure Consortium (ISLLC) published at: [http://www.ccsso.org/Documents/2008/Educational\\_Leadership\\_Policy\\_Standards\\_2008.pdf](http://www.ccsso.org/Documents/2008/Educational_Leadership_Policy_Standards_2008.pdf). The educational leadership–administrator standards are the same standards adopted by the Teacher Standards and Practices Commission (TSPC) for administrator licensure. The standards include:

(1) Visionary Leadership: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by stakeholders. (ISLLC Standard 1)

(2) Instructional Improvement: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by sustaining a positive school culture and instructional program conducive to student learning and staff professional growth. (ISLLC Standard 2)

(3) Effective Management: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by ensuring management of the organization, operation, and resources for a safe, efficient, and effective learning environment. (ISLLC Standard 3)

(4) Inclusive Practice: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by collaborating with faculty and community members, responding to diverse community interests and needs, and mobilizing community resources in order to demonstrate and promote ethical standards of democracy, equity, diversity, and excellence, and to promote communication among diverse groups. (ISLLC Standard 4)

(5) Ethical Leadership: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by acting with integrity, fairness, and in an ethical manner. (ISLLC Standard 5)

(6) Socio-Political Context: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context. (ISLLC Standard 6)

Stat. Auth: ORS 342.805–342.937

Stats. Implemented: OL 2011 § 2, Ch 729 (SB 290)

Hist.: ODE 21-2011, f. & cert. ef. 12-15-11

.....

**Rule Caption:** Approved Transportation Costs for Payment from the State School Fund.

**Adm. Order No.:** ODE 22-2011

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 12-15-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 581-023-0040

**Subject:** Amendments to this rule do the following:

(1) Update non-reimbursable cost rate per mile for 2011-12 and 2012-13 school years. It is a requirement that every two years the Department of Education update these rates.

(2) Adds language that charter school may reimburse district for transportation costs. This reimbursement will not reduce district transportation grant

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 581-023-0040

**Approved Transportation Costs for Payments from the State School Fund**

(1) Definitions for the purpose of this rule:

(a) “Elementary School Student” means, notwithstanding any other OAR or statute, pupils attending a school offering only an elementary curriculum, any combination of grades K through 8;

(b) “Secondary School Student” means, notwithstanding any other OAR or statute, pupils attending a school offering any secondary curriculum.

## ADMINISTRATIVE RULES

lum for grades 9, 10, 11, or 12. Additionally, all students attending a school designated by the local school board through board action as a junior high school or middle school may be considered secondary students;

(c) "Local School Board" means, notwithstanding any other OAR or statute, the local school board for the district in which the student's legal residence is physically located. Local school boards are not required to provide transportation for students who have requested and received approval to attend a school other than that designated by the local school board for students living in their specified attendance area;

(d) "Manufacturer's Rated Capacity" means the number of students to be used in the calculations specified in paragraph (5)(n)(B) of this rule and described below:

(A) Buses transporting only elementary students will have a passenger capacity as stated on the manufacturer's identification plate;

(B) Buses transporting only high school students, grades 9 through 12 will have a passenger capacity based on two students for each 39 inch bus seat;

(C) Buses transporting mixed groups from grades K-12 (in any combination) or groups of only junior high or middle school students will have a passenger capacity based on 2.5 students for each 39-inch bus seat.

**EXAMPLE:** A bus with a manufacturer's passenger capacity stated on the identification plate of 72 would have the following ratings: elementary – 72, high school only – 48, mixed groups – 60, middle school and junior high school – 60.

(e) "Mile(s) from School" means the distance a student lives from school, measured from the closest, reasonable, and prudent point between the school property identified by the local board for that pupil's attendance and the property where the pupil lives. The distance will be measured over the shortest practicable route on maintained public roadways or over existing pedestrian facilities or pedestrian facilities capable of meeting the requirements listed in ORS 332.405(4);

(f) "Patron" means any individual, organization, or entity that is able to use student transportation services except for charter schools (as defined in ORS 338) reimbursing school districts up to one hundred percent (100%) of incurred transportation costs pursuant to ORS 338.145.

(g) "Supplemental Plan" means a plan adopted by local school board resolution identifying groups or categories of students who live within the 1 and 1.5 mile limitations and require transportation based on health or safety reasons, including special education. Supplemental plan approvals may be ordered by the State Board of Education or its designated representatives. The State Board shall have the right of final review of any actions regarding supplemental plans. Appeals will be directed to the State Board for final consideration. The Plan must include the following:

(A) The approximate number of students to be transported based on the plan;

(B) The health or safety reasons cited for providing transportation;

(C) The local board resolution specifying the supplemental plan as submitted; and

(D) Any additional information or documentation supporting the supplemental plan deemed appropriate locally.

(2) Approved transportation costs shall include those costs incurred in transporting pupils to and from instructional programs during the regularly scheduled school term within the limitations specified by ORS 327.006 and 327.033. Approved transportation costs may include costs incurred in transporting students participating in extended school year programs eligible for funding from the State School Fund.

(3) Approved transportation costs shall include those district expenditures associated with:

(a) Home-to-school transportation of elementary school pupils who live at least one mile from school;

(b) Home-to-school transportation of secondary school pupils who live at least one and one-half miles from school;

(c) Transportation of pupils between educational facilities either within or across district boundaries, if the facilities are used as part of the regularly-scheduled instructional program approved by the Board;

(d) Transportation of pupils for in-state field trips when such represents an extension of classroom activities for instructional purposes, and shall include out-of-state destinations within 100 miles of the Oregon border;

(e) Transportation of pupils home to school for whom a supplemental plan has been approved by the State Board of Education in addressing safety, health, and special education needs;

(f) Transportation of preschool children in Early Childhood Special Education Services having an Individual Family Service Plan requiring transportation and preschool children receiving Early Intervention Services under the authority of ORS 343.533.

(g) School to home transportation following extended school day instructional programs for:

(A) Elementary school pupils who live at least one mile from school;

(B) Secondary school pupils who live at least one and one-half miles from school.

(4) Approved transportation costs shall exclude those district expenditures associated with transportation for the following unless the school program is required under provisions of the Individuals with Disabilities Education Act, ORS 343.533 or 339.010 through 339.090 and 339.250:

(a) Pupils living within the limits prescribed in ORS 327.006(2) for whom no supplemental plan has been approved by the State Board;

(b) Activity trips other than for instructional purposes;

(c) Athletic trips;

(d) School lunch purposes;

(e) Summer school;

(f) Adult education;

(g) Evening school;

(h) Preschool and/or nursery school;

(i) Board and room in lieu of transportation associated with field trips;

(j) Transportation facility and staff costs other than those directly related to approved pupil transportation activities.

(5) The computation shall be made as follows:

(a) Pupil Transportation Salaries;

(b) Pupil Transportation Supplies, Equipment, Repairs, and Maintenance;

(c) All contracted Transportation;

(d) Travel of Pupil Transportation Personnel;

(e) Employee Benefits on Pupil Transportation Salaries;

(f) Pupil Transportation Insurance;

(g) Payments in Lieu of Transportation;

(h) Other Expenses of Pupil Transportation;

(i) Payments to Other Districts for Pupil Transportation;

(j) Leases and Rentals;

(k) Depreciation:

(A) Depreciation of Garage, but this shall not include land;

(B) Depreciation of Buses that are used at least 50% for reimbursable mileage.

(C) Shall include the costs to retrofit, as defined in ORS 468A.795, or to replace school buses for the purpose of reducing or eliminating diesel engine emissions, except that these costs may not include the costs paid with moneys received from the state by a school district from the Clean Diesel Engine Fund that are described in ORS 468A.801 (2)(a) to retrofit or to replace school buses for the purpose of reducing or eliminating diesel engine emissions.

(L) Total of subsections (5)(a) through (k) of this rule;

(m) Deduct (if cost is included in detail above):

(A) Payments Received from Other Districts and from Patrons for reimbursable transportation;

(B) Nonreimbursable Transportation Costs:

(i) For 2009-10:

(I) Number of miles @ \$2.02 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity greater than 20 persons including driver, or

(II) Number of miles @ \$1.01 per mile for all school activity vehicles having a manufacturers' designed passenger capacity 20 or less including driver;

(ii) For 2010-11:

(I) Number of miles @ \$2.04 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity greater than 20 persons including driver, or

(II) Number of miles @ \$1.02 per mile for all school activity vehicles having a manufacturers' designed passenger capacity 20 or less including driver; or

(iii) For 2011-12:

(I) Number of miles @ \$2.07 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity greater than 20 persons including driver, or

(II) Number of miles @ \$1.04 per mile for all school activity vehicles having a manufacturers' designed passenger capacity 20 or less including driver;

(iv) For 2012-13:

(I) Number of miles @ \$2.10 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity greater than 20 persons including driver, or



## ADMINISTRATIVE RULES

(II) Number of miles @ \$1.06 per mile for all school activity vehicles having a manufacturer's designed passenger capacity 20 or less including driver; or

(v)(I) Those local school board certified marginal costs attributable to services described in section (4)(a) of this rule, calculated and documented as follows: Documentation maintained by local district shall include: bus and route identification, school(s) being served, number of eligible students on board, number of ineligible students on board;

(II) Calculation of marginal costs shall be as follows: District Cost Per Mile of bus operation divided by the total number of students transported on each bus to derive an average cost per student. The cost per student multiplied by the number of ineligible students and the number of miles inside the limits provides the amount for deduction. Example: Cost per student = district cost per bus mile - number of students on bus; Total Deduction = cost per student x ineligible students x number of miles inside limit.

(III) No deduction will be made for transportation inside prescribed limits if the local board certifies student demographics would require student bus rides to or from school of more than one hour if the bus is routed in a manner making it accessible to the number of eligible students living outside the prescribed mileage limit equal to 130 percent of the bus manufacturer's rated capacity; or

(IV) The local school board certifies that buses are routed in a manner to serve at least the number of eligible students living outside the prescribed mileage limits equal to 130 percent of the bus manufacturer's rated passenger capacity; and

(V) In either of the aforementioned situations, no additional costs have been incurred by the district for the identified service.

(C) State and Federal Receipts for Transportation, except those apportioned under ORS 327.006 or third party Medicaid payments for transportation, if used to support expenditures in subsections (5)(a) through (l) of this rule;

(D) Rental or Lease Payments from Private Contractors;

(E) The percentage of transportation facility depreciation commensurate with the percentage of the total district fleet value based upon purchase price (see subsection (6)(k) of this rule) represented by nonpupil transportation equipment. Examples of nonpupil transportation equipment would include the following: lawnmowers, tractors, backhoes, trucks, pickups, cars, trailers, snow blowers, etc.

(n) Total Deductions ((5)(m)(A)+(m)(B)+(m)(C)+(m)(D)+ (m)(E));

(o) Approved Cost ((5)(I) minus (5)(n)).

(6) In the above computation, the following definitions apply:

(a) Pupil Transportation Salaries. Salaries and wages paid school bus drivers, assistants to driver, and that portion of salaries paid mechanics and other bus maintenance employees, supervisors of transportation, secretarial and clerical assistants, and persons assigned transportation oversight and coordination responsibilities attributable to the transportation program and documented through position descriptions and payroll records. No school district General Administration salaries may be included in this area;

(b) Pupil Transportation Supplies, Equipment, Repairs, and Maintenance. Costs of fuel, oil, lubricants, tires, tire repair, batteries, vehicle diagnosis and repair equipment identified as capital expenditures in the "Program Budget Manual," vehicle repair parts and supplies, repair of vehicles by other than the school district, garage maintenance and operation, and garage equipment repair and maintenance;

(c) All Contracted Transportation. Payments to parents and independent public or private contractors for transporting pupils from home to school, between educational facilities and for nonreimbursable activities enumerated in paragraph (6)(l)(B) of this rule; and fares to public carriers for transporting pupils from home to school and between educational facilities;

(A) If a district retains ownership of buses and garages and contracts for the operation of the transportation system with provision in the contract for lease or rental of the buses and garages, the contracted transportation cost shown should reflect the gross bid including the lease or rental payment. The lease or rental payment shall be deducted in the computation as reported in paragraph (5)(n)(D) of this rule;

(B) If the district retains ownership of buses and garages and participates in a transportation cooperative or consortium through an intergovernmental agreement, depreciation apportionment provided under ORS 327.033 will be disbursed directly to the district. No depreciation component is approved for cooperative-owned buses or garages.

(d) Travel of Pupil Transportation Personnel. Meals, lodging, mileage, per diem and other travel expenses of pupil transportation personnel, and private car mileage if paid to bus drivers for travel to and from the point where school bus is parked if other than the central garage. The same trav-

el expenses plus tuition or registration are included for attendance at Department of Education sponsored or presented pupil transportation training programs and seminars;

(e) Employee Benefits on Pupil Transportation Salaries. The district's contributions for employee benefits including social security and retirement, employee health insurance, workers' compensation, and unemployment insurance;

(f) Pupil Transportation Insurance. Payments for public liability and property damage, medical care, collision, fire and theft, and insurance on garages and shops;

(g) Payments in Lieu of Transportation. Payments for pupils' board and room in lieu of transportation, consistent with ORS 332.405(2);

(h) Other Expenses of Pupil Transportation. District-paid fees for school bus drivers' physical examinations; interest on bus or garage contracts payable including lease-purchase agreements if capitalized (see subsection (6)(k) of this rule);

(i) Payments to Other In-State or Out-of-State Districts for Transportation. Payments to other districts for approved pupil transportation costs;

(j) Leases and Rentals. Rental or lease payments for the use of land or buildings used for approved pupil transportation. Rental or lease payments for buses operated by district personnel for approved pupil transportation.

**NOTE:** Only those leases which do not contain an option to purchase or application of rentals to purchase should be included in subsection (5)(j) of this rule. See subsection (6)(k) of this rule as to the proper treatment of other lease-purchase agreements.

(k) Depreciation. For purposes of computing depreciation, capitalized cost is defined to include the unit cost of the asset, exclusive of interest, for such assets purchased outright, by conventional contract, or by lease-purchase agreement if such agreement contains any provision to acquire ownership at the end of the agreement by application of a portion of the rentals paid or a terminal payment. The computation of the capitalized cost and the depreciation shall be according to the following:

(A) Portions of Garages and Other Buildings Used for Approved Pupil Transportation:

(i) Outright purchase (including purchase by conventional contract). For each outright purchase or purchase by conventional contract, each district shall report to the Oregon Department of Education, on the forms provided, the unit cost of the garage or other building purchased and the dollar amount of interest payments associated with such purchase. The purchase of land shall not be included in the Garage Depreciation. The capitalized value shall represent the unit cost, exclusive of interest. Depreciation shall be computed at an annual rate of four percent;

(ii) Lease-purchase agreements. For each lease-purchase agreement, the district shall report to the Oregon Department of Education, on the forms provided, the dollar amount of the agreement, the interest payments contained in the agreement, and the schedule of such interest payments contained in the agreement. Land shall not be included in the lease purchase agreement for the purpose of reimbursement. Subsequent to July 1, 1975, the capitalized value shall represent the lease-purchase price less any interest payments contained in the agreement. Depreciation shall be computed at an annual rate of four percent.

(B) Buses and Other Vehicles Used for Approved Pupil Transportation:

(i) Outright purchase (including purchase by conventional contract). For each outright purchase or purchase by conventional contract, each district shall report to the Oregon Department of Education, on the forms provided, the unit cost of the vehicle(s) purchased and the dollar amount of interest payments associated with such purchase. The capitalized value shall represent the unit cost, exclusive of interest. Depreciation shall be computed at an annual rate of ten percent;

(ii) Lease-purchase agreements. For each lease-purchase agreement, the district shall report to the Oregon Department of Education, on the forms provided, the dollar amount of the agreement, any applicable trade-in value, the dollar amounts of interest payments contained in the agreement, and the schedule of such interest payments contained in the agreement. The capitalized value of the vehicles shall represent the lease-purchase price including the trade-in allowance less interest payments contained in the agreement. Depreciation shall be computed at an annual rate of ten percent;

(iii) Lease agreements. If the district is leasing its buses under a lease agreement, the district shall report the annual lease cost. A lease agreement as used in this paragraph means an agreement whereby the lessor retains title to the buses being leased to the lessee school district and the title to the buses is never received by the lessee. Under such a lease agreement, the use of the buses by the lessee is limited by the term of the lease. If there is an

## ADMINISTRATIVE RULES

auxiliary agreement either written or oral whereby at the end of the lease term, the title of the buses shall pass to the lessee school district, the agreement is not a lease agreement as described in this paragraph but is a lease-purchase agreement as outlined in subparagraph (ii) of this paragraph. The lease payment made by a school district obtaining the use of buses pursuant to a lease as defined in this paragraph shall be used in the computation of the reimbursement in place of the depreciation set forth in subparagraphs (i) and (ii) of this paragraph.

(l) Deductions:

(A) Payments Received from Other Districts and from Patrons. Money received from other school districts, parents, guardians, or students for transportation if paid in support of expenditures listed in subsections (5)(a) through (l) of this rule;

(B) Nonreimbursable Transportation Costs. Actual bus mileage of excludable trips shall include the actual mileage in district owned or contracted buses for transportation for activity trips, athletic trips, school lunch purposes, summer school, adult education, evening school, nursery school, and any other nonreimbursable purposes. Such mileage shall be deducted at the rate indicated in subsection (5)(m)(B) of this rule. The rate of deduction may be reviewed periodically by the State Board of Education and adjusted accordingly;

(C) State and Federal Receipts for Transportation. All state and federal receipts for transportation expenditures, exclusive of funds apportioned under ORS 327.006 and 327.033, that have been included in subsection (5)(a) through (l) of this rule;

(D) Rental or Lease Payments from Private Contractors. Payments received from private contractors for the use of district owned buses and garages in the operation of the pupil transportation system by the private contractor. This item must be shown as Revenue Code 1930 in the school district audit and the gross payments to the contractor must be included in subsection (5)(c) of this rule.

(7) Each district shall maintain a record, by purpose, of total pupil transportation miles and shall submit a report of such to the Oregon Department of Education on the form provided. The accuracy of such records shall be certified by the district clerk.

(8) If an education service district offers a special service under the provisions of section (4) of ORS 334.175, including home-to-school transportation that would qualify for reimbursement under the provisions of ORS 327.006 if provided by a local school district, the following procedure in crediting the transportation expenditure to the local district may be employed:

(a) The education service district shall compute approved home-to-school transportation costs as provided in section (4) of this rule;

(b) The approved costs so determined shall be billed to and paid by each of the local school districts. The expenditure shall be accounted for by the local district as a transportation expenditure paid to another education agency;

(c) The audited district expenditure shall be recognized by the State Superintendent of Public Instruction in computing the local district's entitlement under ORS 327.006;

(d) If the education service district reimburses the local district the difference between that portion billed and that paid under ORS 327.006, such reimbursement – if derived from property tax sources by education service district resolution – shall not be deducted by the state in determining the local district's approved costs. The local district shall account for the education service district reimbursement as other general receipts are accounted for from the education service district.

(9) For purposes of computing board and room entitlement for a district operating a dormitory under provisions of ORS 327.006, the state assumes responsibility for its proportionate share of costs associated with the provision of food, facilities, staff, operation, and maintenance necessary to provide students with safe and healthy living conditions. The state does not assume responsibility for costs associated with recreation or entertainment of students. The approved cost against which the computation is made for state liability shall not exceed the limit stated in ORS 332.405. In addition, the state will assume its proportionate share of the cost of field trips as defined in subsection (3)(c) of this rule.

(10) The computation of approved expenditures for board and room entitlement shall be made as follows:

(a) Salaries;

(b) Operation:

(A) Utilities;

(B) Supplies;

(C) Other Operational Costs.

(c) Maintenance:

(A) Upkeep;

(B) Replacement.

(d) Fixed Charges:

(A) Employee Benefits;

(B) Other Fixed Charges.

(e) Food;

(f) Operation of Buses and Other Vehicles – Supplies, Repairs and Maintenance;

(g) Depreciation:

(A) Dormitory;

(B) Buses and Other Vehicles.

(h) Total Expenditures (Sum of subsections (10)(a) through (g) of this rule);

(i) Deductions (subtract if cost is included in cost above):

(A) Payments Received from Other Districts and from Patrons;

(B) Nonreimbursable Transportation Costs as indicated in subsection (5)(m)(B) of this rule;

(C) State and Federal Receipts for Transportation, except those apportioned under ORS 327.006, 327.033, or third party Medicaid payments, if used to support expenditures in subsections (10)(a) through (g) of this rule;

(D) Federal School Lunch, Breakfast, and Milk Reimbursements;

(E) Sales of Food.

(j) Total Deductions (sum (10)(i)(A) + (i)(B) + (i)(C) + (i)(D) + (i)(E));

(k) Approved Cost ((10)(h) minus (10)(j) of this rule).

(11) The items included in the board and room entitlement computation are defined as follows:

(a) Salaries. Salaries and wages paid dormitory personnel, including the dormitory manager, cooks, custodians, and other personnel directly concerned with operation of the dormitory, and that portion of salaries paid secretarial and clerical assistants and other personnel attributable to the dormitory program;

(b) Operation:

(A) Utilities. Heat for buildings, water and sewage, electricity, telephone, and other utilities necessary for the operation of the dormitory;

(B) Supplies. Custodial supplies, supplies for care of grounds, linens, and other supplies necessary for the operation of the dormitory including food services. Purchase of food is included in subsection (11)(e) of this rule;

(C) Other Operational Costs. Contracted custodial services, window washing, laundry or linen services, etc., necessary for the operation of the dormitory.

(c) Maintenance:

(A) Upkeep. Expenditures associated with maintaining the existing dormitory facilities in a safe, healthy, and efficient condition, including supplies and materials for upkeep of dormitory grounds and the dormitory building. Costs associated with maintenance of recreational or entertainment facilities are excluded;

(B) Replacement of Equipment. Expenditures associated with replacing equipment necessary to the safe, healthy, and efficient operation of the dormitory. Replacement of equipment used for recreational or entertainment purposes are excluded.

(d) Fixed Charges:

(A) Employee Benefits. Expenditures for dormitory employees' benefits including social security and retirement, employee health insurance, workers' compensation, and unemployment insurance;

(B) Other Fixed Charges. Expenditures for property insurance, liability insurance, rental of land and buildings for purposes associated with operation of the dormitory, and other fixed charges directly attributable to operation of the dormitory.

(e) Food. Expenditures for food necessary for the operation of the dormitory;

(f) Operation of Buses and Other Vehicles – Supplies, Repairs, and Maintenance. Expenditures for fuel, oil, lubricants, tires, tire repair, batteries, vehicle repair parts and supplies, repair of vehicles by other than the school district, garage maintenance and operation, and garage equipment repair and maintenance necessary for the operation of buses utilized for purposes stated in section (3) of this rule and of other vehicles necessary for the operation of the dormitory;

(g) Depreciation:

(A) Dormitory. For purposes of computing dormitory depreciation, capitalized cost is defined as the unit cost of the asset (including the cost of original equipment), exclusive of interest, plus the cost of substantial improvements or remodeling. The purchase of land shall not be included. Costs associated with providing recreational or entertainment facilities are

# ADMINISTRATIVE RULES

not included. Depreciation shall be computed at an annual rate of four percent;

(B) Buses and Other Vehicles. Depreciation for buses used for approved pupil transportation and that portion of other vehicles necessary for operation of the dormitory shall be computed in accordance with the formula and definition stated in paragraph (6)(k)(B) of this rule.

(h) Total. Sum of subsections (10)(a) through (g) of this rule;

(i) Deductions:

(A) Payments Received from Other Districts and from Patrons. Money received from other school districts, parents, guardians, or students for transportation or room and board if paid in support of expenditures listed in subsections (10)(a) through (f) of this rule;

(B) Nonreimbursable Transportation Costs. Costs for nonreimbursable transportation according to the formula and definition stated in paragraph (6)(l)(B) of this rule;

(C) State and Federal Receipts for Transportation. All state and federal receipts for transportation or room and board expenditures exclusive of funds apportioned under ORS 327.006 that have been included in subsections (10)(a) through (f) of this rule;

(D) Federal School Lunch, Breakfast, and Milk Reimbursements. All federal receipts for school lunch, breakfast, and milk expenditures that have been included in subsections (10)(a) through (f) of this rule;

(E) Sales of Food. Money received from teachers, students, or other individuals from food sales for which the expenditures are included in subsections (10)(a) through (f) of this rule.

(12) Such items of expenditure as may be questionable in applying the policy stated in this administrative rule shall be resolved by the State Superintendent of Public Instruction and such determination shall be final.

(13) Apportionment of the State School Fund for 2001–02 and subsequent years.

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

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

Stats. Implemented: ORS 327.013 & 820.100 - 820.120

Hist.: 1EB 177, f. 10-2-74; 1EB 181, f. 1-17-75, ef. 7-1-75; 1EB 209, f. 12-5-75, ef. 1-16-76; 1EB 220, f. 2-17-76, ef. 3-15-76; 1EB 233, f. 6-11-76, ef. 6-18-76; 1EB 4-1978, f. 1-27-78, ef. 1-27-78; 1EB 10-1980, f. & ef. 5-5-80; 1EB 6-1981, f. 3-2-81, ef. 3-3-81; 1EB 4-1982, f. & ef. 2-10-82; 1EB 15-1982, f. 8-4-82, ef. 8-5-82; 1EB 17-1983, f. 11-23-83, ef. 11-25-83; 1EB 1-1985, f. 1-4-85, ef. 1-7-85; 1EB 5-1986, f. 1-30-86, ef. 2-1-86; EB 4-1987, f. & ef. 2-20-87; EB 32-1987, f. & ef. 12-10-87; EB 42-1988, f. & cert. ef. 11-15-88; EB 3-1992, f. & cert. ef. 2-21-92; EB 21-1993, f. & cert. ef. 6-2-93; EB 4-1997, f. & cert. ef. 4-25-97; ODE 9-2000, f. & cert. ef. 4-5-00; ODE 25-2001, f. & cert. ef. 11-7-01; ODE 9-2003, f. & cert. ef. 6-13-03; ODE 10-2006, f. & cert. ef. 2-21-06; ODE 8-2008, f. & cert. ef. 3-21-08; ODE 6-2010, f. & cert. ef. 4-26-10; ODE 22-2011, f. & cert. ef. 12-15-11

\*\*\*\*\*

**Rule Caption:** Method of Awarding Competitive Grants.

**Adm. Order No.:** ODE 23-2011

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 12-15-11

**Notice Publication Date:** 10-1-2011

**Rules Repealed:** 581-040-0000

**Subject:** Method of awarding competitive grants – rule is obsolete.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

\*\*\*\*\*

**Rule Caption:** Workforce 2000 Vocational technical Education Program.

**Adm. Order No.:** ODE 24-2011

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 12-15-11

**Notice Publication Date:** 10-1-2011

**Rules Repealed:** 581-044-0080, 581-044-0090, 581-044-0100, 581-044-0110, 581-044-0120, 581-044-0130, 581-044-0140, 581-044-0200

**Subject:** The rules in division 44 refer to the Workforce 2000 Vocational Technical Education Program that was established in 1989 to assist public schools and community colleges to prepare an internationally competitive workforce by the year 2000. This federal program has been repealed and no longer exists.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

\*\*\*\*\*

**Rule Caption:** Job Training Partnership Act.

**Adm. Order No.:** ODE 25-2011

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 12-15-11

**Notice Publication Date:** 10-1-2011

**Rules Repealed:** 581-060-0005, 581-060-0010, 581-060-0015, 581-060-0020

**Subject:** Funds to State and Local Agencies to provide Employment and training Services under the Job training Partnership Act (JTPA).

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

\*\*\*\*\*

**Rule Caption:** Distribution of Job Training partnership Act Title III Governor's Reserve Funds.

**Adm. Order No.:** ODE 26-2011

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 12-15-11

**Notice Publication Date:** 10-1-2011

**Rules Repealed:** 581-070-0000, 581-070-0010, 581-070-0020, 581-070-0030, 581-070-0040, 581-070-0050, 581-070-0060, 581-070-0070, 581-070-0080, 581-070-0090, 581-070-0110, 581-070-0130, 581-070-0140, 581-070-0150, 581-070-0170, 581-070-0180, 581-070-0190, 581-070-0200, 581-070-0210, 581-070-0220, 581-070-0230, 581-070-0240, 581-070-0250, 581-070-0380, 581-070-0390, 581-070-0400, 581-070-0410, 581-070-0420, 581-070-0500, 581-070-0510

**Subject:** Distribution of JTPA Title III Governor's reserve Funds – rule is obsolete.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

\*\*\*\*\*

**Rule Caption:** Radio Television Agreement.

**Adm. Order No.:** ODE 27-2011

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 12-15-11

**Notice Publication Date:** 10-1-2011

**Rules Repealed:** 581-071-0005, 581-071-0010

**Subject:** Radio Television Agreement.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

\*\*\*\*\*

## Oregon Film and Video Office Chapter 951

**Rule Caption:** Rule intended to clarify reporting requirements for Greenlight Rebate.

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

**Filed with Sec. of State:** 12-15-2011

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

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

**Rules Amended:** 951-004-0003, 951-004-0004

**Subject:** To clarify that the Oregon Film and Video Office will issue a pre-certification pending verification that taxes have been paid and that a subsequent final certification will be issued upon such verification.

**Rules Coordinator:** Jane Ridley—(503) 229-5832

### 951-004-0003

#### Greenlight Oregon Labor Rebate Certification

(1) After receipt of an application for certification, the OFVO will review the application to determine if the proposed Qualifying Film Production satisfies the following certification requirements:

(a) OFVO determines that it is reasonably likely that the applicant will incur Actual Expenses of at least \$1 million that are related to the Qualifying Film Production proposed by the applicant;

(b) If the Qualifying Film Production proposed by the applicant consists of one or more episodes of a television series, the Actual Expenses are associated with production that comprises no more than a single season of episodes;

(c) If the Qualifying Film Production proposed by the applicant consists of one or more commercials, the Actual Expenses are to be incurred within a single year; and

(d) If the Qualifying Film Production proposed by the applicant consists of a movie or other film production not described in sections (1) or (2) above, the Actual Expenses are associated with that movie or other film production;

(e) The Qualifying Film Production meets the requirements of OAR 951-004-0004.



# ADMINISTRATIVE RULES

(2) If the OFVO determines that the Qualifying Film Production proposed by the applicant satisfies the certification requirements set forth in section (1) of this rule, the OFVO will pre-certify the rebate pending verification that the withholding required has been paid. The OFVO will send a written certificate evidencing the pre-certification to the applicant and a copy of the pre-certification to the Oregon Department of Revenue.

(3) The Oregon Department of Revenue will verify that the taxes required under OAR 951-004-0004 have been paid and will inform the OFVO of the Qualifying Film Production's compliance with the rule.

(4) Upon verification from the Department of Revenue that the Qualifying Film Production has paid the required taxes, the OFVO will finalize the certification and issue a final certificate to the Qualifying Film Production showing the amount of the Greenlight Oregon Labor Rebate. The Department of Revenue will issue payment for the Labor Rebate amount shown on the final certificate.

Stat. Auth.: ORS 284.335 & 2005 OL Ch. 559

Stats. Implemented: 2005 OL Ch. 559

Hist.: FVO 2-2006, f. & cert. ef. 11-17-06; FVO 1-2011, f. 12-15-11, cert. ef. 1-1-12

## 951-004-0004

### Greenlight Oregon Labor Rebate: Withholding and Reporting

(1) A person issued a written pre-certification under OAR 951-004-0003 must:

(a) Withhold from qualifying compensation and remit to the Oregon Department of Revenue a minimum aggregate withholding of 6.2% of the total qualifying compensation using payroll reporting procedures found in ORS 316.162 to 316.221 and related rules.

(b) Send a written report to the OFVO specifying:

(A) The total amount of Qualifying Compensation paid by the person for the period;

(B) The names, taxpayer identification numbers, amounts of qualifying compensation, and withholding made for each employee receiving Qualifying Compensation during which period the Qualifying Film Production was produced;

(C) Copies of the Oregon Form OQ and Oregon Form 132 reported for the Qualifying Film Production for the period;

(D) Copies of unemployment insurance tax returns for states other than Oregon if the employees upon which Oregon withholding was made are not included on the Oregon Form 132 for the period; and

(E) Any other information required by the OFVO.

(2) The written report required in subsection (1)(b) of this rule is due by the 31st of each month following regular quarterly payroll tax reporting periods, or within 30 days following the completion of the Qualifying Film Production, whichever is earlier.

(3) Notwithstanding subsection (1)(a) of this rule, a Qualifying Film Production may use a third-party payroll reporting service to pay the Qualifying Compensation and withhold appropriately on behalf of the Qualifying Film Production.

(a) If the Qualifying Film Production engages another company to pay the Qualifying Compensation and withhold the tax, the Qualifying Film Production must inform the OFVO of the name and tax identification numbers of the entity retained before any Qualifying Compensation is paid on behalf of the Qualifying Film Production.

(b) To use the compensation paid by the third-party payroll reporting service to qualify as Qualifying Compensation for the certificate holder, the Qualifying Film Production must provide copies of the payroll reports that reflect the same information as is required in subsection (1)(b) of this rule for the entity retained to pay the qualifying compensation and the tax on behalf of the Qualifying Film Production.

(c) If the third-party payroll reporting service retained by the Qualifying Film Production has not reported and remitted the tax in full, the Qualifying Film Production may not use the compensation paid to employees to qualify for the Greenlight Oregon Labor Rebate.

Stat. Auth.: ORS 284.335 & 2005 OL Ch. 559

Stats. Implemented: 2005 OL Ch. 559

Hist.: FVO 2-2006, f. & cert. ef. 11-17-06; FVO 1-2011, f. 12-15-11, cert. ef. 1-1-12

## Oregon Health Authority Chapter 943

**Rule Caption:** Requirements for organizations and users seeking or receiving access to Authority information assets.

**Adm. Order No.:** OHA 27-2011

**Filed with Sec. of State:** 12-1-2011

**Certified to be Effective:** 12-1-11

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

**Rules Adopted:** 943-014-0300, 943-014-0305, 943-014-0310, 943-014-0315, 943-014-0320

**Rules Repealed:** 943-014-0300(T), 943-014-0305(T), 943-014-0310(T), 943-014-0315(T), 943-014-0320(T)

**Subject:** These rules apply to anyone who seeks access to the Oregon Health Authority's (Authority) information assets, systems, and networks. It establishes access controls for all organizations and users and requires organizations to establish a risk management plan addressing common safeguards and HIPAA compliance. These rules allow for audits of organizations handling Authority information assets, address privilege changes, and establish requirements for reporting incidents and resolutions.

**Rules Coordinator:** Evonne Alderete—(503) 932-9663

## 943-014-0300

### Scope

These rules (OAR 943-014-0300 through 943-014-0320) apply to an organization or individual seeking or receiving access to Authority information assets or network and information systems for the purpose of carrying out a business transaction between the Authority and the user.

(1) These rules are intended to complement, and not supersede, access control or security requirements in the Authority's Electronic Data Transmission rules, OAR 943-120-0100 to 943-120-0200, and whichever rule is more specific shall control.

(2) The confidentiality of specific information and the conditions for use and disclosure of specific information are governed by other laws and rules, including but not limited to the Authority's rules for the privacy of protected information, OAR 943-014-0000 to 943-014-0070.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 182.122

Hist.: OHA 16-2011(Temp), f. & cert. ef. 8-9-11 thru 2-2-12; OHA 27-2011, f. & cert. ef. 12-1-11

## 943-014-0305

### Definitions

For purpose of these rules, the following terms have definitions set forth below. All other terms not defined in this section shall have the meaning used in the Health Insurance Portability and Accountability Act (HIPAA) security rules found at 45 CFR § 164.304:

(1) "Access" means the ability or the means necessary to read, communicate, or otherwise use any Authority information asset.

(2) "Access Control Process" means Authority forms and processes used to authorize a user, identify their job assignment, and determine the required access.

(3) "Authority" means the Oregon Health Authority.

(4) "Client Records" means any client, applicant, or participant information regardless of the media or source, provided by the Authority to the user, or exchanged between the Authority and the user.

(5) "Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of any network and information system or Authority information asset including, but not limited to unauthorized disclosure of information; failure to protect user's identification (ID) provided by the Authority; or, theft of computer equipment that uses or stores any Authority information asset.

(6) "Information Asset" means any information, also known as data, provided through the Authority, regardless of the source or media, which requires measures for security and privacy of the information.

(7) "Network and Information System" means the State of Oregon's computer infrastructure, which provides personal communications, client records and other sensitive information assets, regional, wide area and local area networks, and the internetworking of various types of networks on behalf of the Authority.

(8) "User" means any individual authorized by the Authority to access a network and information system or information asset.

(9) "Organization" means any entity authorized by the Authority to access a network and information system or information asset.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 182.122

Hist.: OHA 16-2011(Temp), f. & cert. ef. 8-9-11 thru 2-2-12; OHA 27-2011, f. & cert. ef. 12-1-11

## 943-014-0310

### Information Access

The organization or user shall utilize the Authority access control process for all requested and approved access. The Authority shall notify the user of each approval or denial. When approved, the Authority shall pro-

# ADMINISTRATIVE RULES

vide the user with a unique login identifier to access the network and information system or information asset. The Authority may authorize the use of a generic login identifier.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 182.122  
Hist.: OHA 16-2011(Temp), f. & cert. ef. 8-9-11 thru 2-2-12; OHA 27-2011, f. & cert. ef. 12-1-11

## 943-014-0315

### Security Information Assets

(1) No organization or user shall access an information asset for any purpose other than that specifically authorized by the Authority access control process.

(2) Except as specified or approved by the Authority, no organization or user shall alter, delete, or destroy any information asset.

(3) The organization shall prohibit unauthorized access by their staff, contractors, agents, or others to the network and information systems, or Authority information assets, and shall implement safeguards to prevent unauthorized access in accordance with section (4) of this rule.

(4) The organization shall develop a security risk management plan. The organization shall ensure that the plan includes, but is not limited to the following:

(a) Administrative, technical, and physical safeguards commonly found in the International Standards Organization 27002: 2005 security standard or National Institute of Standards and Technology (NIST) 800 Series;

(b) Standards established in accordance with HIPAA Security Rules, 45 CFR Parts 160 and 164, applicable to an organization or user regarding the security and privacy of a client record, any information asset, or network and information system;

(c) The organization's privacy and security policies;

(d) Controls and safeguards that address the security of equipment and storage of any information asset accessed to prevent inadvertent destruction, disclosure, or loss;

(e) Controls and safeguards that ensure the security of an information asset, regardless of the media, as identified below:

(A) The user keeps Authority-assigned access control requirements such as identification of authorized users and access control information (passwords and personal identification numbers (PIN's)), in a secure location until access is terminated;

(B) Upon request of the Authority, the organization makes available all information about the user's use or application of the access controlled network and information system or information asset; and

(C) The organization or user ensures the proper handling, storage, and disposal of any information asset obtained or reproduced, and, when the authorized use of that information ends, is consistent with any applicable record retention requirements.

(f) Existing security plans developed to address other regulatory requirements, such as Sarbanes-Oxley Act of 2002 (PL 107-204), Title V of Gramm Leach Bliley Act of 1999, Statement on Auditing Standards (SAS) number 70, will be deemed acceptable as long as they address the above requirements.

(5) The Authority may request additional information related to the organization's security measures.

(6) The organization or user must immediately notify the Authority when access is no longer required, and immediately cease access to or use of all information assets or network and information systems.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 182.122  
Hist.: OHA 16-2011(Temp), f. & cert. ef. 8-9-11 thru 2-2-12; OHA 27-2011, f. & cert. ef. 12-1-11

## 943-014-0320

### User Responsibility

The organization or user shall not make any root level changes to any Authority or State of Oregon network and information system. The Authority recognizes that some application users have root level access to certain functions to allow the user to diagnose problems (such as startup or shutdown operations, disk layouts, user additions, deletions or modifications, or other operation) that require root privileges. This access does not give the user the right to make any changes normally restricted to root without explicit written permission from the Authority.

(1) Use and disclosure of any Authority information asset is strictly limited to the minimum information necessary to perform the requested and authorized service.

(2) The organization shall have established privacy and security measures that meet or exceed the standards set forth in the Authority privacy and

information security policies, available from the Authority, regarding the disclosure of an information asset.

(3) The organization or user shall comply with all security and privacy federal and state laws, rules, and regulations applicable to the access granted.

(4) The organization shall make the security risk plan available to the Authority for review upon request.

(5) The organization or user shall report to the Authority all privacy or security incidents by the user that compromise, damage, or cause a loss of protection to the Authority information assets or the network and information systems. The incident report shall be made no later than five business days from the date on which the user becomes aware of such incident. The user shall provide the Authority a written report which must include the results of the incident assessment findings and resolution strategies.

(6) Wrongful use of a network and information system, or wrongful use or disclosure of an Authority information asset by the organization or user may cause the immediate suspension or revocation of any access granted, at the sole discretion of the Authority without advance notice.

(7) The organization or user shall comply with the Authority's request for corrective action concerning a privacy or security incident and with laws requiring mitigation of harm caused by the unauthorized use or disclosure of confidential information, if any.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 182.122  
Hist.: OHA 16-2011(Temp), f. & cert. ef. 8-9-11 thru 2-2-12; OHA 27-2011, f. & cert. ef. 12-1-11

\*\*\*\*\*

**Rule Caption:** Review Process When Self-Defense Asserted to a "Substantiated" Finding at State Hospitals and State Operated Programs.

**Adm. Order No.:** OHA 28-2011

**Filed with Sec. of State:** 12-1-2011

**Certified to be Effective:** 12-4-11

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

**Rules Adopted:** 943-045-0000

**Rules Repealed:** 943-045-0000(T)

**Subject:** This rule adopts and incorporates by reference the Department of Human Services' Review of Substantiated Physical Abuse When Self-Defense is Asserted at State Hospitals and State Operated Residential 24-hour Programs rules: chapter 407-0000 through 0110.

HB 2009 (2009) created the Oregon Health Authority and transferred to the Authority the Department of Human Services' (Department) Divisions responsible for health and health care. Effective July 1, 2011 the Authority needs to adopt and incorporate by reference the Department's rules which provide the Authority with the legal authority to conduct abuse investigations with respect to individuals residing in state hospitals and state operated 24-hour programs. These rules set forth the review process when self defense is asserted by individuals in response to a "substantiated" determination.

**Rules Coordinator:** Evonne Alderete—(503) 932-9663

## 943-045-0000

### Review of Substantiated Physical Abuse When Self-Defense is Asserted at State Hospitals

Protective service investigations and review of findings of alleged abuse in state hospitals are handled by the Office of Investigations and Training (OIT) State hospitals are administered by the Oregon Health Authority (Authority).

(1) The Authority adopts and incorporates by reference OAR 407-045-0000 to 407-045-0110 (Review of Substantiated Physical Abuse When Self-Defense is Asserted at State Hospitals).

(2) Any reference to any rule from OAR 407-045-0000 to 407-045-0110 in rules or contracts of the Authority are deemed to be references to the requirements of this rule, and shall be construed to apply to employees, volunteers, providers, or contractors that work at those locations that are administered by the Authority.

(3) References in OAR 407-045-0000 to 407-045-0110 to the Department of Human Services (Department) or to the Authority shall be construed to be references to either or both agencies.

(4) The Authority authorizes the Department to act on its behalf in carrying out protective service investigations and review of findings of alleged abuse at those locations that are administered by the Authority.

# ADMINISTRATIVE RULES

(5) Appeals will be handled by the Authority under the procedures set out in OAR 407-045-0000 to 407-045-0110, however, references to agency actions or decisions that qualify as orders under ORS 183.310(6) that are issued by “the Department” or by “the Director” are hereby incorporated as references to “the Oregon Health Authority” and “the Authority Director.”

(6) References in OAR 407-045-0000 to 407-045-0110 to the Human Services Abuse Review Committee (HSARC), the OIT Substantiation Review Committee (OSRC) or “Office of Developmental Disability Services Review Committee” (ODDSRC) shall be construed to be references to committees for either the Department or the Authority.

Stat. Auth.: ORS 179.040 & 413.042

Other Auth.: HB 2009, OL Ch. 595, sec. 19-25

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.755 - 430.768

Hist.: Hist.: OHA 10-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 28-2011, f. 12-1-11, cert. ef. 12-4-11

\*\*\*\*\*

**Rule Caption:** Abuse or Mistreatment Reporting and Protective Services in Community Programs for Adults with Mental Illness.

**Adm. Order No.:** OHA 29-2011

**Filed with Sec. of State:** 12-1-2011

**Certified to be Effective:** 12-5-11

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

**Rules Adopted:** 943-045-0250, 943-045-0260, 943-045-0280, 943-045-0290, 943-045-0300, 943-045-0310, 943-045-0320, 943-045-0330, 943-045-0340, 943-045-0350, 943-045-0360, 943-045-0370

**Rules Repealed:** 943-045-0250(T), 943-045-0260(T), 943-045-0280(T), 943-045-0290(T), 943-045-0300(T), 943-045-0310(T), 943-045-0320(T), 943-045-0330(T), 943-045-0340(T), 943-045-0350(T), 943-045-0360(T), 943-045-0370(T)

**Subject:** HB 2009 created the Oregon Health Authority and transferred to the Authority the Department of Human Services’ Divisions responsible for health and health care. With the creation of a new agency, the community programs and community facilities serving adults with mental illness moved to the Authority. Community programs and facilities serving adults with developmental disabilities will continue to be governed by the Department of Human Services’ rule found at OAR 407-045-0250 to 0370. The Authority needs to adopt these rules to reflect the separation of the Department of Human Services and Oregon Health Authority.

These rules also include the definition of mistreatment.

**Rules Coordinator:** Evonne Alderete—(503) 932-9663

## 943-045-0250

### Purpose

These rules, OAR 943-045-0250 to 943-045-0370, prescribe standards and procedures for the investigation of, assessment for, and provision of protective services in community programs and community facilities, and the nature and content of the abuse investigation and protective services report.

Stat. Auth.: ORS 179.040 & 413.042, 414.715 & 430.731

Stats. Implemented: ORS 413.032, 430.735-430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11

## 943-045-0260

### Definitions

As used in OAR 943-045-0250 to 943-045-0370, the following definitions apply:

(1) “Abuse of an adult with mental illness” means:

(a) Death of an adult caused by other than accidental or natural means or occurring in unusual circumstances.

(b) “Neglect” means the active or passive withholding of services necessary to maintain the health and well-being of an adult, which leads to physical harm of an adult. “Services” include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the adult.

(c) “Physical abuse” means:

(A) Any physical injury by other than accidental means or that appears to be at variance with the explanation given for the injury.

(B) Willful infliction of physical pain or injury.

(C) Physical abuse is presumed to cause physical injury, including pain, to adults otherwise incapable of expressing pain.

(D) Physical abuse does not include physical emergency restraint to prevent immediate injury to an adult who is in danger of physically harming himself or herself or others, provided only that the degree of force reasonably necessary for protection is used for the least amount of time necessary.

(d) “Sexual abuse” including:

(A) An act that constitutes a crime under ORS 163.375 (rape in the first degree), 163.405 (sodomy in the first degree), 163.411 (unlawful penetration in the first degree), 164.415 (sexual abuse in the third degree), 163.425 (sexual abuse in the second degree), (163.427 (sexual abuse in the first degree), 163.456 (public indecency) or 163.467 (private indecency).

(B) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315.

(C) Sexual harassment, sexual exploitation, or inappropriate exposure to sexually explicit material or language including requests for sexual favors. Sexual harassment or exploitation includes but is not limited to any sexual contact or failure to discourage sexual contact between an employee of a community facility or community program, provider, or other caregiver and an adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome physical sexual contact including requests for sexual favors and other physical conduct directed toward an adult.

(D) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver. Sexual abuse does not mean consensual sexual contact between an adult and a paid caregiver who is the spouse or partner of the adult.

(E) Any sexual contact that is achieved through force, trickery, threat, or coercion.

(F) As defined in ORS 163.305, “sexual contact” means any touching of sexual or other intimate parts of a person or causing such person to touch sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(G) An adult who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner shall for this reason alone not be considered subjected to mistreatment.

(2) “Abuse or Mistreatment Investigation and Protective Services Report” means a completed report.

(3) “Adult” means an individual who is 18 years of age or older who:

(a) Has a mental illness and is receiving services from a community program or facility;

(b) Receives services in a residential treatment home, residential care facility, adult foster home, or is in a facility approved by the Addictions and Mental Health Division (Division) for acute care services or crisis respite when the adult is in custody in the facility pursuant to ORS 426.072, and;

(c) Is the alleged abuse or mistreatment victim.

(4) “Adult Foster Home” means any home licensed by the Authority’s Addictions and Mental Health Division pursuant to OAR 309-040-0300 et.seq., in which residential care is provided to five or fewer adults who are not related to the provider by blood or marriage as described in ORS 443.705 through 443.825.

(5) “Adult protective services” means the necessary actions taken to prevent abuse or mistreatment or exploitation of an adult, to prevent self-destructive acts, and to safeguard an allegedly abused or mistreated adult’s person, property, or funds.

(6) “Authority” means the Oregon Health Authority.

(7) “Caregiver” means an individual or facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.

(8) “Community facility” means a community residential treatment home, residential care facility, adult foster home. “Community facility” also means a facility approved by the Division for acute care services or crisis respite when the adult is in custody in the facility pursuant to ORS 426.072.

(9) “Community program” means the community mental health program as established in ORS 430.610 to 430.695.

(10) “Designee” means the community program.

(11) “Department” means the Department of Human Services.

(12) “Inconclusive” means there is insufficient evidence to conclude the alleged abuse or mistreatment occurred or did not occur by a preponderance of the evidence. The inconclusive determination may be used only in the following circumstances:

(a) After diligent efforts have been made, the protective services investigator is unable to locate the person alleged to have committed the



# ADMINISTRATIVE RULES

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11

abuse or mistreatment, or cannot locate the alleged victim or another individual who might have information critical to the investigation; or

(b) Relevant records or documents are unavailable, or there is conflicting or inconsistent information from witnesses, documents, or records with the result that after the investigation is complete, there is insufficient evidence to support a substantiated or not substantiated conclusion.

(13) "Law enforcement agency" means any city or municipal police department, county sheriff's office, the Oregon State Police, or any district attorney.

(14) "Mandatory reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an adult has suffered abuse, or that any individual with whom the official comes in contact while acting in an official capacity has abused an adult. Pursuant to ORS 430.765(2), psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 295.

(15) "Mistreatment" means mistreatment as defined in OAR 309-035-0105, 309-035-0260 and 309-040-0305.

(16) "Not substantiated" means the preponderance of evidence establishes the alleged abuse or mistreatment did not occur.

(17) "Office of Investigations and Training" (OIT) means the Department's Shared Services Division responsible for the investigation of allegations of abuse or mistreatment made in community programs and community facilities for adults with mental illness

(18) "Provider agency" means an entity licensed or certified to provide services to adults in Adult Foster Homes (AFH), Residential Treatment Homes (RTH) or Residential Care Facilities (RCF). "Provider agency" also means a facility approved by the Division for acute care services or crisis respite when the adult is in custody in the facility pursuant to ORS 426.072.

(19) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor, or podiatrist, including any intern or resident;

(b) Health aide, or employee of an in-home health services organization;

(c) Employee of the Authority, Department, county health department, community mental health or developmental disabilities program, or private agency contracting with a public body to provide any community services;

(d) Peace officer;

(e) Member of the clergy;

(f) Licensed clinical social worker;

(g) Physical, speech, or occupational therapist;

(h) Information and referral, outreach, or crisis worker;

(i) Attorney;

(j) Licensed professional counselor or licensed marriage and family therapist;

(k) Firefighter or emergency medical technician; or

(l) Any public official who comes in contact with adults in the performance of the official's duties.

(20) "Residential Care Facility (RCF)" means a facility licensed by the Division that is operated to provide services on a 24-hour basis for six or more residents pursuant to OAR 309-035-0100 et seq..

(21) "Residential Treatment Home (RTH)" means a home licensed by the Division that is operated to provide services on a 24-hour basis for five or fewer residents pursuant to OAR 309-035-0250 et seq..

(22) "Substantiated" means that the preponderance of evidence establishes the abuse or mistreatment occurred.

(23) "Unbiased investigation" means an investigation that is conducted by a community program that does not have an actual or potential conflict of interest with the outcome of the investigation.

Stat. Auth.: ORS 179.040 & 413.042, 414.715 & 430.731

Stats. Implemented: ORS 413.032, 430.735-430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11

## 943-045-0280

### Training for Adults Investigating Reports of Alleged Abuse

(1) The Authority shall provide sufficient and timely training and consultation to community programs to ensure that the community program is able to conduct a thorough and unbiased investigation and reach a conclusion about the abuse. Training shall include initial and continuing education of any individual designated to conduct protective services investigations.

(2) The training shall address the cultural and social diversity of the State of Oregon.

Stat. Auth.: ORS 179.040 & 413.042, 414.715 & 430.731

Stats. Implemented: ORS 413.032, 430.735-430.765, 443.400 - 443.460, 443.705 - 443.825

## 943-045-0290

### General Duties of the Community Program and Initial Action on Report of Alleged Abuse

(1) For the purpose of carrying out these rules, community programs are Authority designees.

(2) If mandatory reporters have reasonable cause to believe abuse of an adult has occurred, the reporter must report the abuse to the community program, to a local law enforcement agency, or to the Authority when the reporter believes a crime may have been committed.

(3) Each community program shall designate at least one employee to conduct protective services investigations. Community programs shall require their designated protective services investigators to participate in training and to demonstrate an understanding of investigative core competencies.

(4) If the Authority or community program has reasonable cause to believe abuse or mistreatment occurred, it must immediately notify the appropriate public licensing or certifying agency and provide a copy of the abuse investigation and completed protective services report.

(5) If the Authority or community program has reasonable cause to believe that an individual licensed or certified by any state agency to provide care has committed abuse or mistreatment, it must immediately notify the appropriate state licensing or certifying agency and provide that agency with a copy of the abuse or mistreatment investigation and completed protective services report.

(6) The Authority or community program may share information prior to the completion of the abuse or mistreatment investigation and protective services report if the information is necessary for:

(a) The provision of protective services; or

(b) The function of licensing and certifying agencies or law enforcement agencies.

(7) Each community program must establish an after hours reporting system.

(8) Upon receipt of any report of alleged abuse or mistreatment or upon receipt of a report of a death that may have been caused by other than accidental or natural means, the community program must begin:

(a) Investigation into the nature and cause of the alleged abuse or mistreatment within one working day of receipt of the report to determine if abuse or mistreatment occurred or whether a death was caused by abuse or mistreatment;

(b) Assessment of the need for protective services; and

(c) Provision of protective services, if protective services are needed.

(9) The community program receiving a report alleging abuse or mistreatment must document the information required by ORS 430.743(1) and any additional reported information. The community program must attempt to elicit the following information from the individual making a report:

(a) The name, age, and present location of the adult;

(b) The names and addresses of the adult's programs or facilities responsible for the adult's care;

(c) The nature and extent of the alleged abuse or mistreatment, including any evidence of previous abuse or mistreatment of the adult or evidence of previous abuse or mistreatment by the person alleged to have committed the abuse or mistreatment;

(d) Any information that led the individual making the report to suspect abuse or mistreatment had occurred;

(e) Any information that the individual believes might be helpful in establishing the cause of the abuse or mistreatment and the identity of the person alleged to have committed the abuse or mistreatment; and

(f) The date of the incident.

(10) The community program shall maintain all reports of abuse or mistreatment in a confidential location.

(11) If there is reason to believe a crime has been committed, the community program must contact the law enforcement agency with jurisdiction in the county where the report is made.

(12) Upon receipt of a report of abuse or mistreatment, the community program must notify the case manager providing primary case management services to the adult. The community program must also notify the guardian of the adult unless doing so would undermine the integrity of the abuse or mistreatment investigation or a criminal investigation because the guardian or case manager is suspected of committing abuse or mistreatment.

(13) If there is reasonable cause to believe that abuse or mistreatment has occurred, the community program must determine if the adult is in danger or in need of immediate protective services and shall provide those

# ADMINISTRATIVE RULES

services immediately. Under these circumstances, the community program must also advise the provider agency or guardian about the allegation, and must include any information appropriate or necessary for the health, safety, and best interests of the adult in need of protection.

(14) The community program shall immediately, but no later than one working day, notify the Authority it has received a report of abuse or mistreatment, in the format provided by the Authority.

(15) In addition to the notification required by section (12) of these rules, if the community program determines that a report will be assigned for investigation, the community program must notify the provider agency, guardian, and any other individual with responsibility for providing services and protection, unless doing so would compromise the safety, health, or best interests of the adult in need of protection, or would compromise the integrity of the abuse or mistreatment investigation or a criminal investigation. The notice shall include information that the case shall be assigned for investigation, identify the investigator, and provide information regarding how the assigned investigator may be contacted. The notice must be provided within five working days from the date the report was received.

(16) If the community program determines from the report that there is no reasonable cause to believe abuse or mistreatment occurred, the community program shall notify the provider agency within five working days that a protective services investigation shall not commence and explain the reasons for that decision. The community program shall document the notice and maintain a record of all notices.

(17) The community program or law enforcement agency shall notify the appropriate medical examiner in cases where the community program or law enforcement agency finds reasonable cause to believe that an adult has died as a result of abuse or mistreatment or where the death occurred under suspicious or unknown circumstances.

Stat. Auth.: ORS 179.040 & 413.042, 414.715 & 430.731

Stats. Implemented: ORS 413.032, 430.735–430.765, 443.400 – 443.460, 443.705 – 443.825

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11

## 943-045-0300

### Investigation of Alleged Abuse or Mistreatment

(1) Investigation of abuse or mistreatment shall be thorough and unbiased. Community programs may not investigate allegations of abuse or mistreatment made against employees of the community program. Investigations of community program staff shall be conducted by the Authority or other community programs not subject to an actual or potential conflict of interest.

(2) In conducting an abuse or mistreatment investigation, the investigator must:

(a) Make in-person contact with the adult;

(b) Interview the adult, witnesses, the person alleged to have committed the abuse or mistreatment, and other individuals who may have knowledge of the facts of the abuse or mistreatment allegation or related circumstances. Interviews must be conducted in-person where practicable. The investigator must attempt to elicit the date of birth for each individual interviewed and shall obtain the date of birth of any person alleged to have committed the alleged abuse or mistreatment;

(c) Review all evidence relevant and material to the complaint; and

(d) Photograph the adult consistent with forensic guidelines, or arrange for the adult to be photographed, to preserve evidence of the alleged abuse or mistreatment and of the adult's physical condition at the time of investigation, unless the adult knowingly refuses.

(3) All records necessary for the investigation shall be available to the community program for inspection and copying. A community facility shall provide community programs access to employees, the adult, and the premises for investigation purposes.

(4) When a law enforcement agency is conducting a criminal investigation of the alleged abuse or mistreatment, the community program shall also perform its own investigation as long as it does not interfere with the law enforcement agency investigation under the following circumstances:

(a) There is potential for action by a licensing or certifying agency;

(b) Timely investigation by law enforcement is not probable; or

(c) The law enforcement agency does not complete a criminal investigation.

(5) When a law enforcement agency is conducting an investigation of the alleged abuse or mistreatment, the community program must communicate and cooperate with the law enforcement agency.

Stat. Auth.: ORS 179.040 & 413.042, 414.715 & 430.731

Stats. Implemented: ORS 413.032, 430.735–430.765, 443.400 – 443.460, 443.705 – 443.825

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11

## 943-045-0310

### Assessment for and Provision of Protective Services to the Adult

The community program shall ensure that appropriate and necessary protective services are provided to the adult to prevent further abuse or mistreatment and must be undertaken in a manner that is least intrusive to the adult and provide for the greatest degree of independence available within existing resources. Assessment for the provision of protective services may include:

(1) Arranging for the immediate protection of the adult;

(2) Contacting the adult to assess his or her ability to protect his or her own interest or give informed consent;

(3) Determining the ability of the adult to understand the nature of the protective service and his or her willingness to accept services;

(4) Coordinating evaluations to determine or verify the adult's physical and mental status, if necessary;

(5) Assisting in and arranging for appropriate services and alternative living arrangements;

(6) Assisting in or arranging the medical, legal, financial, or other necessary services to prevent further abuse or mistreatment;

(7) Providing advocacy to assure the adult's rights and entitlements are protected; and

(8) Consulting with the community facility, program, or others as appropriate in developing recommendations or requirements to prevent further abuse or mistreatment.

Stat. Auth.: ORS 179.040 & 413.042, 414.715 & 430.731

Stats. Implemented: ORS 413.032, 430.735–430.765, 443.400 – 443.460, 443.705 – 443.825

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11

## 943-045-0320

### Abuse or Mistreatment Investigation and Protective Services Report

(1) The Authority shall provide abuse or mistreatment investigation and protective services report formats.

(2) Upon completion of the investigation and within 45 calendar days of the date the community program has assigned a report alleging abuse or mistreatment for investigation, the community programs shall prepare an abuse or mistreatment investigation and protective services report. This 45-day time period does not include an additional five-working day period allowing OIT to review and approve the report. The protective services report shall include:

(a) A statement of the allegations being investigated, including the date, location, and time;

(b) A list of protective services provided to the adult;

(c) An outline of steps taken in the investigation, a list of all witnesses interviewed, and a summary of the information provided by each witness;

(d) A summary of findings and conclusion concerning the allegation of abuse or mistreatment;

(e) A specific finding of "substantiated," "inconclusive," or "not substantiated";

(f) A plan of action necessary to prevent further abuse or mistreatment of the adult;

(g) Any additional corrective action required by the community program and deadlines for completing these actions;

(h) A list of any notices made to licensing or certifying agencies;

(i) The name and title of the individual completing the report; and

(j) The date the report is written.

(3) In cases where, for good cause shown, the protective services investigator cannot complete the report within 45 days, the investigator shall submit a request for time extension to OIT.

(a) An extension may be granted for good cause shown which includes but is not limited to:

(A) When law enforcement is conducting an investigation;

(B) A material party or witness is temporarily unavailable;

(C) New evidence is discovered;

(D) The investigation is complex (e.g. large numbers of witnesses need to be interviewed taking into account scheduling difficulties and limitations, consultation with experts, or a detailed review of records over an extended period of time is required); or

(E) For some other mitigating reason.

(b) When granting an extension, OIT shall consult with the program about the need for an extension and determine the length of the extension as necessary.

(c) The community program shall notify the provider agency and guardian when an extension is granted and advise them of the new report due date.

# ADMINISTRATIVE RULES

(4) A copy of the final abuse or mistreatment investigation and protective services report shall be provided to the Authority within five working days of the report's completion and approval by OIT.

(5) The community program must provide notice of the outcome of the investigation, or assure that notice is provided to the alleged victim, guardian, provider agency, accused person, and to any law enforcement agency which previously received notice of the initial report. Notice of outcome shall be provided to a reporter upon the reporter's request. Notice of outcome must be made within five working days after the date the case is completed and approved by OIT. The community program must document how the notice was provided.

(6) A centralized record of all abuse or mistreatment investigation and protective services reports shall be maintained by community programs for all abuse or mistreatment investigations conducted in their county, and by the Authority for all abuse or mistreatment investigations in the state.

Stat. Auth.: ORS 179.040 & 413.042, 414.715 & 430.731

Stats. Implemented: ORS 413.032, 430.735-430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11

## 943-045-0330

### Disclosure of the Abuse Investigation and Protective Services Report and Related Documents

(1) Portions of the abuse or mistreatment investigation and protective services report and underlying investigatory documents are confidential and are not available for public inspection. Pursuant to ORS 430.763, names of abuse or mistreatment reporters, witnesses, and the alleged abuse or mistreatment victim are confidential and shall not be available for public inspection. Investigatory documents, including portions of the abuse or mistreatment investigation and protective services report that contains "individually identifiable health information," as that term is defined under ORS 192.519 and 45 CFR160.103, are confidential under federal Health Insurance Portability and Accountability Act (HIPAA) privacy rules, 45 CFR Parts 160 and 164, and ORS 192.520 and 179.505-179.509.

(2) Notwithstanding section (1) of this rule, the Authority shall make confidential information available, including any photographs if appropriate, to any law enforcement agency, public agency that licenses or certifies facilities or licenses or certifies the individuals practicing therein, and any public agency providing protective services for the adult. The Authority shall make the protective services report and underlying investigatory materials available to any private agency providing protective services for the adult and to the protection and advocacy system designated pursuant to ORS 192.517(1).

(3) Individuals or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and shall not redisclose the confidential information to unauthorized individuals or entities, as required by state or federal law.

(4) The community program shall prepare a redacted version of the final completed abuse or mistreatment investigation report within 10 days after the date of the final report. The redacted report shall not contain any confidential information which is prohibited from disclosure pursuant to state or federal law. The redacted report shall be submitted to the provider agency.

(5) The community program shall provide a redacted version of the written report to the public for inspection upon written request.

(6) When the abuse or mistreatment investigation and protective services report is conducted by a community program as the Authority's designee, the protective services investigation may be disclosed pursuant to this rule either by the community program or the Authority.

Stat. Auth.: ORS 179.040 & 413.042, 414.715 & 430.731

Stats. Implemented: ORS 413.032, 430.735-430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11

## 943-045-0340

### Prohibition Against Retaliation

(1) A community facility, community program, or individual shall not retaliate against any individual who reports suspected abuse or mistreatment in good faith, including the adult.

(2) Any community facility, community program, or individual that retaliates against any individual because of a report of suspected abuse or mistreatment shall be liable, according to ORS 430.755, in a private action to that individual for actual damages and, in addition, a civil penalty up to \$1,000, notwithstanding any other remedy provided by law.

(3) Any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse or mistreatment. For purposes of this sub-section, "adverse action" means any action taken by a community facil-

ity, community program, or individual involved in a report against the individual making the report or against the adult because of the report and includes but is not limited to:

(a) Discharge or transfer from the community facility, except for clinical reasons;

(b) Termination of employment;

(c) Demotion or reduction in remuneration for services; or

(d) Restriction or prohibition of access to the community facility or its residents.

(4) Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Stat. Auth.: ORS 179.040 & 413.042, 414.715 & 430.731

Stats. Implemented: ORS 413.032, 430.735-430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11

## 943-045-0350

### Immunity of Individuals Making Reports in Good Faith

(1) Any individual who makes a good faith report and who had reasonable grounds for making the report shall have immunity from civil liability with respect to having made the report.

(2) The reporter shall have the same immunity in any judicial proceeding resulting from the report as may be available in that proceeding.

(3) An individual who has personal knowledge that an employee or former employee of the adult was found to have committed abuse is immune from civil liability for the disclosure to a prospective employer of the employee of known facts concerning the abuse.

Stat. Auth.: ORS 179.040 & 413.042, 414.715 & 430.731

Stats. Implemented: ORS 413.032, 430.735-430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11

## 943-045-0360

### Authority Investigation of Alleged Abuse or Mistreatment

(1) If determined necessary or appropriate, the Authority may conduct an investigation rather than allow the community program to investigate the alleged abuse or mistreatment or in addition to the investigation by the community program. Under such circumstances, the community program must receive authorization from the Authority before conducting any separate investigation.

(2) The community program shall make all records necessary for the investigation available to the Authority for inspection and copying. The community facilities and community programs must provide the Authority access to employees, the adult, and the premises for investigation purposes.

Stat. Auth.: ORS 179.040 & 413.042, 414.715 & 430.731

Stats. Implemented: ORS 413.032, 430.735-430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11

## 943-045-0370

### County Multidisciplinary Teams

(1) The community program must participate in its county Multidisciplinary Team (MDT) to coordinate and collaborate on protective services for the abuse of adults with developmental disabilities or mental illness or both.

(2) All confidential information protected by state and federal law that is shared or obtained by MDT members in the exercise of their duties on the MDT is confidential and may not be further disclosed except as permitted by law.

(3) The community program or OIT shall provide an annual report to the MDT reporting the number of investigated and substantiated allegations of abuse of adults and the number referred to law enforcement in the county.

Stat. Auth.: ORS 179.040 & 413.042, 414.715 & 430.731

Stats. Implemented: ORS 413.032, 430.735-430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11

\*\*\*\*\*

## Oregon Health Authority, Addictions and Mental Health Division: Mental Health Services Chapter 309

**Rule Caption:** Mental Health Services For Homeless Individuals.

**Adm. Order No.:** MHS 9-2011(Temp)

**Filed with Sec. of State:** 11-22-2011

**Certified to be Effective:** 11-22-11 thru 5-18-12

**Notice Publication Date:**



# ADMINISTRATIVE RULES

**Rules Adopted:** 309-032-0301, 309-032-0311, 309-032-0321, 309-032-0331, 309-032-0341, 309-032-0351

**Rules Suspended:** 309-032-0175, 309-032-0180, 309-032-0185, 309-032-0190, 309-032-0195, 309-032-0200, 309-032-0205, 309-032-0210

**Subject:** The Addictions and Mental Health Division (AMH) is revising these rules in order that they conform to federal requirements and accurately reflect AMH practices.

**Rules Coordinator:** Nola Russell—(503) 945-7652

## 309-032-0301

### Purpose and Scope

These rules prescribe the standards for community-based programs that serve individuals with a serious mental illness experiencing homelessness under the Projects for Assistance in Transition from Homelessness (PATH) program.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 430.610 – 430.695

Hist.: MHS 7-2011, f. & cert. ef. 9-26-11; MHS 9-2011(Temp), f. & cert. ef. 11-22-11 thru 5-18-12

## 309-032-0311

### Definitions

(1) “Co-Occurring Disorders” (COD) means the existence of at least one diagnosis of a substance use disorder and one diagnosis of a serious mental illness.

(2) “Community Mental Health Program” (CMHP) means an entity that is responsible for planning and delivery of services for individuals with substance use or mental illness diagnoses, operated in a specific geographic area of the state under an intergovernmental agreement or a direct contract with the Addictions and Mental Health Division (AMH).

(3) “Division” means the Addictions and Mental Health Division of the Oregon Health Authority (OHA).

(4) “Eligible Individual” means an individual who, as defined in these rules:

- (a) Is homeless or at imminent risk of becoming homeless and
- (b) Who has, or is reasonably assumed to have, a serious mental illness.
- (c) The individual may also have a co-occurring substance use disorder.

(5) “Enrolled” means an eligible individual who:

- (a) Receives services supported at least partially with PATH funds and
- (b) Has an individual service record that indicates enrollment in the PATH program.

(6) “Homeless Individual” means an individual who:

- (a) Lacks housing without regard to whether the individual is a member of a family and whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations; or
- (b) Is a resident in transitional housing that carries time limits.

(7) “Individual” means an individual potentially eligible for or who has been enrolled to receive services described in these rules.

(8) “Individual Service and Support Plan” (ISSP) means a comprehensive plan for services and supports provided to or coordinated for an eligible individual that is reflective of the intended outcomes of service.

(9) “Imminent Risk of Homelessness” means that an individual is:

- (a) Living in a doubled-up living arrangement where the individual’s name is not on the lease;
- (b) Living in a condemned building without a place to move;
- (c) In arrears in their rent or utility payments;
- (d) Subject to a potential eviction notice without a place to move; or
- (e) Being discharged from a health care or criminal justice institution without a place to live.

(10) “Individual Service Record” means the written or electronic documentation regarding an enrolled individual that summarizes the services and supports provided from point of entry to service conclusion.

(11) “Literally Homeless Individual” means an individual who lacks housing without regard to whether the individual is a member of a family, including an individual whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations.

(12) “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.

(13) “Outreach” means the process of bringing individuals into treatment who do not access traditional services.

(14) “Projects for Assistance in Transition from Homelessness” (PATH) means the Formula Grants, 42 U.S.C. 290cc-21 to 290-cc-35.

(15) “Qualified Mental Health Professional” (QMHP) means any person who meets one of the following minimum qualifications as authorized by the LMHA or designee:

- (a) A Licensed Medical Practitioner;
- (b) A graduate degree in psychology, social work, or recreational, art or music therapy;
- (c) A graduate degree in a behavioral science field;
- (d) A bachelor’s degree in occupational therapy and licensed by the State or Oregon; or
- (e) A bachelor’s degree in nursing and licensed by the State of Oregon.

(16) “Secretary” means the Secretary of the U.S. Department of Health and Human Services.

(17) “Serious Mental Illness” means a psychiatric condition experienced by an individual who is 18 years of age or older and who is:

- (a) Diagnosed by a QMHP as suffering from a serious mental disorder as defined in Oregon Revised Statutes (ORS) 426.495 which includes, but is not limited to conditions such as schizophrenia, affective disorder, paranoid disorder, and other disorders which manifest psychotic symptoms that are not solely a result of a developmental disability, epilepsy, drug abuse or alcoholism; and which continue for more than one year, or
- (b) Is impaired to an extent which substantially limits the individual’s consistent ability to function in one or more of the following areas:

- (A) Independent attendance to the home environment including shelter needs, personal hygiene, nutritional needs and home maintenance;
- (B) Independent and appropriate negotiation within the community such as utilizing community resources for shopping, recreation, transportation and other needs;
- (C) Establishment and maintenance of supportive relationships; or
- (D) Maintained employment sufficient to meet personal living expenses or engagement in other age appropriate activities.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 430.610 – 430.695

Hist.: MHS 7-2011, f. & cert. ef. 9-26-11; MHS 9-2011(Temp), f. & cert. ef. 11-22-11 thru 5-18-12

## 309-032-0321

### Eligible Services

(1) Effective outreach to engage people in the following array of services:

- (a) Identification of individuals in need;
- (b) Screening for symptoms of serious mental illness;
- (c) Development of rapport with the individual;
- (d) Offering support while assisting with immediate and basic needs;
- (e) Referral to appropriate resources; or
- (f) Distribution of information including but not limited to:
  - (A) Flyers and other written information;
  - (B) Public service announcements; or
  - (C) Other indirect methods of contact.

(2) Methods of active outreach including but not limited to face-to-face interaction with literally homeless people in streets, shelters, under bridges and in other non-traditional settings, in order to seek out eligible individuals.

(3) Methods of in-reach, including but not limited to placing outreach staff in a service site frequented by homeless people, such as a shelter or community resource center, where direct, face to face interactions occur, in order to allow homeless individuals to seek out outreach workers.

- (4) Screening and diagnosis.
- (5) Habilitation and rehabilitation services.
- (6) Community mental health services.
- (7) Alcohol or drug treatment services.
- (8) Staff training, including the training of those who work in shelters, mental health clinics, substance abuse programs, and other sites where homeless individuals require services.

(9) Case management including the following.

# ADMINISTRATIVE RULES

(a) Preparing a plan for the provision of community mental health services to the eligible individual and reviewing the plan not less than once every three months;

(b) Assistance in obtaining and coordinating social and maintenance services for the eligible individual, including services related to daily living activities, personal financial planning, transportation, and housing services;

(c) Assistance to the eligible individual in obtaining income support services including housing assistance, food stamps and supplemental security income benefits;

(d) Referring the eligible individual for such other services as may be appropriate and

(e) Providing representative payee services in accordance with section 1631(a)(2) of the Social Security Act 42 U.S.C. 1383(a)(2) if the eligible individual is receiving aid under title XVI of such act [42 U.S.C. 1381 et seq. and if the applicant is designated by the Secretary to provide such services;

(10) Supportive and supervisory services in residential settings;

(11) Housing services, which shall not exceed twenty percent of all total PATH expenses and which may include:

(a) Minor renovation, expansion and repair of housing;

(b) Planning of housing;

(c) Technical assistance in applying for housing assistance;

(d) Improving the coordination of housing services;

(e) Security deposits;

(f) The costs associated with matching eligible individuals with appropriate housing situations; or

(g) One time rental payments to prevent eviction; and

(12) Referrals to other appropriate services or agencies, for those determined ineligible for other PATH services.

(13) Other appropriate services as determined by the Secretary.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 430.610 – 430.695

Hist.: MHS 7-2011, f. & cert. ef. 9-26-11; MHS 9-2011(Temp), f. & cert. ef. 11-22-11 thru 5-18-12

## 309-032-0331

### Staff Qualifications and Training Standards

(1) Staff delivering case management and outreach services to individuals shall have demonstrated ability to:

(a) Identify individuals who appear to be seriously mentally ill;

(b) Identify service goals and objectives and incorporate them into an ISSP; and

(c) Refer the individuals for services offered by other agencies.

(2) All staff delivering PATH services shall have training, knowledge and skills suitable to provide the services described in these rules.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 430.610 – 430.695

Hist.: MHS 7-2011, f. & cert. ef. 9-26-11; MHS 9-2011(Temp), f. & cert. ef. 11-22-11 thru 5-18-12

## 309-032-0341

### Rights of Eligible Individuals

(1) In addition to all applicable statutory and constitutional rights, every eligible individual receiving services has the right to:

(a) Choose from available services and supports;

(b) Be treated with dignity and respect;

(c) Have all services explained, including expected outcomes and possible risks;

(d) Confidentiality and the right to consent to disclosure in accordance with ORS 107.154, 179.505, 192.515 and 42 CFR Part 2 and 45 CFR Part 205.50;

(e) Give informed consent to services in writing prior to the start of services, except in a medical emergency or as otherwise permitted by law;

(f) Inspect their Individual Service Record in accordance with ORS 179.505;

(g) Not participate in experimentation;

(h) Receive medications specific to the individual's diagnosed clinical needs;

(i) Receive prior notice of service conclusion or transfer, unless the circumstances necessitating service conclusion or transfer pose a threat to health or safety;

(j) Be free from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;

(k) Have religious freedom;

(l) Be informed at the start of services and periodically thereafter of the rights guaranteed by these rules;

(m) 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;

(n) Have family involvement in service planning and delivery;

(o) Make a declaration for mental health treatment, when legally an adult;

(p) File grievances, including appealing decisions resulting from the grievance; and

(q) Exercise all rights described in this rule without any form of reprisal or punishment.

(2) The provider will give to the individual and if applicable, to the guardian, a document that describes the preceding individual rights.

(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 will be explained and

(c) Individual rights will be posted in writing in a common area.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 430.610 – 430.695

Hist.: MHS 7-2011, f. & cert. ef. 9-26-11; MHS 9-2011(Temp), f. & cert. ef. 11-22-11 thru 5-18-12

## 309-032-0351

### Enrollment and Record Requirements

(1) An individual's eligibility shall be determined and documented at the earliest possible date.

(2) A record shall be maintained for each enrolled individual receiving services under this rule. The record shall contain the following:

(a) An enrollment form which includes:

(A) The individual's name and PATH enrollment date;

(B) A list or description of the criteria determining the individual's PATH eligibility; and

(C) The individual's PATH services discharge date.

(b) A plan defining the enrolled individual's goals and service objectives including one or more of the following:

(A) Accessing community mental health services for the eligible individual, which includes reviewing the plan not less than once every three months;

(B) Accessing and coordinating needed services for the eligible individual, as detailed in these rules.

(C) Accessing income and income support services, including housing assistance, food stamps, and supplemental security income; and

(D) Referral to other appropriate services.

(c) Progress notes that provide an on-going account of contacts with enrolled individual, a description of services delivered, and progress toward the enrolled individual's service plan goals; and

(d) A termination summary describing reasons for the enrolled individual no longer being involved in service.

(3) A record shall be maintained for individuals served but not yet enrolled under the provisions of these rules. The record shall contain:

(a) A description of the potentially eligible individual, which may include but not be limited to:

(A) A physical description of the individual;

(B) The location where the individual was served; and

(C) A description of the individual's personal belongings.

(b) A preliminary assessment of the potentially eligible individual's needs based on available information; and

(c) A record of where and when contacts with the potentially eligible individual were made and the outcome of those contacts.

(4) Records shall be confidential in accordance with ORS 179.505, 45 CFR Part 2 and OAR 032-1535 pertaining to individuals' records.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 430.610 – 430.695

Hist.: MHS 7-2011, f. & cert. ef. 9-26-11; MHS 9-2011(Temp), f. & cert. ef. 11-22-11 thru 5-18-12

\*\*\*\*\*

**Rule Caption:** Residential Treatment Facilities For Mentally or Emotionally Disturbed Persons.

**Adm. Order No.:** MHS 10-2011(Temp)

**Filed with Sec. of State:** 12-5-2011

**Certified to be Effective:** 12-5-11 thru 5-31-12

**Notice Publication Date:**

**Rules Amended:** 309-035-0100, 309-035-0105, 309-035-0250, 309-035-0260

# ADMINISTRATIVE RULES

**Subject:** These rules prescribe standards by which the Addictions and Mental Health Division of the Oregon Health Authority approves residential treatment homes and facilities for adults with mental or emotional disorders.

**Rules Coordinator:** Nola Russell—(503) 945-7652

## 309-035-0100

### Purpose and Scope

(1) Purpose. These rules prescribe standards by which the Addictions and Mental Health Division of the Oregon Health Authority approves residential treatment facilities for adults with mental or emotional disorders. The standards promote the well-being, health and recovery of adults with mental or emotional disorders through the availability of a wide range of residential service options. They prescribe how services will be provided in safe, secure and homelike environments that recognize the dignity, individuality and right to self-determination of each resident.

(2) Scope. These rules apply to residential treatment facilities for six to 15 residents and to residential treatment facilities serving 16 or more residents. Where standards differ based on the number of residents in a facility, the rules prescribe different requirements.

Stat. Auth.: ORS 413.042 & 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 10-2011(Temp), f. & cert. ef. 12-5-11 thru 5-31-12

## 309-035-0105

### Definitions

As used in these rules the following definitions apply:

(1) "Abuse" includes but is not limited to:

(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury;

(d) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program, or provider, or other caregiver and the adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the adult;

(e) Neglect that leads to physical harm through withholding of services necessary to maintain health and well being;

(f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the individual.

(2) "Administrator" means the person designated by the licensee as responsible for the daily operation and maintenance of the facility.

(3) "Adult" means an individual 18 years of age or older.

(4) "Aid to Physical Functioning" means any special equipment ordered for a resident by a Licensed Medical Professional (LMP) or other qualified health care professional which maintains or enhances the resident's physical functioning.

(5) "Applicant" means the person(s) or entity, including the Division, who owns or maintains and operates the facility and is applying for the license.

(6) "Approved" means authorized or allowed by the Division.

(7) "Authority" means the Oregon Health Authority.

(8) "Building Code" means the Oregon Structural Specialty Code adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(9) "Care" means services such as supervision; protection; assistance with activities of daily living such as bathing, dressing, grooming or eating; management of money; transportation; recreation; and the providing of room and board.

(10) "Caregiver" means an employee, program staff, provider or volunteer of a licensed Residential Treatment Facility (RTF).

(11) "Community Mental Health Program (CMHP)" means the organization of all or a portion of services for persons with mental or emotional disorders, 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.

(12) "Contract" means a formal written agreement between the community mental health program, Oregon Health Plan contractor or the Division and a Residential Treatment Facility (RTF) owner. (13) "Crisis-

Respite Services" means the provision of services to individuals for up to 30 days. Individuals receiving crisis-respite services are RTF residents.

(14) "DSM" means the "Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)," published by the American Psychiatric Association.

(15) "Deputy Director" means the Deputy Director of the Addictions and Mental Health Division of the Oregon Health Authority.

(16) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(17) "Direct Care Staff Person" means an employee responsible for providing services to residents.

(18) "Emergency Admission" means an admission to an RTF made on an urgent basis due to the pressing service needs of the individual.

(19) "Employee" means a person who is employed by a licensed Residential Treatment Facility (RTF), who receives wages, a salary, or is otherwise paid by the RTF for providing the service. The term also includes employees of other providers delivering direct services to clients of RTFs.

(20) "Evacuation Capability" means the ability of occupants, including residents and staff as a group, to either evacuate the building or relocate from a point of occupancy to a point of safety as defined in the Oregon Structural Specialty Code. The category of evacuation capability is determined by documented evacuation drill times or scores on National Fire Protective Association (NFPA) 101A 2000 edition worksheets. There are three categories of evacuation capability:

(a) Impractical (SR-2): A group, even with staff assistance, that cannot reliably move to a point of safety in a timely manner, determined by an evacuation capability score of five or greater or with evacuation drill times in excess of 13 minutes.

(b) Slow (SR-1): A group that can move to a point of safety in a timely manner, determined by an evacuation capability score greater than 1.5 and less than five or with evacuation drill times over three minutes but not in excess of 13 minutes.

(c) Prompt: A group with an evacuation capability score of 1.5 or less or equivalent to that of the general population or with evacuation drill times of three minutes or less. The Division is authorized to determine evacuation capability for RTFs in accordance with the NFPA 101A 2000 edition. Facilities that are determined to be "Prompt" may be used in Group R occupancies classified by the building official, in accordance with the building code.

(21) "Facility" means one or more buildings and adjacent grounds on contiguous properties that are used in the operation of a Residential Treatment Facility.

(22) "Fire Code" means the Oregon Fire Code as adopted by the State of Oregon Fire Marshal.

(23) "Individual" means any person being considered for or receiving residential and other services regulated by these rules.

(24) "Licensed Medical Professional (LMP)" means a person who meets the following minimum qualifications as documented by the Local Mental Health Authority (LMHA) or designee:

(a) Holds at least one of the following educational degrees and valid licenses:

(A) Physician licensed to practice in the State of Oregon;

(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

(b) Whose training, experience and competence demonstrate the ability to conduct a Comprehensive Mental Health Assessment and provide medication management.

(25) "Licensee" means the person(s) or entity legally responsible for the operation of the facility to which the Division has issued a license.

(26) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties who choose to operate a CMHP or MHO; or, if the county declines to operate or contract for all or part of a CMHP or MHO, the board of directors of a public or private corporation which contracts with the Division to operate a CMHP or MHO for that county.

(27) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any person.

(28) "Mental or Emotional Disorder" means a primary Axis I or Axis II DSM diagnosis, other than mental retardation or a substance abuse disorder that limits an individual's ability to perform activities of daily living.

(29) "Mental Health Assessment" means a determination by a Qualified Mental Health Professional (QMHP) of the client's need for mental health services. It involves collection and assessment of data pertinent to the client's mental health history and current mental health status obtained



## ADMINISTRATIVE RULES

through interview, observation, testing, and review of previous treatment records. It concludes with determination of a DSM diagnosis or other justification of priority for mental health services, or a written statement that the person is not in need of community mental health services.

(30) "Mental Health Organization (MHO)" means an approved organization that provides most mental health services through a capitated payment mechanism under the Oregon Health Plan. MHOs may be fully capitated health plans, community mental health programs, private mental health organizations or combinations thereof.

(31) "Mistreatment" means the following behaviors, displayed by an employee, program staff, provider or volunteer of an RTF when directed toward an individual:

(a) "Abandonment" means desertion or willful forsaking when the desertion or forsaking results in harm or places the individual at a risk of serious harm.

(b) "Financial Exploitation" means:

(A) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an individual.

(B) Alarming an individual by conveying a threat to wrongfully take or appropriate money or property of the individual if the individual would reasonably believe that the threat conveyed would be carried out.

(C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an individual.

(D) Failing to use the income or assets of an individual effectively for the support and maintenance of the individual. "Effectively" means use of income or assets for the benefit of the individual.

(c) "Involuntary Restriction" means the involuntary restriction of an individual for the convenience of a caregiver or to discipline the individual. Involuntary restriction may include but is not limited to placing restrictions on an individual's freedom of movement by restriction to his or her room or a specific area, or restriction from access to ordinarily accessible areas of the facility, residence or program, unless agreed to by the treatment plan. Restriction may be permitted on an emergency or short term basis when an individual's presence would pose a risk to health or safety to the individual or others.

(d) "Neglect" means active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an individual that creates a significant risk of harm to an individual or results in significant mental injury to an individual. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the individual.

(e) "Verbal Mistreatment" means threatening significant physical harm or emotional harm to an individual through the use of:

(A) Derogatory in inappropriate names, insults, verbal assaults, profanity or ridicule.

(B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(C) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of an individual.

(D) For purposes of this definition, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an individual or within their hearing distance of sight, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard.

(E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress or fear.

(f) "Wrongful Restraint" means:

(A) A wrongful use of a physical or chemical restraint excluding an act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730.

(B) Wrongful restraint does not include physical emergency restraint to prevent immediate injury to an individual who is in danger of physically harming himself or herself or others, provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.

(32) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions that are delegated by a registered nurse to a person other than a licensed nurse, which are governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(33) "Owner" means the person(s) or entity, including the Division, that is legally responsible for the operation of the facility.

(34) "P.R.N. (pro re nata) Medications and Treatments" means those medications and treatments which have been ordered to be given as needed.

(35) "Program" means the Residential Treatment Facility and may refer to the owner, staff and/or services as applicable to the context.

(36) "Program Staff" means an employee or person who, by contract with an RTF, provides a service and who has the applicable competencies, qualifications, and certification, required by the Integrated Services and Supports Rule (ISSR), OAR 309-032-1500 through 309-032-1565 to provide the service.

(37) "Progress Notes" means the notations in the resident record documenting significant information concerning the resident and summarizing progress made relevant to the objectives outlined in the residential service plan.

(38) "Protection" means the necessary actions taken by the program to prevent abuse, mistreatment, or exploitation of the residents, to prevent self-destructive acts, and to safeguard residents, property and funds.

(39) "Provider" means a qualified individual or an organizational entity operated by or contractually affiliated with a community mental health program, or contracted directly with the Division for the direct delivery of mental health services and supports to adults receiving residential and supportive services in an RTF.

(40) "Resident" means any adult residing in a facility who receives services on a 24-hour basis, except as excluded under ORS 443.400.

(41) "Residential Service Plan" means an individualized, written plan outlining the care and treatment to be provided to a resident in or through the facility based upon an individual assessment of care and treatment needs. The residential service plan may be a section or subcomponent of the individual's overall mental health treatment plan when the RTF is operated by a mental health service agency that provides other services to the resident.

(42) "Residential Treatment Facility (RTF)" means a facility that is operated to provide services on a 24-hour basis for six or more residents.

(43) "Restraints" means any chemical or physical methods or devices that are intended to restrict or inhibit the movement, functioning, or behavior of a resident.

(44) "Seclusion" means placing an individual in a locked room. A locked room includes a room with any type of door locking device, such as a key lock, spring lock, bolt lock, foot pressure lock, or physically holding the door shut.

(45) "Secure Residential Treatment Facility (SRTF)" means any Residential Treatment Facility, or portion thereof, that restricts a resident's exit from the facility or its grounds through the use of approved locking devices on resident exit doors, gates or other closures. Such locking devices will be installed in accordance with Building Code requirements.

(46) "Services" means the care and treatment provided to residents as part of the Residential Treatment Facility plan.

(47) "Supervision" means the daily observation, and monitoring of residents by direct care staff or oversight of staff by the administrator or administrator's designee, as applicable to the context.

(48) "Termination of Residency" means the time at which the resident ceases to live in the RTF, and includes the transfer of the resident to another facility, but does not include absences from the facility for the purpose of taking a planned vacation, visiting family or friends, or receiving time-limited medical or psychiatric treatment.

(49) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities consistent with ORS 443.400(12).

(50) "Volunteer" means a person who provides a service or who takes part in a service provided to individuals receiving supportive services in an RTF or other provider, and who is not a paid employee of the RTF or other provider. The services must be non-clinical unless the person has the required credentials to provide a clinical service.

Stat. Auth.: ORS 413.042 & 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 6-2007(Temp), f. & cert. ef. 5-25-07 thru 11-21-07; MHS 13-2007, f. & cert. ef. 8-31-07; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 10-2011(Temp), f. & cert. ef. 12-5-11 thru 5-31-12

### 309-035-0250

#### Purpose, Scope and Statutory Authority

(1) Purpose. These rules prescribe standards by which the Addictions and Mental Health Division of the Oregon Health Authority approves resi-

# ADMINISTRATIVE RULES

dential treatment homes for adults with mental or emotional disorders. The standards promote the well-being, health and recovery of adults with mental or emotional disorders through the availability of a wide range of residential service options. They prescribe how services will be provided in safe, secure and homelike environments that recognize the dignity, individuality and right to self-determination of each resident.

(2) Scope. These rules apply to residential treatment homes for five or fewer residents.

Stat. Auth.: ORS 413.042 & 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; MHS 10-2011(Temp), f. & cert. ef. 12-5-11 thru 5-31-12

## 309-035-0260

### Definitions

As used in these rules the following definitions apply:

(1) "Abuse" includes but is not limited to:

(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury;

(d) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program, or provider, or other caregiver and the adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the adult;

(e) Neglect that leads to physical harm through withholding of services necessary to maintain health and well being;

(f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the individual.

(2) "Administrator" means the person designated by the licensee as responsible for the daily operation and maintenance of the Residential Treatment Home (RTH).

(3) "Adult" means an individual 18 years of age or older.

(4) "Aid to Physical Functioning" means any special equipment ordered for a resident by a Licensed Medical Professional or other qualified health care professional which maintains or enhances the resident's physical functioning.

(5) "Applicant" means the person(s) or entity that owns the business and is applying for the license.

(6) "Approved" means authorized or allowed by the Department.

(7) "Authority" means the Oregon Health Authority.

(8) "Building Code" means the state building code as defined in ORS 455.010 and includes the Oregon Structural Specialty Code, One and Two Family Dwelling Code and other specialty codes adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(9) "Care" means services such as supervision; protection; assistance with activities of daily living such as bathing, dressing, grooming, or eating; management of money; transportation; recreation; and the providing of room and board.

(10) "Caregiver" means an employee, program staff, provider or volunteer of a licensed Residential Treatment Facility (RTF), Residential Treatment Home (RTH) or Adult Foster Home (AFH).

(11) "Community Mental Health Program (CMHP)" means the organization of all or a portion of services for persons with mental or emotional disorders, and 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.

(12) "Contract" means a formal written agreement between the community mental health program, Mental Health Organization or the Addictions and Mental Health Division and a Residential Treatment Home (RTH) owner.

(13) "Crisis-Respite Services" means the provision of services to individuals for up to 30 days. Individuals receiving crisis-respite services are RTH residents.

(14) "DSM" means the "Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)" published by the American Psychiatric Association.

(15) "Direct Care Staff Person" means an employee responsible for providing services to residents.

(16) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(17) "Electrical Code" means the Uniform Building and Fire Codes adopted on October 1, 2004 by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(18) "Emergency Admission" means an admission to an RTH made on an urgent basis due to the pressing service needs of the individual.

(19) "Employee" means a person who is employed by a licensed Residential Treatment Home (RTH) who receives wages, a salary, or is otherwise paid by the RTH for providing the service. The term also includes employees of other providers delivering direct services to clients of RTHs.

(20) "Evacuation Capability" means the ability of occupants, including residents and staff as a group, to either evacuate the building or relocate from a point of occupancy to a point of safety as defined in the Oregon Structural Specialty Code. The category of evacuation capability is determined by documented evacuation drill times or scores on National Fire Protective Association (NFPA) 101A 2000 edition worksheets. There are three categories of evacuation capability:

(a) Impractical (SR- 2): A group, even with staff assistance, that cannot reliably move to a point of safety in a timely manner, determined by an evacuation capability score of five or greater or with evacuation drill times in excess of 13 minutes.

(b) Slow (SR- 1 for more than 16 residents) and (SR-4 for 6 to 16 residents): A group that can move to a point of safety in a timely manner, determined by an evacuation capability score greater than 1.5 and less than five or with evacuation drill times over three minutes but not in excess of 13 minutes. SR-3 occupancies are those homes with five or fewer occupants having evacuation capabilities of impractical or slow with assistance.

(c) Prompt: A group with an evacuation capability score of 1.5 or less or equivalent to that of the general population or with evacuation drill times of three minutes or less. The Division shall determine evacuation capability for RTH's in accordance with the National Fire Protection Association (NFPA) 101A 2000 edition. Facilities that are determined to be "Prompt" may be used in Group R occupancies classified by the building official, in accordance with the building code.

(21) "Fire Code" means the Oregon Fire Code as adopted by the Office of State Fire Marshal and as amended by local jurisdictions.

(22) "Home" means the building and grounds where the Residential Treatment Home program is operated.

(23) "Individual" means any person being considered for or receiving residential and other services regulated by these rules.

(24) "Licensed Medical Professional (LMP)" means a person who meets the following minimum qualifications as documented by the Local Mental Health Authority (LMHA) or designee:

(a) Holds at least one of the following educational degrees and valid licenses:

(A) Physician licensed to practice in the State of Oregon;

(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

(b) Whose training, experience, and competence demonstrate the ability to conduct a Comprehensive Mental Health Assessment and provide medication management.

(25) "Licensee" means the person or entity legally responsible for the operation of the RTH to which the Division has issued a license.

(26) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties who choose to operate a CMHP or MHO; or, if the county declines to operate or contract for all or part of a CMHP or MHO, the board of directors of a public or private corporation which contracts with the Division to operate a CMHP or MHO for that county.

(27) "Mechanical Code" means the Oregon Mechanical Specialty Code adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(28) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any person.

(29) "Mental or Emotional Disorder" means a primary Axis I or Axis II DSM diagnosis, other than mental retardation or a substance abuse disorder that limits an individual's ability to perform activities of daily living.

(30) "Mental Health Assessment" means a determination by a Qualified Mental Health Professional of the client's need for mental health services. It involves collection and assessment of data pertinent to the client's mental health history and current mental health status obtained through interview, observation, testing, and review of previous treatment records. It concludes with determination of a DSM diagnosis or other jus-

## ADMINISTRATIVE RULES

tification of priority for mental health services, or a written statement that the person is not in need of community mental health services.

(31) "Mental Health Organization (MHO)" means an approved organization that provides most mental health services through a capitated payment mechanism under the Oregon Health Plan. MHOs may be fully capitated health plans, community mental health programs, private mental health organizations or combinations thereof.

(32) "Mistreatment" means the following behaviors, displayed by an employee, program staff, provider or volunteer of an RTH when directed toward an individual:

(a) "Abandonment" means desertion or willful forsaking when the desertion or forsaking results in harm or places the individual at a risk of serious harm.

(b) "Financial exploitation" means:

(A) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an individual.

(BI) Alarming an individual by conveying a threat to wrongfully take or appropriate money or property of the individual if the individual would reasonably believe that the threat conveyed would be carried out.

(C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an individual.

(D) Failing to use the income or assets of an individual effectively for the support and maintenance of the individual. "Effectively" means use of income or assets for the benefit of the individual.

(c) "Involuntary Restriction" means the involuntary restriction of an individual for the convenience of a caregiver or to discipline the individual. Involuntary restriction may include but is not limited to placing restrictions on an individual's freedom of movement by restriction to his or her room or a specific area, or restriction from access to ordinarily accessible areas of the facility, residence or program, unless agreed to by the treatment plan. Restriction may be permitted on an emergency or short term basis when an individual's presence would pose a risk to health or safety to the individual or others.

(d) "Neglect" means active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an individual that creates a significant risk of harm to an individual or results in significant mental injury to an individual. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the individual.

(e) "Verbal Mistreatment" means threatening significant physical harm or emotional harm to an individual through the use of:

(A) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule.

(B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(C) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of an individual.

(D) For purposes of this definition, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an individual or within their hearing distance or sight, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard.

(E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.

(f) "Wrongful Restraint" means:

(A) A wrongful use of a physical or chemical restraint excluding an act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730.

(B) Wrongful restraint does not include physical emergency restraint to prevent immediate injury to an individual who is in danger of physically harming himself or herself or others, provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.

(33) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions that are delegated by a registered nurse to a person other than a licensed nurse, which are governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(34) "Owner" means the person or entity including the Division that is legally responsible for the operation of the facility.

(35) "Plumbing Code" means the Oregon Plumbing Specialty Code adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(36) "PR Nn. (pro re nata) Medications and Treatments" means those medications and treatments that have been ordered to be given as needed.

(37) "Program" means the Residential Treatment Home and may refer to the owner, staff, or services as applicable to the context.

(38) "Program staff" means an employee or person who, by contract with an RTH, provides a service and who has the applicable competencies, qualifications, and certification, required by the Integrated Services and Supports Rule (ISSR) (OAR 309-032-1500 to 309-032-1565) to provide the service.

(39) "Progress Notes" means the notations in the resident record documenting significant information concerning the resident and summarizing progress made relevant to the objectives outlined in the residential service plan.

(40) "Protection" means the necessary actions taken by the program to prevent abuse, mistreatment, or exploitation of the residents, to prevent self-destructive acts, and to safeguard residents, property, and funds.

(41) "Provider" means a qualified individual or an organizational entity operated by or contractually affiliated with a community mental health program, or contracted directly with the Division for the direct delivery of mental health services and supports to adults receiving residential and supportive services in an RTH.

(42) "Qualified Health Care Professional" means a health care professional licensed to practice in the state of Oregon who is approved to perform certain health care tasks referenced in the relevant section of these rules consistent with the scope of practice specified by the licensing board for the profession. In accordance with the referenced health care task, the qualified health care professional may include a physician, a physician's assistant, a nurse practitioner, a registered nurse, or a pharmacist.

(43) "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 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 group therapy within the scope of his or her practice.

(44) "Resident" means any adult residing in the RTH who receives services on a 24-hour basis, except as excluded under ORS 443.400(3).

(45) "Residential Service Plan" means an individualized, written plan outlining the care and treatment to be provided to a resident in or through the RTH based upon an individual assessment of care and treatment needs. The residential service plan may be a section or subcomponent of the individual's overall mental health treatment plan when the RTH is operated by a mental health service agency that provides other services to the resident.

(46) "Residential Treatment Home (RTH)" means a home that is operated to provide services on a 24-hour basis for five or fewer residents.

(47) "Restraints" means any chemical or physical methods or devices that are intended to restrict or inhibit the movement, functioning, or behavior of a resident.

(48) "Seclusion" means placing an individual in a locked room. A locked room includes a room with any type of door locking device, such as a key lock, spring lock, bolt lock, foot pressure lock, or physically holding the door shut.

(49) "Secure Residential Treatment Facility" means any residential treatment facility, or portion thereof, that restricts a resident's exit from the facility or its grounds through the use of approved locking devices on resident exit doors, gates or other closures.

(50) "Services" means the care and treatment provided to residents as part of the RTH program.

(51) "Supervision" means the daily observation, and monitoring of residents by direct care staff or oversight of staff by the administrator or administrator's designee, as applicable to the context.



# ADMINISTRATIVE RULES

(52) "Termination of Residency" means the time at which the resident ceases to live in the RTH and includes the transfer of the resident to another facility, but does not include absences from the RTH for the purpose of taking a planned vacation, visiting family or friends, or receiving time-limited medical or psychiatric treatment.

(53) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities consistent with ORS 443.400(12).

(54) "Volunteer" means a person who provides a service or who takes part in a service provided to individuals receiving supportive services in an RTH or other provider, and who is not a paid employee of the RTH or other provider. The services must be non-clinical unless the person has the required credentials to provide a clinical service.

Stat. Auth.: ORS 413.042 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.875, 443.991

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; MHS 6-2007(Temp), f. & cert. ef. 5-25-07 thru 11-21-07; MHS 13-2007, f. & cert. ef. 8-31-07; MHS 10-2011(Temp), f. & cert. ef. 12-5-11 thru 5-31-12

\*\*\*\*\*

**Rule Caption:** Adult Foster Homes.

**Adm. Order No.:** MHS 11-2011(Temp)

**Filed with Sec. of State:** 12-5-2011

**Certified to be Effective:** 12-5-11 thru 5-31-12

**Notice Publication Date:**

**Rules Amended:** 309-040-0300, 309-040-0305

**Subject:** These rules prescribe standards and procedures for the provision of care and services to residents with mental illness in the Addictions and Mental Health Division of the Oregon Health Authority adult foster homes, as a condition for licensure and payment.

**Rules Coordinator:** Nola Russell—(503) 945-7652

## 309-040-0300

### Purpose and Scope

(1) Purpose. These rules prescribe the standards and procedures for the provision of care and services to residents with mental illness in the Addictions and Mental Health Division of the Oregon Health Authority (Authority) adult foster homes as a condition for licensure and payment. The care and services are designed to promote the resident's right to independence, choice and decision making while providing a safe, secure, homelike environment. The resident's needs shall be addressed in a manner, which enables the resident to function at the highest level of independence possible.

(2) Scope. These rules apply to adult foster homes for five or fewer residents.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0000, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 11-2011(Temp), f. & cert. ef. 12-5-11 thru 5-31-12

## 309-040-0305

### Definitions

As used in these rules the following definitions apply:

(1) "Abuse" includes but is not limited to:

(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury;

(d) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program, or provider, or other caregiver and the adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the adult;

(e) Neglect that leads to physical harm through withholding of services necessary to maintain health and well being;

(f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the adult.

(2) "Abuse Investigation and Protective Services" means an investigation and any subsequent services or supports necessary to prevent further abuse as required by ORS 430.745 to 430.765 and OAR 407-045-0000 through 407-045-0980, or any other rules established by the Authority

applicable to allegations of abuse of residents of an Adult Foster Home licensed by the Division.

(3) "Activities of Daily Living (ADL)" are those individual skills necessary for a resident's continued well being including eating and nutrition, dressing, personal hygiene, mobility, and toileting.

(4) "Administration of Medication" means administration of medicine or a medical treatment to a resident as prescribed by a Licensed Medical Practitioner.

(5) "Adult Foster Home (AFH)" means any home licensed by the Addictions and Mental Health Division of the Oregon Health Authority in which residential care is provided to five or fewer adults who are not related to the provider by blood or marriage as described in ORS 443.705 through 443.825. For the purpose of these rules, if an adult family member receives care, he or she must be included as one of the residents within the total license capacity of the home. A home or person that advertises, including word-of-mouth advertising, to provide room, board, and care and services for adults, is deemed to be an Adult Foster Home. For the purpose of these rules, an Adult Foster Home does not include facilities referenced in 443.715(1)(2)(3)(4).

(6) "Applicant" means any person or entity that makes an application for a license that is also the owner of the business.

(7) "Assessment" means an evaluation of a resident and the resident's level of function completed by a case manager and provides the basis for the development of the resident's Personal Care Plan.

(8) "Authority" means the Oregon Health Authority.

(9) "Authorized Department Representative" means an employee of the Addictions and Mental Health Division or the designee of the local Community Mental Health Program.

(10) "Behavioral Interventions" means those interventions that will modify the resident's behavior or the resident's environment.

(11) "Bill of Rights" means civil, legal or human rights afforded to Adult Foster Home residents, which are in accord with those rights afforded to all other U.S. citizens, including but not limited to those rights delineated in the Adult Foster Home Bill of Rights as described in OAR 309-040-0390(7).

(12) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation and assignments to Unlicensed Persons according to the statutes and rule of the Oregon State Board of Nursing, chapter 851, division 47, ORS 678.010 to 678.445.

(13) "Care" means the provision of but is not limited to services of room, board, services and assistance with activities of daily living, such as assistance with bathing, dressing, grooming, eating, money management, recreational activities, and medication management. Care also means services that promote maximum resident independence and enhance quality of life.

(14) "Case Management" means identified services provided by qualified persons to residents by local, regional or state allied agencies or other service providers. Case management includes advocating for the resident's treatment needs, providing assistance in obtaining entitlements based on mental or emotional disability, accessing housing or residential programs, coordinating services including mental health treatment, educational or vocational activities, and arranging alternatives to inpatient hospital services.

(15) "Case Manager" means a person employed by a local, regional, or state allied agency approved by the Division to provide case management services. In accordance with OAR 309-032-0545(2)(g-j), Standards for Adult Mental Health Services, when a resident resides in a Adult Foster Home, the case manager shall assist in development of the Personal Care Plan. Additionally, the case manager must evaluate the appropriateness of services in relation to the consumer's assessed need and review the Personal Care Plan every 180 days.

(16) "Community Mental Health Program (CMHP)" means the organization of all services for persons with mental or emotional disturbances, drug abuse problems, 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.

(17) "Compensation" means payments made by or on behalf of a resident to a provider in exchange for room and board, care and services, including services described in the resident's Personal Care Plan.

(18) "Complaint Investigation" means an investigation of any allegation that a provider has taken action, which is perceived as contrary to law, rule, or policy but does not meet the criteria for an abuse investigation.

## ADMINISTRATIVE RULES

(19) "Condition" means a provision attached to a new or existing license, which limits or restricts the scope of the license or imposes additional requirements on the licensee.

(20) "Contested Case Hearing" means an arbitrated hearing resulting in a directed or recommended action. The hearing is held at the request of the provider or the Division in response to an action, sanction, or notice of finding issued by the Division that would result in the loss of license of the provider or other sanctions that would adversely affect the license of the provider. The hearing group is composed of:

- (a) The provider and if the provider chooses, the provider's attorney;
- (b) The Division as represented by the Attorney General's Office; and
- (c) The Office of Administration Hearings Administrative Law Judge.

(21) "Contract" means a written agreement between a provider and the Division to provide room and board, care and services for compensation for residents of a licensed Adult Foster Home.

(22) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.

(23) "Criminal History Check (CHC)" means the Oregon Criminal History Check and when required, a National Criminal History check and or a State-Specific Criminal History check, and the processes and procedures required by the rules OAR 943-007-0000 through 943-007-0500 Criminal History Check.

(24) "Day Care" means care and services in an Adult Foster Home for a person who is not a resident of the Adult Foster Home. Children under the age of five living in the Adult Foster Home are included in the licensed capacity of the home.

(25) "Declaration for Mental Health Treatment" means a document that states the resident's preferences or instructions regarding mental health treatment as defined by ORS 127.700 through 127.737.

(26) "Director" means the Director of the Oregon Health Authority or that person's designee.

(27) "Discharge Summary" means a document that describes the conclusion of the planned course of services described in the resident's individualized personal care plan, regardless of outcome or attainment of goals described in the resident's individualized personal care plan. In addition, the discharge summary addresses resident's monies, financial assets and monies, medication and personal belongings at time of discharge.

(28) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(29) "Employee" means a person who is employed by a licensed Adult Foster Home (AFH), who receives wages, a salary, or is otherwise paid by the AFH for providing the service. The term also includes employees of other providers delivering direct services to clients of AFHs.

(30) "Exempt Area" means a county agency that provides similar programs for licensing and inspection of Adult Foster Homes which the Director finds equal to or superior to the requirements of ORS 443.705 to 443.825 and which has entered into an agreement with the Authority to license, inspect, and collect fees according to the provisions of 443.705 to 443.825.

(31) "Family Member" for the purposes of these rules, means a husband or wife, natural parent, child, sibling, adopted child, domestic partner, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(32) "Home" means the Adult Foster Home (AFH).

(33) "Homelike Environment" means an Adult Foster Home setting, which promotes the dignity, safety, independence, security, health and comfort of residents through the provision of personalized care and services to encourage independence, choice, and decision making of the residents.

(34) "House Rules" means those written standards governing house activities developed by the provider and approved by the Authority or designee. These standards must not conflict with the Adult Foster Home Bill of Rights.

(35) "Incident Report" means a written description and account of any occurrence including but not limited to, any injury, accident, acts of physical aggression, use of physical restraints, medication error, any unusual incident involving a resident or the home and/or providers.

(36) "Informed Consent for Services" means that the services to be provided by the Adult Foster Home provider to the person have been explained to the person and guardian, if applicable, and explained in a manner that they may comprehend.

(37) "Initial Personal Care Plan (IPCP)" means a written document developed for a resident within 24 hours of admission to the home. The document must address the care and services to be provided for the resident during the first 30 days or less until the Personal Care Plan can be devel-

oped. At a minimum the IPCP must contain goals that address the following: Immediate health care support needs, medication management issues, safety and supervision needs, activities of daily living that the resident needs assistance with completing as well as any pertinent information as required by the case manager or their designee at the time of the admission. The provider must develop an Initial Personal Care Plan (IPCP) within 24 hours of admission to the Adult Foster Home.

(38) "Level One Adult Foster Home" means an Adult Foster Home licensed by the Division to provide care and services to individuals with severe and persistent mental illness, who may also have limited medical conditions.

(39) "License" means a document issued by the Authority to applicants who are determined by the Authority or designee to be in substantial compliance with these rules.

(40) "Licensed Medical Practitioner (LMP)" means any person who meets the following minimum qualifications as documented by the CMHP or designee and holds at least one of the following educational degrees and a valid license:

- (a) Physician licensed to practice in the State of Oregon; or
- (b) Nurse practitioner licensed to practice in the State of Oregon.

(41) "Licensee" means the person or entity to whom a license is issued and whose name(s) is on the license.

(42) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties who choose to operate a community mental health program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health program, the board of directors of a public or private corporation which directly contracts with the Authority to operate a CMHP for that county.

(43) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that the adult has suffered abuse, or that any person with whom the official contact while acting in an official capacity, has abused the adult. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under 40.225 to 40.295.

(44) "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.

(45) "Mental or Emotional Disturbances (MED)" means a disorder of emotional reactions, thought processes, or behavior that results in substantial subjective distress or impaired perceptions of reality or impaired ability to control or appreciate the consequences of the person's behavior and constitutes a substantial impairment of the person's social, educational, or economic functioning. Medical diagnosis and classification must be consistent with the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM-IV). As used in these rules, this term is functionally equivalent to "serious and persistent mental illness."

(46) "Mistreatment" means the following behaviors, displayed by an employee, program staff, provider or volunteer of an AFH when directed toward an individual:

(a) "Abandonment" means desertion or willful forsaking when the desertion or forsaking results in harm or places the individual at a risk of serious harm.

(b) "Financial Exploitation" means:

(A) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an individual.

(B) Alarming an individual by conveying a threat to wrongfully take or appropriate money or property of the individual if the individual would reasonably believe that the threat conveyed would be carried out.

(C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an individual.

(D) Failing to use the income or assets of an individual effectively for the support and maintenance of the individual. "Effectively" means use of income or assets for the benefit of the individual.

(c) "Involuntary Restriction" means the involuntary restriction of an individual for the convenience of a caregiver or to discipline the individual. Involuntary restriction may include but is not limited to placing restrictions on an individual's freedom of movement by restriction to his or her room or a specific area, or restriction from access to ordinarily accessible areas of the facility, residence or program, unless agreed to by the treatment plan. Restriction may be permitted on an emergency or short term basis when an

## ADMINISTRATIVE RULES

individual's presence would pose a risk to health or safety to the individual or others.

(d) "Neglect" means active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an individual that creates a significant risk of harm to an individual or results in significant mental injury to an individual. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the individual.

(e) "Verbal Mistreatment" means threatening significant physical harm or emotional harm to an individual through the use of:

(A) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule.

(B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(C) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of an individual.

(D) For purposes of this definition, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an individual or within their hearing distance or sight, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard.

(E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.

(f) "Wrongful Restraint" means:

(A) A wrongful use of a physical or chemical restraint excluding an act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730.

(B) Wrongful restraint does not include physical emergency restraint to prevent immediate injury to an individual who is in danger of physically harming himself or herself or others. Provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.

(47) "National Criminal History Check" means obtaining and reviewing criminal history outside Oregon's borders. This information may be obtained from the Federal Bureau of Investigation through the use of fingerprint cards and from other criminal information resources in accordance with OAR 943-007-0000 through 943-007-0500 Criminal History Check Rules.

(48) "Neglect" means an action or inaction that leads to physical harm through withholding of services necessary to maintain health and well-being. For purposes of this paragraph, "neglect" does not include a failure of the state or a community program to provide services due to a lack of funding available to provide the services.

(49) "Nurse Practitioner" means a registered nurse who has been certified by the board as qualified to practice in an expanded specialty role within the practice of nursing.

(50) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are delegated under specified conditions by a registered nurse to persons other than licensed nursing personnel, which is governed by ORS chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(51) "Nursing Delegation" means that a registered nurse authorizes an unlicensed person to perform special tasks of client/nursing care in selected situations and indicates that authorization in writing. The delegation process includes nursing assessment of a client in a specific situation, evaluation of the ability of the unlicensed person, teaching the task and ensuring supervision.

(52) "Personal Care Plan (PCP)" means a written plan outlining the care and services to be provided to a resident. The PCP is based upon the review of current assessment, referral, observations, resident preference, and input from members of the Personal Care Plan Team. The plan identifies the care, services, activities, and opportunities to be provided by the caregiver to promote the resident's recovery and independence.

(53) "Personal Care Plan Team (PCP Team)" means a group composed of the resident, the case manager or other designated representative CMHP representative, the provider and or resident manager, and others needed including the resident's legal guardian, representatives of all current service providers, advocates or others determined appropriate by the resident receiving services. If the resident is unable or does not express a pref-

erence, other appropriate team membership must be determined by the PCP team members.

(54) "Personal Care Services" means services prescribed by a physician or other designated person in accordance with the individual's plan of treatment. The services are provided by a caregiver that is qualified to provide the service and is not a member of the individual's immediate family. For those Adult Foster Home individuals who are Medicaid eligible, Personal Care services are funded under Medicaid.

(55) "Practice of Registered Nursing" means the application of knowledge drawn from broad in-depth education in the social and physical sciences in assessing, planning, ordering, giving, delegating, teaching and supervising care which promotes the person's optimum health and independence.

(56) "Program Staff" means an employee or person who, by contract with an AFH provides a service and who has the applicable competencies, qualifications, and certification, required by the Integrated Services and Supports Rule (ISSR) (OAR 309-032-1500 through 309-032-1565) to provide the service.

(57) "Provider" means a qualified individual or an organizational entity operated by or contractually affiliated with a community mental health program, or contracted directly with the Division for the direct delivery of mental health services and supports to adults receiving residential and supportive services in an AFH.

(58) "Psychiatric Security Review Board (PSRB)" means the Board consisting of five members appointed by the Governor and subject to confirmation by the Senate under Section Four, Article 111 of the Oregon Constitution and described in ORS 161.295 through 161.400 and OAR 309-032-1540.

(59) "Registered Nurse" means an individual licensed and registered to practice nursing by the State of Oregon Board of Nursing in accordance with ORS Chapter 678 and OAR Chapter 851.

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

(61) "Relative" means any person identified as family members.

(62) "Resident" means any person age 18 or older who receives room, board, care, and services in an Adult Foster Home.

(63) "Resident Manager" means an employee of the provider who is approved by the Division to live in the Adult Foster Home and is responsible for the care and services of residents on a day-to-day basis.

(64) "Residential Care" means the provision of room, board, and services that assist the resident in activities of daily living, such as assistance with bathing, dressing, grooming, eating, medication management, money management or recreation. Residential care includes 24 hour supervision; being aware of the residents' general whereabouts; monitoring the activities of the resident while on the premises of the Adult Foster Home to ensure their health, safety, and welfare; providing social and recreational activities; and assistance with money management as requested.

(65) "Residents' Bill of Rights" means residents of the Adult Foster Home have the following rights as defined in ORS 443.739. Each resident has a right to:

(a) Be treated as an adult, with respect and dignity;

(b) Be informed of all resident rights and all house rules;

(c) Be encouraged and assisted to exercise legal rights, including the right to vote;

(d) Be informed of the resident's medical condition and the right to consent to or refuse treatment;

(e) Receive appropriate care and services, and prompt medical care as needed;

(f) A safe and secure environment;

(g) Be free from mental and physical abuse;

(h) Be free from chemical or physical restraints except as ordered by a physician or other qualified practitioner;

(i) Complete privacy when receiving treatment or personal care;

(j) Associate and communicate privately with any person the resident chooses;

(k) Send and receive personal mail unopened;

(l) Participate in activities of social, religious and community groups;

(m) Have medical and personal information kept confidential;

(n) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space;



# ADMINISTRATIVE RULES

(o) Manage the resident's own money and financial affairs unless legally restricted;

(p) Be free from financial exploitation. The provider must not charge or ask for application fees or nonrefundable deposits and must not solicit, accept or receive money or property from a resident other than the amount agreed to for services;

(q) A written agreement regarding the services to be provided and the rate schedule to be charged. The provider must give 30 days' written notice before any change in the rates or the ownership of the home;

(r) Not to be transferred or moved out of the adult foster home without 30 days' advance written notice and an opportunity for a hearing. A provider may transfer or discharge a resident only for medical reasons including a medical emergency described in ORS 443.738(1)(a), or for the welfare of the resident or other residents, or for nonpayment;

(s) Be free of discrimination in regard to race, color, national origin, sexual orientation, disability, sex or religion;

(t) Make suggestions and complaints without fear of retaliation.

(66) "Respite Care" means the provision of room, board, care, and services in an Adult Foster Home for a period of up to 14 days. Respite care residents will be counted in the total licensed capacity of the home. Respite care is not crisis respite care.

(67) "Restraints" means any physical hold, device, or chemical substance, which restricts, or is meant to restrict, the movement or normal functioning of a resident.

(68) "Room and Board" means the provision of meals, a place to sleep, laundry and housekeeping.

(69) "Seclusion" means the involuntary confinement of an individual to a room or area where the person is physically prevented from leaving.

(70) "Self-Administration of Medication" means the act of a resident placing a medication in or on their own body. The resident identifies the medication and the times and manners of administration, and placed the medication internally or externally on their own body without assistance.

(71) "Self Preservation" in relation to fire and life safety means the ability of residents to respond to an alarm without additional cues and be able to reach a point of safety without assistance.

(72) "Services" means those activities which are intended to help the residents develop appropriate skills to increase or maintain their level of functioning and independence. Services include coordination and consultation with other service providers or entities to assure residents access to necessary medical care, treatment, and/or services identified in the resident's personal care plan.

(73) "Substitute Caregiver" means any person meeting the qualifications of a caregiver who provides care and services in an Adult Foster Home under the jurisdiction of the Authority in the absence of the provider or resident manager. A resident may not be a substitute caregiver.

(74) "Unusual Incident" means those incidents involving acts of physical aggression, serious illnesses or accidents, any injury or illness of a resident requiring a non-routine visit to a health care practitioner, suicide attempts, death of a resident, a fire requiring the services of a fire Department, or any incident requiring an abuse investigation.

(75) "Variance" means an exception from a regulation or provision of these rules, granted in writing by the Authority, upon written application from the provider.

(76) "Volunteer" means a person who provides a service or who takes part in a service provided to individuals receiving supportive services in an AFH or other provider, and who is not a paid employee of the AFH or other provider. The services must be non-clinical unless the person has the required credentials to provide a clinical service.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0005, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 6-2007(Temp), f. & cert. ef. 5-25-07 thru 11-21-07; MHS 13-2007, f. & cert. ef. 8-31-07; MHS 11-2011(Temp), f. & cert. ef. 12-5-11 thru 5-31-12

.....

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

**Rule Caption:** Managed Care Fully Capitated Health Plan and Physician Care Organization Pharmaceutical Drug List Requirements.

**Adm. Order No.:** DMAP 32-2011(Temp)

**Filed with Sec. of State:** 11-21-2011

**Certified to be Effective:** 11-21-11 thru 5-15-12

**Notice Publication Date:**

**Rules Amended:** 410-141-0070

**Subject:** The Oregon Health Plan (OHP or Managed Care) Program administrative rules govern Division of Medical Assistance Programs' (Division) payments for services provided to clients. The Division temporarily amended OAR 410-141-0070, Managed Care Fully Capitated Health Plan and Physician Care Organization Pharmaceutical Drug List Requirements, because a prior update inadvertently created some concerns with respect to how the division will address requests to exclude drugs from the capitation rate that were FDA approved to treat mental health diseases, but were not listed as a class 7 or 11, by First DataBank. This filing is to clarify and assist providers when addressing this issue in the future. This rule must be updated in time for providers to conform to the Division's requirements set forth in this rule.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

### 410-141-0070

#### Managed Care Fully Capitated Health Plan and Physician Care Organization Pharmaceutical Drug List Requirements

(1) Prescription drugs are a covered service based on the funded Condition/Treatment Pairs. Fully Capitated Health Plan (FCHP)'s and Physician Care Organization (PCO)'s shall pay for prescription drugs, except:

(a) As otherwise provided, mental health drugs that are in Class 7 & 11 (based on the National Drug Code (NDC) as submitted by the manufacturer to First Data Bank);

(b) Depakote, Lamictal and those drugs that the Division of Medical Assistance Programs (Division) specifically carved out from capitation according to sections (8) and (9) of this rule;

(c) Any applicable co-payments;

(d) For drugs covered under Medicare Part D when the client is fully dual eligible.

(2) FCHPs and PCOs may use a restrictive drug list as long as it allows access to other drug products not on the drug list through some process such as prior authorization (PA). The drug list must:

(a) Include (FDA) Federal Drug Administration- approved drug products for each therapeutic class sufficient to ensure the availability of covered drugs with minimal prior approval intervention by the provider of pharmaceutical services;

(b) Include at least one item in each therapeutic class of over-the-counter medications; and

(c) Be revised periodically to assure compliance with this requirement.

(3) FCHPs and PCOs shall provide their participating providers and their pharmacy subcontractor with:

(a) Their drug list and information about how to make non-drug listed requests;

(b) Updates made to their drug list within 30 days of a change that may include, but is not limited to:

(A) Addition of a new drug;

(B) Removal of a previously listed drug; and

(C) Generic substitution.

(4) If a drug cannot be approved within the 72-hour time requirement for prior authorization of drugs and the medical need for the drug is immediate, FCHPs and PCOs must provide (within 24 hours of receipt of the drug prior authorization request) for the dispensing of at least a 72-hour supply of a drug that requires prior authorization.

(5) FCHPs and PCOs shall authorize the provision of a drug requested by the Primary Care Physician (PCP) or referring provider, if the approved prescriber certifies medical necessity for the drug such as:

(a) The equivalent of the drug listed has been ineffective in treatment;

or

(b) The drug listed causes or is reasonably expected to cause adverse or harmful reactions to the Division member.

(6) Prescriptions for Physician Assisted Suicide under the Oregon Death with Dignity Act are excluded; payment is governed solely by OAR 410-121-0150.

(7) FCHPs and PCOs shall not authorize payment for any Drug Efficacy Study Implementation (DESI) Less Than Effective (LTE) drugs which have reached the FDA Notice of Opportunity for Hearing (NOOH) stage, as specified in OAR 410-121-0420 (DESI)(LTE) Drug List. The DESI LTE drug list is available at: [http://www.cms.hhs.gov/MedicaidDrugRebateProgram/12\\_LTEIRSDrugs.asp](http://www.cms.hhs.gov/MedicaidDrugRebateProgram/12_LTEIRSDrugs.asp)

# ADMINISTRATIVE RULES

(8) An FCHP or PCO may seek to add drugs to the list contained in section (1) of this rule by submitting a request to the Division no later than March 1 of any given contract year that contains all of the following information:

- (a) The name of the drug;
- (b) The FDA approved indications that identifies the drug may be used to treat a severe mental health condition; and,
- (c) The reason that the Division should consider this drug for carve out.

(9) Upon receipt of a request from an FCHP or PCO requesting a drug not be paid within the capitation rate of the FCHP or PCO, the Division shall exclude the drug from capitation rate for the following January contract cycle if the Division determines that the drug has an approved FDA indication for the treatment of a severe mental health condition such as major depressive, bi-polar or schizophrenic disorders.

(10) The Division will pay for a drug that is not included in the capitation rate pursuant to the Pharmaceutical Services Program rules (chapter 410, division 121). An FCHP or PCO may not reimburse providers for carved out drugs.

(11) FCHPs and PCOs shall submit quarterly utilization data, within 60 days of the date of service, as part of the Centers for Medicare and Medicaid Services (CMS) Medicaid Drug Rebate Program requirements pursuant to Section 2501 of the Affordable Care Act.

Stat. Auth.: ORS 413.042

Stats. Implemented: 414.065

Hist.: OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 57-2005, f. 10-25-05, cert. ef. 11-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; 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 32-2011(Temp), f. & cert. ef. 11-21-11 thru 5-15-12

\*\*\*\*\*

**Rule Caption:** Provider billing & retroactive reimbursement for visual materials for clients with primary Medicare coverage.

**Adm. Order No.:** DMAP 33-2011

**Filed with Sec. of State:** 12-5-2011

**Certified to be Effective:** 12-6-11

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

**Rules Amended:** 410-140-0080, 410-140-0260, 410-140-0400

**Subject:** The Visual Services program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. The Division's current sole optical services contractor is not a Medicare credentialed provider and cannot bill Medicare, therefore, the Division amended rules listed above to allow vision providers to bill and be reimbursed for visual materials (i.e., frames, lenses, specialty frames, and miscellaneous items) ordered from any visual materials supplier for Oregon Health Plan clients who receive services on a fee-for-service basis and have primary Medicare coverage. The revisions also allow providers to resubmit claims to the Division retroactively for 18-months, for dates of service beginning June 1, 2010.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-140-0080

### Medicare/Medicaid Assistance Program Claims

(1) When a client has both Medicare and coverage through the Division of Medical Assistance Programs (Division), optometrists and ophthalmologists must bill Medicare first for Medicare covered services. Refer to the Division's General Rules, Oregon Administrative Rules (OAR) 410-120-1210, Medical Assistance Benefit Packages and Delivery.

(2) When an Oregon Health Plan (OHP) client receives services on a fee-for-service basis under the Division's rules and has Medicare coverage:

(a) A provider may use any visual materials supplier to order visual materials (i.e., frames, lenses, specialty frames, and miscellaneous items); and

(b) The Division does not require payment authorization for Medicare-covered services. Refer to OAR 410-120-1320, Authorization of Payment.

(3) Effective only for dates of service between 6/1/2010 and 12/1/2011, a provider may resubmit a claim for visual materials from a visual materials supplier other than SWEEP Optical (as noted above), and receive appropriate reimbursement from the Division in accordance with OARs 410-120-1210, Medical Assistance Benefit Packages and Delivery, OAR 410-120-1300, Timely Submission of Claims, and 410-120-1340, Payment.

Stat. Auth.: ORS 413.042, 414.065

Stats. Implemented: ORS 414.025, 414.065, 414.075

Hist.: AFS 75-1989, f. & cert. ef. 12-15-89; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0190; HR 37-1992, f. & cert. ef. 12-18-92; HR 15-1994, f. & cert. ef. 3-1-94; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 65-2004, f. 9-13-04, cert. ef. 10-1-04; OMAP 22-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 33-2011, f. 12-5-11, cert. ef. 12-6-11

## 410-140-0260

### Purchase of Ophthalmic Materials

(1) The Division of Medical Assistance Programs (Division) contracts with SWEEP Optical Laboratories (also referred to herein as contractor) to buy materials (i.e., frames, lenses, specialty frames, and miscellaneous items), excluding contact lenses. Rates for materials are negotiated by the Oregon Department of Administrative Services. All frames, lenses and miscellaneous items filled into these frames are to be provided:

(a) Only by contractor, unless the client has primary Medicare coverage; or

(b) By any visual materials supplier when the client has primary Medicare coverage. See Oregon Administrative Rule (OAR) 410-140-0080; and

(c) It is the provider's responsibility to verify the client's eligibility prior to ordering vision materials. See OAR 410-140-0050 and refer to 410-120-1140 Verification of Eligibility.

(2) Contact lenses or glasses are limited to once every 24 months for eligible adults (see OAR 410-140-0050). Replacement of contact lenses is limited to a total of two contacts every 12 months (or the equivalent in disposable lenses), and does not require prior authorization (PA). See OAR 410-140-0160 for information on coverage of contact lenses.

(3) One pair of additional glasses is covered within 120 days following cataract surgery. When ordering glasses from contractor for post-cataract surgery, mark the appropriate box indicating surgery was performed within 120 days.

(4) The purchase of glasses for children (birth through age 20) is covered when it is documented in the physician/optometrist's clinical record as medically appropriate.

(5) Ophthalmic materials that are not covered include, but are not limited to the following:

- (a) Two pair of glasses in lieu of bifocals or trifocals in a single frame;
- (b) Hand-held, low vision aids;
- (c) Nonspectacle mounted aids;
- (d) Single lens spectacle mounted low vision aids;
- (e) Telescopic and other compound lens system, including distance vision telescopic, nearvision telescopes, and compound microscopic lens systems;

(f) Extra or spare pairs of glasses or contacts;

(g) Anti-reflective lens coating;

(h) U-V lens;

(i) Progressive and blended lenses;

(j) Bifocals and trifocals segments over 28mm including executive;

(k) Aniseikonia lenses;

(l) Sunglasses.

(6) Scratch Coating is included in the lens service. Providers cannot charge scratch coating to the Division, the Fully Capitated Health Plan or the client as a separate service.

(7) PA for materials provided by contractor:

(a) Materials that require PA must be medically necessary and include:

(A) Frames not included in the Division's contract with contractor. Providers should contact contractor for assistance with locating a frame to meet the client's need. (Contractor's frame catalog can be accessed at [www.sweepoptical.com](http://www.sweepoptical.com));

(i) May be purchased through contractor if there is an unusual circumstance or medical need that prevents the client from using any of the existing frames or lenses. For example: A client has an unusually large head size that requires a custom frame or a larger frame than provided in the contract. This does not mean that a client can select a frame that is not included in the contract because the provider's office does not carry the full selection of contract frames or that the client does not approve of the selection.

(ii) Frames not included in the contract may exceed the limit of the required 7-10 calendar-day turn-around time frame.

(B) Deluxe frames;

(C) Specialty lenses or lenses considered as "not otherwise classified" by HCPCS;

(b) The Division will send Notice of all approved PA requests to contractor, who will forward a copy of the PA approval and confirmation number to the requesting provider;

# ADMINISTRATIVE RULES

(c) After receiving a copy of the PA approval, the provider will submit the prescription to SWEEP Optical to be filled.

(8) PA for contact lenses – PA is required for adults (except for the treatment of injury or disease, including Keratoconus).

(9) Providers must maintain adequate documentation as outlined in OAR 410-120-1360, Requirements for Financial, Clinical and Other Records:

(a) Providers will provide contractor with specific, appropriate written documentation for materials ordered from contractor;

(b) Contractor is not responsible if the Division determines the documentation in the client's record does not allow for the service as directed by the limitations indicated in the administrative rules.

(10) The following services no longer require PA but are subject to strict limitations:

(a) Frames and lenses for adults age 21 and over are limited to once every 24 months. Glasses with a prescription that is equal to or less than +/- .25 diopters in both eyes are not covered;

(b) Replacement of frame fronts and temples for frames not included in the Division's contract with contractor (See Visual Services Supplemental Information for accessing frames catalog): Limited to frames that were not included in contract that were purchased with proper prior approval or when a client has a medical condition that requires the use of a specialty temple;

(c) Tints and Photochromic lenses: Limited to clients with documented albinism and pupillary defects. The most appropriate International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) code selected by a physician or optometrist will be included in appropriate documentation provided to contractor;

(d) Other medically necessary items for a contract frame (i.e., cable temples, head-strap frame), when a client has a medical condition that requires the use of a specialty temple, nose pieces, head strap frame. Appropriate documentation must be submitted to contractor by a physician or an optometrist;

(e) Nonprescription glasses: Limited to clients that do not require any correction in one eye and where there is blindness in one eye. The purpose of this exception is to offer maximum protection for the remaining functional eye. Appropriate documentation must be submitted to contractor by a physician or an optometrist;

(f) High Index Lenses:

(A) Power is +/- 10 or greater in any meridian in either eye; or

(B) Prism diopters are 10 or more diopters in either lens;

(g) Polycarb lenses are limited to the following populations:

(A) Children (birth through age 20);

(B) Clients with developmental disabilities; and

(C) Clients who are blind in one eye and need protection for the other eye, regardless of whether a vision correction is required.

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

Stat. Auth.: ORS 413.042, 414.065

Stats. Implemented: ORS 414.025, 414.065, 414.075

Hist.: AFS 55-1983, f. 11-15-83, ef. 12-1-83; AFS 75-1989, f. & cert. ef. 12-15-89, Renumbered from 461-018-0011; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0280; HR 37-1992, f. & cert. ef. 12-18-92; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; HR 15-1996(Temp), f. & cert. ef. 7-1-96; HR 26-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 24-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 11-2002, f. & cert. ef. 4-1-02; OMAP 56-2002, f. & cert. ef. 10-1-02; DMAP 21-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 44-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 33-2011, f. 12-5-11, cert. ef. 12-6-11

## 410-140-0400

### Contractor Services/Provider Ordering

(1) The Division of Medical Assistance Programs (Division) contracts with SWEEP Optical Laboratories (also referred to herein as contractor) to provide vision materials and supplies. Providers needing materials and supplies must order those directly from the contractor, except when the Oregon Health Plan client has primary Medicare coverage. See OAR 410-140-0080.

(2) Providers are responsible for:

(a) Verifying client eligibility prior to submitting an order to the contractor. Refer to OAR 410-120-1140 Verification of Eligibility; and

(b) Complying with contractor's order submission requirements, as outlined in the Visual Services Supplemental Information Guide found on this Division website: <http://www.dhs.state.or.us/policy/healthplan/guides/vision/main.html>;

(3) Contractor's responsibilities:

(a) Order specifications:

(A) The contractor must provide the order as specified by the ordering provider;

(B) The contractor must pay for postage via United States mail or United Parcel Service for all returned orders which are not to the specifications of the order or that are damaged in shipping;

(C) While the contractor will not accept initial orders via telephone, the contractor must accept telephone calls or faxed messages regarding orders that are not made to specifications;

(D) When the contractor is notified of an item to be returned due to the item not being made to specifications in the original order, the contractor must begin remaking the product as soon as they are notified, whether or not they have received the item being returned. (The ordering provider must return the original product to the contractor with a written explanation of the problem and indicate the date the provider contacted the contractor to remake the order.);

(b) Original order delivery:

(A) The contractor must deliver the original order of materials and supplies to the ordering provider within 7 calendar days of the date the order is received;

(B) If there is an unavoidable delay causing the need for more turn-around time, the contractor must:

(i) Notify the ordering provider of the delay within 2 days of receipt of the order;

(ii) Document the reason for delay and the date the ordering provider was notified; and

(iii) Deliver delayed orders within a "reasonable" time.

(4) Neither the Contractor nor the Division is responsible for expenses incurred due to "doctor's error" or "re-do's" (remake of materials or supplies not due to client's negligence).

(5) Contractor may use the date of order as the date of service (DOS) but may not bill the Division until the order has been completed and shipped.

(6) Contractor must bill the Division using Health Care Common Procedure Coding System (HCPC) Codes listed in the contract agreement. Payment will be at contracted rates. Refer to Supplemental Information, found on the Division website, for billing instructions.

(7) The contractor must include eyeglass cases with every frame. Cases need not be included in orders for only lenses, temples or frame fronts.

(8) Contractor will provide display frames to the ordering provider at a cost not to exceed the contract cost.

(9) Contractors will have unisex frame styles available, and will allow clients to choose any frame regardless of category listed (i.e. women may choose "Girls" frames).

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

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025, 414.065

Hist.: AFS 75-1989, f. & cert. ef. 12-15-89; HR 37-1992, f. & cert. ef. 12-18-92, Renumbered from 461-018-0300; HR 15-1994, f. & cert. ef. 3-1-94; HR 5-1995, f. & cert. ef. 3-1-95; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; OMAP 44-2001, f. 9-24-01 cert. ef. 10-1-01; OMAP 61-2005, f. 11-29-05, cert. ef. 12-1-05; DMAP 21-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 33-2011, f. 12-5-11, cert. ef. 12-6-11

\*\*\*\*\*

**Rule Caption:** Managed Care Disenrollment from Prepaid Health Plan.

**Adm. Order No.:** DMAP 34-2011(Temp)

**Filed with Sec. of State:** 12-9-2011

**Certified to be Effective:** 1-1-12 thru 6-28-12

**Notice Publication Date:**

**Rules Amended:** 410-141-0080

**Subject:** The Oregon Health Plan (OHP or Managed Care) Program administrative rules govern Division of Medical Assistance Programs' (Division) payments for services provided to clients. The Division temporarily amended OAR 410-141-0080 effective retroactively to September 1, 2011, to allow clients the option of a "client choice" to disenroll from a managed care plan, in accordance with new provisions added to and made part of ORS Chapter 414. This rule is also revised to incorporate the procedures stated in statute for a 500 plus transfer of members from one managed care plan to another due to change in contracting status, effective January 1, 2012, in accordance with new provisions added to and made part of ORS Chapter 414. The Division intends to permanently amend this rule.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-141-0080

### Managed Care Disenrollment from Prepaid Health Plans

(1) Division member requests for disenrollment:



## ADMINISTRATIVE RULES

(a) All Oregon Health Plan (OHP) Division member-initiated requests for disenrollment from a Prepaid Health Plan (PHP) must be initiated, orally or in writing, by the primary person in the benefit group enrolled with a PHP, where primary person and benefit group are defined in OAR 461-110-0110 and 461-110-0720, respectively. For Division members who are not able to request disenrollment on their own, the request may be initiated by the Division member's Representative;

(b) Primary person or Representative requests for disenrollment shall be honored:

(A) Without cause:

(i) After six months of Division member's enrollment. The effective date of disenrollment shall be the first of the month following the Department's approval of disenrollment;

(ii) Whenever a Division member's eligibility is redetermined by the Department of Human Services (Department) and the primary person requests disenrollment without cause. The effective date of disenrollment shall be the first of the month following the date that the Division member's eligibility is redetermined by the Department;

(iii) Effective retroactively on or after September 1, 2011 and in accordance with SB 201 and the Division's determination, Division members have the right to disenroll from a FCHP or PCO during their redetermination (enrollment period), or one additional time during their enrollment period based on the Division member's choice and with OHA approval.

(B) With cause:

(i) At any time;

(ii) Division members who disenroll from a Medicare Advantage plan shall also be disenrolled from the corresponding Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO). The effective date of disenrollment shall be the first of the month that the Division member's Medicare Advantage plan disenrollment is effective;

(iii) Division members who are receiving Medicare and who are enrolled in a FCHP or PCO that has a corresponding Medicare Advantage component may disenroll from the FCHP or PCO at any time if they also request disenrollment from the Medicare Advantage plan. The effective date of disenrollment from the FCHP or PCO shall be the first of the month following the date of request for disenrollment;

(iv) PHP does not, because of moral or religious objections, cover the service the Division member seeks;

(v) The Division member needs related services (for example a cesarean section and a tubal ligation) to be performed at the same time, not all related services are available within the network, and the Division members' Primary Care Provider or another Provider determines that receiving the services separately would subject the Division member to unnecessary risk; or

(vi) Other reasons, including but not limited to, poor quality of care, lack of access to services covered under the contract, or lack of access to Participating Providers experienced in dealing with the Division member's health care needs. Examples of sufficient cause include but are not limited to:

(I) The Division member moves out of the PHP's Service Area;

(II) The Division member is a Native American or Alaskan Native with Proof of Indian Heritage who wishes to obtain primary care services from his or her Indian Health Service facility, tribal health clinic/program or urban clinic and the Fee-For-Service (FFS) delivery system;

(III) Continuity of care that is not in conflict with any section of 410-141-0060 or this rule. Participation in the Oregon Health Plan, including managed care, does not guarantee that any Oregon Health Plan client has a right to continued care or treatment by a specific provider. A request for disenrollment based on continuity of care will be denied if the basis for this request is primarily for the convenience of an Oregon Health Plan client or a provider of a treatment, service or supply, including but not limited to a decision of a provider to participate or decline to participate in a PHP.

(IV) If 500 or more Division members choose to change plans in order to continue receiving care from a provider that is terminating their contractual relationship with a PHP;

(i) The member and all family (case) members will be transferred to the provider's new PHP.

(ii) The transfer will take effect when the provider's contract with their current PHP contractual relationship ends, or on a date approved by the Division;

(C) If the following conditions are met:

(i) The applicant is in the third trimester of her pregnancy and has just been determined eligible for OHP, or the OHP client has just been re-deter-

mined eligible and was not enrolled in a FCHP or PCO within the past 3 months; and

(ii) The new FCHP or PCO the Division member is enrolled with does not contract with the Division member's current OB Provider and the Division member wishes to continue obtaining maternity services from that Non-Participating OB Provider; and

(iii) The request to change FCHPs, PCOs or return to FFS is made prior to the date of delivery.

(c) In addition to the disenrollment constraints listed in (b), above, Division member disenrollment requests are subject to the following requirements:

(A) The Division member shall join another PHP, unless the Division member resides in a Service Area where enrollment is voluntary, or the Division member meets the exemptions to enrollment as stated in 410-141-0060(4);

(B) If the only PHP available in a mandatory Service Area is the PHP from which the Division member wishes to disenroll, the Division member may not disenroll without cause;

(C) The effective date of disenrollment shall be the end of the month in which disenrollment was requested unless retroactive disenrollment is approved by the Division;

(D) If the Department fails to make a disenrollment determination by the first day of the second month following the month in which the Division member files a request for disenrollment, the disenrollment is considered approved.

(2) Prepaid Health Plan requests for disenrollment:

(a) Causes for disenrollment:

(A) The Division may disenroll Division members for cause when requested by the PHP, subject to American with Disabilities Act requirements. Examples of cause include, but are not limited to the following:

(i) Missed appointments. The number of missed appointments is to be established by the Provider or PHP. The number must be the same as for commercial members or patients. The Provider must document they have attempted to ascertain the reasons for the missed appointments and to assist the Division member in receiving services. This rule does not apply to Medicare members who are enrolled in a FCHP's or PCO's Medicare Advantage plan;

(ii) Division member's behavior is disruptive, unruly, or abusive to the point that his/her continued enrollment in the PHP seriously impairs the PHP's ability to furnish services to either the Division member or other members, subject to the requirements in (2)(a)(B)(vii);

(iii) Division member commits or threatens an act of physical violence directed at a medical Provider or property, the Provider's staff, or other patients, or the PHP's staff to the point that his/her continued enrollment in the PHP seriously impairs the PHP's ability to furnish services to either this particular Division member or other Division members, subject to the requirements in (2)(a)(B)(vii);

(iv) Division member commits fraudulent or illegal acts such as: permitting use of his/her medical ID card by others, altering a prescription, theft or other criminal acts (other than those addressed in (2)(a)(A)(ii) or (iii)) committed in any Provider or PHP's premises. The PHP shall report any illegal acts to law enforcement authorities or to the office for Children, Adults and Families (CAF) Fraud Unit as appropriate;

(v) OHP clients who have been exempted from mandatory enrollment with a FCHP or PCO, due to the OHP client's eligibility through a hospital hold process and placed in the Adults/Couples category as required under 410-141-0060(4)(b)(F);

(vi) Division member fails to pay co-payment(s) for Covered Services as described in OAR 410-120-1230.

(B) Division members shall not be disenrolled solely for the following reasons:

(i) Because of a physical or mental disability;

(ii) Because of an adverse change in the Division member's health;

(iii) Because of the Division member's utilization of services, either excessive or lack thereof;

(iv) Because the Division member requests a hearing;

(v) Because the Division member has been diagnosed with End Stage Renal Disease (ESRD);

(vi) Because the Division member exercises his/her option to make decisions regarding his/her medical care with which the PHP disagrees;

(vii) Because of uncooperative or disruptive behavior, including but not limited to threats or acts of physical violence, resulting from the Division member's special needs (except when continued enrollment in the PHP seriously impairs the PHP's ability to furnish services to either this Division member or other members).

## ADMINISTRATIVE RULES

(C) Requests by the PHP for disenrollment of specific Division members shall be submitted in writing to their PHP Coordinator for approval. The PHP must document the reasons for the request, provide written evidence to support the basis for the request, and document that attempts at intervention were made as described below. The procedures cited below must be followed prior to requesting disenrollment of a Division member:

(i) There shall be notification from the Provider to the PHP at the time the problem is identified. The notification must describe the problem and allow time for appropriate intervention by the PHP. Such notification shall be documented in the Division member's Clinical Record. The PHP shall conduct Provider education regarding the need for early intervention and the services they can offer the Provider;

(ii) The PHP shall contact the Division member either verbally or in writing, depending on the severity of the problem, to inform the Division member of the problem that has been identified, and attempt to develop an agreement with the Division member regarding the issue(s). If contact is verbal, it shall be documented in the Division member's record. The PHP shall inform the Division member that his/her continued behavior may result in disenrollment from the PHP;

(iii) The PHP shall provide individual education, counseling, and/or other interventions with the Division member in a serious effort to resolve the problem;

(iv) The PHP shall contact the Division member's Department caseworker regarding the problem and, if needed, involve the caseworker and other appropriate agencies' caseworkers in the resolution, within the laws governing confidentiality;

(v) If the severity of the problem and intervention warrants, the PHP shall develop a care plan that details how the problem is going to be addressed and/or coordinate a case conference. Involvement of the Provider, caseworker, Division member, family, and other appropriate agencies is encouraged. If necessary, the PHP shall obtain an authorization for release of information from the Division member for the Providers and agencies in order to involve them in the resolution of the problem. If the release is verbal, it must be documented in the Division member's record;

(vi) Any additional information or assessments requested by the Division PHP Coordinator;

(vii) If the Division member's behavior is uncooperative or disruptive, including but not limited to threats or acts of physical violence, as the result of his/her special needs or disability, the PHP must also document each of the following:

(I) A written assessment of the relationship of the behavior to the special needs or disability of the individual and whether the individual's behavior poses a direct threat to the health or safety of others. Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures. In determining whether a Division member poses a direct threat to the health or safety of others, the PHP must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or best available objective evidence to ascertain the nature, duration and severity of the risk to the health or safety of others; the probability that potential injury to others will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk to others;

(II) A PHP-staffed interdisciplinary team review that includes a mental health professional or behavioral specialist or other health care professionals who have the appropriate clinical expertise in treating the Division member's condition to assess the behavior, the behavioral history, and previous history of efforts to manage behavior;

(III) If warranted, a clinical assessment of whether the behavior will respond to reasonable clinical or social interventions;

(IV) Documentation of any accommodations that have been attempted;

(V) Documentation of the PHP's rationale for concluding that the Division member's continued enrollment in the PHP seriously impairs the PHP's ability to furnish services to either this particular Division member or other members.

(viii) If a Primary Care Provider (PCP) terminates the Provider/patient relationship, the PHP shall attempt to locate another PCP on their panel who will accept the Division member as their patient. If needed, the PHP shall obtain an authorization for release of information from the Division member in order to share the information necessary for a new Provider to evaluate if they can treat the Division member. All terminations of Provider/patient relationships shall be according to the PHP's policies and must be consistent with PHP or PCP's policies for commercial members.

(D) Requests will be reviewed according to the following process:

(i) If there is sufficient documentation, the request will be evaluated by the PHP's Coordinator or a team of PHP Coordinators who may request additional information from Ombudsman Services, AMH or other agencies as needed; If the request involves the Division member's mental health condition or behaviors related to substance abuse, the PHP Coordinator should also confer with the OHP Coordinator in AMH;

(ii) If there is not sufficient documentation, the PHP Coordinator will notify the PHP within 2 business days of what additional documentation is required before the request can be considered;

(iii) The PHP Coordinators will review the request and notify the PHP of the decision within ten working days of receipt of sufficient documentation from the PHP. Written decisions, including reasons for denials, will be sent to the PHP within 15 working days from receipt of request and sufficient documentation from the PHP.

(E) If the request is approved the PHP Coordinator must send the Division member a letter within 14 days after the request was approved, with a copy to the PHP, the Division member's Department caseworker and Division's Health Management Unit (HMU). The letter must give the disenrollment date, the reason for disenrollment, and the notice of Division member's right to file a Complaint (as specified in 410-141-0260 through 410-141-0266) and to request an Administrative Hearing. If the Division member requests a hearing, the Division member will continue to be disenrolled until a hearing decision reversing that disenrollment has been sent to the Division member and the PHP:

(i) In cases where the Division member is also enrolled in the FCHP's or PCO's Medicare Advantage plan and the plan has received permission to disenroll the client, the FCHP or PCO will provide proof of the CMS approval to disenroll the client and the date of disenrollment shall be the date approved by CMS;

(ii) The disenrollment date is 30 days after the date of approval, except as provided in subsections (iii) and (iv) of this section:

(I) The PHP Coordinator will determine when enrollment in another PHP or with a PCM is appropriate. If appropriate, the PHP Coordinator will contact the Division member's Department caseworker to arrange enrollment. The Division may require the Division member and/or the benefit group to obtain services from FFS Providers or a PCM until such time as they can be enrolled in another PHP;

(II) When the disenrollment date has been determined, HMU will send a letter to the Division member with a copy to the Division member's Department caseworker and the PHP. The letter shall inform the Division member of the requirement to be enrolled in another PHP, if applicable.

(iii) If the PHP Coordinator approves a PHP's request for disenrollment because of the Division member's uncooperative or disruptive behavior, including threats or acts of physical violence directed at a medical Provider, the Provider's staff, or other patients, or because the Division member commits fraudulent or illegal acts as stated in 410-141-0080(2)(a), the following additional procedures shall apply:

(I) The Division member shall be disenrolled as of the date of the PHP's request for disenrollment;

(II) All Division members in the Division member's benefit group, as defined in OAR 461-110-0720, may be disenrolled if the PHP requests;

(III) At the time of enrollment into another PHP, the Division shall notify the new PHP that the Division member and/or benefit group were previously disenrolled from another PHP at that PHP's request.

(iv) If a Division member who has been disenrolled for cause is re-enrolled in the PHP, the PHP may request a disenrollment review by the PHP's PHP Coordinator. A Division member may not be disenrolled from the same PHP for a period of more than 12 months. If the Division member is re-enrolled after the 12-month period and is again disenrolled for cause, the disenrollment will be reviewed by the Department for further action.

(b) Other reasons for the PHP's requests for disenrollment include the following:

(A) If the Division member is enrolled in the FCHP or MHO on the same day the Division member is admitted to the hospital, the FCHP or MHO shall be responsible for said hospitalization. If the Division member is enrolled after the first day of the inpatient stay, the Division member shall be disenrolled, and the date of enrollment shall be the next available enrollment date following discharge from inpatient hospital services;

(B) The Division member has surgery scheduled at the time their enrollment is effective with the PHP, the Provider is not on the PHP's Provider panel, and the Division member wishes to have the services performed by that Provider;

(C) The Medicare member is enrolled in a Medicare Advantage plan and was receiving Hospice Services at the time of enrollment in the PHP;

# ADMINISTRATIVE RULES

(D) The Division member had End Stage Renal Disease at the time of enrollment in the PHP;

(E) Excluding the DCO, the PHP determines that the Division member has a third party insurer. If after contacting The Health Insurance Group, the disenrollment is not effective the following month, the PHP may contact HMU to request disenrollment;

(F) If a PHP has knowledge of a Division member's change of address, the PHP shall notify the Department. The Department will verify the address information and disenroll the Division member from the PHP, if the Division member no longer resides in the PHP's Service Area. Division members shall be disenrolled if out of the PHP's Service Area for more than three (3) months, unless previously arranged with the PHP. The effective date of disenrollment shall be the date specified by the Division and the Division will recoup the balance of that month's Capitation Payment from the PHP;

(G) The Division member is an inmate who is serving time for a criminal offense or confined involuntarily in a State or Federal prison, jail, detention facility, or other penal institution. This does not include Division members on probation, house arrest, living voluntarily in a facility after their case has been adjudicated, infants living with an inmate, or inmates who become inpatients. The PHP is responsible for identifying the Division members and providing sufficient proof of incarceration to HMU for review of the disenrollment request. The Division will approve requests for disenrollment from PHPs for Division members who have been incarcerated for at least fourteen (14) calendar days and are currently incarcerated. FCHPs are responsible for inpatient services only during the time a Division member was an inmate;

(H) The Division member is in a state psychiatric institution.

(3) The Division Initiated disenrollments:

(a) The Division may initiate and disenroll Division members as follows:

(A) If the Division determines that the Division member has sufficient third party resources such that health care and services may be cost effectively provided on a FFS basis, the Division may disenroll the Division member. The effective date of disenrollment shall be the end of the month in which the Division makes such a determination. The Division may specify a retroactive effective date of disenrollment if the Division member's third party coverage is through the PHP, or in other situations agreed to by the PHP and the Division;

(B) If the Division member moves out of the PHP's Service Area(s), the effective date of disenrollment shall be the date specified by the Division and the Division will recoup the balance of that month's Capitation Payment from the PHP;

(C) If the Division member is no longer eligible under the Oregon Health Plan Medicaid Demonstration Project or Children's Health Insurance Program, the effective date of disenrollment shall be the date specified by the Division;

(D) If the Division member dies, the effective date of disenrollment shall be through the date of death;

(E) When a non-Medicare contracting PHP is assumed by another PHP that is a Medicare Advantage plan, Division members with Medicare shall be disenrolled from the existing PHP. The effective date of disenrollment shall be the day prior to the month the new PHP assumes the existing PHP;

(F) If the Division determines that the PHP's Division member has enrolled with their Employer Sponsored Insurance (ESI) through FHIAP the effective date of the disenrollment shall be the Division member's effective date of coverage with FHIAP.

(b) Unless specified otherwise in these rules or in the Division notification of disenrollment to the PHP, all disenrollments are effective the end of the month after the request for disenrollment is approved by the Division;

(c) The Division shall inform the Division members of the disenrollment decision in writing, including the right to request an Administrative Hearing. OHP clients may request a Division hearing if they dispute a disenrollment decision by the Division;

(d) If the OHP client requests a hearing, the OHP client will continue to be disenrolled until a hearing decision reversing that disenrollment is sent the OHP client.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 33-1994, f. & cert. ef. 11-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 21-1996(Temp), f. & cert. ef. 11-1-96; HR 11-1997, f. 3-28-97, cert. ef. 4-1-97; HR 14-1997, f. & cert. ef. 7-1-97; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 49-1998(Temp), f. 12-31-98, cert. ef. 1-1-99 thru 6-30-99; Administrative correction 8-9-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 4-2003, f. 1-

31-03, cert. ef. 2-1-03; OMAP 24-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; 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 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 34-2011(Temp), f. 12-9-11, cert. ef. 1-1-12 thru 6-28-12

\*\*\*\*\*

**Rule Caption:** January '12 – Amend rules for clarity and consistency.

**Adm. Order No.:** DMAP 35-2011

**Filed with Sec. of State:** 12-13-2011

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

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

**Rules Amended:** 410-131-0040, 410-131-0080, 410-131-0100, 410-131-0120, 410-131-0160

**Rules Repealed:** 410-131-0060, 410-131-0140, 410-131-0180, 410-131-0200, 410-131-0270, 410-131-0275, 410-131-0280

**Subject:** The Occupational and Physical Therapy Services Program administrative rules govern Division payments for services to certain clients. The Division amended rules listed above to ensure clarity and consistency. As a continued effort to make administrative rules more efficient, the Division deleted OARs 410-131-0060, 410-131-0140, 410-131-0180, 410-131-0200, 410-131-0270, 410-131-0275, 410-131-0280, placing information in more appropriate rules being amended, or repeal entirely if information is not needed in rule.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-131-0040

### Foreword for Physical and Occupation Therapy

(1) The Division of Medical Assistance Programs (Division) Physical and Occupational Therapy (PT/OT) Services Program rules are designed to assist licensed physical and occupational therapists deliver health care services and prepare health claims for clients with medical assistance program coverage.

(2) Oregon Administrative Rules (OAR) 410-131-0040 through 410-131-0160:

(a) Apply to services delivered by home health agencies and by hospital-based therapists in the outpatient setting. Billing and reimbursement for therapy services delivered by home health agencies and hospital outpatient departments are to be in accordance with the rules in their respective provider guides; and

(b) Do not apply to services provided to hospital inpatients.

(3) The Division enrolls only the following types of providers as performing providers under the PT/OT program:

(a) A person licensed by the relevant State licensing authority to practice physical therapy; and

(b) A person licensed by the relevant State licensing authority to practice occupational therapy.

(4) The PT/OT program rules contain information on policy, prior authorization, and service coverage and limitations for some procedures. All Division 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 Oregon Health Services Commission's Prioritized List of Health Services is found in OAR 410-141-0520 and defines the services covered under the Division.

(6) The PT/OT provider must understand and follow all Division rules that are in effect on the date services are provided.

Stat. Auth.: ORS 413.042, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 8-1991, f. 1-25-91, cert. ef. 2-1-91; DMAP 35-2011, f. 12-13-11, cert. ef. 1-1-12

## 410-131-0080

### Therapy Plan of Care and Record Requirements

(1) A therapy plan of care is required for prior authorization (PA) for payment.

(2) The therapy plan of care must include:

(a) Client's name, diagnosis, type, amount, frequency and duration of the proposed therapy;

(b) Individualized, measurably objective short-term and/or long-term functional goals;

(c) Documented need for extended service, considering 60 minutes as the maximum length of a treatment session;



# ADMINISTRATIVE RULES

(d) Plan to address implementation of a home management program as appropriate, from the initiation of therapy forward;

(e) Dated signature of the therapist or the prescribing practitioner establishing the therapy plan of care; and

(f) Evidence of certification of the therapy plan of care by the prescribing practitioner.

(3) The therapy treatment plan and regimen will be taught to the client, family, foster parents, or caregiver during the therapy treatments. No extra treatments will be authorized for teaching.

(4) A therapy plan of care requires reauthorization every 30 days:

(a) The need for continuing therapy must be clearly stated; and

(b) Changes to the therapy plan of care, including duration and frequency of intervention, must be documented, signed and dated by the prescribing practitioner.

(5) Therapy Records must include:

(a) A written referral, including:

(A) The client's name;

(B) The ICD-9-CM diagnosis code; and

(C) Must specify the type of services, amount, and duration required.

(b) A copy of the signed therapy plan of care must be on file in the provider's therapy record prior to billing for services. The therapy plan of care must be reviewed and signed by the prescribing practitioner every 30 days.

(c) Documents, evaluations, re-evaluations and progress notes to support the therapy treatment plan and prescribing provider's written orders for changes in the therapy treatment plan;

(d) Modalities used on each date of service;

(e) Procedures performed and amount of time spent performing the procedures is documented and signed by the therapist; and

(f) Documentation of splint fabrication and time spent fabricating the splint.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 688.135, 414.065

Hist.: HR 8-1991, f. 1-25-91, cert. ef. 2-1-91; HR 19-1992, f. & cert. ef. 7-1-92; OMAP 18-1999, f. & cert. ef. 4-1-99; OMAP 32-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 41-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 39-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 35-2011, f. 12-13-11, cert. ef. 1-1-12

## 410-131-0100

### Maintenance

(1) Determination of when maintenance therapy is reached is made through comparison of written documentation of evaluation of the last several functional evaluations related to initial baseline measurements.

(2) Therapy becomes maintenance when any one of the following occur:

(a) The therapy plan of care goals and objectives are reached; or

(b) There is no progress toward the therapy plan of care goals and objectives; or

(c) The therapy plan of care does not require the skills of a therapist; or

(d) The client, family, foster parents, and/or caregiver have been taught and can carry out the therapy regimen and are responsible for the maintenance therapy.

(3) Maintenance therapy is not a reimbursable service.

(4) Re-evaluation to change the therapy plan of care and up to two treatments for brief retraining of the client, family, foster parents or caregiver are not considered maintenance therapy and are reimbursable.

(5) Providers must maintain adequate documentation as outlined in OAR 410-120-1360, Requirements for Financial, Clinical and Other Records.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065 & 688.135

Hist.: HR 8-1991, f. 1-25-91, cert. ef. 2-1-91; HR 19-1992, f. & cert. ef. 7-1-92; OMAP 18-1999, f. & cert. ef. 4-1-99; OMAP 32-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 41-2001, f. 9-24-01, cert. ef. 10-1-01; DMAP 35-2011, f. 12-13-11, cert. ef. 1-1-12

## 410-131-0120

### Limitations of Coverage and Payment

(1) Physical and occupational therapy (PT/OT) services are not covered under the Standard Benefit Package. See General Rules, 410-120-1210 for additional information.

(2) Oregon Health Plan (OHP) Plus clients shall be responsible for paying a co-payment for some services. This co-payment shall be paid directly to the provider. See OAR 410-120-1230, Client Co-payment, and Table 120-1230-1 for specific details.

(3) The provision of PT/OT evaluations and therapy services require a prescribing practitioner referral, and services must be supported by a ther-

apy plan of care signed and dated by the prescribing practitioner (see OAR 410-131-0080).

(4) PT/OT initial evaluations and re-evaluations do not require Prior Authorization (PA), but are limited to:

(a) Up to two initial evaluations in any 12-month period; and

(b) Up to four re-evaluation services in any 12-month period;

(5) Reimbursement is limited to the initial evaluation when both the initial evaluation and a re-evaluation are provided on the same day.

(6) All other occupational and physical therapy treatments require PA. See also OAR 410-131-0160 and Table 131-0160-1.

(7) Program Information – A licensed occupational or physical therapist, or a licensed occupational or physical therapy assistant under the supervision of a therapist, must be in constant attendance while therapy treatments are performed:

(a) Duration - Therapy treatments must not exceed one hour per day each for occupational and physical therapy;

(b) Modalities;

(A) Require PA;

(B) Up to two modalities may be authorized per day of treatment;

(C) Need to be billed in conjunction with a therapeutic procedure code; and

(D) Each individual supervised modality code may be reported only once for each client encounter. See Table 131-0160-1.

(c) Massage therapy is limited to two (2) units per day of treatment, and will only be authorized in conjunction with another therapeutic procedure or modality;

(8) Supplies and materials for the fabrication of splints must be billed at the acquisition cost, and reimbursement will not exceed the Division's maximum allowable in accordance with the physician fee schedule. Acquisition cost is purchase price plus shipping. Off-the-shelf splints, even when modified, are not included in this service;

(9) Services Not Covered – The following services are not covered:

(a) Services not medically appropriate;

(b) Services that are not paired with a funded diagnosis on the Health Services Commission's Prioritized List of Health Services adopted under OAR 410-141-0520;

(c) Work hardening;

(d) Back school/back education classes;

(e) Hippotherapy (e.g. horse or equine-assisted therapy);

(f) Services included in OAR 410-120-1200 Excluded Services Limitations;

(g) Durable medical equipment and medical supplies other than those splint supplies listed in Table 131-0120-1, OAR 410-131-0280; and

(h) Maintenance therapy (see OAR 410-131-0100).

(10) Physical capacity examinations are not a part of the PT/OT program, but may be reimbursed as Administrative Examinations when ordered by the local branch office. See OAR 410 Division 150 for information on Administrative examinations and report billing.

(11) Table 131-0120-1

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

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065 & 688.135

Hist.: HR 8-1991, f. 1-25-91, cert. ef. 2-1-91; HR 19-1992, f. & cert. ef. 7-1-92; HR 28-1993, f. & cert. ef. 10-1-93; HR 43-1994, f. 12-30-94, cert. ef. 1-1-95; HR 2-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 8-1998, f. & cert. ef. 3-2-98; OMAP 18-1999, f. & cert. ef. 4-1-99; OMAP 32-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 53-2002, f. & cert. ef. 10-1-02; OMAP 64-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 59-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 15-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 35-2011, f. 12-13-11, cert. ef. 1-1-12

## 410-131-0160

### Prior Authorization for Payment

(1) Most Oregon Health Plan (OHP) clients have prepaid health services, contracted for by the Oregon Health Authority (Authority) through enrollment in a Prepaid Health Plan (PHP). Client's who are not enrolled in a PHP receive services on an "open card" or "fee-for-service" (FFS) basis.

(2) The provider must verify whether a PHP or the Division of Medical Assistance Programs (Division) is responsible for reimbursement. Refer to OAR 410-120-1140 Verification of Eligibility.

(3) If a client is enrolled in a PHP there may be prior authorization (PA) requirements for some services that are provided through the PHP. Providers must comply with the PHP's PA requirements or other policies necessary for reimbursement from the PHP before providing services to any OHP client enrolled in a PHP. The physical or occupational therapy (PT/OT) provider needs to contact the client's PHP for specific instructions.

(4) If a client receives services on a FFS basis, the Division or their contractor may require a PA for certain covered services or items before the service can be provided or before payment will be made. A PT/OT provider assumes full financial risk in providing services to a FFS client prior to

# ADMINISTRATIVE RULES

receiving authorization, or in providing services that are not in compliance with Oregon Administrative Rules (OARs). See OAR 410-120-1320 Authorization of Payment, this rule and Table 131-0160-1 Services Require Payment Authorization:

(a) PT/OT initial evaluations and re-evaluations do not require a prior authorization (see OAR 410-131-0120);

(b) To ensure reimbursement for continuation of PT/OT services and procedures beyond the initial evaluation, the PT/OT provider must request a PA within five working days following initiation of services:

(A) PA requests dated within five working days of initiation of services may be approved retroactively to include services provided within five days prior to the date of the PA request;

(B) PA requests dated beyond five working days of initiating services will not be authorized retroactive, and if authorized will be effective the date of the PA request. The division recognizes the facsimile or postmark as the PA date of request;

(c) All PA requests require a therapy plan of care (see OAR 410-131-0080); and

(d) A PA is not required for Medicare-covered PT/OT services provided to dual-eligible clients, Medicare clients who are also Medicaid-eligible.

(5) If the service or item is subject to prior authorization, the PT/OT provider must follow and comply with PA requirements in these rules, and the General Rules, including but not limited to:

(a) The service is adequately documented (see OAR 410-120-1360 Requirements for Financial, Clinical and Other Records). Providers must maintain documentation in the provider's files to adequately determine the type, medical appropriateness, or quantity of services provided;

(b) The services provided are consistent with the information submitted when authorization was requested;

(c) The services billed are consistent with those services provided;

(d) The services are provided within the timeframe specified on the authorization of payment document; and

(e) Includes the PA number on all claims for occupational and physical therapy services that require PA, or the claim will be denied.

(6) Table 131-0160-1

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: PWC 706, f. 1-2-75, ef. 2-1-75; PWC 760, f. 9-5-75, ef. 10-1-75; AFS 46-1982, 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 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 98-1982, f. 10-25-82, ef. 11-1-82; AFS 14-1984(Temp), f. & ef. 4-2-84; AFS 22-1984(Temp), f. & ef. 5-1-84; AFS 40-1984, f. 9-18-84, ef. 10-1-84; AFS 63-1987, f. 12-30-87, ef. 4-1-88; HR 8-1991, f. 1-25-91, cert. ef. 2-1-91, Renumbered from 461-023-0015; HR 19-1992, f. & cert. ef. 7-1-92; HR 28-1993, f. & cert. ef. 10-1-93; HR 43-1994, f. 12-30-94, cert. ef. 1-1-95; HR 2-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 8-1998, f. & cert. ef. 3-2-98; OMAP 18-1999, f. & cert. ef. 4-1-99; OMAP 32-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 41-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 53-2002, f. & cert. ef. 10-1-02; OMAP 92-2003, f. 12-30-03 cert. ef. 1-1-04; OMAP 59-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 35-2011, f. 12-13-11, cert. ef. 1-1-12

.....

**Rule Caption:** Budget/provider rate changes, definition revision, OHP hospital benefits, fraud & abuse, PHI, permanently amend temps.

**Adm. Order No.:** DMAP 36-2011

**Filed with Sec. of State:** 12-13-2011

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

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

**Rules Amended:** 410-120-0000, 410-120-0006, 410-120-1160, 410-120-1200, 410-120-1210, 410-120-1340, 410-120-1510, 410-120-1920, 410-120-1960

**Rules Repealed:** 410-120-0006(T), 410-120-1340(T)

**Subject:** The General Rules program administrative rules govern Division payments for services to clients. The Division amended as follows:

• **OAR 410-120-0000, Definitions:** Changes the definition from a Limited Access Permit to an Expanded Practice Permit for Dental Hygienist. The scope of practice and name was revised upon passage of SB 738.

• **OAR 410-120-0006, Medical Eligibility Standards:** To permanently amend the prior temporary rules filed to reference the Department of Human Services eligibility rules. Temporary rules were filed in July, August and October 2011. With this Notice, the

Division will also amend the rule to update the reference date for the DHS January 2012 revisions.

• **OAR 410-120-1160, Provider guides:** Technical correction to update text referring to the client medical ID cards.

• **OAR 410-120-1200, Excluded services and Limitations:** DUI related services covered under the intoxicated driver fund exclusion are eliminated. HB 2103 includes treatment for services covered under Medicaid.

• **OAR 410-120-1210, Benefit Package:** OHP Standard limited hospital benefit is being restored to OHP Plus package. Hospital tax revenue funds the OHP Standard benefit packages. A legislatively approved tax increase provides funding to change the hospital benefit.

• **OAR 410-120-1340, Payment:** Having temporarily amended 410-120-1340 effective August 1, 2011, the Division will permanently amend this rule to reference the reimbursement methodology changes indicated in HB SB 5529 (2011 Legislative session).

• **OAR 410-120-1510, Fraud and Abuse:** To comply with the Affordable Care Act (Section 6402(h)(2)) to reflect that states may not receive federal funding if they fail to suspend payments when there is pending an investigation of a credible allegation of fraud.

• **OAR 410-120-1920, Institutional Reimbursement:** To include the Centers for Medicare and Medicaid's proposed addition to the methods used to comply with the public notice requirement. The rule would be revised accordingly.

• **OAR 410-120-1960, Private Health Insurance:** To merge the HIPP and PHI programs into a single program, update the chart used to determine if it is cost-effective, and reflect the new design.

• Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-120-0000

### Acronyms and Definitions

Identification of acronyms and definitions within this rule specifically pertain to their use within the Oregon Health Authority (Authority), Division of Medical Assistance Programs (Division) administrative rules. This rule does not include an exhaustive list of Division acronyms and definitions. For more information, see Oregon Health Plan (OHP) program OAR 410-141-0000, Acronyms and Definitions, and any appropriate governing acronyms and definitions in the Department of Human Services (Department) chapter 407 administrative rules, or contact the Division.

(1) AAA – Area Agency on Aging.

(2) Abuse – Provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to the Division, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to the Division.

(3) Acupuncturist – A person licensed to practice acupuncture by the relevant state licensing board.

(4) Acupuncture services – Services provided by a licensed acupuncturist within the scope of practice as defined under state law.

(5) Acute – A condition, diagnosis or illness with a sudden onset and that is of short duration.

(6) Acquisition cost – Unless specified otherwise in individual program administrative rules, the net invoice price of the item, supply or equipment, plus any shipping and/or postage for the item.

(7) Addiction and Mental Health Division (AMH) – A division within the Authority that administers mental health and addiction programs and services.

(8) Adequate record keeping – Documentation that supports the level of service billed. See 410-120-1360, Requirements for Financial, Clinical, and Other Records, and the individual provider rules.

(9) Administrative medical examinations and reports – Examinations, evaluations, and reports, including copies of medical records, requested on the DMAP 729 form through the local Department branch office or requested or approved by the Division to establish client eligibility for a medical assistance program or for casework planning.

(10) Adverse event – An undesirable and unintentional, though not unnecessarily unexpected, result of medical treatment.

# ADMINISTRATIVE RULES

(11) All-inclusive rate – The nursing facility rate established for a facility. This rate includes all services, supplies, drugs and equipment as described in OAR 411-070-0085, and in the Division's Pharmaceutical Services program administrative rules and the Home Enteral/Parenteral Nutrition and IV Services program administrative rules, except as specified in OAR 410-120-1340, Payment.

(12) Allied agency – Local and regional governmental agency and regional authority that contracts with the Department to provide the delivery of services to covered individual. (e.g., local mental health authority, community mental health program, Oregon Youth Authority, Department of Corrections, local health departments, schools, education service districts, developmental disability service programs, area agencies on aging (AAAs), federally recognized American Indian tribes).

(13) Ambulance – A specially equipped and licensed vehicle for transporting sick or injured persons which meets the licensing standards of the Department or the licensing standards of the state in which the ambulance provider is located.

(14) Ambulatory Surgical Center (ASC) – A facility licensed as an ASC by the Department.

(15) American Indian/Alaska Native (AI/AN) – A member of a federally recognized Indian tribe, band or group, an Eskimo or Aleut or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601, or a person who is considered by the Secretary of the Interior to be an Indian for any purpose.

(16) American Indian/Alaska Native (AI/AN) clinic – A clinic recognized under Indian Health Services (IHS) law or by the Memorandum of Agreement between IHS and the Centers for Medicare and Medicaid Services (CMS).

(17) Ancillary services – Services supportive of or necessary to the provision of a primary service (e.g., anesthesiology is an ancillary service necessary for a surgical procedure); Typically, such medical services are not identified in the definition of a condition/treatment pair, but are medically appropriate to support a service covered under the OHP benefit package; ancillary services and limitations are specified in the OHP (Managed Care) administrative rules related to the Oregon Health Services Commission's Prioritized List of Health Services (410-141-0480 through 410-141-0520), the General Rules Benefit Packages (410-120-1210), Exclusions (410-120-1200) and applicable individual program rules.

(18) Anesthesia services – Administration of anesthetic agents to cause loss of sensation to the body or body part.

(19) Atypical provider – Entity able to enroll as a billing provider (BP) or performing provider for medical assistance programs related non-health care services but which does not meet the definition of health care provider for National Provider Identification (NPI) purposes.

(20) Audiologist – A person licensed to practice audiology by the State Board of Examiners for Speech Pathology and Audiology.

(21) Audiology – The application of principles, methods and procedures of measurement, testing, appraisal, prediction, consultation, counseling and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory training, speech reading and hearing aid evaluation, or other behavior related to hearing impairment.

(22) Automated Voice Response (AVR) – A computer system that provides information on clients' current eligibility status from the Division by computerized phone or Web-based response.

(23) Benefit Package – The package of covered health care services for which the client is eligible.

(24) Billing agent or billing service – Third party or organization that contracts with a provider to perform designated services in order to facilitate an Electronic Data Interchange (EDI) transaction on behalf of the provider.

(25) Billing provider (BP) – A person, agent, business, corporation, clinic, group, institution, or other entity who submits claims to and/or receives payment from the Division on behalf of a performing provider and has been delegated the authority to obligate or act on behalf of the performing provider.

(26) Buying Up – The practice of obtaining client payment in addition to the Division or managed care plan payment to obtain a non-covered service or item. (See 410-120-1350 Buying Up)

(27) By Report (BR) – Services designated, as BR require operative or clinical and other pertinent information to be submitted with the billing as a basis for payment determination. This information must include an adequate description of the nature, and extent of need for the procedure. Information such as complexity of symptoms, final diagnosis, pertinent

physical findings, diagnostic and therapeutic procedures, concurrent problems, and follow-up care will facilitate evaluation.

(28) Children, Adults and Families Division (CAF) – A division within the Department, responsible for administering self-sufficiency and child-protective programs.

(29) Children's Health Insurance Program (CHIP) – A federal and state funded portion of the Oregon Health Plan (OHP) established by Title XXI of the Social Security Act and administered by the Division.

(30) Chiropractor – A person licensed to practice chiropractic by the relevant state licensing board.

(31) Chiropractic services – Services provided by a licensed chiropractor within the scope of practice, as defined under state law and Federal regulation.

(32) Citizen/Alien-Waived Emergency Medical (CAWEM) – Aliens granted lawful temporary resident status, or lawful permanent resident status under the Immigration and Nationality Act, are eligible only for emergency services and limited service for pregnant women. Emergency services for CAWEM are defined in OAR 410-120-1210 (3)(f).

(33) Claimant – a person who has requested a hearing.

(34) Client – A person who is currently receiving medical assistance (also known as a recipient).

(35) Clinical Social Worker – A person licensed to practice clinical social work pursuant to State law.

(36) Contiguous Area – The area up to 75 miles outside the border of the State of Oregon.

(37) Contiguous area provider – A provider practicing in a contiguous area.

(38) Co-payments – The portion of a claim or medical, dental or pharmaceutical expense that a client must pay out of their own pocket to a provider or a facility for each service. It is usually a fixed amount that is paid at the time service is rendered. (See 410-120-1230 Client Copayment)

(39) Cost effective – The lowest cost health care service or item that, in the judgment of Division staff or its contracted agencies, meets the medical needs of the client.

(40) Current Dental Terminology (CDT) – A listing of descriptive terms identifying dental procedure codes used by the American Dental Association.

(41) Current Procedural Terminology (CPT) – The physicians' CPT is a listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians and other health care providers.

(42) Date of receipt of a claim – The date on which the Division receives a claim, as indicated by the Internal Control Number (ICN) assigned to a claim. Date of receipt is shown as the Julian date in the 5th through 7th position of the ICN.

(43) Date of service – The date on which the client receives medical services or items, unless otherwise specified in the appropriate provider rules. For items that are mailed or shipped by the provider, the date of service is the date on which the order was received, the date on which the item was fabricated, or the date on which the item was mailed or shipped.

(44) Dental emergency services – Dental services provided for severe tooth pain, unusual swelling of the face or gums, or an avulsed tooth.

(45) Dental Services – Services provided within the scope of practice as defined under state law by or under the supervision of a dentist.

(46) Dentist – A person licensed to practice dentistry pursuant to state law of the state in which he/she practices dentistry, or a person licensed to practice dentistry pursuant to Federal law for the purpose of practicing dentistry as an employee of the Federal government.

(47) Denturist – A person licensed to practice denture technology pursuant to State law.

(48) Denturist services – Services provided, within the scope of practice as defined under State law, by or under the personal supervision of a denturist.

(49) Dental hygienist – A person licensed to practice hygiene under the direction of a licensed professional within the scope of practice pursuant to State law.

(50) Dental hygienist with an Expanded Practice Permit – A person licensed to practice dental hygiene services as authorized by the board of dentistry with an Expanded Practice Dental Hygienist Permit (EPDHP) pursuant to State law.

(51) Department – the Department of Human Services.

(52) Department of Human Services (Department) – The Department or DHS means the Department of Human Services established in ORS Chapter 409, including such divisions, programs and offices as may be established therein. Wherever the former Office of Medical Assistance



## ADMINISTRATIVE RULES

Programs, OMAP or DMAP is used in contract or in administrative rule, it shall mean the Division of Medical Assistance Programs (Division). Wherever the former Office of Mental Health and Addiction Services or OMHAS is used in contract or in rule, it shall mean the Addictions and Mental Health Division (AMHD). Wherever the former Seniors and People with Disabilities or SPD is used in contract or in rule, it shall mean the Seniors and People with Disabilities Division (SPD). Wherever the former Children Adults and Families or CAF is used in contract or rule, it shall mean the Children, Adults and Families Division (CAF). Wherever the former Health Division is used in Contract or in rule, it shall mean the Public Health Division (PHD).

(53) Department representative – A person who represents the Department and presents the position of the Department in a hearing.

(54) Diagnosis code – As identified in the International Classification of Diseases, 9th revision, Clinical Modification (ICD-9-CM), the primary diagnosis code is shown in all billing claims, unless specifically excluded in individual provider rule(s). Where they exist, diagnosis codes shall be shown to the degree of specificity outlined in OAR 410-120-1280, Billing.

(55) Diagnosis Related Group (DRG) – A system of classification of diagnoses and procedures based on the ICD-9-CM.

(56) Division of Medical Assistance Programs (Division) – A division within the Authority; the Division is responsible for coordinating the medical assistance programs within the State of Oregon including the Oregon Health Plan (OHP) Medicaid demonstration, the State Children's Health Insurance Program (SCHIP -Title XXI), and several other programs.

(57) Division member – An OHP client enrolled with a PHP.

(58) Durable Medical Equipment, Prosthetics, Orthotics and Medical Supplies (DMEPOS) – Equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose. Examples include wheelchairs, respirators, crutches and custom built orthopedic braces. Medical supplies are non-reusable items used in the treatment of illness or injury. Examples of medical supplies include diapers, syringes, gauze bandages and tubing.

(59) Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services (aka, Medichex) – The Title XIX program of EPSDT services for eligible clients under age 21. It is a comprehensive child health program to assure the availability and accessibility of required medically appropriate health care services and to help Division clients and their parents or guardians effectively use them.

(60) Electronic Data Interchange (EDI) – The exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, using bulk transmission processes and other formats as the Authority designates for EDI transactions. For purposes of rules 407-120-0100 through 407-120-0200, EDI does not include electronic transmission by web portal.

(61) EDI submitter – An individual or an entity authorized to establish an electronic media connection with the Authority to conduct an EDI transaction. An EDI submitter may be a trading partner or an agent of a trading partner.

(62) Electronic Verification System (EVS) eligibility information that has met the legal and technical specifications of the Division in order to offer eligibility information to enrolled providers of the Division.

(63) Emergency department – The part of a licensed hospital facility open 24 hours a day to provide care for anyone in need of emergency treatment.

(64) Emergency medical condition – a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part. An emergency medical condition is determined based on the presenting symptoms (not the final diagnosis) as perceived by a prudent layperson (rather than a health care professional) and includes cases in which the absence of immediate medical attention would not in fact have had the adverse results described in the previous sentence. (This definition does not apply to clients with CAWEM benefit package. CAWEM emergency services are governed by OAR 410-120-1210(3)(f)(B)).

(65) Emergency Medical transportation – Transportation necessary for a client with an emergency medical condition, as defined in this rule, and requires a skilled medical professional such as an Emergency Medical Technician (EMT) and immediate transport to a site, usually a hospital, where appropriate emergency medical service is available.

(66) Evidence-based medicine- is the conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individual patients. The practice of evidence based medicine means integrating individual clinical expertise with the best available external clinical evidence from systematic research. By individual clinical expertise we mean the proficiency and judgment that individual clinicians acquire through clinical experience and clinical practice. Increased expertise is reflected in many ways, but especially in more effective and efficient diagnosis and in the more thoughtful identification and compassionate use of individual patients' predicaments, rights, and preferences in making clinical decisions about their care. By best available external clinical evidence we mean clinically relevant research, often from the basic sciences of medicine, but especially from patient centered clinical research into the accuracy and precision of diagnostic tests (including the clinical examination), the power of prognostic markers, and the efficacy and safety of therapeutic, rehabilitative, and preventive regimens. External clinical evidence both invalidates previously accepted diagnostic tests and treatments and replaces them with new ones that are more powerful, more accurate, more efficacious, and safer. (Source: BMJ 1996; 312:71-72 (13 January))

(67) False claim – A claim that a provider knowingly submits or causes to be submitted that contains inaccurate, misleading or omitted information and such inaccurate, misleading or omitted information would result, or has resulted, in an overpayment.

(68) Family planning services – Services for clients of child bearing age (including minors who can be considered to be sexually active) who desire such services and which are intended to prevent pregnancy or otherwise limit family size.

(69) Federally Qualified Health Center (FQHC) – A federal designation for a medical entity which receives grants under Section 329, 330, or 340 of the Public Health Service Act; or a facility designated as a FQHC by Centers for Medicare and Medicaid (CMS) upon recommendation of the U.S. Public Health Service.

(70) Fee-for-service provider – A medical provider who is not reimbursed under the terms of a Division contract with a Prepaid Health Plan (PHP), also referred to as a Managed Care Organization (MCO). A medical provider participating in a PHP may be considered a fee-for-service provider when treating clients who are not enrolled in a PHP.

(71) Fraud – An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

(72) Fully dual eligible – For the purposes of Medicare Part D coverage (42 CFR 423.772), Medicare clients who are also eligible for Medicaid, meeting the income and other eligibility criteria adopted by the Department for full medical assistance coverage.

(73) General Assistance (GA) – Medical assistance administered and funded 100% with State of Oregon funds through OHP.

(74) Healthcare Common Procedure Coding System (HCPCS) – A method for reporting health care professional services, procedures, and supplies. HCPCS consists of the Level I – American Medical Association's Physician's Current Procedural Terminology (CPT), Level II – National codes, and Level III – Local codes. The Division uses HCPCS codes; however, Division uses Current Dental Terminology (CDT) codes for the reporting of dental care services and procedures.

(75) Health Maintenance Organization (HMO) – A public or private health care organization which is a federally qualified HMO under Section 1310 of the U.S. Public Health Services Act. HMOs provide health care services on a capitated, contractual basis.

(76) Hearing aid dealer – A person licensed by the Board of Hearing Aid Dealers to sell, lease or rent hearing aids in conjunction with the evaluation or measurement of human hearing and the recommendation, selection, or adaptation of hearing aids.

(77) Home enteral nutrition – Services provided in the client's place of residence to an individual who requires nutrition supplied by tube into the gastrointestinal tract, as described in the Home Enteral/Parenteral Nutrition and IV Services program provider rules.

(78) Home health agency – A public or private agency or organization which has been certified by Medicare as a Medicare home health agency and which is licensed by the Authority as a home health agency in Oregon, and meets the capitalization requirements as outlined in the Balanced Budget Act (BBA) of 1997.

(79) Home health services – Part-time or intermittent skilled nursing services, other therapeutic services (physical therapy, occupational therapy, speech therapy), and home health aide services made available on a visiting basis in a place of residence used as the client's home.

## ADMINISTRATIVE RULES

(80) Home intravenous services – Services provided in the client's place of residence to an individual who requires that medication (antibiotics, analgesics, chemotherapy, hydration fluids, or other intravenous medications) be administered intravenously as described in the Home Enteral/Parenteral Nutrition and IV Services program administrative rules.

(81) Home parenteral nutrition – Services provided in the client's residence to an individual who is unable to absorb nutrients via the gastrointestinal tract, or for other medical reasons, requires nutrition be supplied parenterally as described in the Home Enteral/Parenteral Nutrition and IV Services program administrative rules.

(82) Hospice – a public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, is certified certified by the federal Centers for Medicare and

Medicaid Services as a program of hospice services meeting current standards for Medicare and Medicaid reimbursement and Medicare Conditions of Participation; and currently licensed by the Oregon Health Authority (Authority), Public Health Division.

(83) Hospital – A facility licensed by the Office of Public Health Systems as a general hospital which meets requirements for participation in the OHP under Title XVIII of the Social Security Act. The Division does not consider facilities certified by the CMS as long-term care hospitals, long term acute care hospitals or religious non-medical facilities as hospitals for reimbursement purposes. Out-of-state hospitals will be considered hospitals for reimbursement purposes if they are licensed as a short term acute care or general hospital by the appropriate licensing authority within that state, and if they are enrolled as a provider of hospital services with the Medicaid agency within that state.

(84) Hospital-based professional services – Professional services provided by licensed practitioners or staff based on a contractual or employee/employer relationship and reported as a cost on the Hospital Statement of Reasonable Cost report for Medicare and the Calculation of Reasonable Cost (Division 42) report for the Division.

(85) Hospital laboratory – A laboratory providing professional technical laboratory services as outlined under laboratory services, in a hospital setting, as either an inpatient or outpatient hospital service whose costs are reported on the hospital's cost report to Medicare and to the Division.

(86) Indian Health Program – Any Indian health service facility, any Federally recognized Tribe or Tribal organization, or any FQHC with a 638 designation.

(87) Individual Adjustment Request Form (DMAP 1036) – Form used to resolve an incorrect payment on a previously paid claim, including underpayments or overpayments.

(88) Inpatient hospital services – Services that are furnished in a hospital for the care and treatment of an inpatient. (See Division Hospital Services program administrative rules in chapter 410, division 125 for inpatient covered services.)

(89) Institutional Level of Income Standards (ILIS) – Three times the amount SSI pays monthly to a person who has no other income and who is living alone in the community. This is the standard used for Medicaid eligible individuals to calculate eligibility for long-term nursing care in a nursing facility, Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and individuals on ICF/MR waivers or eligibility for services under Seniors and People with Disabilities' (SPD) Home and Community Based Waiver.

(90) Institutionalized – A patient admitted to a nursing facility or hospital for the purpose of receiving nursing and/or hospital care for a period of 30 days or more.

(91) International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) (including volumes 1, 2, and 3, as revised annually) – A book of diagnosis codes used for billing purposes when treating and requesting reimbursement for treatment of diseases.

(92) Laboratory – A facility licensed under ORS 438 and certified by CMS, Department of Health and Human Services (DHHS), as qualified to participate under Medicare, to provide laboratory services (as defined in this rule) within or apart from a hospital. An entity is considered to be a laboratory if the entity derives materials from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings. If an entity performs even one laboratory test, including waived tests for these purposes, it is considered to be a laboratory, under the Clinical Laboratory Improvement Act (CLIA).

(93) Laboratory services – Those professional and technical diagnostic analyses of blood, urine, and tissue ordered by a physician or other licensed practitioner of the healing arts within his/her scope of practice as defined under State law and provided to a patient by or under the direction

of a physician or appropriate licensed practitioner in an office or similar facility, hospital, or independent laboratory.

(94) Licensed Direct Entry Midwife – A practitioner who has acquired the requisite qualifications to be registered and/or legally licensed to practice midwifery by the Public Health Division.

(95) Liability insurance – Insurance that provides payment based on legal liability for injuries or illness. It includes, but is not limited to, automobile liability insurance, uninsured and underinsured motorist insurance, homeowner's liability insurance, malpractice insurance, product liability insurance, Worker's Compensation, and general casualty insurance. It also includes payments under state wrongful death statutes that provide payment for medical damages.

(96) Managed Care Organization (MCO) – Contracted health delivery system providing capitated or prepaid health services, also known as a Prepaid Health Plan (PHP). An MCO is responsible for providing, arranging and making reimbursement arrangements for covered services as governed by state and federal law. An MCO may be a Chemical Dependency Organization (CDO), Fully Capitated Health Plan (FCHP), Dental Care Organization (DCO), Mental Health Organization (MHO), or Physician Care Organization (PCO).

(97) Maternity Case Management – A program available to pregnant clients. The purpose of Maternity Case Management is to extend prenatal services to include non-medical services, which address social, economic and nutritional factors. For more information refer to the Division's Medical-Surgical Services Program administrative rules.

(98) Medicaid – A federal and state funded portion of the medical assistance programs established by Title XIX of the Social Security Act, as amended, administered in Oregon by the Authority.

(99) Medical assistance eligibility confirmation – Verification through the Electronic Verification System (EVS), AVR, Secure Web site or Electronic Data Interchange (EDI), or an authorized Department or Authority representative.

(100) Medical services – Care and treatment provided by a licensed medical provider directed at preventing, diagnosing, treating or correcting a medical problem.

(101) Medical transportation – Transportation to or from covered medical services.

(102) Medically appropriate – Services and medical supplies that are required for prevention, diagnosis or treatment of a health condition which encompasses physical or mental conditions, or injuries, and which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community, evidence-based medicine and professional standards of care as effective;

(c) Not solely for the convenience of an OHP client or a provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of medical services or medical supplies which can be safely provided to a Division client or Primary Care Manager (PCM) Member in the PHP's or PCM's judgment.

(103) Medicare – A federally administered program offering health insurance benefits for persons aged 65 or older and certain other aged or disabled persons. This program includes:

(a) Hospital Insurance (Part A) for Inpatient services in a hospital or skilled nursing facility, home health care, and hospice care; and

(b) Medical Insurance (Part B) for physicians' services, outpatient hospital services, home health care, end-stage renal dialysis, and other medical services and supplies;

(c) Prescription drug coverage (Part D) – Covered Part D drugs include prescription drugs, biological products, insulin as described in specified paragraphs of section 1927(k) of the Social Security Act, and vaccines licensed under section 351 of the Public Health Service Act; also includes medical supplies associated with the injection of insulin; Part D covered drugs prohibit Medicaid Title XIX Federal Financial Participation (FFP). For limitations, see the Division's Pharmaceutical Services program administrative rules in chapter 410, division 121.

(104) Medichex for Children and Teens – Services also known as Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services – The Title XIX program of EPSDT services for eligible clients under age 21. It is a comprehensive child health program to assure the availability and accessibility of required medically appropriate health care services and to help Division clients and their parents or guardians effectively use them.

(105) NCCI- National Correct Coding Initiative – The Centers for Medicare and Medicaid Services (CMS) developed the National Correct

## ADMINISTRATIVE RULES

Coding Initiative (NCCI) to promote national correct coding methodologies and to control improper coding leading to inappropriate payment.

(106) National Provider Identification (NPI) – Federally directed provider number mandated for use on HIPAA covered transactions; individuals, provider organizations and subparts of provider organizations that meet the definition of health care provider (45 CFR 160.103) and who conduct HIPAA covered transactions electronically are eligible to apply for an NPI; Medicare covered entities are required to apply for an NPI.

(107) Naturopath – A person licensed to practice naturopathy pursuant to State law.

(108) Naturopathic services – Services provided within the scope of practice as defined under State law.

(109) Non-covered services – Services or items for which the Division is not responsible for payment or reimbursement. Non-covered services are identified in:

(a) OAR 410-120-1200, Excluded Services and Limitations; and,

(b) 410-120-1210, Medical Assistance Benefit Packages and Delivery System;

(c) 410-141-0480, OHP Benefit Package of Covered Services;

(d) 410-141-0520, Prioritized List of Health Services; and

(e) Any other applicable Division administrative rules.

(110) Nurse Anesthetist, C.R.N.A. – A registered nurse licensed in the State of Oregon who is currently certified by the American Association of Nurse Anesthetists Council on Certification.

(111) Nurse Practitioner – A person licensed as a registered nurse and certified by the Board of Nursing to practice as a Nurse Practitioner pursuant to State law.

(112) Nurse Practitioner services – Services provided within the scope of practice of a Nurse Practitioner as defined under State law and by rules of the Board of Nursing.

(113) Nursing facility – A facility licensed and certified by the Department SPD and defined in OAR 411-070-0005.

(114) Nursing services – Health care services provided to a patient by a registered professional nurse or a licensed practical nurse under the direction of a licensed professional within the scope of practice as defined by State law.

(115) Nutritional counseling – Counseling which takes place as part of the treatment of a person with a specific condition, deficiency or disease such as diabetes, hypercholesterolemia, or phenylketonuria.

(116) Occupational Therapist – A person licensed by the State Board of Examiners for Occupational Therapy.

(117) Occupational Therapy – The functional evaluation and treatment of individuals whose ability to adapt or cope with the task of living is threatened or impaired by developmental deficiencies, physical injury or illness, aging process, or psychological disability; the treatment utilizes task-oriented activities to prevent or correct physical and emotional difficulties or minimize the disabling effect of these deficiencies on the life of the individual.

(118) Optometric services – Services provided, within the scope of practice of optometrists as defined under State law.

(119) Optometrist – A person licensed to practice optometry pursuant to State law.

(120) Oregon Health Authority (OHA) – The Authority or OHA means the Oregon Health Authority established in ORS Chapter 413, that administers the funds for Titles XIX and XXI of the Social Security Act. It is the single state agency for the administration of the medical assistance program under ORS chapter 414. For purposes of these rules the agencies under the authority of the OHA are the Public Health Division, the Addictions and Mental Health Division, and the Division of Medical Assistance Programs. These divisions are referred to as the Authority whereas the divisions under authority of the Department of Human Services are CAF and SPD and are referred to as the Department.

(121) Oregon Youth Authority (OYA) – The state department charged with the management and administration of youth correction facilities, state parole and probation services and other functions related to state programs for youth corrections.

(122) Out-of-State providers – Any provider located outside the borders of the State of Oregon:

(a) Contiguous area providers are those located no more than 75 miles from the border of the State of Oregon;

(b) Non-contiguous area providers are those located more than 75 miles from the borders of the State of Oregon.

(123) Outpatient hospital services – Services that are furnished in a hospital for the care and treatment of an outpatient. For information on out-

patient-covered services, see the Division's Hospital Services administrative rules found in chapter 410, division 125.

(124) Overdue claim – A valid claim that is not paid within 45 days of the date it was received.

(125) Overpayment – Payment(s) made by Division to a provider in excess of the correct Division payment amount for a service. Overpayments are subject to repayment to the Division.

(126) Overuse – Use of medical goods or services at levels determined by Division medical staff and/or medical consultants to be medically unnecessary or potentially harmful.

(127) Panel – The Hearing Officer Panel established by section 3, chapter 849, Oregon Laws 1999.

(128) Payment Authorization – Authorization granted by the responsible agency, office or organization for payment prior or subsequent to the delivery of services, as described in these General Rules and the appropriate program rules. See the individual program rules for services requiring authorization.

(129) Peer Review Organization (PRO) – An entity of health care practitioners of services contracted by the State to review services ordered or furnished by other practitioners in the same professional field.

(130) Pharmaceutical Services – Services provided by a Pharmacist, including medications dispensed in a pharmacy upon an order of a licensed practitioner prescribing within his/her scope of practice.

(131) Pharmacist – A person licensed to practice pharmacy pursuant to state law.

(132) Physical Capacity Evaluation – An objective, directly observed measurement of a person's ability to perform a variety of physical tasks combined with subjective analysis of abilities of the person.

(133) Physical Therapist – A person licensed by the relevant State licensing authority to practice Physical Therapy.

(134) Physical Therapy – Treatment comprising exercise, massage, heat or cold, air, light, water, electricity or sound for the purpose of correcting or alleviating any physical or mental disability, or the performance of tests as an aid to the assessment, diagnosis or treatment of a human being. Physical Therapy shall not include radiology or electrosurgery.

(135) Physician – A person licensed to practice medicine pursuant to state law of the state in which he/she practices medicine, or a person licensed to practice medicine pursuant to federal law for the purpose of practicing medicine under a contract with the federal government.

(136) Physician Assistant – A person licensed as a physician assistant in accordance with ORS 677. Physician assistants provide medical services under the direction and supervision of an Oregon licensed physician according to a practice description approved by the Board of Medical Examiners.

(137) Physician Services – Services provided, within the scope of practice as defined under state law, by or under the personal supervision of a physician.

(138) Podiatric Services – Services provided within the scope of practice of podiatrists as defined under state law.

(139) Podiatrist – A person licensed to practice podiatric medicine pursuant to state law.

(140) Post-Payment Review – Review of billings and/or other medical information for accuracy, medical appropriateness, level of service or for other reasons subsequent to payment of the claim.

(141) Practitioner – A person licensed pursuant to state law to engage in the provision of health care services within the scope of the practitioner's license and/or certification.

(142) Premium sponsorship – Premium donations made for the benefit of one or more specified Division clients (See 410-120-1390).

(143) Prepaid Health Plan (PHP) – A managed health, dental, chemical dependency, or mental health organization that contracts with the Division and/or AMH on a case managed, prepaid, capitated basis under OHP. PHP's may be a Chemical Dependency Organization (CDO), Dental Care Organization (DCO), Fully Capitated Health Plan (FCHP), Mental Health Organization (MHO), or Physician Care Organization (PCO)

(144) Primary Care Physician – A physician who has responsibility for supervising, coordinating and providing initial and primary care to patients, initiating Referrals for consultations and specialist care, and maintaining the continuity of patient care.

(145) Primary Care Provider (PCP) – Any enrolled medical assistance provider who has responsibility for supervising, coordinating, and providing initial and primary care within their scope of practice for identified clients. PCPs initiate Referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of medically appropriate client care.



## ADMINISTRATIVE RULES

(146) Prior Authorization (PA) – Payment authorization for specified medical services or items given by Division staff, or its contracted agencies prior to provision of the service. A physician referral is not a PA.

(147) Prioritized List of Health Services – Also referred to as the Prioritized List, the Oregon Health Services Commission's (HSC) listing of health services with "expanded definitions" of ancillary Services and preventive services and the HSC practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The Prioritized List governs medical assistance programs' health services and benefit packages pursuant to these General Rules (OAR 410-120-0000 et seq.) and OAR 410-141-0480 through 410-141-0520.

(148) Private Duty Nursing Services – Nursing services provided within the scope of license by a registered nurse or a licensed practical nurse, under the general direction of the patient's physician to an individual who is not in a health care facility.

(149) Provider – An individual, facility, institution, corporate entity, or other organization which supplies health care services or items, also termed a performing provider, or bills, obligates and receives reimbursement on behalf of a performing provider of services, also termed a billing provider (BP). The term provider refers to both performing providers and BP(s) unless otherwise specified.

(150) Provider Organization – a group practice, facility, or organization that is:

(a) An employer of a provider, if the provider is required as a condition of employment to turn over fees to the employer; or

(b) The facility in which the service is provided, if the provider has a contract under which the facility submits claims; or

(c) A foundation, plan, or similar organization operating an organized health care delivery system, if the provider has a contract under which the organization submits the claim; and

(d) Such group practice, facility, or organization is enrolled with the Authority, and payments are made to the group practice, facility or organization.

(e) If such entity solely submits billings on behalf of providers and payments are made to each provider, then the entity is an agent.

(See Subparts of Provider Organization)

(151) Public Health Clinic – A clinic operated by county government.

(152) Public Rates – The charge for services and items that providers, including Hospitals and nursing facilities, made to the general public for the same service on the same date as that provided to Division clients.

(153) Qualified Medicare Beneficiary (QMB) – A Medicare beneficiary, as defined by the Social Security Act and its amendments.

(154) Qualified Medicare and Medicaid Beneficiary (QMM) – A Medicare beneficiary who is also eligible for Division coverage.

(155) Quality Improvement Organization (QIO) – An entity that has a contract with CMS under Part B of Title XI to perform utilization and quality control review of the health care furnished, or to be furnished, to Medicare and Medicaid clients; formerly known as a Peer Review Organization.

(156) Radiological Services – Those professional and technical radiological and other imaging services for the purpose of diagnosis and treatment ordered by a physician or other licensed practitioner of the healing arts within the scope of practice as defined under state law and provided to a patient by or under the direction of a physician or appropriate licensed practitioner in an office or similar facility, Hospital, or independent radiological facility.

(157) Recipient – A person who is currently eligible for medical assistance (also known as a client).

(158) Recreational therapy – recreational or other activities that are diversional in nature (includes, but is not limited to, social or recreational activities or outlets).

(159) Recoupment – An accounts receivable system that collects money owed by the provider to the Division by withholding all or a portion of a provider's future payments.

(160) Referral – The transfer of total or specified care of a client from one provider to another. As used by the Division, the term referral also includes a request for a consultation or evaluation or a request or approval of specific services. In the case of clients whose medical care is contracted through a Prepaid Health Plan (PHP), or managed by a Primary Care Physician, a referral is required before non-emergency care is covered by the PHP or the Division.

(161) Remittance Advice (RA) – The automated notice a provider receives explaining payments or other claim actions. It is the only notice sent to providers regarding claim actions.

(162) Request for Hearing – A clear expression, in writing, by an individual or representative that the person wishes to appeal a Department or Authority decision or action and wishes to have the decision considered by a higher authority.

(163) Retroactive Medical Eligibility – Eligibility for medical assistance granted to a client retroactive to a date prior to the client's application for medical assistance.

(164) Sanction – An action against providers taken by the Division in cases of fraud, misuse or abuse of division requirements.

(165) School Based Health Service – A health service required by an Individualized Education Plan (IEP) during a child's education program which addresses physical or mental disabilities as recommended by a physician or other licensed practitioner.

(166) Seniors and People with Disabilities Division (SPD) – An Office of the Department responsible for the administration of programs for seniors and people with disabilities.

(167) Service agreement – An agreement between the Division and a specified provider to provide identified services for a specified rate. Service agreements may be limited to services required for the special needs of an identified client. Service agreements do not preclude the requirement for a provider to enroll as a provider.

(168) Sliding Fee Schedule – A fee schedule with varying rates established by a provider of health care to make services available to indigent and low-income individuals. The sliding-fee schedule is based on ability to pay.

(169) Social Worker – A person licensed by the Board of Clinical Social Workers to practice clinical social work.

(170) Speech-Language Pathologist – A person licensed by the Oregon Board of Examiners for Speech Pathology.

(171) Speech-Language Pathology Services – The application of principles, methods, and procedure for the measuring, evaluating, predicting, counseling or instruction related to the development and disorders of speech, voice, or language for the purpose of preventing, habituating, rehabilitating, or modifying such disorders in individuals or groups of individuals.

(172) Spend-Down – The amount the client must pay for medical expenses each month before becoming eligible for medical assistance under the Medically Needy Program. The spend-down is equal to the difference between the client's total countable income and Medically Needy program income limits.

(173) State Facility – A Hospital or training center operated by the State of Oregon, which provides long-term medical or psychiatric care.

(174) Subparts (of a provider organization) – For NPI application, subparts of a health care provider organization would meet the definition of health care provider (45 CFR 160.103) if it were a separate legal entity and if it conducted HIPAA-covered transactions electronically, or has an entity do so on its behalf, could be components of an organization or separate physical locations of an organization.

(175) Subrogation – Right of the State to stand in place of the client in the collection of third party resources (TPR).

(176) Supplemental Security Income (SSI) – A program available to certain aged and disabled persons which is administered by the Social Security Administration through the Social Security office.

(177) Surgical Assistant – A person performing required assistance in surgery as permitted by rules of the State Board of Medical Examiners.

(178) Suspension – A sanction prohibiting a provider's participation in the medical assistance programs by deactivation of the provider's Division-assigned billing number for a specified period of time. No payments, Title XIX or State Funds, will be made for services provided during the suspension. The number will be reactivated automatically after the suspension period has elapsed.

(179) Targeted Case Management (TCM) – Activities that will assist the client in a target group in gaining access to needed medical, social, educational and other services. This includes locating, coordinating, and monitoring necessary and appropriate services. TCM services are often provided by Allied Agency providers.

(180) Termination – A sanction prohibiting a provider's participation in the Division's programs by canceling the provider's Division-assigned billing number and agreement. No payments, Title XIX or State Funds, will be made for services provided after the date of termination. Termination is permanent unless:

(a) The exceptions cited in 42 CFR 1001.221 are met; or

(b) Otherwise stated by the Division at the time of termination.

# ADMINISTRATIVE RULES

(181) Third Party Resource (TPR) – A medical or financial resource which, under law, is available and applicable to pay for medical Services and items for a Division client.

(182) Transportation – See Medical Transportation.

(183) Type A Hospital – A hospital identified by the Office of Rural Health as a Type A hospital.

(184) Type B AAA Unit – A Type B Area Agency on Aging (AAA) funded by Oregon Project Independence (OPI), Title III – Older Americans Act, and Title XIX of the Social Security Act.

(185) Type B Hospital – A hospital identified by the Office of Rural Health as a Type B hospital.

(186) Usual Charge (UC) – The lesser of the following unless prohibited 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.

(187) Utilization Review (UR) – The process of reviewing, evaluating, and assuring appropriate use of medical resources and services. The review encompasses quality, quantity, and appropriateness of medical care to achieve the most effective and economic use of health care services.

(188) Valid Claim – An invoice received by the Division or the appropriate Authority/Department office for payment of covered health care services rendered to an eligible client which:

(a) Can be processed without obtaining additional information from the provider of the goods or services or from a TPR; and

(b) Has been received within the time limitations prescribed in these General Rules (OAR 410 division 120).

(189) Vision Services – Provision of corrective eyewear, including ophthalmological or optometric examinations for determination of visual acuity and vision therapy and devices.

Stat. Auth.: ORS 413.042 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 5-1981, f. 1-23-81, ef. 3-1-81; AFS 33-1981, f. 6-23-81, ef. 7-1-81; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82, for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 57-1982, f. 6-28-82, ef. 7-1-82; AFS 81-1982, f. 8-30-82, ef. 9-1-82; AFS 4-1984, f. & ef. 2-1-84; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-84, ef. 9-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 13-1987, f. 3-31-87, ef. 4-1-87; AFS 7-1988, f. & cert. ef. 2-1-88; AFS 69-1988, f. & cert. ef. 12-5-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0005; HR 25-1991(Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 11-2000, f. & cert. ef. 6-23-00; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 67-2004, f. 9-14-04, cert. ef. 10-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007 f. 12-11-07 cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 13-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 11-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12

## 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 1, 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

## 410-120-1160

### Medical Assistance Benefits and Provider Rules

((1) Providers enrolled with and seeking reimbursement for services through the Division of Medical Assistance Programs (Division) are responsible for compliance with current federal and state laws and regulations governing Medicaid services and reimbursement, including familiarity with periodic law and rule changes. The Division's administrative rules are posted on the Oregon Health Authority (Authority) Web page for the division and its medical assistance programs. It is the provider's responsibility to become familiar with, and abide by, these rules.

(2) The following services are covered to the extent included in the Division client's benefit package of health care services, when medically or dentally appropriate and within the limitations established by the Division and set forth in the Oregon Administrative Rules (OARs) for each category of Medical Services:

(a) Acupuncture services, as described in the Medical-Surgical Services Program provider rules (OAR chapter 410, division 130);

(b) Administrative examinations, as described in the Administrative Examinations and Billing Services Program provider rules (OAR chapter 410, division 150);

(c) Alcohol and drug abuse treatment services:

(A) The Division covers alcohol and drug inpatient services for medical detoxification when provided in an acute care hospital and when hospitalization is considered medically appropriate;

(B) The Division does not cover residential level of care provided in an inpatient hospital setting for alcohol and drug abuse treatment;

(C) The Addictions and Mental Health Division (AMH) covers non-hospital alcohol and drug treatment services on a residential or outpatient basis through direct contracts with counties or providers. For information to access these services, contact the client's managed care plan if enrolled, the community mental health program (CMHP), an outpatient alcohol and drug treatment provider, the residential treatment program or AMH.

(d) Ambulatory surgical center services, as described in the Medical-Surgical Services Program provider rules (OAR 410 division 130);

(e) Anesthesia services, as described in the Medical-Surgical Services Program provider rules (OAR chapter 410, division 130);

(f) Audiology services, as described in the Speech-Language Pathology, Audiology and Hearing Aid Services Program provider rules (OAR chapter 410, division 129);

(g) Chiropractic services, as described in the Medical-Surgical Services Program provider rules (OAR chapter 410, division 130);

(h) Dental services, as described in the Dental/Denturist Services Program provider rules (OAR chapter 410, division 123);

(i) Early and periodic screening, diagnosis and treatment services (EPSDT, Medichex for children and teens), are covered for individuals under 21 years of age as set forth in the individual program provider rules. The Division may authorize services in excess of limitations established in the OARs when it is medically appropriate to treat a condition that is identified as the result of an EPSDT screening;

(j) Family planning services, as described in the Medical-Surgical Services Program provider rules (OAR chapter 410, division 130);

(k) Federally qualified health centers and rural health clinics, as described in the Federally Qualified Health Center and Rural Health Clinic Program provider rules (OAR chapter 410, division 147);

(l) Home and community-based waiver services, as described in the Authority and the Department's OARs of Children, Adults and Families

# ADMINISTRATIVE RULES

Division (CAF), Addictions and Mental Health Division (AMH), and Seniors and People with Disabilities Division (SPD);

(m) Home enteral/parenteral nutrition and IV services, as described in the Home Enteral/Parenteral Nutrition and IV Services Program rules (OAR chapter 410, division 148), and related Durable Medical Equipment, Prosthetics, Orthotics and Supplies Program rules (OAR chapter 410, division 122) and Pharmaceutical Services Program rules (OAR chapter 410, division 121);

(n) Home health services, as described in the Home Health Services Program rules (OAR chapter 410, division 127);

(o) Hospice services, as described in the Hospice Services Program rules (OAR chapter 410, division 142);

(p) Indian health services or tribal facility, as described in The Indian Health Care Improvement Act and its Amendments (Public Law 102-573), and the Division's American Indian/Alaska Native Program rules (OAR chapter 410, division 146);

(q) Inpatient hospital services, as described in the Hospital Services Program rules (OAR chapter 410, division 125);

(r) Laboratory services, as described in the Hospital Services Program rules (OAR chapter 410, division 125) and the Medical-Surgical Services Program rules (OAR chapter 410, division 130);

(s) Licensed direct-entry midwife services, as described in the Medical-Surgical Services Program rules (OAR chapter 410, division 130);

(t) Maternity case management, as described in the Medical-Surgical Services Program rules (OAR chapter 410, division 130);

(u) Medical equipment and supplies, as described in the Hospital Services Program, Medical-Surgical Services Program, DMEPOS Program, Home Health Care Services Program, Home Enteral/Parenteral Nutrition and IV Services Program and other rules;

(v) When a client's Benefit Package includes mental health, the mental health services provided will be based on the Oregon Health Services Commission's Prioritized List of Health Services.;

(w) Naturopathic services, as described in the Medical-Surgical Services Program rules (OAR chapter 410, division 130);

(x) Nutritional counseling as described in the Medical/Surgical Services Program rules (OAR chapter 410, division 130);

(y) Occupational therapy, as described in the Physical and Occupational Therapy Services Program rules (OAR chapter 410, division 131);

(z) Organ transplant services, as described in the Transplant Services Program rules (OAR chapter 410, division 124);

(aa) Outpatient hospital services, including clinic services, emergency department services, physical and occupational therapy services, and any other outpatient hospital services provided by and in a hospital, as described in the Hospital Services Program rules (OAR chapter 410, division 125);

(bb) Physician, podiatrist, nurse Practitioner and licensed physician assistant services, as described in the Medical-Surgical Services Program rules (OAR chapter 410, division 130);

(cc) Physical therapy, as described in the Physical and Occupational Therapy and the Hospital Services Program rules (OAR chapter 410, division 131);

(dd) Post-hospital extended care benefit, as described in OAR chapter 410, division 120 and 141 and Seniors and People with Disabilities (SPD) program rules;

(ee) Prescription drugs, including home enteral and parenteral nutritional services and home intravenous services, as described in the Pharmaceutical Services Program (OAR chapter 410, division 121), the Home Enteral/Parenteral Nutrition and IV Services Program (OAR chapter 410, division 148) and the Hospital Services Program rules (OAR chapter 410, division 125);

(ff) Preventive services, as described in the Medical-Surgical Services (OAR chapter 410, division 130) and the Dental/Denturist Services Program rules (OAR chapter 410, division 123) and prevention guidelines associated with the Health Service Commission's Prioritized List of Health Services (OAR 410-141-0520);

(gg) Private duty nursing, as described in the Private Duty Nursing Services Program rules (OAR chapter 410, division 132);

(hh) Radiology and imaging services, as described in the Medical-Surgical Services Program rules (OAR chapter 410, division 130), the Hospital Services Program rules (OAR chapter 410, division 125), and Dental Services Program rules (OAR chapter 410, division 123);

(ii) Rural health clinic services, as described in the Federally Qualified Health Center and Rural Health Clinic Program rules (OAR chapter 410, division 147);

(jj) School-based health services, as described in the School-Based Health Services Program rules (OAR chapter 410, division 133);

(kk) Speech and language therapy as described in the Speech-Language Pathology, Audiology and Hearing Aid Services Program rules (OAR chapter 410, division 129) and Hospital Services Program rules (OAR chapter 410, division 125);

(ll) Transportation necessary to access a covered medical service or item, as described in the Medical Transportation Program rules (OAR chapter 410, division 136);

(mm) Vision services as described in the Visual Services Program rules (OAR chapter 410, division 140).

(3) Other Authority or Department Divisions, units or Offices, including Vocational Rehabilitation, AMH, and SPD may offer services to Medicaid eligible clients, which are not reimbursed by or available through the Division of Medical Assistance Programs.

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

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.019, 414.025, 414.065 & 414.705

Hist.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; AFS 14-1979, f. 6-29-79, ef. 7-1-79; AFS 73-1980(Temp), f. & ef. 10-1-80; AFS 5-1981, f. 1-23-81, ef. 3-1-81; AFS 71-1981, f. 9-30-81, ef. 10-1-81; Renumbered from 461-013-0000, AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 94-1982(Temp), f. & ef. 10-18-82; AFS 103-1982, f. & ef. 11-1-82; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 42-1983, f. 9-2-83, ef. 10-1-83; AFS 62-1983, f. 12-19-83, ef. 1-1-84; AFS 4-1984, f. & ef. 2-1-84; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 25-1984, f. 6-8-84, ef. 7-1-84; AFS 14-1985, f. 3-14-85, ef. 4-1-85; AFS 53-1985, f. 9-20-85, ef. 10-1-85; AFS 67-1986(Temp), f. 9-26-86, ef. 10-1-86; AFS 76-1986(Temp), f. & ef. 12-8-86; AFS 16-1987(Temp), f. & ef. 4-1-87; AFS 17-1987, f. 5-4-87, ef. 6-1-87; AFS 32-1987, f. 7-22-87, ef. 8-1-87; AFS 6-1988, f. & cert. ef. 2-1-88; AFS 51-1988(Temp), f. & cert. ef. 8-2-88; AFS 58-1988(Temp), f. & cert. ef. 9-27-88; AFS 69-1988, f. & cert. ef. 12-5-88; AFS 70-1988, f. & cert. ef. 12-7-88; AFS 4-1989, f. 1-31-89, cert. ef. 2-1-89; AFS 8-1989(Temp), f. 2-24-89, cert. ef. 3-1-89; AFS 14-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 47-1989, f. & cert. ef. 8-24-89; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0102; HR 5-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 19-1990, f. & cert. ef. 7-9-90; HR 32-1990, f. 9-24-90, cert. ef. 10-1-90; HR 41-1991, f. & cert. ef. 10-1-91; HR 27-1992(Temp), f. & cert. ef. 9-1-92; HR 33-1992, f. 10-30-92, cert. ef. 11-1-92; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0440; HR 2-1994, f. & cert. ef. 2-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 67-2004, f. 9-14-04, cert. ef. 10-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12

## 410-120-1200

### Excluded Services and Limitations

(1) Certain services or items are not covered under any program or for any group of eligible clients. If the client accepts financial responsibility for a non-covered service, payment is a matter between the provider and the client subject to the requirements of OAR 410-120-1280.

(2) The Division of Medical Assistance Programs (Division) shall make no payment for any expense incurred for any of the following services or items that are:

(a) Not expected to significantly improve the basic health status of the client as determined by Division staff, or its contracted entities, for example, the Division's Medical Director, medical consultants, dental consultants or Quality Improvement Organizations (QIO);

(b) Not reasonable or necessary for the diagnosis and treatment of disability, illness, or injury;

(c) Determined not medically or dentally appropriate by Division staff or authorized representatives, including Acumentra or any contracted utilization review organization;

(d) Not properly prescribed as required by law or administrative rule by a licensed practitioner practicing within his or her scope of practice or licensure;

(e) For routine checkups or examinations for individuals age 21 or older in connection with participation, enrollment, or attendance in a program or activity not related to the improvement of health and rehabilitation of the client. Examples include exams for employment or insurance purposes;

(f) Provided by friends or relatives of eligible clients or members of his or her household, except when the friend, relative or household member:

(A) Is a health professional, acting in a professional capacity; or

(B) Is directly employed by the client under the Department of Human Services (Department) Seniors and People with Disabilities Division (SPD) Home and Community Based Waiver or the SPD administrative rules, OAR 411-034-000 through 411-034-0090, governing Personal Care Services covered by the State Plan; or

(C) Is directly employed by the client under the Children, Adults and Families Division (CAF) administrative rules, OAR 413-090-0100 through



# ADMINISTRATIVE RULES

413-090-0220, for services to children in the care and custody of the Department who have special needs inconsistent with their ages. A family member of a minor client (under the age of 18) must not be legally responsible for the client in order to be a provider of personal care services;

(g) For services or items provided to a client who is in the custody of a law enforcement agency or an inmate of a non-medical public institution, including juveniles in detention facilities, except such services as designated by federal statute or regulation as permissible for coverage under the Division's administrative rules;

(h) Needed for purchase, repair or replacement of materials or equipment caused by adverse actions of clients to personally owned goods or equipment or to items or equipment that the Division rented or purchased;

(i) Related to a non-covered service; some exceptions are identified in the individual provider rules. If the Division determines the provision of a service related to a non-covered service is cost-effective, the related medical service may, at the discretion of the Division and with Division prior authorization (PA), be covered;

(j) Considered experimental or investigational, including clinical trials and demonstration projects, or which deviate from acceptable and customary standards of medical practice or for which there is insufficient outcome data to indicate efficacy;

(k) Identified in the appropriate program rules including the Division's Hospital Services Program administrative rules, Revenue Codes Section, as non-covered services.

(l) Requested by or for a client whom the Division has determined to be non-compliant with treatment and who is unlikely to benefit from additional related, identical, or similar services;

(m) For copying or preparing records or documents that except those Administrative Medical Reports requested by the branch offices or the Division for casework planning or eligibility determinations;

(n) Whose primary intent is to improve appearances;

(o) Similar or identical to services or items that will achieve the same purpose at a lower cost and where it is anticipated that the outcome for the client will be essentially the same;

(p) For the purpose of establishing or reestablishing fertility or pregnancy or for the treatment of sexual dysfunction, including impotence,

(q) Items or services which are for the convenience of the client and are not medically or dentally appropriate;

(r) The collection, processing and storage of autologous blood or blood from selected donors unless a physician certifies that the use of autologous blood or blood from a selected donor is medically appropriate and surgery is scheduled;

(s) Educational or training classes that are not medically appropriate (Lamaze classes, for example);

(t) Outpatient social services except maternity case management services and other social services described as covered in the individual provider rules;

(u) Plasma infusions for treatment of Multiple Sclerosis;

(v) Post-mortem exams or burial costs, or other services subsequent to the death of a client;

(w) Radial keratotomy;

(x) Recreational therapy;

(y) Telephone calls, except for:

(A) Tobacco cessation counseling, as described in OAR 410-130-0190;

(B) Maternity case management as described in OAR 410-130-0595;

(C) Telemedicine as described in OAR 410-130-0610; and

(D) Services specifically identified as allowable for telephonic delivery when appropriate in the mental health and chemical dependency procedure code and reimbursement rates published by the Addiction and Mental Health Division;

(z) Transsexual surgery or any related services or items;

(aa) Weight loss programs, including, but not limited to, Optifast, Nutrisystem, and other similar programs. Food supplements will not be authorized for use in weight loss;

(bb) Whole blood (whole blood is available at no cost from the Red Cross); the processing, storage and costs of administering whole blood are covered;

(cc) Immunizations prescribed for foreign travel;

(dd) Services that are requested or ordered but not provided (i.e., an appointment which the client fails to keep or an item of equipment which has not been provided to the client);

(ee) Transportation to meet a client's personal choice of a provider;

(ff) Pain center evaluation and treatment for unfunded condition/treatment pairs on the Oregon Health Services Commission's Prioritized List of Health Services;

(gg) Alcoholics Anonymous (AA) and other self help programs;

(hh) Medicare Part D covered prescription drugs or classes of drugs, and any cost sharing for those drugs, for Medicare-Medicaid Fully Dual Eligible clients, even if the Fully Dual Eligible client is not enrolled in a Medicare Part D plan. See OAR 410-120-1210 for benefit package.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065, 414.025

Hist.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76, Renumbered from 461-013-0030; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 103-1982, f. & ef. 11-1-82; AFS 15-1983(Temp), f. & ef. 4-20-83; AFS 31-1983(Temp), f. 6-30-83, ef. 7-1-83; AFS 43-1983, f. 9-2-83, ef. 10-1-83; AFS 61-1983, f. 12-19-83, ef. 1-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 57-1986, f. 7-25-86, ef. 8-1-86; AFS 78-1986(Temp), f. 12-16-86, ef. 1-1-87; AFS 10-1987, f. 2-27-87, ef. 3-1-87; AFS 29-1987(Temp), f. 7-15-87, ef. 7-17-87; AFS 54-1987, f. 10-29-87, ef. 11-1-87; AFS 51-1988(Temp), f. & cert. ef. 8-2-88; AFS 53-1988(Temp), f. 8-23-88, cert. ef. 9-1-88; AFS 58-1988(Temp), f. & cert. ef. 9-27-88; AFS 70-1988, f. & cert. ef. 12-7-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0055; 461-013-0103, 461-013-0109 & 461-013-0112; HR 5-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 19-1990, f. & cert. ef. 7-9-90; HR 23-1990(Temp), f. & cert. ef. 7-20-90; HR 32-1990, f. 9-24-90, cert. ef. 10-1-90; HR 27-1991 (Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0420, 410-120-0460 & 410-120-0480; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 6-1996, f. 5-31-96 & cert. ef. 6-1-96; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 12-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 22-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 8-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 17-2003(Temp), f. 3-13-03, cert. ef. 3-14-03 thru 8-15-03; OMAP 46-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; OMAP 56-2003, f. 8-28-03, cert. ef. 9-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 15-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12

## 410-120-1210

### Medical Assistance Benefit Packages and Delivery System

(1) The services clients are eligible to receive are based upon the benefit package for which they are eligible. Benefit packages define a client's benefits and services. Not all packages receive the same benefits. The benefit package identifiers are available on the MMIS eligibility verification screen. New clients receive 'coverage letters' listing their assigned benefit package and other information. A new letter is sent whenever benefit package, service delivery or information changes.

(2) The Division of Medical Assistance Programs (Division) benefit package description, codes and eligibility criteria are identified in these rules.

(3) The benefit limitations and exclusions listed here are in addition to those described in OAR 410-120-1200 and in each of the Division chapter 410 OARs. The benefits and limitations included in each OHP benefit package follow:

(a) Oregon Health Plan (OHP) Plus Benefit Package (benefit package identifier BMH)-clients on this benefit package are categorically eligible for medical assistance as defined in federal regulations and in the 1115 OHP waiver demonstration. A client is categorically eligible for medical assistance if he or she is eligible under a federally defined mandatory, selected, optional Medicaid program or the Children's Health Insurance Program (CHIP) and also meets Oregon Health Authority (Authority) adopted income and other eligibility criteria.

(A) OHP Plus Benefit Package coverage includes:

(i) Services above the funding line on the Health Services Commission's (HSC) Prioritized List of Health Services, (OAR 410-141-0480 through 410-141-0520);

(ii) Ancillary services, (OAR 410-141-0480);

(iii) Chemical dependency services provided through local alcohol and drug treatment providers;

(iv) Mental health services based on the HSC Prioritized List of Health Services, to be provided through Community Mental Health Programs or their subcontractors;

(v) Hospice;

(vi) Post-hospital extended care benefit, up to a 20-day stay in a nursing facility for non-Medicare Division clients who meet Medicare criteria for a post-hospital skilled nursing placement. This benefit requires prior authorization by pre-admission screening (OAR 411-070-0043), or by the Fully Capitated Health Plan (FCHP) for clients enrolled in an FCHP;

(vii) Cost sharing may apply to some covered services;

## ADMINISTRATIVE RULES

(B) The following services have limited coverage for non pregnant adults age 21 and older. (Refer to the cited OAR chapters and divisions for details):

(i) Selected dental (OAR chapter 410, division 123);

(ii) Vision services such as frames, lenses, contacts corrective devices and eye exams for the purpose of prescribing glasses or contacts (OAR chapter 410, division 140);

(b) OHP Standard Benefit Package (benefit package identifier KIT) - clients on this benefit package are eligible for OHP through the 1115 Medicaid expansion waiver. These clients are adults and childless couples who meet Authority-adopted income and other eligibility criteria; the Department identifies these clients through the program acronym, OHP-OPU,

(A) OHP Standard coverage includes:

(i) Services above the funding line on the HSC Prioritized List, (OAR 410-141-0480 through 410-141-0520);

(ii) Ancillary services, (OAR 410-141-0480);

(iii) Outpatient chemical dependency services provided through local alcohol and drug treatment providers;

(iv) Outpatient mental health services based on the HSC Prioritized List of Health Services, to be provided through Community Mental Health Programs or their subcontractors;

(v) Hospice;

(vi) Post-hospital extended care benefit, up to a 20-day stay in a nursing facility for non-Medicare Division clients who meet Medicare criteria for a post-hospital skilled nursing placement. This benefit requires prior authorization by pre-admission screening (OAR 411-070-0043) or by the Fully Capitated Health Plan (FCHP) for clients enrolled in an FCHP.

(B) The following services have limited coverage for the OHP Standard benefit package (Refer to the cited OAR chapters and divisions for details):

(i) Selected dental (OAR chapter 410, division 123);

(ii) Selected durable medical equipment and medical supplies (OAR chapter 410, division 122 and 130);

(iii) Selected home enteral/parenteral services (OAR chapter 410, division 148);

(iv) Other limitations as identified in individual Division program administrative rules.

(C) The following services are not covered under the OHP Standard Benefit Package. Refer to the cited OAR chapters and divisions for details:

(i) Acupuncture services, except when provided for chemical dependency treatment (OAR chapter 410, division 130);

(ii) Chiropractic and osteopathic manipulation services (OAR chapter 410, division 130);

(iii) Hearing aids and related services (i.e., exams for the sole purpose of determining the need for or the type of hearing aid), (OAR chapter 410, division 129);

(iv) Home health services (OAR chapter 410, division 127), except when related to limited EPIV services (OAR chapter 410, division 148);

(v) Non-emergency medical transportation (OAR chapter 410, division 136);

(vi) Occupational therapy services (OAR chapter 410, division 131);

(vii) Physical therapy services (OAR chapter 410, division 131);

(viii) Private duty nursing services (OAR chapter 410, division 132), except when related to limited EPIV services;

(ix) Speech and language therapy services (OAR chapter 410, division 129);

(x) Vision services such as frames, lenses, contacts corrective devices and eye exams for the purpose of prescribing glasses or contacts (OAR chapter 410, division 140);

(xi) Other limitations as identified in individual Division program administrative rules, chapter 410.

(c) Qualified Medicare Beneficiary (QMB) + OHP with limited drug Benefit Package (benefit package identifier BMM) - clients on this benefit package are dual eligible for Medicare and Medicaid benefits. Coverage includes any service covered by Medicare and OHP Plus, except that drugs or classes of drugs covered by Medicare Part D Prescription Drug are only covered by Medicare. Payment for services is the Medicaid allowed payment less the Medicare payment up to the amount of co-insurance and deductible, except as limited in (E) below. This package also covers:

(A) Services above the funding line on the HSC Prioritized List, (OAR 410-141-0480 through 410-141-0520);

(B) Mental health services based on the HSC Prioritized List of Health Services, to be provided through Community Mental Health Programs or their subcontractors;

(C) Chemical dependency services provided through a local alcohol and drug treatment provider;

(D) Ancillary services, (OAR 410-141-0480);

(E) Cost sharing may apply to some covered services, however, cost sharing related to Medicare Part D is not covered since drugs covered by Part D are excluded from the benefit package;

(F) Division will continue to coordinate benefits for drugs covered under Medicare Part B, subject to Medicare's benefit limitations and division provider rules;

(G) Division will cover drugs excluded from Medicare Part D coverage that are also covered under the medical assistance programs, subject to applicable limitations for covered prescription drugs (Refer to OAR chapter 410, division 121 for specific limitations). The drugs include but are not limited to:

(i) Benzodiazepines;

(ii) Over-the-counter (OTC) drugs;

(iii) Barbiturates;

(H) The following services have limited coverage for non pregnant adults age 21 and older (Refer to the cited OAR chapters and divisions for details):

(i) Selected dental (OAR chapter 410, division 123);

(ii) Vision services such as frames, lenses, contacts corrective devices and eye exams for the purpose of prescribing glasses or contacts (OAR chapter 410, division 140);

(d) OHP with limited drug Benefit Package (Benefit Package identifier BMD) - clients on this benefit package are also dual eligible for Medicare and Medicaid but are not designated a QMB by Medicare. Coverage includes any service covered by Medicare and OHP Plus, except that drugs or classes of drugs covered by Medicare Part D Prescription Drug are only covered by Medicare. Payment for services is the Medicaid allowed payment less the Medicare payment up to the amount of co-insurance and deductible, except as limited in (E) below. This package also covers:

(A) Services above the funding line on the HSC Prioritized List, (OAR 410-141-0480 through 410-141-0520);

(B) Mental health services based on the HSC Prioritized List of Health Services, to be provided through Community Mental Health Programs or their subcontractors;

(C) Chemical dependency services provided through a local alcohol and drug treatment provider.

(D) Ancillary services, (OAR 410-141-0480);

(E) Cost sharing may apply to some covered services, however cost sharing related to Medicare Part D is not covered since drugs covered by Part D are excluded from the benefit package;

(F) Division will continue to coordinate benefits for drugs covered under Medicare Part B, subject to Medicare's benefit limitations and division provider rules;

(G) Division will cover drugs excluded from Medicare Part D coverage that are also covered under the medical assistance programs, subject to applicable limitations for covered prescription drugs (Refer to OAR chapter 410, division 121 for specific limitations). The drugs include but are not limited to:

(i) Benzodiazepines;

(ii) Over-the-counter (OTC) drugs;

(iii) Barbiturates;

(H) The following services have limited coverage for non pregnant adults age 21 and older. (Refer to the cited OAR chapters and divisions for details):

(i) Selected dental (OAR chapter 410, division 123);

(ii) Vision services such as frames, lenses, contacts corrective devices and eye exams for the purpose of prescribing glasses or contacts (OAR chapter 410, division 140);

(e) Qualified Medicare Beneficiary (QMB)-Only Benefit Package (benefit package identifier MED) - clients on this limited benefit package are Medicare beneficiaries who have limited income but do not meet the income standard for full medical assistance coverage. These clients have coverage through Medicare Parts A and B only for most covered services:

(A) Payment for services by the Division is limited to the co-insurance or deductible for the Medicare service. Payment is based on the Medicaid allowed payment less the Medicare payment up to the amount of co-insurance and deductible, but no more than the Medicare allowable;

(B) Providers may bill QMB clients for services that are not covered by Medicare. Providers may not bill QMB-only clients for the deductible and coinsurance amounts due for services that are covered by Medicare.

# ADMINISTRATIVE RULES

(f) Citizen/Alien-Waived Emergency Medical (CAWEM) Benefit Package (benefit package identifier CWM)- clients on this limited benefit package are certain eligible, non-qualified aliens that are not eligible for other Medicaid programs pursuant to Oregon Administrative Rules (OAR) 461-135-1070. The Citizen/Alien-Waived Emergency Medical Assistance (CAWEM) Benefit Package provides limited services:

(A) Emergency medical services and labor and delivery services; CAWEM services are strictly defined by 42 CFR 440.255 (the "prudent layperson standard" does not apply to the CAWEM emergency definition);

(B) A CAWEM client is eligible for services only after sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part;

(C) The following services are not covered for CAWEM clients, even if they are seeking emergency services:

- (i) Prenatal or postpartum care;
- (ii) Sterilization;
- (iii) Family Planning;
- (iv) Preventive care;
- (v) Organ transplants and transplant-related services;
- (vi) Chemotherapy;
- (vii) Hospice;
- (viii) Home health;
- (ix) Private duty nursing;
- (x) Dialysis;
- (xi) Dental services provided outside of an emergency department hospital setting;

- (xii) Outpatient drugs or over-the-counter products;
- (xiii) Non-emergency medical transportation;
- (xiv) Therapy services;
- (xv) Durable medical equipment and medical supplies;
- (xvi) Rehabilitation services.

(g) CAWEM Plus-CHIP Prenatal coverage for CAWEM (benefit code CWX) - refer to OAR 410-120-0030 for coverage.

(4) Division clients are enrolled for covered health services to be delivered through one of the following means:

(a) Prepaid Health Plan (PHP):

(A) These clients are enrolled in a PHP for their medical, dental and mental health care;

(B) Most non-emergency services are obtained from the PHP or require a referral from the PHP that is responsible for the provision and reimbursement for the medical, dental or mental health service;

(C) Inpatient hospitalization services that are not the responsibility of a Physician Care Organization (PCO) are governed by the Hospital Services Program rules (OAR 410 Division 125);

(D) The name and phone number of the PHP appears on the Medical Care Identification.

(b) Primary Care Managers (PCM):

(A) These clients are enrolled with a PCM for their medical care;

(B) Most non-emergency services provided to clients enrolled with a PCM require referral from the PCM.

(c) Fee-for-service (FFS):

(A) These clients are not enrolled in a PHP or assigned to a PCM;

(B) Subject to limitations and restrictions in individual program rules, the client can receive health care from any Division-enrolled provider that accepts FFS clients. The provider will bill the Division directly for any covered service and will receive a fee for the service provided.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025, 414.065, 414.705, 414.706, 414.707, 414.708, 414.710  
Hist.: OMAP 46-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; OMAP 56-2003, f. 8-28-03, cert. ef. 9-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12

## 410-120-1340

### Payment

(1) The Division of Medical Assistance Programs (Division) shall make payment only to the enrolled provider who actually performs the service or to the provider's enrolled billing provider for covered services rendered to eligible clients. Any contracted billing agent or billing service submitting claims on behalf of a provider but not receiving payment in the name of or on behalf of the provider does not meet the requirements for billing provider enrollment. If billing agents and billing services intend to submit electronic transactions they must register and comply with the

Oregon Health Authority (Authority) Electronic Data Interchange (EDI) rules, OAR 407-120-0100 through 407-120-0200. Division reimbursement for services may be subject to review prior to reimbursement.

(2) The Division (Division of Medical Assistance Programs or another Division within the Authority) that is administering the program under which the billed services or items are provided sets fee-for-service (FFS) payment rates.

(3) The Division uses FFS payment rates in effect on the date of service that are the lesser of:

(a) The amount billed;

(b) The Division maximum allowable amount or;

(c) Reimbursement specified in the individual program provider rules:

(A) Amount billed may not exceed the provider's "usual charge" (see definitions);

(B) The Division's maximum allowable rate setting process uses the following methodology. The rates are updated periodically and posted on the Authority web site at [http://www.oregon.gov/Department/healthplan/data\\_pubs/feeschedule/main.shtml](http://www.oregon.gov/Department/healthplan/data_pubs/feeschedule/main.shtml):

(C) For all CPT/HCPCS codes assigned a Relative Value Unit (RVU) weight and reflecting services not typically performed in a facility, the Division shall continue to use the 2010 Transitional Non-Facility Total RVU weights published in the Federal Register, Vol. 74, November 25, 2009 with technical corrections published Dec. 10, 2009, to be effective for dates of services beginning January 1, 2011. For CPT/HCPCS codes for professional services typically performed in a facility the Transitional Facility Total RVU weight shall be adopted:

(i) The conversion factor for labor and delivery (59400-59622) is \$41.61;

(ii) CPT codes 92340-92342 and 92352-92353 remain at a flat rate of \$26.81;

(iii) The conversion factor for Primary care providers and services is 27.82. A current list of Primary care CPT, HCPCS and provider specialty codes is available at [http://www.oregon.gov/OHA/healthplan/data\\_pubs/feeschedule/main.shtml](http://www.oregon.gov/OHA/healthplan/data_pubs/feeschedule/main.shtml)

The document dated:

(I) August 1, 2011, is effective for dates of service on or after August 1, 2011.

(iv) All remaining RVU weight based CPT/HCPCS codes have a conversion factor of \$26.00;

(B) Surgical assist reimburses at 20% of the surgical rate;

(C) The base rate for anesthesia services 00100-01996 is \$ 21.20 and is based on per unit of service;

(D) Clinical lab codes are priced at 70% of the Medicare clinical lab fee schedule;

(E) All approved Ambulatory Surgical Center (ASC) procedures are reimbursed at 80% of the Medicare fee schedule;

(F) Physician administered drugs, billed under a HCPCS code, are based on Medicare's Average Sale Price (ASP). When no ASP rate is listed the rate shall be based upon the Wholesale Acquisition Price (WAC) plus 6.25%. If no WAC is available, then the rate shall be reimbursed at Acquisition Cost. Pricing information for WAC is provided by First Data Bank. These rates may change periodically based on drug costs;

(G) All procedures used for vision materials and supplies are based on contracted rates that include acquisition cost plus shipping and handling;

(c) Individual provider rules may specify reimbursement rates for particular services or items.

(4) The Division reimburses inpatient hospital service under the DRG methodology, unless specified otherwise in the Division's Hospital Services Program administrative rules (chapter 410, division 125). Reimbursement for services, including claims paid at DRG rates, shall not exceed any upper limits established by federal regulation.

(5) The Division reimburses all out-of-state hospital services at Oregon DRG or FFS rates as published in the Hospital Services Program rules (OAR chapter 410, division 125) unless the hospital has a contract or service agreement with the Division to provide highly specialized services.

(6) Payment rates for in-home services provided through Department of Human Services (Department) Seniors and People with Disabilities Division (SPD) will not be greater than the current Division rate for nursing facility payment.

(7) The Division sets payment rates for out-of-state institutions and similar facilities, such as skilled nursing care facilities, psychiatric and rehabilitative care facilities at a rate that is:

(a) Consistent with similar services provided in the State of Oregon; and



# ADMINISTRATIVE RULES

(b) The lesser of the rate paid to the most similar facility licensed in the State of Oregon or the rate paid by the Medical Assistance Programs in that state for that service; or

(c) The rate established by SPD for out-of-state nursing facilities.

(8) The Division shall not make payment on claims that have been assigned, sold, or otherwise transferred or when the billing provider, billing agent or billing service receives a percentage of the amount billed or collected or payment authorized. This includes, but is not limited to, transfer to a collection agency or individual who advances money to a provider for accounts receivable.

(9) The Division shall not make a separate payment or copayment to a nursing facility or other provider for services included in the nursing facility's all-inclusive rate. The following services are not included in the all-inclusive rate (OAR 411-070-0085) and may be separately reimbursed:

(a) Legend drugs, biologicals and hyperalimentation drugs and supplies, and enteral nutritional formula as addressed in the Pharmaceutical Services Program administrative rules (chapter 410, division 121) and Home Enteral/Parenteral Nutrition and IV Services Program administrative rules, (chapter 410, division 148);

(b) Physical therapy, speech therapy, and occupational therapy provided by a non-employee of the nursing facility within the appropriate program administrative rules, (chapter 410, division 129 and 131);

(c) Continuous oxygen which exceeds 1,000 liters per day by lease of a concentrator or concentrators as addressed in the Durable Medical Equipment, Prosthetics, Orthotics and Supplies Program administrative rules, (chapter 410, division 122);

(d) Influenza immunization serum as described in the Pharmaceutical Services Program administrative rules, (chapter 410, division 121);

(e) Podiatry services provided under the rules in the Medical-Surgical Services Program administrative rules, (chapter 410, division 130);

(f) Medical services provided by a physician or other provider of medical services, such as radiology and laboratory, as outlined in the Medical-Surgical Services Program rules, (chapter 410, division 130);

(g) Certain custom fitted or specialized equipment as specified in the Durable Medical Equipment, Prosthetics, Orthotics and Supplies Program administrative rules, (chapter 410, division 122).

(10) The Division reimburses hospice services based on CMS Core-Based Statistical Areas (CBSA's). A separate payment will not be made for services included in the core package of services as outlined in OAR chapter 410, division 142.

(11) Payment for Division clients with Medicare and full Medicaid:

(a) The Division limits payment to the Medicaid allowed amount less the Medicare payment up to the Medicare co-insurance and deductible, whichever is less. The Division's payment cannot exceed the co-insurance and deductible amounts due;

(b) The Division pays the Division allowable rate for Division covered services that are not covered by Medicare.

(12) For clients with third-party resources (TPR), the Division pays the Division allowed rate less the TPR payment but not to exceed the billed amount.

(13) The Division 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 the Division, such payment in full includes:

(a) Zero payments for claims where a third party or other resource has paid an amount equivalent to or exceeding Division allowable payment; and

(b) Denials of payment for failure to submit a claim in a timely manner, failure to obtain payment authorization in a timely and appropriate manner, or failure to follow other required procedures identified in the individual provider rules.

(14) Payment by the Division does not restrict or limit the Authority or any state or federal oversight entity's right to review or audit a claim before or after the payment. Claim payment may be denied or subject to recovery if medical review, audit or other post-payment review determines the service was not provided in accordance with applicable rules or does not meet the criteria for quality of care, or medical appropriateness of the care or payment.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025, 414.033, 414.065, 414.095, 414.705, 414.727, 414.728, 414.742, 414.743

Hist.: PWC 683, f. 7-19-74, ef. 8-11-784; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; Renumbered from 461-013-0061; PWC 833, f. 3-18-77, ef. 4-1-77; Renumbered from 461-013-0061; AFS 5-1981, f. 1-23-81, ef. 3-1-81; Renumbered from 461-013-0060, AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 50-1985, f. 8-16-85, ef. 9-1-85; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered

from 461-013-0081, 461-013-0085, 461-013-0175 & 461-013-0180; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040, 410-120-0220, 410-120-0200, 410-120-0240 & 410-120-0320; HR 2-1994, f. & cert. ef. 2-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 35-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 22-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-25-12; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12

## 410-120-1510

### Fraud and Abuse

(1) This rule sets forth requirements for reporting, detecting and investigating fraud and abuse. The terms fraud and abuse in this rule are defined in OAR 410-120-0000. As used in these rules, terms have the following meanings:

(a) "Credible allegation of fraud" means an allegation of fraud, which has been verified by the State and has indicia of reliability that comes from any source as defined in 42 CFR 455.2.

(b) "Conviction" or "convicted" means that a judgment of conviction has been entered by a federal, state, or local court, regardless of whether an appeal from that judgment is pending;

(c) "Exclusion" means that the Oregon Health Authority (Authority) or the Department of Human Services (Department) will not reimburse a specific provider who has defrauded or abused Authority or Department for items or services that provider furnished;

(d) "Prohibited kickback relationships" means remuneration or payment practices that may result in federal civil penalties or exclusion for violation of 42 CFR 1001.951;

(e) "Suspension" means the Authority or Department will not reimburse a specified provider who has been convicted of a program-related offense in a federal, state or local court for items or services that provider furnished.

(2) Cases involving one or more of the following situations shall constitute sufficient grounds for a provider fraud referral:

(a) Billing for services, supplies, or equipment that are not rendered to, or used for, Medicaid patients;

(b) Billing for supplies or equipment that are clearly unsuitable for the patient's needs or are so lacking in quality or sufficiency for the purpose as to be virtually worthless;

(c) Claiming costs for non-covered or non-chargeable services, supplies, or equipment disguised as covered items;

(d) Materially misrepresenting dates and descriptions of services rendered, the identity of the individual who rendered the services, or of the recipient of the services;

(e) Duplicate billing of the Medicaid Program or of the recipient, that appears to be a deliberate attempt to obtain additional reimbursement; and

(f) Arrangements by providers with employees, independent contractors, suppliers, and other, and various devices such as commissions and fee splitting, that appear to be designed primarily to obtain or conceal illegal payments or additional reimbursement from Medicaid.

(2) Provider is required to promptly refer all suspected fraud and abuse, including fraud or abuse by its employees or in the Division administration, to the Medicaid Fraud Control Unit (MFCU) of the Department of Justice or to the Department of Human Services (Department) Provider Audit Unit (PAU). For contact information, see the General Rules Supplemental Information Guide online at [www.dhs.state.or.us/policy/healthplan/guides/genrules/main.html](http://www.dhs.state.or.us/policy/healthplan/guides/genrules/main.html).

(3) Provider, if aware of suspected fraud or abuse by an Authority or Department client (i.e., provider reporting Authority or Department client fraud and abuse) must report the incident to the Department Fraud Investigations Unit (FIU). For contact information, see the General Rules Supplemental Information Guide online at [www.dhs.state.or.us/policy/healthplan/guides/genrules/main.html](http://www.dhs.state.or.us/policy/healthplan/guides/genrules/main.html).

(4) Provider shall permit the MFCU, Authority or Department, or other law enforcement entity, together or separately to inspect, copy, evaluate or audit books, records, documents, files, accounts, and facilities, without charge, as required to investigate an incident of fraud or abuse. When a provider fails to provide immediate access to records, Medicaid payments may be withheld or suspended.

(5) Providers and their fiscal agents must disclose ownership and control information, and disclose information on a provider's owners and other persons convicted of criminal offenses against Medicare, Medicaid or the Title XX services program. Such disclosure and reporting is made a part of the provider enrollment agreement, and the provider is obligated to update that information with an amended provider enrollment agreement if any of

# ADMINISTRATIVE RULES

the information materially changes. The Authority or Department shall use that information to meet the requirements of 42 CFR 455.100 to 455.106, and this rule must be construed in a manner that is consistent with the Authority or Department acting in compliance with those requirements.

(6) The Authority or Department may share information for health oversight purposes with the MFCU and other federal or state health oversight authorities.

(7) The Authority or Department may suspend payments in whole or part in a suspected case of fraud or abuse, or where there exists a credible allegation of fraud or abuse presented to the Authority, the Department or other law enforcement entity, or where there is a pending investigation or conclusion of legal proceedings related to the provider's alleged fraud or abuse.

(8) The Authority or Department is authorized to take the actions necessary to investigate and respond to credible allegations of Fraud and Abuse, including but not limited to suspending or terminating the provider from participation in the medical assistance programs, withholding payments or seeking recovery of payments made to the provider, or imposing other Sanctions provided under state law or regulations. Such actions by the Authority or Department may be reported to the Centers for Medicare and Medicaid Services, or other federal or state entities as appropriate.

(9) The Authority or Department will not pay for covered services provided by persons who are currently suspended, debarred or otherwise excluded from participating in Medicaid, Medicare, or CHIP, or who have been convicted of a felony or misdemeanor related to a crime or violation of Title XVIII, XIX, XXI or XX of the Social Security Act or related laws.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12

## 410-120-1920

### Institutional Reimbursement Changes

(1) The Division of Medical Assistance Programs (Division) is required under federal regulations, 42 CFR 447, to submit specific assurances and related information to the Centers for Medicare and Medicaid Services (CMS) whenever it makes a significant change in its methods and standards for setting payment rates for inpatient hospital services or long-term care facilities.

(2) A "significant change" is defined as a change in payment rates that affects the general method of payment to all providers of a particular type or is projected to affect total reimbursement for that particular type of provider by six percent or more during the 12 months following the effective date.

(3) Federal regulation specifies that a public notice must be published in one of the following:

(a) A state register similar to the Federal Register. For the Oregon Health Authority (Authority), the state register is the Oregon Bulletin published by the Secretary of State;

(b) The newspaper of widest circulation in each city with a population of 50,000 or more;

(c) The newspaper of widest circulation in the state, if there is no city with a population of 50,000 or more;

(d) The Authority web site for public notices.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 409.010

Hist.: AFS 13-1985, f. 3-4-85, ef. 4-1-85; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0006; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0380; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12

## 410-120-1960

### Payment of Private Insurance Premiums

(1) The Private Insurance Premium (PHI) and Health Insurance Premium Payment (HIPP) Program is a cost saving program administered by the Oregon Health Authority (Authority) and the Department of Human Services (Department) for Medicaid enrollees. When a Medicaid client or eligible applicant has employer sponsored group health insurance or private health insurance the Authority or Department may choose to reimburse a portion or the entire insurance premium, if it is determined to be cost effective for the Authority or Department.

(2) The Authority or Department may pay health insurance policy premiums or otherwise enter into agreements with other health insurance plans that comply with ORS 414.115 to 414.145 on behalf of eligible individuals when: (a) The client is enrolled in full coverage Medicaid as indicated by the program acronym CEM, EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP-OPU), OSIPM, and SAC;

(b) The policy is a comprehensive major medical insurance plan (comparable to the Medicaid State Plan coverage) and at a minimum provides the following;

(i) Physician services;

(ii) Hospitalization (inpatient and outpatient);

(iii) Outpatient Lab, x-ray, immunizations; and

(iv) Full prescription Drug coverage.

(c) The payment of premiums and/or co-insurance and deductibles is likely to be cost-effective, as determined under section (5) of this rule;

(d) An eligible applicant may be a non-Medicaid individual living in or outside the household. The Authority or Department may pay the entire premium (excluding the employer's portion) if payment of the premium including that individual is cost-effective, and if it is necessary to include that individual in order to enroll the Authority or Department client in the health plan. The Authority or Department shall not reimburse for policies that are for the purpose of providing court ordered health insurance.

(3) The Authority or Department shall not pay private health insurance premiums for:

(a) Non-SSI institutionalized and waived clients whose income deduction is used for payment of health insurance premiums;

(b) A policy that has limited benefits where the Authority or Department's annual cost for the premiums exceeds the benefit limits of the policy..

(c) Medicaid eligible clients enrolled in Medicare part A and/or Part B.

(d) Non-major medical stand alone policies such as dental, vision, cancer, accident only.

(4) The Authority or Department shall assure that all Medicaid covered services continue to be made available to Medicaid-eligible individuals for whom the Authority or Department elects to purchase all or a portion of their private or employer sponsored health insurance.

(5) Assessment of cost-effectiveness shall include:

(a) The Medical Savings Chart (MSC) is used to obtain the Cost Effectiveness rate for each Medicaid eligible.

(b) In cases where there is more than one Medicaid eligible covered by a single insurance policy, the cost effectiveness rates are combined and compared to the cost of the insurance premium. If the combined cost effectiveness rate total is greater than the cost of the premium it is approved as cost effective.

(c) If the monthly premium exceeds the allowable amount on the MSC, the Authority or Department may elect to review the current and probable future health status of the Medicaid client based upon their existing medical conditions, previous medical history, age, number of dependents, and other relevant health status indicators. The Authority or Department may apply a special conditions rate in addition to the cost effectiveness rate on the MSC to determine if their premium is cost effective.

(6) The Authority or Department may purchase documents or records necessary to establish or maintain the client's eligibility for other insurance coverage.

(7) The Authority or Department shall not make payments for any benefits covered under the private health insurance plan, except as follows:

(a) The Authority or Department shall calculate the Authority or Department's allowable payment for a service. The amount paid by the other insurer shall be deducted from the Authority or Department allowable. If the Authority or Department allowable exceeds the third party payment, the Authority or Department shall pay the provider of service the difference;

(b) The payment made by the Authority or Department shall not exceed any co-insurance, copayment or deductible due;

(c) The Authority or Department shall make payment of co-insurance, copayments or deductibles due only for covered services provided to Medicaid-eligible clients.

(8) Any change of insurance coverage must be reported to the Authority or Department within 10 days of the change to minimize any overpayment made on the client's behalf. Changes that must be reported include but are not limited to:

(a) Private or employer-sponsored insurance is no longer active (ends);

(b) Family member added or dropped from health insurance plan;

(c) Change in health insurance plan or health plan coverage;

(d) Change in employer resulting in change in health insurance plan;

(e) Change in health plan premium cost;

(f) Change in employment status (lay off/termination, short-term disability)

# ADMINISTRATIVE RULES

(g) Address changes

(9) As a condition of eligibility, clients are required to pursue assets (OAR 461-120-0330), and required to obtain medical coverage (OAR 461-120-0345). Failure to notify the Authority or Department worker of insurance coverage or changes in such coverage, and failure to provide periodic required documentation for PHI/HIPP may impact continued eligibility.

(10) The effective date for starting reimbursement of cost-effective PHI/HIPP premiums is the first of the next new month following the eligibility determination, providing the insurance is still active.

(11) Cancellation of premium payment shall result when:

(a) Client(s) is no longer eligible for Medicaid;

(b) No longer covered by the employer sponsored or private health insurance plan;

(c) Health insurance premium is no longer cost effective for the Authority or Department;

(d) Failure to submit or complete Redetermination forms and/or provide documentation required by the Authority or Department to complete Redetermination;

(e) Client or eligible applicant fails to use the Authority or Department's premium payment reimbursement to pay for their private insurance, if they are required to pay the insurance directly;

(f) If the policy-type changes (Primary policy changes to a supplemental policy) or the clients eligibility changes to a category that does not meet the requirements in (2).

(12) The Authority or Department determines where approved premium payments should be sent; to the policy holder (or authorized representative); the employer; or the insurance carrier.

(13) The client or eligible applicant's receipt of payment under this rule is intended for the express purpose of insurance premium payment, or reimbursement of client paid insurance premium.

(14) Redetermination of premium payments will occur:

(a) Annually for continued cost effectiveness and may also be reviewed more frequently to ensure insurance is active;

(b) When changes with Medicaid, insurance eligibility or employment have been reported or identified;

(c) Other reasons determined by the Department.

(15) Clients do not have hearing rights as outlined in OAR 410-120-1855 for a denial of private insurance premium payment. The Authority or Department's decision to place a client in the PHI/HIPP program is not an eligibility determination, nor a denial of a Medicaid benefit.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.019, 414.025, 414.065, 414.115, 414.125, 414.135 & 414.145  
Hist.: AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 38-1984, f. 8-30-84, ef. 9-1-84; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0170; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0500 & 410-120-0520; OMAP 67-2004, f. 9-14-04, cert. ef. 10-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12

\*\*\*\*\*

**Rule Caption:** Budget/provider rate changes, definition revision, OHP hospital benefits, fraud & abuse, PHI, permanently amend temps.

**Adm. Order No.:** DMAP 37-2011

**Filed with Sec. of State:** 12-13-2011

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

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

**Rules Amended:** 410-125-0045, 410-125-0047, 410-125-0080, 410-125-0085, 410-125-0140, 410-125-0220

**Subject:** The Hospital Services Program administrative rules govern Division payments for services to clients. The Division amends as follows:

- 410-125-0080 and 410-125-0220: clarifies language for hospital dentistry prior authorization requirements.

- 410-125-0045, 410-125-0047, 410-125-0080, 410-125-0085 and 410-125-0140: clarifies prior authorization requirements, reflecting the changes to the Standard Limited Hospital benefits to the OHP plus hospital benefit.

- Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-125-0045

### Coverage and Limitations

In general, most medically appropriate services are covered. There are, however, some restrictions and limitations. Please refer to the Division of Medical Assistance Programs' (Division) General Rules Program for information on general scope of coverage and limitations. Some of the limitations and restrictions that apply to hospital services are:

(1) Prior authorization (PA): Some services require PA for the Plus Benefit Package check OAR 410-125-0080.

(2) Non-Covered services:

(a) Services that are not medically appropriate, unproven medical efficacy or services that are the responsibility of another Department of Human Services (Department) Division are not covered by the Division of Medical Assistance Programs;

(b) Service coverage is based on the Health Services Commission's Prioritized List of Services and the benefit package;

(c) See the General Rules Program (chapter 410, division 120) and other program divisions in chapter 410 for a list of not covered services. Further information on covered and non-covered services is found in the Revenue Code section in the Hospital Services Supplemental Information.

(3) Limitations on hospital benefit days: Clients have no hospital benefit day limitations for treatment of covered services.

(4) Dental services: Clients have dental/denturist services identified as covered on the Health Services Commission Prioritized List (OAR 410-141-520).

(5) Services provided outside of the hospital's licensed facilities; for example, in the client's home or in a nursing home, are not covered by Division as hospital services. The only exceptions to this are Maternity Case Management services and specific nursing or physician services provided during a ground or air ambulance transport.

(6) Dialysis services require a written physician prescription. The prescription must indicate the ICD-9 diagnosis code and must be retained by the provider of dialysis services for the period of time specified in the General Rules Program.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: HR 42-1991, f. & cert. ef. 10-1-91; HR 36-1993, f. & cert. ef. 12-1-93; HR 5-1994, f. & cert. ef. 2-1-94; HR 4-1995, f. & cert. ef. 3-1-95; HR 3-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 28-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; DMAP 39-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 37-2011, f. 12-13-11, cert. ef. 1-1-12

## 410-125-0047

### Limited Hospital Benefit for the OHP Standard Population

(1) The Oregon Health Plan (OHP) Standard population has a limited hospital benefit for urgent or emergent inpatient and outpatient services. Inpatient and outpatient hospital services are limited to the International Classification of Diseases 9th revision Clinical Modification (ICD-9 CM) Diagnoses codes listed on the 'Standard Population Limited Hospital Benefit Code List.'

(2) The limited hospital benefit includes the ICD-9 CM codes listed in the OHP Standard Population – Limited Hospital Benefit Code List. This rule incorporates by reference the OHP Standard Population – Limited Hospital Benefit Code List. This list includes diagnoses requiring prior authorization indicated by the letters for prior authorization (PA) next to the code number. The archived and the current list is available on the web site ([www.dhs.state.or.us/policy/healthplan/guides/hospital](http://www.dhs.state.or.us/policy/healthplan/guides/hospital)), or contact the Division of Medical Assistance Programs (Division) for a hardcopy. The document dated:

(a) August 1, 2004, is effective for dates of service August 1, 2004 through August 31, 2004;

(b) September 1, 2004, is effective for dates of service September 30, 2004 through June 30, 2008; and

(c) July 1, 2008 is effective for dates of service July 1, 2008 forward;

(d) On or after January 1, 2012 the limited hospital benefit for the OHP Standard population will be enhanced to the OHP plus hospital benefit and will not be operative until the Division determines all necessary federal approvals have been obtained.

(3) The Division shall reimburse hospitals for inpatient (diagnostic and treatment) services, outpatient (diagnostic and treatment services) and emergency room (diagnostic and treatment) based on the following:

(a) For treatment, the diagnosis must be listed in the OHP Standard Population – Limited Hospital Benefit Code List;

(b) For treatment the diagnosis must be above the funding line on The Health Services Commission Prioritized List of Health Services (OAR 410-141-0520);

(c) The diagnosis (ICD-9) must pair with the treatment (CPT code); and



# ADMINISTRATIVE RULES

(d) Prior authorization (PA) must be obtained for codes indicated in the OHP Standard Population – Limited Hospital Benefit Code List. PA request should be directed to the Division and will follow the present (current) PA process. PAs must be processed as expeditiously as the client's health condition requires;

(e) Medically appropriate services required to make a definitive diagnosis are a covered benefit.

(4) Some non-diagnostic outpatient hospital services (e.g. speech, physical or occupational therapy, etc.) are not covered benefits for the OHP Standard population (see the individual program for coverage) in the hospital setting.

(5) For benefit implementation process and PA requirements for the client enrolled in a Fully Capitated Health Plan (FCHP) and/or Mental Health Organization (MHO), contact the client's FCHP or MHO. The FCHP and/or MHO may have different requirements than the Division.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 52-2004(Temp), f. & cert. ef. 9-1-04 thru 2-15-05; OMAP 84-2004, f. & cert. ef. 11-1-04; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 37-2011, f. 12-13-11, cert. ef. 1-1-12

## 410-125-0080

### Inpatient Services

(1) Elective (not urgent or emergent) admission:

(a) Fully-Capitated Health Plan (FCHP) and Mental Health Organization (MHO) clients – contact the client's MHO or FCHP. The health plan may have different prior authorization (PA) requirements than the Division of Medical Assistance Programs (Division);

(b) Medicare clients – The Division does not require PA for inpatient services provided to clients with Medicare Part A or B coverage;

(c) For Division clients covered by the Oregon Health Plan (OHP) Plus Benefit Package and OHP Standard Benefit Package as referenced in 410-125-0047(2)(d):

(A) For a list of medical and surgical procedures that require PA, see the Medical-Surgical Service rules, specifically OAR 410-130-0200, table 130-0200-1, unless they are urgent or emergent defined in OAR 410-125-0401.

(B) For PA contact the Division unless otherwise indicated in the Medical Surgical Service rules, specifically OAR 410-130-0200, Table 130-0200-1.

(2) Transplant services:

(a) Complete rules for transplant services are in the Division's Transplant Services Program administrative rules (chapter 410, division 124);

(b) Clients are eligible for transplants covered by the Oregon Health Services Commission's Prioritized List of Health Services. See the Transplant Services Program administrative rules for criteria. For clients enrolled in a FCHP, contact the plan for authorization. Clients not enrolled in a FCHP, contact the Division's Medical Director's office.

(3) Out-of-state non-contiguous hospitals:

(a) All non-emergent/non-urgent services provided by hospitals more than 75 miles from the Oregon border require PA;

(b) Contact the Division's Medical Director's office for authorization for clients not enrolled in a Prepaid Health Plan (PHP). For clients enrolled in a PHP, contact the plan.

(4) Out-of-state contiguous hospitals: services provided by contiguous-area hospitals, less than 75 miles from the Oregon border, are prior authorized following the same rules and procedures as in-state providers.

(5) Transfers to another hospital:

(a) Transfers for the purpose of providing a service listed in the Medical Surgical Service Program rules, specifically OAR 410-130-0200, Table 130-0200-1, e.g., inpatient physical rehabilitation care, require PA – contact the Division-contracted QIO;

(b) Transfers to a long term acute care hospital, skilled nursing facility, intermediate care facility or swing bed – contact Seniors and People with Disabilities (SPD). SPD reimburses nursing facilities and swing beds through contracts with the facilities. For FCHP clients – transfers require authorization and payment (for first 20 days) from the FCHP;

(c) Transfers for the same or lesser level inpatient care to a general acute care hospital – the Division shall cover transfers, including back transfers, which are primarily for the purpose of locating the patient closer to home and family, when the transfer is expected to result in significant social/psychological benefit to the patient:

(A) The assessment of significant benefit shall be based on the amount of continued care the patient is expected to need (at least seven

days) and the extent to which the transfer locates the patient closer to family support;

(B) Transfers not meeting these guidelines may be denied on the basis of post-payment review;

(d) Exceptions:

(A) Emergency transfers do not require PA;

(B) In-state or contiguous non-emergency transfers for the purpose of providing care that is unavailable in the transferring hospital do not require PA unless the planned service is listed in Medical Surgical Service Program rules, specifically OAR 410-130-0200, Table 130-0200-1;

(C) All non-urgent transfers to out-of-state non-contiguous hospitals require PA.

(6) Dental procedures provided in a hospital setting:

(a) For prior authorization requirements see the Dental Services rules, specifically OAR 410-123-1260 and 410-123-1490;

(b) Emergency dental services do not require PA;

(c) For prior authorization for fee-for-service clients, contact the Division's Dental Services Program analyst. (See the Division's Dental Supplemental Guide);

(d) For clients enrolled in a FCHP, contact the client's FCHP.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 30-1982, f. 4-26-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 11-1983, f. 3-8-83, ef. 4-1-83; AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 6-1984(Temp), f. 2-28-84, ef. 3-1-84; AFS 36-1984, f. & ef. 8-20-84; AFS 22-1985, f. 4-23-85, ef. 6-1-85; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 46-1987, f. & ef. 10-1-87; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 45-1989, f. & cert. ef. 8-21-89; HR 9-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0190; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 15-1991(Temp), f. & cert. ef. 4-8-91; HR 42-1991, f. & cert. ef. 10-1-91; HR 39-1992, f. 12-31-92, cert. ef. 1-1-93; HR 36-1993, f. & cert. ef. 12-1-93; HR 5-1994, f. & cert. ef. 2-1-94; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 7-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 28-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 35-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 9-2002, f. & cert. ef. 4-1-02; OMAP 22-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 11-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 50-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 27-2007(Temp), f. & cert. ef. 12-20-07 thru 5-15-08; DMAP 12-2008, f. 4-29-08, cert. ef. 5-1-08; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 39-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 17-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 37-2011, f. 12-13-11, cert. ef. 1-1-12

## 410-125-0085

### Outpatient Services

(1) Outpatient services that may require prior authorization include (see the individual program rules):

(a) Physical Therapy (chapter 410, division 131);

(b) Occupational Therapy (chapter 410, division 131);

(c) Speech Therapy (chapter 410, division 129);

(d) Audiology (chapter 410, division 129);

(e) Hearing Aids (chapter 410, division 129);

(f) Dental Procedures (chapter 410, division 123);

(g) Drugs (chapter 410, division 121);

(h) Apnea monitors, services, and supplies (chapter 410, division 131);

(i) Home Parenteral/Enteral Therapy (chapter 410, division 148);

(j) Durable Medical Equipment and Medical supplies (chapter 410, division 122);

(k) Certain hospital services.

(2) The National Drug Code (NDC) must be included on the electronic (837I) and paper (UB 04) claims for physician administered drug codes required by the Deficit Reduction Act of 2005.

(3) Outpatient surgical procedures:

(a) Fully-Capitated Health Plan (FCHP) clients: Contact the client's FCHP. The health plan may have different PA requirements than the Division of Medical Assistance Programs (Division). Some services are not covered under FCHP contracts and require PA from the Division, or the Division's Dental Program analyst;

(b) Medicare clients enrolled in FCHPs: These services must be authorized by the plan even if Medicare is the primary payer. Without this authorization, the provider shall not be paid beyond any Medicare payments (see also OAR 410-125-0103);

(c) For the Plus benefit package and Standard benefit package as referenced in 410-125-0047(2)(d) Division clients:

(A) Surgical procedures listed in OAR 410-125-0080 require PA when performed in an outpatient or day surgery setting, unless they are urgent or emergent.

(B) Contact the Division for PA (unless indicated otherwise in OAR 410-125-0080).

# ADMINISTRATIVE RULES

(d) Out-of-State services – Outpatient services provided by hospitals located less than 75 miles from the border of Oregon do not require prior authorization unless specified in these rules. All non-urgent or non-emergent services provided by hospitals located more than 75 miles from the border of Oregon require prior authorization. For clients enrolled in an FCHP, contact the plan for authorization. For clients not enrolled in a pre-paid health plan, contact the Division's Medical Unit.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: HR 42-1991, f. & cert. ef. 10-1-91; HR 39-1992, f. 12-31-92, cert. ef. 1-1-93; HR 36-1993, f. & cert. ef. 12-1-93; HR 5-1994, f. & cert. ef. 2-1-94; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; DMAP 39-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 37-2011, f. 12-13-11, cert. ef. 1-1-12

## 410-125-0140

### Prior Authorization Does Not Guarantee Payment

(1) Prior authorization (PA) is valid for the date range approved only as long as the client remains eligible for services. For example, a client may become ineligible after the PA has been granted but before the actual date of service, or a client's hospital benefit days may be used prior to the time the claim for the prior authorized service is submitted to the Division of Medical Assistance Programs (Division) for payment.

(2) All prior authorized treatment are subject to retrospective review. If the information provided to obtain PA cannot be validated in a retrospective review, payment shall be denied or recovered.

(3) Hospitals should develop their own internal monitoring system to determine if the admitting physician has received PA for the service from the Division.

(4) For the Plus Benefit Package PA information refer to the PA chart in the Hospital Services Program OAR 410-125-0080.

(5) Hospitals may also verify PA requirements by calling the Division's Provider Services Unit or the RN Benefit Hotline (contact phone numbers are located on the Division's website).

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0220; HR 42-1991, f. & cert. ef. 10-1-91; HR 39-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 37-2011, f. 12-13-11, cert. ef. 1-1-12

## 410-125-0220

### Services Billed on the Electronic 837I or on the Paper UB-04 and Other Claim Forms

(1) All inpatient and outpatient services provided by the hospital or hospital employees, unless otherwise specified below, are billed on the electronic 837I (837 Institutional) or on the paper CMS 1450 (UB-04) claim form.

(2) Professional staff and other providers: Services provided by other providers or professional staff with whom the hospital has a contract or agreement regarding provision of services and whom the hospital reimburses a salary or a fee are billed on the electronic 837I or paper CMS 1450 (UB-04) along with other inpatient or outpatient charges if such costs are reported on the hospital's Medicare Cost Report as a hospital cost.

(3) Residents and medical students: Professional services provided by residents or medical students serving in the hospital as residents or students at the time services are provided are reimbursed by the Division of Medical Assistance Programs (Division) through graduate medical education, for the hospitals that qualify (See OAR 410-125-0141) for payments and may not be billed on the electronic 837I or paper CMS 1450 (UB-04).

(4) Diagnostic and similar services provided by another provider or facility outside the hospital: When diagnostic or short-term services are provided to an inpatient by another provider or facility because the admitting hospital does not have the equipment or facilities to provide all services required and the patient is returned within 24 hours to the admitting hospital, the admitting hospital should add the following charges to the inpatient electronic 837I or paper CMS 1450 (UB-04) claim:

(a) Charges from the other provider or hospital under the appropriate Revenue Code. The admitting hospital is responsible for reimbursing the other provider or hospital. The Division will not reimburse the other provider or hospital; and

(b) Charges for transportation to the other facility or provider. These must be billed under Revenue Code 542. No prior authorization of the transport is required. The hospital will arrange for the transport and pay the transportation provider for the transport. The Division will not reimburse the transportation provider. This is the only instance in which transportation charges can be billed on the electronic 837I or paper CMS 1450 (UB-04).

(5) Orthotics, prosthetics, durable medical equipment and implants:

(a) When a provider of orthotic or prosthetic devices provides services or materials to an inpatient through an agreement or arrangement with the hospital, the cost of those services will be billed by the hospital on the electronic 837I or the paper CMS 1450 (UB-04), along with all other inpatient services. The hospital is responsible for reimbursing the provider. The Division will not reimburse the provider;

(b) Wheelchairs provided to the client for the client's use after discharge from the hospital may be billed separately by the durable medical equipment supplier or by the hospital if the hospital is the supplier.

(6) Pharmaceutical and home parenteral/enteral services: All hospital pharmaceutical charges must be billed on the electronic 837I or paper UB-04, except home parenteral and enteral services and medications provided to patients who are in nursing homes:

(a) Home parenteral and enteral services, including home hyperalimentation, Home IV antibiotics, home IV analgesics, home enteral therapy, home IV chemotherapy, home IV hydrational fluids, and other home IV drugs, require prior authorization and must be billed on the Pharmacy Invoice Form in accordance with the rules in the Home Enteral/Parenteral Program rules (chapter 410, division 148);

(b) Medications provided to clients who are in nursing homes must be billed on the Pharmacy Invoice Form in accordance with the rules in the Pharmaceutical Services Program rules (chapter 410, division 121).

(7) Dental services: Dental services provided by hospitals are billed on the electronic 837I or paper CMS 1450 (UB-04). For hospital dentistry requirements refer to the Dental Service Program rules (chapter 410, division 123).

(8) End-stage renal dialysis facilities: Hospitals providing end-stage renal dialysis and free-standing end-stage renal dialysis facilities will bill on the electronic 837I or paper CMS 1450 (UB-04) as described in these rules and instructions and will be reimbursed at the hospital's interim rate.

(9) Maternity case management:

(a) Hospital clinics may serve as maternity case managers for pregnant clients. The Medical-Surgical Program rules (chapter 410, division 130) contain information on the scope of services, definition of program terms, procedure codes, and provider qualifications. These services are billed by hospitals on the electronic 837I or paper CMS 1450 (UB-04); and

(b) Providers must bill using Revenue Code 569.

(10) Home health care services. Hospitals that operate home health care services must obtain a separate provider number and bill for these services in accordance with the Division's Home Health Care Services Program rules (chapter 410, division 127).

(11) Hospital operated air and ground ambulance services. A hospital which operates an air or ground ambulance service may apply to the Division for a provider number as an air or ground ambulance provider. If costs for staff and equipment are reported on the Medicare Cost Report, these costs must be identifiable. The Division will remove these costs from the Medicare Cost Report in calculating the hospital's cost-to-charge ratio for outpatient services. These services are billed on the electronic 837P (837 Professional) claim form or the paper CMS-1500 in accordance with the rules and restrictions contained in the Medical Transportation Program rules (chapter 410, division 136).

(12) Supervising physicians providing services in a teaching setting:

(a) Services provided on an inpatient or outpatient basis by physicians who are on the faculty of teaching hospitals may be billed on the electronic 837I or paper CMS 1450 (UB-04) with other inpatient or outpatient charges only when:

(A) The physician is serving as an employee of the hospital, or receives reimbursement from the hospital for provision of services, during the period of time when services are provided; and

(B) The hospital does not report these services as a direct medical education cost on the Medicare and the Division's cost report.

(b) The services of supervising faculty physicians are not to be billed to the Division on either the electronic 837P, the paper CMS-1500 or the electronic 837I or paper CMS 1450 (UB-04) if the hospital elects to report the cost of these professional services as a direct medical education cost on the Medicare and the Division's cost report; and

(c) The services of supervising faculty physicians are billed on the electronic 837P or the paper CMS-1500 if the physician is serving in a private capacity during the period of time when services are provided, i.e., the physician is receiving no reimbursement from the hospital for the period of time during which services are provided. Refer to the Medical-Surgical Services rules (chapter 410, division 130) or additional information on billing on the electronic 837P or the paper CMS-1500.

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

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065

# ADMINISTRATIVE RULES

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 30-1982, f. 4-26-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 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 48-1984(Temp), f. 11-30-84, ef. 12-1-84; AFS 29-1985, f. 5-22-85, ef. 5-29-85; AFS 44-1985, f. & ef. 7-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 46-1987, f. & ef. 10-1-87; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0055, 461-015-0130, 461-015-0135; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0260, 461-015-0290, 461-015-0300, 461-015-0310, 461-015-0320, 461-015-0420, 461-015-0430; HR 42-1991, f. & cert. ef. 10-1-91, Renumbered from 410-125-0280, 410-125-0300, 410-125-0320, 410-125-0340, 410-125-0540 & 410-125-0560; HR 39-1992, f. 12-31-92, cert. ef. 1-1-93; HR 36-1993, f. & cert. ef. 12-1-93; HR 5-1994, f. & cert. ef. 2-1-94; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 28-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 13-2005, f. 3-11-05, cert. ef. 4-1-05; OMAP 17-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 37-2011, f. 12-13-11, cert. ef. 1-1-12

29-00, cert. ef. 10-1-00; OMAP 46-2001, f. 9-24-01, cert. ef. 10-1-01, Renumbered from 410-121-0680; OMAP 22-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 63-2003, f. 9-5-03, cert. ef. 10-1-03; DMAP 26-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2011, f. 12-13-11, cert. ef. 1-1-12

\*\*\*\*\*

**Rule Caption:** The DMAP Medical Unit is responsible for prior authorization for Medically Fragile Children Unit.

**Adm. Order No.:** DMAP 38-2011

**Filed with Sec. of State:** 12-13-2011

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

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

**Rules Amended:** 410-148-0060

**Subject:** The Hospital Services Program administrative rules govern Division payments for services to certain clients. The Division amended OAR 410-148-0060 to reflect that prior authorization responsibility for Medically Fragile Children's Unit belongs to the Division's Medical Unit.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-148-0060

### Authorization

(1) The Division of Medical Assistance Programs (Division) requires authorization of payment for the following items or services:

(a) All enteral/parenteral or IV infusion pumps. The provider is required to submit documentation with each request proving that other (non-pump) methods of delivery do not meet the client's medical need;

(b) All nursing service visits, except the assessment nursing visit, associated with home enteral/parenteral nutrition or IV services;

(c) All oral nutritional supplements;

(d) All drugs and goods identified as requiring payment authorization in the Pharmaceutical Services administrative rules (chapter 410, division 121). Contact the Division's Pharmacy Benefit Manager to determine those items that require prior authorization.

(2) The Division will approve payment for the above home enteral/parenteral nutrition and/or IV services entities when they are considered to be "medically appropriate."

(3) The Division requires authorization of payment for those services that require authorization even though the client has other insurance that may cover the service. Authorization of payment is not required for Medicare covered services.

(4) For services requiring authorization, providers must contact the Division's Medical Unit for authorization within five working days following initiation of services. Authorization will be given based on medical appropriateness, appropriateness of level of care given, cost and/or effectiveness.

(5) How to obtain payment authorization:

(a) The Division's Medical Unit is responsible for authorization for services for clients identified as Medically Fragile Children's Unit clients;

(b) Contact the Division's Pharmacy Benefit Manager, prior authorization help desk to request oral nutrition supplements;

(c) Contact the Division's Medical Unit to request all other authorization;

(d) Payment authorization does not guarantee reimbursement.

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

Stat. Auth.: ORS 413.042

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 26-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0220; HR 9-1992, f. & cert. ef. 4-1-92; HR 26-1993, f. & cert. ef. 10-1-93; HR 3-1995, f. & cert. ef. 2-1-95; OMAP 7-1998, f. 2-27-98, cert. ef. 3-1-98; OMAP 29-2000, f. 9-

**Rule Caption:** Legislatively approved budget with provider rate changes.

**Adm. Order No.:** DMAP 39-2011

**Filed with Sec. of State:** 12-15-2011

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

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

**Rules Amended:** 410-127-0060

**Subject:** The Home Health Services Program rules govern the Division of Medical Assistance Programs' (Division) payments for services provided to certain clients. The Division temporarily amended OAR 410-127-0060 to implement rate changes to HH providers to comply with budget limitations required by the 2011 Legislative Assembly in SB 5529 and implement adjustments based on provider and association Rules Advisory Committee input. Now the Division permanently amends the rule including revisions for rate changes and Medicaid supply daily maximums, and revert back to rebasing and recalculations of rates as in the previous rule. However, implementation of these amendments is subject to approval by the Centers for Medicare and Medicaid Services.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-127-0060

### Reimbursement and Limitations

(1) Reimbursement. The Division of Medical Assistance Programs (Division) reimburses home health services on a fee schedule by type of visit (see home health rates and copayment chart on the Oregon Health Authority (OHA) Web site at: <http://www.dhs.state.or.us/policy/healthplan/guides/homehealth/main.html>).

(2) The Division recalculates its home health services rates every other year. The Division will reimburse home health services at a level of 74% of Medicare costs reported on the audited or most recently accepted Medicare Cost Reports prior to the rebase date and pending approval from the Centers for Medicare and Medicaid Services (CMS), and if indicated, Legislative funding authority.

(3) The Division will request the Medicare Cost Reports from home health agencies with a due date, and will recalculate rates based on the Medicare Cost Reports received by the requested due date. It is the responsibility of the home health agency to submit requested cost reports by the date requested.

(4) The Division reimburses only for service which is medically appropriate.

(5) Limitations:

(a) Limits of covered services:

(A) Skilled nursing visits are limited to two visits per day with payment authorization;

(B) All therapy services are limited to one visit or evaluation per day for physical therapy, occupational therapy or speech and language pathology services. Therapy visits require payment authorization;

(C) The Division will authorize home health visits for clients with uterine monitoring only for medical problems, which could adversely affect the pregnancy and are not related to the uterine monitoring;

(D) Medical supplies must be billed at acquisition cost and the total of all medical supply revenue codes may not exceed \$50 per day. Only supplies that are used during the visit or the specified additional supplies used for current client/caregiver teaching or training purposes as medically necessary are billable. Client visit notes must include documentation of supplies used during the visit or supplies provided according to the current plan of care;

(E) Durable medical equipment must be obtained by the client by prescription through a durable medical equipment provider.

(b) Not covered service:

(A) Service not medically appropriate;

(B) A service whose diagnosis does not appear on a line of the Prioritized List of Health Services which has been funded by the Oregon Legislature (OAR 410-141-0520);

(C) Medical Social Worker service;

(D) Registered dietician counseling or instruction;

(E) Drug and or biological;

(F) Fetal non-stress testing;



# ADMINISTRATIVE RULES

- (G) Respiratory therapist service;
- (H) Flu shot;
- (I) Psychiatric nursing service.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: PWC 682, f. 7-19-74, ef. 8-11-74; PWC 798, f. & ef. 6-1-76; PWC 854(Temp), f. 9-30-77, ef. 10-1-77 thru 1-28-78; Renumbered from 461-019-0420 by Chapter 784, Oregon Laws 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 4-1983, f. 5-4-83, ef. 5-5-83; SSD 10-1990, f. 3-30-90, cert. ef. 4-1-90; HR 28-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 411-075-0010; HR 14-1992, f. & cert. ef. 6-1-92; HR 15-1995, f. & cert. ef. 8-1-95; OMAP 19-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 77-2003, f. & cert. ef. 10.1.03; DMAP 16-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 33-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 22-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-25-12; DMAP 39-2011, f. 12-15-11, cert. ef. 1-1-12

\*\*\*\*\*

**Rule Caption:** Prepare for implementation of Federal and state requirements for hospice services in a nursing facility and rule language clarification.

**Adm. Order No.:** DMAP 40-2011

**Filed with Sec. of State:** 12-15-2011

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

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

**Rules Amended:** 410-142-0020, 410-142-0040

**Subject:** The Hospice Services Program administrative rules govern Division of Medical Assistance Programs payments for services provided to certain clients. The Division amended the rules listed above to clarify language, update definitions and prepare at a later date to incorporate federal compliance requirements for payment when a client resides in a nursing facility and elects hospice care.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-142-0020

### Definitions

(1) Accredited/Accreditation: A designation by an accrediting organization that a hospice program has met standards that have been developed to indicate a quality program.

(2) Ancillary staff: Staff that provides additional services to support or supplement hospice care.

(3) Assessment: Procedures by which strengths, weaknesses, problems, and needs are identified and addressed.

(4) Attending physician: A physician who is a doctor of medicine or osteopathy and is identified by the client, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the client's medical care.

(5) Bereavement counseling: Counseling services provided to the client's family before and after the client's death. Bereavement counseling is required to be offered per the Conditions of Participation and is a non-reimbursable hospice service.

(6) Client-family unit includes a client who has a life threatening disease with a limited prognosis and all others sharing housing, common ancestry or a common personal commitment with the client.

(7) Conditions of Participation (CoPs): The applicable federal regulations that hospice programs are required to comply with in order to participate in the federal Medicare and Medicaid programs.

(8) Coordinated: When used in conjunction with the phrase "hospice program," means the integration of the interdisciplinary services provided by client-family care staff, other providers and volunteers directed toward meeting the hospice needs of the client.

(9) Coordination of Care (COC): The federal regulations for coordination of client care between the hospice and the nursing facility that hospice programs are required to comply with in order to serve hospice clients in a nursing facility and participate in the federal Medicare and Medicaid programs.

(10) Coordinator: A registered nurse designated to coordinate and implement the care plan for each hospice client.

(11) Counseling: A relationship in which a person endeavors to help another understand and cope with problems as a part of the hospice plan of care.

(12) Curative: Medical intervention used to ameliorate the disease.

(13) Dying: The progressive failure of the body systems to retain normal functioning, thereby limiting the remaining life span.

(14) Family: The relatives and/or other significantly important persons who provide psychological, emotional, and spiritual support of the client. The "family" need not be blood relatives to be an integral part of the hospice care plan.

(15) Hospice: A public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill clients, and is certified by the federal Centers for Medicare and Medicaid Services as a program of hospice services meeting current standards for Medicare and Medicaid reimbursement and Medicare Conditions of Participation; and currently licensed by the Oregon Health Authority (Authority), Public Health Division.

(16) Hospice continuity of care: Services that are organized, coordinated and provided in a way that is responsive at all times to client/family needs, and which are structured to assure that the hospice is accountable for its care and services in all settings according to the hospice plan of care.

(17) Hospice routine home care: Formally organized services designed to provide and coordinate hospice interdisciplinary team services to client/family in the place of residence. The hospice will deliver at least 80 percent of the care in the place of residence.

(18) Hospice philosophy: Hospice recognizes dying as part of the normal process of living and focuses on maintaining the quality of life. Hospice exists in the hope and belief that through appropriate care and the promotion of a caring community sensitive to their needs, clients and their families may be free to attain a degree of mental and spiritual preparation for death that is satisfactory to them.

(19) Hospice Program: A coordinated program of home and inpatient care, available 24 hours a day, that uses an interdisciplinary team of personnel trained to provide palliative and supportive services to a client-family unit experiencing a life threatening disease with a limited prognosis. A hospice program is an institution for purposes of ORS 146.100.

(20) Hospice Program registry: A registry of all licensed hospice programs maintained by the Authority, Public Health Division.

(21) Hospice services: Items and services provided to a client/family unit by a hospice program or by other clients or community agencies under a consulting or contractual arrangement with a hospice program. Hospice services include home care, inpatient care for acute pain and symptom management or respite, and bereavement services provided to meet the physical, psychosocial, emotional, spiritual and other special needs of the client/family unit during the final stages of illness, dying and the bereavement period.

(22) Illness: The condition of being sick, diseased or with injury.

(23) Interdisciplinary team: A group of individuals working together in a coordinated manner to provide hospice care. An interdisciplinary team includes, but is not limited to, the client-family unit, the client's attending physician or clinician and one or more of the following hospice program personnel: Physician, nurse practitioner, nurse, hospice aide (nurse's aide), occupational therapist, physical therapist, trained lay volunteer, clergy or spiritual counselor, and credentialed mental health professional such as psychiatrist, psychologist, psychiatric nurse or social worker.

(24) Medical director: The medical director must be a hospice employee who is a doctor of medicine or osteopathy who assumes overall responsibility for the medical component of the hospice's client care program.

(25) Medicare certification: Licensed and certified by the Authority, Public Health Division as a program of services eligible for reimbursement.

(26) Nursing facility: A facility licensed and certified by the Department of Human Services (Department), Seniors and People with Disabilities (SPD) and defined in OAR 411-070-0005.

(27) Nursing facility services: The bundled rate of services which incorporates all services, including room and board, for which the nursing facility is paid.

(28) Pain and Symptom Management: For the hospice program, the focus of intervention is to maximize the quality of the remaining life through the provision of palliative services that control pain and symptoms. Hospice programs recognize that when a client/family is faced with terminal illness, stress and concerns may arise in many aspects of their lives. Symptom management includes assessing and responding to the physical, emotional, social and spiritual needs of the client/family.

(29) Palliative services: Comfort services of intervention that focus primarily on reduction or abatement of the physical, psychosocial and spiritual symptoms of terminal illness. Palliative therapy:

(a) Active: Is treatment to prolong survival, arrest the growth or progression of disease. The person is willing to accept moderate side-effects and psychologically is fighting the disease. This person is not likely to be a client for hospice;

(b) Symptomatic: Is treatment for comfort, symptom control of the disease and improves the quality of life. The person is willing to accept minor side-effects and psychologically wants to live with the disease in comfort. This person would have requested and been admitted to a hospice.

# ADMINISTRATIVE RULES

(31) Period of crisis: A period in which the client requires continuous care to achieve palliation or management of acute medical symptoms.

(32) Physician designee: Means a doctor of medicine or osteopathy designated by the hospice who assumes the same responsibilities and obligations as the medical director when the medical director is not available.

(33) Primary caregiver: The person designated by the client or representative. This person may be family, a client who has personal significance to the client but no blood or legal relationship (e.g., significant other), such as a neighbor, friend or other person. The primary caregiver assumes responsibility for care of the client as needed. If the client has no designated primary caregiver the hospice may, according to client program policy, make an effort to designate a primary caregiver.

(34) Prognosis: The amount of time set for the prediction of a probable outcome of a disease.

(35) Representative: An individual who has been authorized under state law to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill client who is mentally or physically incapacitated.

(36) Terminal illness: An illness or injury which is forecast to result in the death of the client, for which treatment directed toward cure is no longer believed appropriate or effective.

(37) Terminally ill means that the client has a medical prognosis that his or her life expectancy is six months or less if the illness runs its normal course.

(38) Volunteer: An individual who agrees to provide services to a hospice program without monetary compensation.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: HR 9-1994, f. & cert. ef. 2-1-94; HR 16-1995, f. & cert. ef. 8-1-95; OMAP 34-2000, f. 9-29-00, cert. ef. 10-1-00; DMAP 18-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 36-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 40-2011, f. 12-15-11, cert. ef. 1-1-12

## 410-142-0040

### Eligibility for the Hospice Services

(1) Hospice services are covered for clients who have:

(a) Been certified as terminally ill in accordance with OAR 410-142-0060, and;

(b) Oregon Health Plan (OHP) Plus or OHP Standard benefit package coverage.

(2) Providers must bill Medicare for hospice services for clients with Medicare Part A coverage. Medicare's payment is considered payment in full.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: HR 9-1994, f. & cert. ef. 2-1-94; HR 16-1995, f. & cert. ef. 8-1-95; OMAP 43-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 40-2011, f. 12-15-11, cert. ef. 1-1-12

.....  
**Oregon Health Authority,  
Office for Oregon Health Policy and Research  
Chapter 409**

**Rule Caption:** Pain Management Commission Rules.

**Adm. Order No.:** OHP 9-2011

**Filed with Sec. of State:** 11-28-2011

**Certified to be Effective:** 12-1-11

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

**Rules Amended:** 409-050-0110, 409-050-0120

**Rules Repealed:** 409-050-0110(T), 409-050-0120(T)

**Subject:** The Oregon Health Authority, Office for Oregon Health Policy and Research is implementing amendments to the Pain Management Commission rules to clarify the process the OHA director must follow to fulfill the statutory requirements in soliciting recommendations prior to making appointments to the Pain Management Commission. The proposed amendment also completes the listing of licensing healthcare professionals required to complete the pain management education program developed by the Commission.

**Rules Coordinator:** Zarie Haverkate—(503) 373-1574

## 409-050-0110

### Definitions

For the purposes of this Division 409-050, the following definitions apply:

(1) "Commission" means the Oregon Pain Management Commission.

(2) "Licensed health care professionals" means those specifically identified licensees that report to the following Licensing Boards:

(a) Oregon Board of Medical Examiners, which includes: physicians, physician assistants and acupuncturists (with the exception of those listed under OAR chapter 847.677, identified as waived);

(b) Oregon State Board of Nursing, which includes: all registered nurses, licensed practical nurses and nurse practitioners;

(c) Oregon Board of Psychologist Examiners, which includes: all licensed psychologists;

(d) Oregon Board of Chiropractic Examiners, which includes: all licensed chiropractors;

(e) Oregon Board of Naturopathic Examiners, which includes: all licensed naturopathic physicians; and

(f) Oregon Board of Pharmacy, which includes: all licensed pharmacists.

(g) Oregon Board of Dentistry, which includes all licensed dentists.

(h) Oregon Board of Occupational Therapy, which includes all licensed occupational therapists.

(i) Oregon Board of Physical Therapy, which includes all licensed physical therapists.

(3) "Curriculum" means a recommended list of educational topics, compiled by the Commission, for medical professionals treating pain.

(4) "Pain management education program" means a specific one-hour web-based program developed by the Commission, in addition to six accredited hours of continuing education in pain management, end of life care or a combination of both.

Stat. Authority: ORS 409.570

Stats. Implemented: ORS 409.500 - 409.570

Hist.: DHSD 1-2007, f. & cert. ef. 2-1-07; Renumbered from 407-020-0005, OHP 1-2011, f. 1-26-11, cert. ef. 2-1-11; OHP 5-2011(Temp), f. 8-30-11, cert. ef. 9-1-11 thru 2-27-12; OHP 9-2011, f. 11-28-11, cert. ef. 12-1-11

## 409-050-0120

### Commission Positions

(1) The Commission consists of:

(a) Nineteen members – seventeen voting members and two non-voting ex-officio members from the Oregon legislature; and

(b) Members that have experience or a demonstrated interest in pain management issues.

(2) In order to apply for a position on the Commission, an individual must:

(a) Complete a Commission interest form; and

(b) Submit the interest form to the Pain Management Program.

(3) Voting member appointments to the Commission are:

(a) Made by the Director of the Oregon Health Authority; and

(b) Must comply with the approved Commission bylaws.

(4) Prior to making appointments, the Director of the Oregon Health Authority shall request and consider recommendations from individuals, public and private agencies and organizations, but not limited to individuals with a healthcare background or individuals representing the healthcare industry or members of the public.

(5) Oregon Health Authority staff shall include a Pain Management Coordinator, who shall staff and facilitate Commission meetings, provide daily organization of Commission business and perform other duties as directed by the Commission.

Stat. Authority: ORS 409.570

Stats. Implemented: ORS 409.500 - 409.570

Hist.: DHSD 1-2007, f. & cert. ef. 2-1-07; Renumbered from 407-020-0010, OHP 1-2011, f. 1-26-11, cert. ef. 2-1-11; OHP 5-2011(Temp), f. 8-30-11, cert. ef. 9-1-11 thru 2-27-12; OHP 9-2011, f. 11-28-11, cert. ef. 12-1-11

.....  
**Oregon Health Authority,  
Oregon Educators Benefit Board  
Chapter 111**

**Rule Caption:** Revised language clarifies when grandchildren are eligible for OEBB benefit coverage.

**Adm. Order No.:** OEBB 22-2011

**Filed with Sec. of State:** 12-14-2011

**Certified to be Effective:** 12-14-11

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

**Rules Amended:** 111-010-0015

**Rules Repealed:** 111-010-0015(T)

**Subject:** The revisions to OAR 111-010-0015 include clarifying language on when a grandchild is eligible for benefit coverage.

**Rules Coordinator:** April Kelly—(503) 378-6588

# ADMINISTRATIVE RULES

## 111-010-0015

### Definitions

Unless the context indicates otherwise, as used in OEBB administrative rules, the following definitions will apply:

(1) "Actuarial value" means the expected financial value for the average member of a particular benefit plan.

(2) "Adverse Benefit Determination" means a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part), for a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on but not limited to:

- (a) A determination of a member's eligibility to participate in the plan;
- (b) A determination that the benefit is not a covered benefit; or
- (c) A rescission of coverage, whether or not, in connection with rescission, there is an adverse effect on any particular benefit.

(3) "Affidavit of Domestic Partnership" means a document that attests the eligible employee and one other eligible individual meet the criteria in section (15)(b).

(4) "Benefit plan" includes, but is not limited to, insurance or other benefits including:

- (a) Medical;
  - (b) Dental;
  - (c) Vision;
  - (d) Life, disability and accidental death;
  - (e) Long term care;
  - (f) Employee Assistance Program Plans;
  - (g) Supplemental medical, dental and vision;
  - (h) Any other remedial care recognized by state law, and related services and supplies;
  - (i) Comparable benefits for employees who rely on spiritual means of healing; and
  - (j) Self insurance programs managed by the Board.
- (5) "Benefits" means goods and services provided under benefit plans.

(6) "Board" means the ten-member board established in the Department of Administrative Services as the Oregon Educators Benefit Board under chapter 00007, Oregon Laws 2007.

(7) "Child" means and includes the following:

(a) An eligible employee's, spouse's, or domestic partner's biological son, daughter, stepson, or stepdaughter; adopted child, child placed for adoption, or legally placed child, who is 25 or younger on the first day of the month. An eligible employee must provide the required custody or legal documents to their Educational Entity showing proof of adoption, legal guardianship or other court order if enrolling a child for whom the employee, spouse, or domestic partner is not the biological parent. Grandchildren are only eligible when the eligible employee is the legal guardian or adoptive parent of the grandchild.

(b) A person who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability. There is no age limit for a dependent child who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability. When the dependent child is 26 years of age or older all the following requirements must be met:

(A) The disability must have existed before attaining age 26.

(B) The employee must provide evidence to the Educational Entity or OEBB that (1) the person had health plan coverage, group or individual, prior to attaining age 26, and (2) health plan coverage continued without a gap until the OEBB health plan effective date.

(C) The person's attending physician must submit documentation of the disability to the eligible employee's OEBB health insurance plan for review and approval. If the person receives health plan approval, the health plan may review the person's health status at any time to determine continued OEBB coverage eligibility.

(D) The person must not have terminated from OEBB health plan coverage after attaining the age of 26.

(c) Eligibility for coverage under this rule includes people who may not be dependents under federal or state tax law and may require an Educational Entity to adjust an Eligible Employee's income based on the imputed value of the benefit.

(8) "Comparable cost (Medical, Dental and Vision)" means that the total cost to a district for enrollment in OEBB plans comparable in design to the district's plan(s) do not exceed the total cost to a district for enrollment in the district's plan(s) using the rate(s) in effect or proposed for the benefit plan year.

(9) "Comparable cost (Basic and Optional Life Insurance, Accidental Death & Dismemberment, and Short and Long Term Disability)" means

that the premium rates of an OEBB plan design option do not exceed the average, aggregate premium rates of a district's pre-OEBB plan design in effect the year prior to implementation.

(10) "Comparable plan design (Medical, Dental and Vision)" means that the actuarial values of two plan designs are within 2.5 percent higher or lower of each other.

(11) "Comparable plan design (Basic and Optional Life Insurance and Accidental Death & Dismemberment)" means that 90 percent of district employees can obtain a maximum benefit through an OEBB plan design that is within \$2,500 of the maximum benefit obtained through a pre-OEBB plan design in effect the year prior to implementation.

(12) "Comparable plan design (Short and Long Term Disability)" means 90 percent of the district employees can obtain the same elimination period, percentage of covered compensation, definition of covered compensation, coverage period duration, and maximum payment per benefit period through an OEBB plan design as through a pre-OEBB plan design in effect the year prior to implementation.

(13) "Dependent" means and includes the Employee's Spouse or Domestic Partner, or child as defined by OAR 111-010-0010(7) or other person having a relation to the subscriber as defined by the Contractor.

(14) "Documented district policies" means Educational Entities' policies and practices that apply to an employee group and are submitted to the Oregon Educators Benefit Board during the plan selection process. Educational Entities' policies and practices must be identified and submitted with the applicable employee group plan selections.

(15) "Domestic partner," unless otherwise defined by a collective bargaining agreement or documented district policy in effect on January 31, 2008, means and includes the following:

(a) An unmarried individual of the same sex who has entered into a "Declaration of Domestic Partnership" with the eligible employee that is recognized under Oregon law; or

(b) An unmarried individual of the same or opposite sex who has entered into a partnership that meets the following criteria:

(A) Both are at least 18 years of age;

(B) Are responsible for each other's welfare and are each other's sole domestic partners;

(C) Are not married to anyone and have not had a spouse or another domestic partner within the prior six months. If previously married, the six-month period starts on the final date of divorce;

(D) Share a close personal relationship and are not related by blood closer than would bar marriage in the State of Oregon;

(E) Have jointly shared the same regular and permanent residence for at least six months immediately preceding the date the Affidavit of Domestic Partnership is signed and submitted to the Educational Entity; and

(F) Are jointly financially responsible for basic living expenses defined as the cost of food, shelter and any other expenses of maintaining a household. Financial information must be provided if requested.

(G) The eligible employee and domestic partner must jointly complete and submit to the Educational Entity an Affidavit of Domestic Partnership form, within five business days of the electronic enrollment date or the date the Educational Entity received the enrollment/change form. If the affidavit is not received, coverage will terminate for the domestic partner retroactive to the effective date.

(c) The domestic partner must notify the Educational Entity within 31 days of meeting all criteria as defined in 111-010-0015 (15)(b) or obtaining the "Declaration of Domestic Partnership" which is recognized under Oregon law.

(d) Educational Entities' must calculate and apply applicable imputed value tax for domestic partners covered under OEBB benefit plans.

(16) "Educational Entity" means public school districts (K-12), education service districts (ESDs), community colleges and public charter schools participating in OEBB.

(17) "Eligible employee" means and includes:

(a) "Active eligible employee" means an employee of an OEBB participating organization who is:

(A) Employed or is in a job-sharing position on a half time or greater basis; or

(B) Meets the definition of an eligible employee under a separate OEBB rule or under a collective bargaining agreement or documented district policy in effect on January 31, 2008; or

(C) An employee of a community college who is covered under a collectively bargained contract and has worked a class load of between 25 percent and 49 percent for a minimum period of two years and is expected to continue to work a class load of at least 25 percent. Coverage is limited to



# ADMINISTRATIVE RULES

medical to include Kaiser Medical Plan 1A (where available), ODS Medical Plan 8 (with Plan C pharmacy) and ODS Medical Plan 9. The tiered rate structure will apply to all medical plans.

(b) "Retired eligible employee" means a previously active eligible employee, who is:

(A) Receiving a service or disability retirement allowance or pension under the Public Employees Retirement System (PERS) or under any other retirement or disability benefit plan or system offered by an OEGB participating organization for its employees;

(B) Eligible to receive a service retirement allowance under PERS and has reached earliest retirement age under ORS Chapter 238;

(C) Eligible to receive a pension under ORS 238A.100 to 238A.245 and has reached earliest retirement age as described in ORS 238A.165; or

(D) Eligible to receive a service retirement allowance or pension under another retirement benefit plan or system offered by an OEGB participating organization and has reached earliest retirement age under the plan or system.

(18) "Employee Group" means employees of a similar employment type, for example administrative, represented classified, non-represented classified, confidential, represented licensed, or non-represented licensed, within an Educational Entity. If one or more collective bargaining unit exists within an employee group, each unit will be considered a separate employee group.

(19) "Flexible benefit plan" includes plans that allow contributions on a tax-favored basis including health savings accounts.

(20) "Members" means and includes the following:

(a) "Eligible employee" as defined by OAR 111-010-0015(17).

(b) "Child" as defined by OAR 111-010-0015(7).

(c) "Domestic Partner" as defined by OAR 111-010-0015(15).

(d) "Spouse" as defined by OAR 111-010-0015(26).

(21) "Non-subject District" means a community college, district or a charter school if the employees are not considered employees of a school district.

(22) "Oregon Educators Benefit Board or OEGB" means the program created under chapter 00007, Oregon Laws 2007.

(23) "OEGB participating organization" means a Subject District, Non-subject District, or Provisional Non-subject District that participates in benefit plans provided by the Oregon Educators Benefit Board (OEGB).

(24) "Provisional Non-subject District" means a common school district, a union high school district, or an education service district that:

(a) Was self-insured on December 31, 2006;

(b) Had an independent health insurance trust established and functioning on December 31, 2006; or

(c) Can provide comparable plan designs at a comparable cost as defined by sections (8) and (10) of this Rule.

(25) "Qualified Status Change (QSC)" means a change in family or work status that allows limited mid-year changes to benefit plans consistent with the individual event.

(26) "Spouse" means a person of the opposite sex who is a husband or wife. Except as provided in Oregon Constitution Article XV, Section 5a, a relationship recognized as a marriage in another state will be recognized in Oregon even though such a relationship would not be a marriage if the same facts had been relied upon to create a marriage in Oregon. The definition of spouse does not include a former spouse and a former spouse does not qualify as a dependent.

(27) "Subject District" means a common school district, a union high school district, or an education service district that:

(a) Did not self-insure on January 1, 2007;

(b) Did not have a health trust in effect on January 1, 2007; or

(c) Does not provide comparable plan designs at a comparable cost as defined by sections (8) and (10) of this Rule.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.874(5)

Hist.: OEGB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEGB 2-2008, f. & cert. ef. 1-4-08; OEGB 10-2008(Temp), f. & cert. ef. 8-13-08 thru 2-6-09; OEGB 1-2009, f. & cert. ef. 1-30-09; OEGB 5-2009(Temp), f. & cert. ef. 3-10-09 thru 9-4-09; OEGB 8-2009, f. & cert. ef. 5-1-09; OEGB 12-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEGB 19-2009, f. & cert. ef. 12-17-09; OEGB 7-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEGB 11-2010(Temp), f. & cert. ef. 9-30-10, cert. ef. 10-1-10 thru 1-29-11; OEGB 1-2011, f. & cert. ef. 2-11-11; OEGB 6-2011(Temp), f. & cert. ef. 2-15-11 thru 8-13-11; OEGB 14-2011, f. & cert. ef. 8-2-11; OEGB 15-2011(Temp), f. & cert. ef. 8-2-11 thru 1-28-12; OEGB 16-2011(Temp), f. & cert. ef. 10-1-11 thru 1-28-12; OEGB 20-2011, f. & cert. ef. 10-14-11; OEGB 22-2011, f. & cert. ef. 12-14-11

\*\*\*\*\*

**Rule Caption:** Amends rules relating to retroactive terminations, rescissions, and coverage effective dates for grandchildren.

**Adm. Order No.:** OEGB 23-2011

**Filed with Sec. of State:** 12-14-2011

**Certified to be Effective:** 12-14-11

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

**Rules Amended:** 111-040-0001, 111-040-0005, 111-040-0015, 111-040-0025, 111-040-0040

**Rules Repealed:** 111-040-0001(T), 111-040-0005(T), 111-040-0015(T), 111-040-0025(T), 111-040-0040(T)

**Subject:** OAR 111-040-0001 is amended to state when eligible grandchildren's coverage is effective. Amendments to OARs 111-040-0005, 111-040-0015, 111-040-0025 and 111-040-0040 result in additional clarification on retroactive terminations and rescissions provided by DOJ regarding the federal Healthcare Reform Act.

**Rules Coordinator:** April Kelly—(503) 378-6588

## 111-040-0001

### Effective Dates

(1) Benefit plan changes or initial elections, unless otherwise specified in a collective bargaining agreement or documented district policy in effect on June 30, 2008, are effective on the later of:

(a) The first of the month following a completed online enrollment in the OEGB benefit management system or submission of a paper enrollment or change form, or

(b)(A) The first of the month following the date of hire or the date of eligibility; with the following exception:

(B) The first of the month following approval of Evidence of Insurability for Optional Life Insurance above the guarantee issue amount, Long Term Disability, or Long Term Care insurance.

(2) Covered dependent changes are effective the first of the month following the date of the event causing the dependent to be eligible under OEGB administrative rules with the following exceptions:

(a) Coverage for a newborn child is effective on the date of birth. The active eligible employee must add the newborn child to their benefit plans within 60 calendar days from the date of birth in order for the newborn child to be eligible for benefit coverage.

(b) Coverage for a newly adopted child is effective the date of the adoption decree or date of placement for adoption. The active eligible employee must add the adopted child to their benefit plans within 60 calendar days from the date of the decree or placement in order for the newly adopted child to be eligible for benefit coverage; and

(A) The active eligible employee must submit the adoption agreement with the enrollment forms to the Educational Entity.

(B) Claims payments will not be made for expenses incurred prior to the date of decree or placement.

(c) Coverage for an eligible grandchild is as follows:

(A) If the legal guardianship is finalized within the first 60 days following the birth of the grandchild, coverage will be effective retroactive to the date of the birth.

(B) If the legal guardianship is finalized 61 or more days from the date of birth of the grandchild, the coverage will be effective the first of the month following the date the guardianship documents are finalized.

(C) If the legal guardianship is finalized 61 to 180 days from the date of birth of the grandchild, and the effective date of legal guardianship is retroactive to the grandchild's date of birth, coverage will be effective retroactive to the date of birth. If legal guardianship is finalized after 180 days coverage will be effective the first of the month following the date the guardianship documents are finalized.

(d) The first of the month following approval of Evidence of Insurability for Optional Spouse/Domestic Partner Life insurance above the guaranteed issue amount, if applicable, or Long Term Care Insurance.

(3) Elections made during an open enrollment period are effective on the first day of the new plan year. There will be a 12-month waiting period for services other than preventive dental exams and cleanings and/or routine vision exams for coverage added during the open enrollment period if enrolling in a dental or vision plan in which the employee and/or dependents were previously eligible.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEGB 14-2008, f. & cert. ef. 8-15-08; OEGB 14-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEGB 21-2009, f. & cert. ef. 12-17-09; OEGB 9-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEGB 12-2010(Temp), f. & cert. ef. 9-30-10, cert. ef. 10-1-10 thru 1-29-11; OEGB 3-2011, f. & cert. ef. 2-11-11; OEGB 17-2011(Temp), f. & cert. ef. 10-1-11 thru 3-29-12; OEGB 23-2011, f. & cert. ef. 12-14-11

# ADMINISTRATIVE RULES

## 111-040-0005

### Termination Dates

(1) Effective October 1, 2011, if an active eligible employee requests a termination of coverage for themselves, a spouse, a domestic partner, or a child, coverage ends on the last day of the month that eligibility is lost. Requests for coverage termination must be made consistent with a Qualifying Event, as defined by 111-040-0040. Retroactive termination of coverage may be made in the event of a delay in the Educational Entities' administrative process.

(2) Effective October 1, 2011, benefit coverage termination that is considered by OEBB to be intentional misrepresentation may be rescinded in compliance with the law. If this occurs, OEBB shall give the affected individual 30 days notice of the rescission of benefit coverage and an opportunity to appeal before the rescission takes effect.

(3) Benefit coverage for active eligible employees ends on the last day of the month that they retire, unless otherwise determined in a collective bargaining agreement or documented district policy in effect on June 30, 2008. Benefit coverage may be continued based on the requirements and limitations in OARs 111-050-0001 through 111-050-0050.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEBB 14-2008, f. & cert. ef. 8-15-08; OEBB 12-2010(Temp), f. 9-30-10, cert. ef. 10-1-10 thru 1-29-11; OEBB 3-2011, f. & cert. ef. 2-11-11; OEBB 23-2011, f. & cert. ef. 12-14-11

## 111-040-0015

### Removing an Ineligible Individual from Benefit Plans

(1) An active eligible employee is responsible for removing ineligible spouses, domestic partners and children from their OEBB-sponsored benefit plans by submitting completed, applicable forms to their Educational Entity benefits administrator within 31 calendar days after the date the individual becomes ineligible. Coverage ends on the date identified under OAR 111-040-0005.

(2) An active eligible employee ending a domestic partnership must complete and submit a Termination of Domestic Partnership form and enrollment update forms to the Educational Entity benefits administrator within 31 calendar days after the event for removal of the domestic partner and domestic partner's children from their benefit plan. Benefit coverage for the domestic partner and domestic partner's children ends on the date identified in OAR 111-040-0005.

(3) An Educational Entity is responsible for removing ineligible individuals from the OEBB benefits management system. The Educational Entity must complete such removal within 14 calendar days after:

(a) An event resulting in loss of the employee's eligibility, or

(b) The receipt of notification of an event resulting in loss of eligibility of the employee's spouse, domestic partner or child.

(4) If coverage of an employee's spouse, domestic partner or child is terminated retroactively then:

(a) The active eligible employee may be responsible for claims previously paid by the benefit plans to the providers during the period of ineligibility at the carrier's discretion; and

(b) Premium adjustments will be made retroactively based on the coverage end date.

(5) OEBB shall conduct audits to monitor compliance with OEBB administrative rules governing eligibility and enrollment.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEBB 14-2008, f. & cert. ef. 8-15-08; OEBB 9-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBB 12-2010(Temp), f. 9-30-10, cert. ef. 10-1-10 thru 1-29-11; OEBB 3-2011, f. & cert. ef. 2-11-11; OEBB 17-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; OEBB 23-2011, f. & cert. ef. 12-14-11

## 111-040-0025

### Correcting Enrollment and Processing Errors

(1) Employee Enrollment Errors. Enrollment errors occur when an active eligible employee provides incorrect information or fails to make correct selections when making benefit plan elections. The active eligible employee is responsible for identifying enrollment errors or omissions.

(a) OEBB authorizes Educational Entities to correct enrollment errors reported by the active eligible employee within 60 calendar days of the original eligibility date, open enrollment period end date, or Qualified Status Change date.

(b) Enrollment errors identified after 60 calendar days of the eligibility date, open enrollment period end date or Qualified Status Change date must be submitted to OEBB for review and approval based on OAR 111-080-0030.

(2) Benefit Administrator Processing Errors. Processing errors or omissions occur when benefit plan elections are processed incorrectly in

the benefit system or when a newly-eligible active eligible employee does not receive correct enrollment information or materials within 31 calendar days of the eligibility date.

(a) OEBB authorizes Educational Entities to correct processing errors identified within 60 calendar days of the eligibility date, open enrollment period end date, or Qualified Status Change date. The Educational Entity must reconcile all premium discrepancies.

(b) Processing errors identified after 60 calendar days of the eligibility date, open enrollment period end date, or Qualified Status Change date must be submitted to OEBB for review and approval based on OAR 111-080-0030. The Educational Entity must reconcile all premium discrepancies within 30 calendar days of any adjustments made in the system.

(3) The effective date for the correction of either an employee enrollment error or benefit administrator error is: Retroactive to the original effective date as identified in OAR 111-040-000(1).

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEBB 14-2008, f. & cert. ef. 8-15-08; OEBB 14-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 21-2009, f. & cert. ef. 12-17-09; OEBB 9-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBB 3-2011, f. & cert. ef. 2-11-11; OEBB 17-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; OEBB 23-2011, f. & cert. ef. 12-14-11

## 111-040-0040

### Qualified Status Changes (QSC's)

(1) Active eligible employees experiencing a change in family or work status as noted below after annual open enrollment, or anytime during the plan year, have 31 calendar days beginning on the date of the event to make changes. If the event is gaining a child, as defined by 111-040-0040(2)(c), or results in a loss of eligibility, the eligible employee has 60 calendar days after the event to make changes.

(2) The eligible employee can only make changes that are consistent with the event for themselves and/or dependents.

(3) The employee must report the Qualified Status Change (QSC) to the employee's Educational Entity within the specified timeframe. Failure to report a QSC that will result in removal of a spouse, domestic partner, or child within the timeframe stated in 111-040-0040(1) may be considered intentional misrepresentation, and OEBB may rescind the individual's coverage back to the last day of the month in which the individual lost eligibility. Please refer to the QSC matrix for details on what changes can occur with each event.

(4) Qualified Status Changes which allow the employee to make changes to his or her coverage are:

(a) Gain spouse by marriage or domestic partner by meeting domestic partner eligibility;

(b) Loss of spouse or domestic partner by divorce, annulment, death or termination of domestic partnership,

(c) Gain a child by birth, placement for/or adoption, or Domestic Partner's children (by affidavit of domestic partnership),

(d) Active eligible employee starts new employment and gains eligibility;

(e) Change in employment status by active eligible employee which affects eligibility;

(f) Active eligible employee ends employment or other change in employment status resulting in a loss of eligibility;

(g) Spouse or domestic partner starts new employment or other change in employment status which affects eligibility;

(h) Spouse or domestic partner's employment ends or other change in employment status resulting in a loss of eligibility under their employer's plan;

(i) Event by which a child satisfies eligibility requirements under OEBB plans (for a list of requirements see 111-010-0015);

(j) Event by which a child ceases to satisfy eligibility requirements under OEBB plans (for a list of requirements see 111-010-0015),

(k) Changes in the residence of the active eligible employee, spouse, domestic partner, or child (i.e., moving out of the service area of an HMO);

(l) Reinstatement of coverage. Reinstatement can be used in the following situations:

(A) Military (USERRA);

(B) When coverage was continued under COBRA

(C) When coverage was terminated in error and there is no lapse in coverage.

(m) Significant changes in cost of the eligible employee's or early retiree's current plan and tier level that result in a negative impact of 10 percent or more to:

(A) The amount an active eligible employee or early retiree must contribute toward benefits.

# ADMINISTRATIVE RULES

(B) The amount a spouse or domestic partner must contribute toward his or her group health insurance plan cost.

(n) Different Open Enrollment/Plan Year under a spouse/domestic partner's employer plan.

(o) Related laws or court orders. For example: Qualified Medical Child Support Order (QMSCO), Medicare, HIPAA, or Family Health Insurance Assistance Program (FHIAP). Changes are determined by the applicable law or court order.

(5) Changes in coverage, or contribution amounts that result in a reduced amount that an employee or eligible dependent must contribute toward benefits, do not constitute a Qualified Status Change.

(6) The following applies to the Long Term Care benefit plans only:

(a) Cancel the plan at anytime without a QSC event.

(b) Plan additions or changes require a QSC event as defined 111-040-0040(2). The addition of a plan or change in plans with a QSC is subject to a medical evidence review by the LTC carrier.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEBB 14-2008, f. & cert. ef. 8-15-08; OEBB 10-2009(Temp), f. 5-4-09, cert. ef. 5-5-09 thru 10-31-09; OEBB 11-2009, f. & cert. ef. 7-31-09; OEBB 17-2009(Temp), f. & cert. ef. 10-7-09 thru 4-4-10; OEBB 22-2009, f. & cert. ef. 12-17-09; OEBB 2-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10; OEBB 6-2010, f. & cert. ef. 8-3-10; OEBB 9-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBB 12-2010(Temp), f. 9-30-10, cert. ef. 10-1-10 thru 1-29-11; OEBB 3-2011, f. & cert. ef. 2-11-11; OEBB 7-2011(Temp), f. & cert. ef. 2-15-11 thru 8-13-11; OEBB 11-2011, f. & cert. ef. 6-22-11; OEBB 17-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; OEBB 23-2011, f. & cert. ef. 12-14-11

\*\*\*\*\*

**Rule Caption:** Amends rules relating to retroactive terminations, rescissions, and coverage effective dates for grandchildren.

**Adm. Order No.:** OEBB 24-2011

**Filed with Sec. of State:** 12-14-2011

**Certified to be Effective:** 12-14-11

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

**Rules Amended:** 111-050-0015, 111-050-0025, 111-050-0030, 111-050-0045, 111-050-0050

**Rules Repealed:** 111-050-0015(T), 111-050-0025(T), 111-050-0030(T), 111-050-0045(T), 111-050-0050(T)

**Subject:** OAR 111-050-0025 is amended to state when eligible grandchildren's coverage is effective. Amendments to OARs 111-050-0015, 111-050-0030, 111-050-0045 and 111-050-0050 result in additional clarification on retroactive terminations and rescissions provided by DOJ regarding the federal Healthcare Reform Act.

**Rules Coordinator:** April Kelly—(503) 378-6588

## 111-050-0015

### Medical, Dental and Vision Termination Dates for Retirees

(1) A retiree enrolled in OEBB retiree insurance plan that becomes eligible for Medicare coverage may not continue on an OEBB medical or vision plan, unless they are eligible as a result of end-stage renal disease. OEBB benefits end the last day of the month prior to the Medicare effective date. The retiree is responsible for reporting to their Educational Entity and to OEBB when the retiree is covered by Medicare within 31 days after the Medicare coverage effective date. Failure to report within this timeframe may be considered intentional misrepresentation by OEBB and OEBB may rescind OEBB coverage back to the last day of the month prior to the Medicare effective date.

(2) If a retiree becomes eligible for Medicare coverage, but his or her currently-enrolled eligible dependents are not, these eligible individuals may continue OEBB medical, dental and vision insurance coverage until such time as they no longer meet OEBB eligibility requirements or become eligible for Medicare coverage for reasons other than end-stage renal disease, whichever occurs first. The eligible individuals must confirm intent to continue coverage with the retiree plan administrator within 31 days after the retiree's eligibility for Medicare.

(3) Eligible dependents who were covered on a plan at the time of retirement who are eligible for Medicare, or who become eligible for Medicare, may not continue coverage on an OEBB medical or vision plan unless it is stated in a collective bargaining agreement or documented district policy in effect on or before February 1, 2010, that they may continue on OEBB medical plans until the retiree becomes eligible for Medicare with the following exception: OEBB coverage must end for Medicare-eligible dependents of a retiree enrolled on a Kaiser Permanente medical plan.

(4) If the retiree is responsible for self-paying all or partial premiums and fails to remit the premium amount to their Educational Entity, all coverage will terminate on the last day of the month in which premiums are paid in full to OEBB.

(5) Dental coverage may be continued subject to the Educational Entity's documented district policy or collective bargaining agreement. Coverage is based on the OEBB dental plans that the Educational Entity offers to retired OEBB Medicare-eligible individuals.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEBB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEBB 7-2008, f. & cert. ef. 4-15-08; OEBB 3-2009, f. & cert. ef. 1-30-09; OEBB 15-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 1-2010, f. & cert. ef. 2-1-10; OEBB 13-2010(Temp), f. 9-30-10, cert. ef. 10-1-10 thru 1-29-11; OEBB 4-2011, f. & cert. ef. 2-11-11; OEBB 18-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; OEBB 24-2011, f. & cert. ef. 12-14-11

## 111-050-0025

### Effective Dates

(1) Benefit plan changes or initial elections, unless otherwise specified in a collective bargaining agreement or documented district policy in effect on June 30, 2008, are effective on the later of:

(a) The first of the month following a completed online enrollment in the OEBB benefit management system or submission of a paper enrollment or change form,

(b) The first of the month following the date of eligibility; or

(c) The first of the month following the approval date of additional optional life insurance requested above the guarantee issue amount.

(2) Covered dependent changes are effective the first of the month following the date of the event causing the dependent to be eligible under OEBB administrative rules with the following exceptions:

(a) Coverage for a newborn child is effective on the date of birth. Retired eligible employee must add the newborn child to their benefit plans within 60 calendar days from the date of birth for the newborn child to be eligible for benefit coverage.

(b) Coverage for a newly adopted child is effective the date of the adoption decree or date of placement for adoption. Retired eligible employee must add the adopted child to their benefit plans within 60 calendar days from the date of the decree or placement for the newly adopted child to be eligible for benefit coverage; and

(A) The retired eligible employee must submit the adoption agreement with the enrollment forms to the Educational Entity.

(B) Claims payments will not be made for expenses incurred prior to the date of decree or placement.

(c) Coverage for an eligible grandchild is as follows:

(A) If the legal guardianship is finalized within the first 60 days following the birth of the grandchild, coverage will be effective retroactive to the date of the birth.

(B) If the legal guardianship is finalized 61 or more days from the date of birth of the grandchild, the coverage will be effective the first of the month following the date the guardianship documents are finalized.

(C) If the legal guardianship is finalized 61 to 180 days from the date of birth of the grandchild, and the effective date of legal guardianship is retroactive to the grandchild's date of birth, coverage will be effective retroactive to the date of birth. If legal guardianship is finalized after 180 days coverage will be effective the first of the month following the date the guardianship documents are finalized.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEBB 13-2008(Temp), f. & cert. ef. 8-15-08 thru 2-11-09; OEBB 3-2009, f. & cert. ef. 1-30-09; OEBB 15-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 1-2010, f. & cert. ef. 2-1-10; OEBB 10-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBB 4-2011, f. & cert. ef. 2-11-11; OEBB 18-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; OEBB 24-2011, f. & cert. ef. 12-14-11

## 111-050-0030

### Correcting Enrollment and Processing Errors

(1) Employee Enrollment Errors. Enrollment errors occur when a retired eligible employee provides incorrect information or fails to make correct selections when making benefit plan changes. The retired eligible employee is responsible for identifying enrollment errors or omissions.

(a) OEBB authorizes Educational Entities to correct enrollment errors reported by the retired eligible employee within 60 calendar days of the original eligibility date, annual plan change period end date, or Qualified Status Change date.

(b) Enrollment errors identified after 60 calendar days of the eligibility date, annual plan change period end date or Qualified Status Change date must be submitted to OEBB for review and approval based on OAR 111-080-0030.

(2) Benefit Administrator Processing Errors. Processing errors or omissions occur when benefit plan changes are processed incorrectly in the benefit system.

(a) OEBB authorizes Educational Entities to correct processing errors identified within 60 calendar days of the eligibility date, annual plan change



# ADMINISTRATIVE RULES

period end date, or Qualified Status Change date. The Educational Entities must reconcile all premium discrepancies.

(b) Processing errors identified after 60 calendar days of the eligibility date, annual plan change period end date, or Qualified Status Change date must be submitted to OEBC for review and approval based on OAR 111-080-0030. If approved, corrections are retroactive to the original effective date as identified in 111-040-0001. The Educational Entity must reconcile all premium discrepancies within 30 calendar days of any adjustments made in the system.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEBC 13-2008(Temp), f. & cert. ef. 8-15-08 thru 2-11-09; OEBC 3-2009, f. & cert. ef. 1-30-09; OEBC 10-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBC 13-2010(Temp), f. 9-30-10, cert. ef. 10-1-10 thru 1-29-11; OEBC 4-2011, f. & cert. ef. 2-11-11; OEBC 18-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; OEBC 24-2011, f. & cert. ef. 12-14-11

## 111-050-0045

### Termination Dates

(1) Effective October 1, 2011, if retired eligible employee requests a termination of coverage for themselves, a spouse, a domestic partner, or a child, coverage ends on the last day of the month that eligibility is lost. Requests for coverage termination must be made consistent with a Qualifying Event, as defined by 111-040-0040. Retroactive termination of coverage may be made in the event of a delay in the Educational Entities' administrative process.

(2) Effective October 1, 2011, benefit coverage termination that is considered by OEBC to be intentional misrepresentation may be rescinded in compliance with the law. If this occurs, OEBC shall give the affected individual 30 days notice of the rescission of benefit coverage and an opportunity to appeal before the rescission takes effect.

(3) Benefit coverage for a spouse, domestic partner, or child ends on the last day of the month that a retired eligible employee dies, unless otherwise determined by a collective bargaining agreement or documented district policy in effect on June 30, 2008.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEBC 13-2008(Temp), f. & cert. ef. 8-15-08 thru 2-11-09; OEBC 3-2009, f. & cert. ef. 1-30-09; OEBC 13-2010(Temp), f. 9-30-10, cert. ef. 10-1-10 thru 1-29-11; OEBC 4-2011, f. & cert. ef. 2-11-11; OEBC 18-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; OEBC 24-2011, f. & cert. ef. 12-14-11

## 111-050-0050

### Removing an Ineligible Individual from Benefit Plans

(1) A retired eligible employee is responsible for removing ineligible spouses, domestic partners and children from their OEBC-sponsored benefit plans by submitting completed, applicable forms to their Educational Entity benefits administrator within 31 calendar days after the date the individual becomes ineligible. Coverage ends on the date identified under OAR 111-050-0045.

(2) A retired eligible employee ending a domestic partnership must complete and submit a Termination of Domestic Partnership form and enrollment update forms to the Educational Entity benefits administrator within 31 calendar days after the event for removal of the domestic partner and domestic partner's dependent children from their benefit plan. Benefit coverage for the domestic partner and domestic partner's dependent children ends on the date identified in OAR 111-050-0045.

(3) An Educational Entity is responsible for removing ineligible individuals from the OEBC benefits management system. The Educational Entity must complete such removal within 14 calendar days after:

(a) An event resulting in loss of the retired employee's eligibility, or

(b) The receipt of notification of an event resulting in loss of eligibility of the retired employee's spouse, domestic partner or child.

(4) If coverage of an employee's spouse, domestic partner or child is terminated retroactively then:

(a) The retired eligible employee may be responsible for claims previously paid by the benefit plans to the providers during the period of ineligibility at the carrier's discretion; and

(b) Premium adjustments will be made retroactively based on the coverage end date.

(5) OEBC shall conduct audits to monitor compliance with OEBC administrative rules governing eligibility and enrollment.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEBC 13-2008(Temp), f. & cert. ef. 8-15-08 thru 2-11-09; OEBC 3-2009, f. & cert. ef. 1-30-09; OEBC 10-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBC 13-2010(Temp), f. 9-30-10, cert. ef. 10-1-10 thru 1-29-11; OEBC 4-2011, f. & cert. ef. 2-11-11; OEBC 18-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; OEBC 24-2011, f. & cert. ef. 12-14-11

**Rule Caption:** Amendments to the overpayment and underpayment rule.

**Adm. Order No.:** OEBC 25-2011

**Filed with Sec. of State:** 12-14-2011

**Certified to be Effective:** 12-14-11

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

**Rules Amended:** 111-080-0005

**Rules Repealed:** 111-080-0005(T)

**Subject:** OAR 111-080-005 is amended update the rule due to changes in the OEBC contracts with the insurance carriers.

**Rules Coordinator:** April Kelly—(503) 378-6588

## 111-080-0005

### Overpayments and Underpayments

(1) For the purpose of this rule:

(a) "Overpayment" means the amount of a Participating District's monthly payment to OEBC that exceeded the amount due.

(b) "Underpayment" means a payment submitted by a Participating District that is less than the invoiced amount.

(2) Participating Districts seeking a refund of overpayments must:

(a) Notify OEBC within 90 calendar days from the date overpayment occurred;

(b) OEBC will resolve member overpayments by requesting a refund from the carrier in accordance with the law. The carrier shall refund the premium to OEBC back to the date of the termination or the date allowed by law for recoupment of paid claims.

(c) OEBC will generally reimburse Participating District overpayments through adjustments to future monthly payments.

(3) The Participating District shall submit any underpayment to OEBC as soon as it is discovered.

(4) OEBC reserves the right to issue surcharges or use other appropriate means for Participating District's that submit underpayments.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEBC 11-2008(Temp), f. & cert. ef. 8-13-08 thru 2-6-09; OEBC 4-2009, f. & cert. ef. 1-30-09; OEBC 19-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; OEBC 25-2011, f. & cert. ef. 12-14-11

.....

## Oregon Health Authority, Public Health Division Chapter 333

**Rule Caption:** Requires correctional facilities to test inmates with risk factors for tuberculosis when incarcerated 15 days.

**Adm. Order No.:** PH 12-2011

**Filed with Sec. of State:** 12-14-2011

**Certified to be Effective:** 12-14-11

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

**Rules Adopted:** 333-019-0042

**Rules Amended:** 333-019-0041

**Subject:** The Oregon Health Authority, Public Health Division is permanently adopting and amending rules in chapter 333, division 19 related to tuberculosis (TB) screening. OAR 333-019-0042 is being adopted to replace subsection (2)(a) of OAR 333-019-0041, which requires correctional facilities to follow inmate TB screening recommendations as outlined in the Centers for Disease Control Guideline "Prevention and Control of Tuberculosis in Correctional Facilities: Recommendations from the CDC". The proposed rule provides specific guidance that inmates should be screened for symptoms of TB disease at intake and tested for latent TB infection if TB risk factors are present at 15 days of consecutive incarceration. This rule change is being made to provide correctional facilities with better clarity as to when TB screening should take place and which populations need TB screening.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-019-0041

### Tuberculosis

(1) Each health care facility shall formally assess the risk of tuberculosis transmission among staff (professional and volunteer), residents, and patients at least annually and shall follow tuberculosis screening recommendations outlined in "Guidelines for preventing the transmission of Mycobacterium tuberculosis in Health-Care Settings," published by the

# ADMINISTRATIVE RULES

## Oregon Health Licensing Agency Chapter 331

Centers for Disease Control and Prevention (Morbidity and Mortality Weekly Report, Vol. 54, Number RR-17: 1-141; December 30, 2005) or otherwise approved by the Authority. For the purposes of this rule "health care facility" has the meaning given that term in ORS 442.015.

(2) Each facility specified below shall formally assess the risk of tuberculosis transmission among staff (professional and volunteer), residents, and patients at least annually and shall follow appropriate tuberculosis screening recommendations as outlined in the relevant publication or as otherwise approved by the Authority:

(a) Long Term Care Facilities for the Elderly: "Prevention and control of tuberculosis in facilities providing long-term care to the elderly. Recommendations of the Advisory Committee for Elimination of Tuberculosis," published by the Centers for Disease Control and Prevention (Morbidity and Mortality Weekly Report, Vol. 39, RR-10, pp. 7-20; July 13, 1990) and "Guidelines for preventing the transmission of Mycobacterium tuberculosis in Health-Care Settings," published by the Centers for Disease Control and Prevention (Morbidity and Mortality Weekly Report, Vol. 54, Number RR-17: 1-141; December 30, 2005).

(b) Homeless Shelters: "Prevention and control of tuberculosis among homeless persons," published by the Centers for Disease Control and Prevention (Morbidity and Mortality Weekly Report, Vol. 41, RR-5, pp. 13-23; April 17, 1992)

Publications: Publications referenced are available from the agency.  
Stat. Auth.: ORS 431.110, 432.060, 433.001-433.035, 433.110-433.220 & 437.030  
Stats. Implemented: ORS 431.150, 431.155, 431.170, 433.001-433.035, 433.110-433.220 & 437.030  
Hist.: OH 4-2002, f. & cert. ef. 3-4-02; PH 10-2005, f. 6-15-05, cert. ef. 6-21-05; PH 9-2009, f. & cert. ef. 9-22-09; PH 7-2011, f. & cert. ef. 8-19-11; PH 12-2011, f. & cert. ef. 12-14-11

### 333-019-0042

#### Tuberculosis Screening in Correctional Facilities

(1) For purposes of this rule:

(a) "Correctional facility" means a facility operated by the Oregon Department of Corrections or a local correctional facility as that is defined in ORS 169.005; and

(b) "Symptoms of TB disease" means a cough longer than 3 weeks and/or coughing up blood in conjunction with fever, fatigue, night sweats or weight loss.

(2) A correctional facility shall screen all inmates upon admission for symptoms of tuberculosis (TB) disease. This screening and any follow-up shall be documented.

(3) Any inmate suspected of having TB disease or who has TB disease shall be isolated as appropriate and provided medical care and treatment that meets accepted standards of practice.

(4) Inmates detained or confined for 15 consecutive days or more in a correctional facility shall be screened for the following TB risk factors:

(a) HIV/AIDS;

(b) Immigration within the past five years from a country that has a high incidence of TB, including but not limited to immigration from Africa, Asia, Middle East, Latin America, Eastern Europe and South Pacific regions;

(c) Close contact to a person with infectious TB disease;

(d) History of injection drug use;

(e) History of homelessness; and

(f) Taking immunosuppressive medication.

(5) Inmates screened under section (4) of this rule who have TB risk factors and no documented history of prior positive screening tests for TB shall be screened with either a TB skin test or interferon gamma release assay (IGRA). Inmates with a documented previously positive TB skin test or IGRA, or a new positive result upon testing, shall receive a chest X-ray.

(6) Exceptions:

(a) A correctional facility is not required to retest an inmate at each admission under section (5) of this rule if:

(A) There is a documented record of a negative TB skin test or negative IGRA or normal chest X-ray within the past year; or

(B) There is a documented record of adequate TB treatment or compliance with a currently prescribed TB treatment.

(b) This exception does not apply if the inmate has symptoms of TB, evidence of new exposure to a person with infectious TB disease or a diagnosis of HIV/AIDS.

(7) Nothing in these rules prohibit any correctional facility from having more stringent TB screening requirements.

Stat. Auth.: ORS 431.110, 432.060, 433.001-433.035, 433.110-433.220 & 437.030  
Stats. Implemented: ORS 431.150, 431.155, 431.170, 433.001-433.035, 433.110-433.220 & 437.030  
Hist.: PH 12-2011, f. & cert. ef. 12-14-11

**Rule Caption:** Exempt sleep labs from the definition of respiratory care if certain standards and guidelines are met.

**Adm. Order No.:** HLA 13-2011(Temp)

**Filed with Sec. of State:** 11-22-2011

**Certified to be Effective:** 11-22-11 thru 5-10-12

**Notice Publication Date:**

**Rules Adopted:** 331-705-0072

**Subject:** In November 2010, the Respiratory Therapist Licensing Board adopted temporary administrative rules regarding Sleep Lab Exemption, to allow for certain respiratory care services (e.g. positive airway pressure) to be performed by unlicensed individuals in sleep labs under a medical doctor. The primary purpose for the temporary rule was to allow the 2011 Legislative Assembly time to consider licensing polysomnographers or sleep technicians within the Respiratory Therapist Licensing Board. The 2011 Legislative Assembly passed SB 723 which created the Respiratory Therapist and Polysomnographic Technologist Licensing Board. According to the bill, the Oregon Health Licensing Agency can start licensing polysomnographic technicians as of January 1, 2012. The bill also requires that all individuals practicing polysomnography must be licensed by January 1, 2013. This temporary rule continues to allow certain respiratory care services (e.g. positive airway pressure) be performed by unlicensed individuals in sleep labs under a medical doctor.

**Rules Coordinator:** Samantha Patnode—(503) 373-1917

### 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 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 physician 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.

# ADMINISTRATIVE RULES

(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

\*\*\*\*\*  
**Oregon Health Licensing Agency,  
Nursing Home Administrators Board  
Chapter 853**

**Rule Caption:** Standardization with other professions regulated by OHLA.

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

**Filed with Sec. of State:** 12-15-2011

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

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

**Rules Adopted:** 853-020-0000, 853-030-0000, 853-030-0010, 853-030-0020, 853-030-0030, 853-030-0040, 853-030-0050, 853-030-0060, 853-030-0070, 853-040-0000, 853-050-0000, 853-050-0010, 853-060-0000, 853-060-0010

**Rules Repealed:** 853-001-0000, 853-001-0005, 853-001-0020, 853-001-0025, 853-001-0030, 853-010-0010, 853-010-0015, 853-010-0017, 853-010-0020, 853-010-0025, 853-010-0035, 853-010-0040, 853-010-0045, 853-010-0050, 853-010-0055, 853-010-0060, 853-010-0065, 853-010-0070, 853-010-0074, 853-010-0075, 853-010-0076, 853-010-0077, 853-010-0078, 853-010-0079, 853-010-0080

**Subject:** The Oregon Health Licensing Agency (Agency) and the Nursing Home Administrators Board (NHAB) are proposing to adopt the NHAB administrative rules Chapter 853 Divisions 20 – 60. Rule changes are necessary to standardize and streamline rules for consistency with other professions regulated by OHLA and to allow for the adoption of rules that will align with current industry, agency and statewide rulemaking standards and principles.

Adopt 853-020-0000 Definitions: in order to meet rulemaking protocols and define relevant terms where utilized within the rule for efficiency.

Adopt 853-030-0000 Nursing Home Administrator Application Requirements: to establish standardized pathways for licensure and to streamline the application process. The pathways include:

- Qualification through the AIT program
- Qualification through dual facility experience
- Qualification through advanced education and experience
- Reciprocity

Adopt 853-030-0010 Provisional Licenses – Application and Issuance: for bona fide emergencies.

Adopt 853-030-0020 Application for Registration as an AIT: for individuals applying for an AIT registration.

Adopt 853-030-0030 Application for Registration as a Preceptor: to strengthen the AIT supervisory role and to outline minimum qualifications that a preceptor must meet in order to qualify to train AITs.

Adopt 853-030-0040 Administrator-in-Training (AIT) Program: requirements in order to add clarity and to provide the AIT with a streamlined process for the training period.

Adopt 853-030-0050 General Examination Information: requirements to include all information related to examinations are streamlined into one administrative rule.

Adopt 853-030-0060 Examination Retake: to clarify the retake process.

Adopt 853-030-0070 Nursing Home Administrator Issuance and Renewal: to align with statutory provisions pursuant to ORS 678.775, by establishing a reactivation fee and the number of years a licensee can renew late up to three years to align with renewal requirements

and agency protocol. The rule also addresses those authorizations that have expired beyond three years.

Adopt 853-040-0000 Fees: establishing and changing fees.

Adopt 853-050-0000 Continuing Education Requirements: to clarify and establish continuing education credit criteria. Nursing Home Administrators must complete a minimum of 2.0 credits or 20 hours every year.

Adopt 853-050-0010 Continuing Education: Audit, Required Documentation and Sanctions: provide the licensee clarity regarding the process if selected for an audit of attested continuing education credits.

Adopt 853-060-0000 Standards of Practice: to establish and maintain a high standard of integrity and dignity in the profession of nursing home administrators.

Adopt 853-060-0010 Standards of Professional Conduct: to protect the public against unprofessional conduct on the part of nursing home administrator.

**Rules Coordinator:** Samantha Patnode—(503) 373-1917

## 853-020-0000

### Definitions

(1) “Agency” means the Oregon Health Licensing Agency.

(2) “CEU” means a continuing education unit and the numerical value determined by the board to be earned by a renewal applicant by attending a specified training course. The terms “continuing education credit” and “continuing education unit” are synonymous and may be used interchangeably.

(3) “Continuing Education” means post-licensure education in health care administration undertaken to maintain professional competency to practice nursing home administration, and improve administration skills, in the interest of safety, health and welfare of the people served.

(4) “Experience” means prior performance in administration, including planning, organizing, directing, staffing, and budgeting of a licensed long-term care facility.

(5) “Experience in Health Care Management” means experience in administration, planning, organizing, directing, staffing and budgeting of a licensed health care facility.

(6) “Long-Term Care Facility” means a licensed facility as defined in ORS 442.015.

(7) “NAB” is the National Association of Long Term Care Administrator Boards.

(8) “Official Transcript” means an original document certified by an accredited college or university indicating hours and types of course work, examinations and scores that the student has completed, which has been submitted by the accredited college or university by mail or courier to the agency in a sealed envelope in accordance with ORS 678.730.

(9) “One Year” when related to employment means a period equivalent to 40 hours a week for 48 weeks.

(10) “Preceptor” means a person who is registered to train and supervise an AIT.

(11) “Trainee”; “Administrator-in-Training”; or “AIT” means a person who is completing the residency or intern requirements leading to licensure as a nursing home administrator. See ORS 678.730(1)(a)

Stat. Auth.: ORS 676.615, 678.820(2)(g)  
Stats. Implemented: ORS 678.710, 678.730, 678.760  
Hist.: NHAB 1-2011, f. 12-15-11, cert. ef. 1-1-12

## 853-030-0000

### Nursing Home Administrator Application Requirements

An individual applying for a nursing home administrator 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) In addition to requirements listed in subsections (1) and (2) of this rule, an applicant must provide documentation of one of the following pathways:

(a) Licensure Pathway 1 – Qualification through the AIT Program. Applicant must submit:

(A) Official transcript as defined in OAR 853-020-0000(8) demonstrating attainment of qualifying Bachelor’s degree pursuant to ORS 678.730(3);



# ADMINISTRATIVE RULES

(B) Certificate of Training Completion on forms prescribed by the agency;

(C) Examination fees;

(D) Official documentation of a passing score on the NAB examination, successfully completed within one year following the date of application, sent directly by the NAB to the agency. Copies of examination results or other documentation provided by the applicant are not acceptable. The applicant is responsible for payment of fees assessed by NAB in obtaining required official documentation. See ORS 678.740 and OAR 853-030-0030

**Note:** Upon completion and approval of all application requirements listed in (1), (2), and (3)(a)(A) through (B) of this rule the agency may notify NAB an applicant is qualified to take the NAB examination;

(E) Proof of having completed and passed the board approved state examination within one year preceding or one year following the date of application. See ORS 678.740 and OAR 853-030-0030; and

(F) Upon passage of all required examinations and before issuance of license, applicant must pay all license fees.

(b) Licensure Pathway 2 – Qualification through dual facility experience. Applicant must submit:

(A) Proof, from the organization, of one year experience as an administrator serving a dual facility as per ORS 678.710(1);

(B) Examination fees;

(C) Official documentation of a passing score on the NAB examination, successfully completed within one year following the date of application, sent directly by the NAB to the agency. Copies of examination results or other documentation provided by the applicant are not acceptable. The applicant is responsible for payment of fees assessed by NAB in obtaining required official documentation. See ORS 678.740 and OAR 853-030-0050

**Note:** Upon completion and approval of all application requirements listed in (1), (2), and (3)(b)(A) of this rule the agency may notify NAB an applicant is qualified to take the NAB examination;

(D) Proof of having completed and passed the board approved state examination within one year preceding or one year following the date of application. See ORS 678.740 and OAR 853-030-0050; and

(E) Upon passage of all required examinations and before issuance of license, applicant must pay all licensing fees.

(c) Licensure Pathway 3 – Qualification through advanced education and experience. Applicant must submit:

(A) Official transcript as defined in OAR 853-020-0000(8) demonstrating attainment of a postgraduate degree in management pursuant to ORS 678.730(4);

(B) Proof of ten years of experience in health care management as defined in OAR 853-020-0000(5).

(C) All licensing fees.

(d) Licensure Pathway 4 – Reciprocity. Applicant must submit:

(A) 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 nursing home administrator. The license must have been issued by another state or territory of the United States and the licensing requirements must be at least equivalent to those in ORS 678.730

(B) All licensing fees.

(e) Licensure Pathway 5 – Reciprocity for licensees registered prior to January 1, 1983. Applicant must submit:

(A) 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 nursing home administrator. The license must have been issued by another state or territory of the United States and the licensing requirements must be at least equivalent to those in ORS 678.730. The affidavit must indicate that the license was originally issued prior to January 1, 1983;

(B) All licensing fees.

Stat. Auth.: ORS 676.615, 678.820(2)(g)

Stats. Implemented: ORS 678.730, 678.760, 678.770, 678.775, 678.820

Hist.: NHAB 1-2011, f. 12-15-11, cert. ef. 1-1-12

## 853-030-0010

### Provisional Licenses – Application and Issuance

(1) Whenever a bona fide emergency exists such as, but not limited to, the death, incapacitation, or unexpected resignation of a licensed nursing home administrator and the nursing home which such person was administering is unable to employ a regularly licensed nursing home administrator, the long-term care facility may be administered by a provisionally licensed nursing home administrator. The provisional license is valid for only the nursing home in which the emergency that allowed the provisional license exists, and is valid until a licensed nursing home administrator can be employed, but not to exceed six months.

(2) An individual applying for a nursing home administrator provisional license 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 a formal request from the owner or manager of the nursing home explaining the emergency situation and the need for a provisional administrator.

(d) In addition to requirements listed in subsection (2) (a), (b) and (c) of this rule, an applicant must provide documentation of one of the following:

(A) Proof of qualification under licensure pathway 2, 3, 4 or 5;

(B) Current employment as the nursing home's Assistant Administrator; or

(C) Current employment as the nursing home's Director of Nursing.

Stat. Auth.: ORS 676.615, 678.820(2)(g)

Stats. Implemented: ORS 678.710, 678.760(5), 678.775

Hist.: NHAB 1-2011, f. 12-15-11, cert. ef. 1-1-12

## 853-030-0020

### Application for Registration as an AIT

An individual applying for an AIT registration 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.

Stat. Auth.: ORS 676.615, 678.820(2)(g)

Stat. Implemented: ORS 678.730

Hist.: NHAB 1-2011, f. 12-15-11, cert. ef. 1-1-12

## 853-030-0030

### Application for Registration as a Preceptor

An individual applying for a Preceptor registration 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) In addition to requirements listed in subsection (1) and (2) of this rule, a preceptor must:

(a) Hold a current Oregon nursing home administrator license with no current or pending disciplinary action, and with no fines, fees, or civil penalties owing to the Agency;

(b) Have been a licensed nursing home administrator for the least three years; and

(c) Have attended a Board-approved workshop for preceptors in Oregon within three years preceding the date of application for registration.

(4) In order to maintain current registration as a Preceptor with the agency;

(a) For a preceptor registered before January 1, 2012 the preceptor must attend a Board-approved workshop for preceptors in Oregon by December 31, 2012.

(b) A preceptor must attend a Board-approved workshop for preceptors in Oregon every three years.

Stat. Auth.: ORS 676.615, 678.820(2)(g)

Stats. Implemented: 678.730, 678.760, 678.775, 678.820

Hist.: NHAB 1-2011, f. 12-15-11, cert. ef. 1-1-12

## 853-030-0040

### AIT Program

The AIT program consists of 960 hours of training under the supervision of a preceptor. The training program documentation can be reviewed at [www.oregon.gov/OHLA/NHAB](http://www.oregon.gov/OHLA/NHAB).

(1) An AIT program applicant must apply for and be granted registration pursuant to OAR 853-030-0020 prior to beginning the AIT program.

(2) An AIT registered after January 1, 2012:

(a) Must complete the AIT program in no less than six months and no more than two years after beginning the program. An AIT failing to complete the program within two years after beginning the program must reapply and, if accepted, must begin the program again;

(b) May apply for a waiver of up to 80 hours of the AIT program pertaining to resident care and quality of life if the AIT submits:

(A) Proof of current CNA certification with no current or pending disciplinary actions and with no fines, fees, or civil penalties currently owing. Applicants must submit an affidavit of licensure pursuant to OAR 331-030-0040; or

(B) A certificate of completion from a CNA program within the last two years preceding the date of registration application.

(c) May apply for a waiver of up to 160 hours of the AIT program pertaining to resident care and quality of life if the AIT:

# ADMINISTRATIVE RULES

(A) Submits proof of current licensure as a LPN or RN in a long-term care facility, with no current or pending disciplinary actions and with no fines, fees, or civil penalties currently owing; and

(B) Has three years of experience within the last five years as a LPN or RN in a long-term care facility. Applicants must submit an affidavit of licensure pursuant to OAR 331-030-0040; and

(d) May apply for a waiver under subsection (3) or (4) of this rule, but not both.

(3) A registered preceptor must provide the AIT a minimum of four (4) hours per month of in-person consultation regarding the strengths, progress, and competency development needs of the AIT, and to suggest methods of improvement. In-person consultation must be documented on a form prescribed by the agency.

(4) A registered preceptor must:

(a) Train only one AIT at any one time;

(b) Sign the Certificate of Training completion forms;

(5) Both the AIT and preceptor registrants must notify the agency of any discontinuation of, change or interruptions in the AIT program.

(6) An AIT registered prior to January 1, 2012, may complete training under that AIT's currently approved program. The AIT must complete the AIT program in no less than six months and no more than two years after beginning the program. An AIT failing to complete the program within two years after beginning the program must reapply and, if accepted, must begin the program pursuant to OAR 853-030-0040(2);

(7) Neither AIT registration nor acceptance into an AIT program authorizes an AIT registrant to practice or offer to practice as a nursing home administrator or to use the title of or abbreviations for Nursing Home Administrator. An AIT registrant engaging in such conduct may be disqualified from all or part of the training program. See ORS 678.720(1).

Stat. Auth.: ORS 676.615, 678.820(2)(g)

Stats. Implemented: ORS 678.730, 678.760, 678.820

Hist.: NHAB 1-2011, f. 12-15-11, cert. ef. 1-1-12

## 853-030-0050

### General Examination Information

(1) The board approved examinations for a nursing home administrator license are the NAB examination with a NAB passing score and the state prepared examination administered by the agency with a board approved passing score.

(2) To take the examinations, an applicant must meet identification requirements listed under OAR 331-030-0000.

(3) The examination is administered in English only, unless an agency approved testing contractor or vendor provides the examination in languages other than English.

(4) Examination candidates may be electronically monitored during the course of testing.

(5) The Board will establish a maximum time allowance for each section of the examination.

(6) Notes, textbooks, notebooks, electronic equipment or 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) A candidate may be immediately disqualified before, during, or after the examination for conduct that interferes with the examination or otherwise violates this rule. At the time of disqualification, the examination may be invalidated and examination fees may be forfeited. Disqualifying 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 subsection (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.

(8) The applicant may be required to reapply, submit additional examination fees, and request in writing to schedule another examination if applicant is disqualified from taking the examination.

Stat. Auth.: ORS 676.615, 678.820(2)(g)

Stats. Implemented: ORS 678.730, 678.740, 678.760, 678.775

Hist.: NHAB 1-2011, f. 12-15-11, cert. ef. 1-1-12

## 853-030-0060

### Examination Retake

All examinations retakes are subject to examination fees and an approved examination schedule set by the agency

Stat. Auth.: ORS 676.615, 678.820(2)(g)

Stats. Implemented: ORS 678.40, 678.775

Hist.: NHAB 1-2011, f. 12-15-11, cert. ef. 1-1-12

## 853-030-0070

### Nursing Home Administrator Issuance and Renewal

(1) AUTHORIZATION AND RENEWAL: A licensee is subject to the provisions of OAR chapter 331, division 30 regarding the issuance and renewal of a license, provisions regarding authorization to practice, identification requirements, and requirements for issuance of a duplicate license.

(2) AUTHORIZATION 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 853-040-0000; and

(c) Documentation of having obtained required annual continuing education under OAR 853-050-0000, on a form prescribed by the agency.

(3) INACTIVE AUTHORIZATION: A license may be inactive for up to three years. 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 853-040-0000;

(c) Documentation of having obtained required annual continuing education under OAR 853-050-0000, on a form prescribed by the agency, whether license has been current or inactive;

(4) EXPIRED AUTHORIZATION: A license that has been inactive for more than three years is expired and the licensee must reapply and meet the requirements listed in OAR 853-030-0000.

(5) A licensee failing to meet continuing education requirements listed under OAR 853-050-0000 is expired and must reapply and meet requirements pursuant to OAR 853-030-0000.

(6) A licensee may not practice with an inactive or expired license.

Stat. Auth.: ORS 676.615, 678.820(2)(g)

Stats. Implemented: ORS 678.730, 678.740, 678.760, 678.775, 678.820

Hist.: NHAB 1-2011, f. 12-15-11, cert. ef. 1-1-12

## 853-040-0000

### Fees

(1) Applicants and registrants 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) License (including by reciprocity): \$100

(B) Provisional license: \$50

(C) AIT registration: \$100

(D) Preceptor registration: \$100

(b) State examination: \$125

(c) Original issuance:

(A) License (including by reciprocity): \$130 for one year

(B) Provisional license: \$50 for six months

(d) Renewal of license: \$130 for one year

(e) Other administrative fees:

(A) Delinquency fee: \$50 for each year in inactive status up to three years.

(B) Replacement of license, including name change: \$25

(C) Affidavit of licensure: \$50

(D) Information Packet: \$10

(E) 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 676.615, 678.775, 678.820(2)(g)

Stat. Implemented: ORS 678.775

Hist.: NHAB 1-2011, f. 12-15-11, cert. ef. 1-1-12

## 853-050-0000

### Continuing Education Requirements

(1) To maintain licensure, nursing home administrators must complete a minimum of 2.0 credits or 20 hours every year. Credit hours obtained in excess of those required for the one-year reporting period shall not be carried forward.

(2) Each licensee shall document compliance with the continuing education requirement through attestation on the license renewal application. Licensees are subject to provisions of OAR 853-050-0010 pertaining to periodic audit of continuing education.

# ADMINISTRATIVE RULES

(3) Continuing education must be obtained by participation in or attendance at a course provided by an accredited college or university, a course or program approved by NAB, or an agency pre-approved course or program.

(4) Continuing education must address subject matter related to nursing home administration in accordance with ORS 678.710(3) and OAR 853-020-0000(3).

(5) CEU credit will be awarded based on the following criteria:

(a) Completion and passing of academic courses taken from an accredited college or university at the same rate of credit established by that institution;

(b) Completion of professional courses which meet academic course requirements in content, instruction and evaluation will be assigned CEU credit at the same rate as academic courses.

(c) Courses that do not meet standards as set forth in paragraphs (a) and (b) of this subsection, such as workshops, symposiums, seminars, laboratory exercises, or any applied experience with or without formal classroom work may receive credit at the rate of 1.0 CEU for each ten hours of attendance.

(6) Documentation supporting compliance with continuing education requirements must be maintained for a period of two years following renewal, and must be available to the agency upon request.

Stat. Auth.: ORS 676.615, 678.820(2)(g)

Stats. Implemented: ORS 678.730, 678.760

Hist.: NHAB 1-2011, f. 12-15-11, cert. ef. 1-1-12

## 853-050-0010

### Continuing Education: Audit, Required Documentation and Sanctions

(1) The Oregon Health Licensing Agency will audit a percentage of licensees, as determined by the Board, to verify compliance with continuing education requirements of this rule.

(2) Licensees notified of selection for audit of continuing education attestation shall submit to the agency, within 30 calendar days from the date of issuance of the notification, satisfactory evidence of participation in required continuing education in accordance with OAR 853-050-0000.

(3) If selected for audit, the registrant must provide documentation of the required continuing education, which must include:

(a) For courses provided by an accredited college or university – An official transcript from the accredited college or university;

(b) For NAB approved programs or courses – A certificate of completion that includes the NAB approval number; or

(c) For agency pre-approved programs or courses – A certificate of completion or other agency approved documentation that includes the agency pre-approval number.

(4) For courses or programs attended prior to March 1, 2012 that are provided by organizations previously granted blanket program approval by the board, no documentation of NAB approval or agency pre-approval is required.

(5) If documentation of continuing education is incomplete, the registrant has 30 calendar days from the date of notice to submit further documentation to substantiate having completed the required continuing education.

(6) Failure to meet continuing education requirements shall constitute grounds for 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 676.615, 678.820(2)(g)

Stats. Implemented: ORS 678.730, 678.760

Hist.: NHAB 1-2011, f. 12-15-11, cert. ef. 1-1-12

## 853-060-0000

### Standards of Practice

The board adopts the following standards of practice to establish and maintain a high standard of integrity and dignity in the profession of nursing home administrators. A licensee must:

(1) Develop policies which govern the continuing care and related medical and other services provided by the facility which reflects the facility's person-centered philosophy;

(2) Maintain a clean and safe environment to ensure the health, safety, and welfare of residents and staff in the licensee's facility;

(3) Ensure a quality of care and quality of life that is consistent with the health and safety of the residents in the facility. This includes, but is not limited to, the promotion of care, related medical and other services provided by the facility to assist each resident to attain or maintain the highest practicable mental, physical, and psychosocial well being to the extent it is consistent with the resident's wishes;

(4) Participate with the ownership, management, or facility governing board to plan, implement, and evaluate written policies and procedures to

promote facility systems to function properly and ensure compliance with all local, state, and federal laws and regulations;

(5) Communicate and problem solve regularly with the governing body, department heads, facility staff and residents to allocate resources properly. The nursing home administrator must foster effective communication and problem solving between management, staff, residents, family, community, and all parties involved to ensure appropriate management and operation of the facility and to provide for residents' rights, health, safety, and welfare; and

(6) Plan, implement, and evaluate an integrated financial program for the facility which ensures compliance with all local, state, and federal laws and regulations; quality of care and life; and appropriate and accurate billing for services.

Stat. Auth.: 676.615, 678.820

Stats. Implemented: ORS 678.720, 678.725, 678.780, 678.820

Hist.: NHAB 1-2011, f. 12-15-11, cert. ef. 1-1-12

## 853-060-0010

### Standards of Professional Conduct

The Board adopts the following standards of professional conduct to protect the public against unprofessional conduct on the part of nursing home administrators. A licensee must:

(1) Comply with all local, state, and federal laws and regulations concerning the operation and reimbursement of nursing homes and/or nursing home administrators. The licensed nursing home administrator shall cooperate with any investigation of these regulatory bodies;

(2) Exercise appropriate supervision and responsibility over the activities of nursing home personnel;

(3) Protect resident rights as required by state and federal laws including, but not limited to, the protection against abuse, neglect, and other mistreatment pursuant to ORS 676.150 and 678.725;

(4) Possess and maintain the competencies necessary to effectively perform the responsibilities as a nursing home administrator, including but not limited to:

(a) Exercising ethical and professional decision making and judgment;

(b) Assuming leadership in the facility;

(c) Exemplifying an administrative philosophy congruent with the mission and goals of the organization as well as generally accepted standards;

(d) Planning, organizing, and directing those responsibilities delegated to the administrator by the ownership, management, or governing board of the facility and inherent in the role of an administrator;

(e) Abiding by and keeping confidential resident information; and

(f) Keeping current with standards of practice; and

(5) Take appropriate steps to avoid discrimination against residents on basis of race, color, sex, religion, age, national origin, disability, marital status, ancestry, sexual orientation or any other factor that may be discriminatory or not related to bona fide requirements of quality care.

Stat. Auth.: ORS 676.615, 678.820

Stats. Implemented: ORS 676.150, 678.710, 678.725, 678.780, 678.820

Hist.: NHAB 1-2011, f. 12-15-11, cert. ef. 1-1-12

.....

## Oregon Liquor Control Commission Chapter 845

**Rule Caption:** Amendment removing requirement for Self-Distribution Permit applicants to provide true copy of manufacturing license.

**Adm. Order No.:** OLCC 11-2011

**Filed with Sec. of State:** 12-6-2011

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

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 845-005-0425

**Subject:** This rule describes the qualifications necessary for an out-of-state manufacturer to obtain a Self-Distribution Permit, which allows the permittee to ship wine or cider they manufacture directly to Oregon retail licensees who hold a valid Commission endorsement authorizing its receipt. House Bill (HB) 2147 has passed with an emergency clause, effective June 2, 2011. HB 2147 amends ORS 471.274 and has eliminated the statutory requirement to provide a true copy of an applicant's manufacturing license. The new statutory language now provides the alternative of the applicant providing sufficient information to allow for Commission verification of the



# ADMINISTRATIVE RULES

out-of-state license by electronic means. Subsection (2)(a) of this rule was amended to bring it into statutory compliance.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

## 845-005-0425

### Qualifications for Wine Self-Distribution Permit for Wine and Cider

ORS 471.274 allows a manufacturer of wine or cider with a Wine Self-Distribution Permit to sell and ship wine and cider that the manufacturer produced directly to the Commission or to retail licensees of the Commission who hold a valid endorsement issued by the Commission authorizing receipt of wine or cider from the holder of a Wine Self-Distribution Permit. This rule sets the qualifications to obtain a Wine Self-Distribution Permit.

(1) In order to qualify for a Wine Self-Distribution Permit, a person must:

(a) Hold a valid license issued by another state within the United States that authorizes the manufacture of wine or cider;

(b) Hold a valid Certificate of Approval issued under ORS 471.244; and

(c) Hold a bond or other security, as described in ORS 471.155, in the minimum amount of \$1,000.

(2) Application. A person must make application to the Commission upon forms to be furnished by the Commission and receive a Wine Self-Distribution Permit from the Commission before shipping any wine or cider directly to retail licensees of the Commission. The application shall include:

(a) Any information required by the Commission to establish that the applicant holds a valid license authorizing the manufacture of wine or cider;

(b) A statement that the person understands and will follow Oregon's alcohol laws and rules regarding wine self-distribution, tied-house and financial assistance prohibitions, and wine and cider privilege tax;

(c) Proof of a valid Certificate of Approval issued under ORS 471.244;

(d) A \$100 fee; and

(e) Proof of posting a bond or other security, as described in ORS 471.155, in the minimum amount of \$1,000.

(3) The Commission may refuse to process any application required under this rule that is not complete and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS Chapter 183.

(4) The Commission may revoke or refuse to issue or renew a Wine Self-Distribution Permit if the permit holder or applicant fails to qualify for the permit under this rule or a refusal basis applies under ORS Chapter 471 or any other rule of the Commission and good cause does not overcome the refusal basis.

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

Stats. Implemented: ORS 471.272 & 471.274

Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08; OLCC 11-2011, f. 12-6-11, cert. ef. 1-1-12

.....

**Rule Caption:** Amendment implementing statutory change expanding license types allowed to participate in Responsible Vendor Program.

**Adm. Order No.:** OLCC 12-2011

**Filed with Sec. of State:** 12-6-2011

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

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 845-009-0135

**Subject:** This rule describes the Commission's standards and procedures for participation in the Responsible Vendor Program (RVP). The 2011 legislature has passed House Bill (HB) 2148, effective January 1, 2012. HB 2148 amends ORS 471.344 by changing the definition of "retail licensee" for purposes of the RVP. Rather than using the definition in ORS 471.392, which excludes certain license types with retail privileges such as a Brewery-Public House license and a Winery license, the new statutory language allows any licensee with retail privileges to participate in the RVP. Amending ORS 845-009-0135, by deleting the current definition of "retail licensee" and adding language to the now section (2), brings our rule into compliance with the new statutory language. While the rule was open, we also amended what is now (7)(a) so that licensees will not be removed from the RVP if the only program element they are miss-

ing is the posting requirement for house policies or legal I.D. signs. The amendments also include the addition in what is now (3)(e) of the requirement to produce training records for inspection within five business days. And finally, to improve clarity, amendments include an overall clean up and restructuring of what are now sections (5) and (7), governing both maintenance of RVP status and program removal & reinstatement.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

## 845-009-0135

### Responsible Vendor Program

(1) Purpose. ORS 471.344 requires the Commission to establish a Responsible Vendor Program (program) for retail licensees, including the positive measures a licensee must take to participate in the program. The purpose of this rule is to set standards and procedures for program participation.

(2) Application Process. To be eligible for the program, a licensee must hold a liquor license that authorizes the sale of alcoholic beverages at retail. Any eligible licensee who meets the program standards may participate. To apply for the program, the licensee must complete and submit a Commission-provided application form. Commission staff will review the application for completeness, and will:

(a) Approve a completed application that clearly indicates the licensee has all program standards in place; put the application in the licensee's file; and send a certificate to the licensee acknowledging the licensee as an approved Responsible Vendor. The Responsible Vendor Program is a self-certifying program. The approval means only that staff has reviewed the application to confirm that it is complete and that the licensee states in writing that he/she has all the program standards in place. The Commission may take administrative action if it learns that the licensee did not meet all the standards at the time of application; or

(b) Return an incomplete application that does not clearly indicate the licensee has all program standards in place. Staff will include a letter highlighting the reason/s the application is being returned.

(3) Program Standards. To qualify as a Responsible Vendor, a licensee must:

(a) Train each employee in alcohol sales. For training purposes, an employee is any person whose responsibilities include the sale or service of alcohol. Except for an on-premises employee who has a valid service permit, each employee must:

(A) Before selling alcohol, read and sign the Commission-provided off-premises brochure or, at the licensee's discretion, meet the alternative requirements of OAR 845-009-0130, Training Brochure Requirement for Off-Premises Sales Employees. Licensees must comply with the record keeping requirements of 845-009-0130; and

(B) Within three days of beginning to sell alcohol, receive training that covers at a minimum the topics listed in Section (4) of this rule. Licensees may train their employees themselves; licensee's trainings do not require Commission approval. Licensees may also choose to use any clerk training course approved by the Commission under OAR 845-009-0145, Clerk Training Courses. Additionally, servers who have not completed a Server Education course must do so within the time required in 845-009-0100, Service Permittee Requirements.

(b) Accept only identification allowed in ORS 471.130.

(c) In an area visible to employees, post the house policies on alcohol sales and checking identification. The licensee must have each employee read and sign the house policies which must include at a minimum:

(A) A list of valid types of identification which are accepted at the premises;

(B) Directions for properly checking identification, including the requirement to check anyone who appears to be under the age of 26 years. A licensee may have a house policy to check customers who appear to be older than 26 years; and

(C) Consequences for selling alcohol to a minor.

(d) Permanently post signs reminding patrons and employees of the legal requirements for selling alcohol. The signs must include:

(A) A list of valid types of identification which are accepted at the premises;

(B) A notice that anyone who appears to be under the age of 26 years must show valid identification. A licensee may post that their house policy is to check customers who appear to be older than 26 years.

(e) At a minimum, provide four employee trainings spaced at regular intervals within each 12-month period. The licensee must ensure that employees attend the trainings. The licensee must keep a record of each training which includes the date of the training, names of the employees

# ADMINISTRATIVE RULES

who participated, and a summary of the training. The licensee must produce these training records for inspection by any Commission employee within five business days, excluding weekends and holidays. Examples of training include computer based training, video training, classroom instruction, and meetings. The training may be done individually or in a group. At a minimum, each training must cover the topics listed in Section (4) of this rule.

(f) Have no prior Category I or II violation within the last five years for the licensee personally.

(g) Have no aggravating circumstances surrounding a violation for failing to verify the age of a minor or selling alcohol to a minor. For purposes of this rule, aggravating circumstances do not include licensee's personal involvement in the violation. Aggravating circumstances include, but are not limited to, an intentional sale to a minor; multiple employees or patrons involved in the violation; the violation results in death or personal injury; the sale was made to a person under age 18 who appeared to be under the age of 21 when the sale was made.

(4) Topics to be Covered in Responsible Vendor Training. All training required by this rule must include at a minimum the following topics:

- (a) Guidelines for recognizing minors and visibly intoxicated persons;
- (b) Legal forms of identification for purchasing alcohol;
- (c) How to properly check identification, and how to recognize false or altered identification;

(d) The requirement that anyone who appears to be under the age of 26 years must show valid identification. If the licensee's house policy requires that they check customers who appear to be older than 26 years, the licensee must include that information;

(e) Recommended approaches for refusing sales of alcohol to minors or visibly intoxicated persons;

(f) A review of the consequences for selling to minors, and the importance of not selling alcohol to minors or visibly intoxicated persons; and

(g) A review of house policies on alcohol sales. Each licensee must ensure that his/her employees receive training that covers the licensee's own house policies.

(5) Maintenance of Responsible Vendor Status. To retain Responsible Vendor certification, a licensee must:

(a) Continue to meet all of the qualifying standards listed in Section (3) of this rule; and

(b) Require an Off-Premises Sales employee who sold alcohol to a minor or failed to properly verify identification to complete a clerk training course as required by OAR 845-009-0145, Clerk Training Courses; require an on-premises employee who sold alcohol to a minor or failed to properly verify identification to complete a training course that covers all the topics listed in Section (4) of this rule or a Commission-approved Alcohol Server Education course within 45 days of official Commission notification of the violation.

(6) Sanctions. If the licensee's employee sells to a minor and the licensee is a certified Responsible Vendor who has all program standards in place, the Commission will not cancel the license of the licensee, or deny issuance of a license to the person who holds the retail license. The licensee will be eligible for reduced sanctions based on OAR 845-006-0500, Suspensions and Civil Penalties.

(7) Licensee Removal from Program and Reinstatement. The licensee is removed from the program in the following circumstances:

(a) For a sale to a minor or failure to properly verify identification by a licensee or employee, if the licensee did not have all of the Responsible Vendor standards, except for the posting requirements in subsection (3)(c) and (3)(d), in place at the time of the violation. The licensee may reapply for the program one year after the violation is ratified.

(b) For a sale to a minor or failure to properly verify identification by a licensee or employee, if aggravating circumstances (as referenced in subsection (3)(g)) are present. The licensee may reapply for the program in one year.

(c) For a second sale to a minor or failure to properly verify identification by a licensee personally within a two year period. The licensee may reapply for the program in one year.

(d) For a Category I or II violation by the licensee personally. The licensee may not reapply for the program. For a Category I or II violation by an employee, the licensee is removed from the program, but may reapply for the program in one year.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)  
Stats. Implemented: ORS 471.344  
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05; OLCC 12-2011, f. 12-6-11, cert. ef. 1-1-12

**Rule Caption:** Amendment allowing more flexibility in advertising methods when filling retail sales agent vacancies.

**Adm. Order No.:** OLCC 13-2011

**Filed with Sec. of State:** 12-6-2011

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

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 845-015-0120

**Subject:** This rule describes the Commission's standard procedure for seeking applications from the public to fill a retail sales agent vacancy. Amendments have been made to section (2) of this rule regarding the methods used to advertise retail sales agent vacancies. Since the rule was last substantively amended (in 2003), advertising has evolved to reflect today's technological advances. The language requiring advertisements to be placed in printed newspapers has been deleted, and replaced with language that allows for flexibility in advertising methods, including the now more commonly used types of online media.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

## 845-015-0120

### Retail Sales Agent Selection Procedure

(1) When the Commission fills a retail sales agent vacancy other than as OAR 845-015-0125(2) describes, the Commission seeks applications from the public.

(2) When seeking applications from the public, the Commission advertises to fill a vacancy. The Commission may publish its intent to fill a vacancy via a variety of methods, i.e. internet postings, other online media, or newspapers.

(3) After an application deadline, all applications will be screened according to selection criteria in OAR 845-015-0125 and qualified applicants will be selected for interview. After reviewing applications and screening results, an interview committee conducts personal interviews. The interview committee scores the applicants and recommends finalists who are most qualified based on the selection criteria in 845-015-0125. From the finalists, the Commission appoints a retail sales agent using the criteria in 845-015-0125. A public presentation at a Commission meeting may be required. Advance notice of the public meeting date will be given to all finalists.

(4) An appointed retail sales agent must submit a retail liquor store improvement plan for approval, enter into a Retail Sales Agent Agreement, purchase fixtures and equipment at an established price or provide fixtures and equipment where none are available for purchase, and begin operation of a retail liquor store on the date the Commission specifies. If an appointed retail sales agent cannot purchase, rent or lease, and equip an approved location and begin operation by the required date, the Commission(ers) may select another applicant from the list of finalists.

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

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 20-1986, f. 10-16-86, ef. 1-1-87; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0022; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06, OLCC 13-2011, f. 12-6-11, cert. ef. 1-1-12

\*\*\*\*\*

**Rule Caption:** Amendment implementing statutory changes removing mandatory minimum case for customer special orders of distilled spirits.

**Adm. Order No.:** OLCC 14-2011

**Filed with Sec. of State:** 12-6-2011

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

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 845-015-0185

**Subject:** This rule describes the Commission's procedures for special orders for distilled spirits by customers. Previously there was a one case minimum for such orders. Senate Bill (SB) 944 has passed and eliminates the one case minimum order requirement in some circumstances. SB 944 amends both ORS 471.175 governing distilled spirits purchases by Full On-Premises Sales licensees and ORS 471.750 governing purchases by any person through a retail liquor store. In both statutes, the amendments prohibit the Commission from requiring the purchase of more than one container if: a) the retail price is a minimum of \$30 per container (adjusted annually based on CPI); b) the product is available through a U.S. distributor with only a minimum case order required; c) the product is not reg-

# ADMINISTRATIVE RULES

ularly stocked by the Commission; and d) is ordered in a 750 milliliter container if available. This rule was amended to bring it into statutory compliance effective January 1, 2012.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

## 845-015-0185

### Special Orders for Distilled Spirits

Customers may order distilled spirits products or container sizes that the Commission does not carry in the regular product line. Minimum order quantities may apply. For special orders, the customer pays the wholesale cost, the average handling and freight costs per case and the regular markup. The Commission sets the average handling and freight costs from an annual review of these costs for special orders.

Stat. Auth.: ORS 471, including 471.030, 471.175, 471.730(1) & (5)

Stats. Implemented: ORS 471.175 & 471.750

Hist.: LCC 30-1986, f. 11-20-86, ef. 1-1-87; OLCC 21-1991, f. 12-19-91, cert. ef. 1-1-92; OLCC 5-1992, f. 4-30-92, cert. ef. 5-1-92; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0100; OLCC 14-2011, f. 12-6-11, cert. ef. 1-1-12

\*\*\*\*\*

**Rule Caption:** Amend and adopt rules to update and modernize the distilled spirits retail store system.

**Adm. Order No.:** OLCC 15-2011

**Filed with Sec. of State:** 12-6-2011

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

**Notice Publication Date:** 10-1-2011

**Rules Adopted:** 845-015-0210

**Rules Amended:** 845-015-0101, 845-015-0190, 845-015-0196

**Subject:** Staff's goal with this rule package is to enhance the distilled spirits retail system within the existing context of a control state structure. By updating and modernizing the system the Commission will enhance its ability to both keep up with customers' growing expectations and provide enough incentive to attract & retain effective liquor store agents. This in turn will lead to optimal revenue generation for the state of Oregon. The amendments in this rule package provide the flexibility to update the current business model in two main areas: 1) Updating the retail liquor agents' resignation buy-out program – the amendments to OAR 845-015-0190 Resignation Buy-Out Program for Retail Liquor Agents increase the standard buy-out percentage to three percent and for those with a current outstanding Annual Evaluation, four percent. 2) Building in additional flexibility to accommodate future pilot programs – to meet this goal the Commission adopted OAR 845-015-0210 Pilot Programs which gives the Commission the flexibility to test new retail sales models through a pilot program of up to three years duration. Further amendments include OAR 845-015-0196 Appointment of a Temporary Agent, in order to expand the circumstances under which the Commission may appoint temporary agents beyond just when a current agent becomes unable to operate their liquor store, and housekeeping amendments to OAR 845-015-0101 Definitions.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

## 845-015-0101

### Definitions

As used in OAR chapter 845, division 015:

(1) "Commission" includes the 5-member body of Commissioners appointed by the Governor, the administrator (director) and agency staff. Any of the actions or decisions specified in this division may be delegated to the administrator (director) as provided in ORS 471.040(2).

(2) "Disabled Retail Sales Agent" is one who has a physical or mental impairment that has continued more than one year or is permanent that prevents a retail sales agent from properly performing contractual duties. The Commission determines retail sales agent disability after reviewing medical reports from the retail sales agent's physician. The Commission may require additional medical information from a Commission-selected physician.

(3) "Full On-Premises Sales Licensee" means any person or entity holding a Full On-Premises Sales license.

(4) "Retail Liquor Store" is a premises or a specific area in a premises the Commission approves for the sale of packaged distilled spirits for off-premises consumption, other than an Oregon licensed distillery or portion of such a distillery which has been approved for the sale of packaged distilled spirits manufactured by the distillery.

(5) "Retail Sales Agent" or "Agent" is an individual person appointed by the Commission who enters into a retail sales agent agreement to sell packaged distilled spirits on behalf of the Commission in a retail liquor store.

(6) "Retail Sales Agent Agreement" is a written contract between the Commission and a retail sales agent that specifies the terms, conditions, and obligations between both parties.

(7) "Temporary Retail Sales Agent" or "Temporary Agent" is an individual person selected by the Commission to temporarily operate a retail liquor store.

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

Stats. Implemented: ORS 471.750 & 471.752

Hist.: LCC 25-1980, f. 9-30-85, ef. 1-1-81; LCC 9-1985, f. 11-6-85, ef. 1-1-86; Renumbered from 845-015-0040; LCC 23-1986, f. 10-16-86, ef. 1-1-87; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0007; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06; OLCC 15-2011, f. 12-6-11, cert. ef. 1-1-12

## 845-015-0190

### Resignation Buy-Out Program for Retail Sales Agents

(1) Purpose. The purpose of the Resignation Buy-Out Program is to provide a monetary benefit to all retail sales agents when they resign. Retail sales agents receive the buy-out, in part, to recognize their contribution in building a successful business.

(2) Definitions.

(a) "Solicit," "solicitation" and "soliciting" have the meaning given them under OAR 845-015-0145. These terms also include any act or contact directed at a specific business, Full On-Premises Sales licensee or other like entity for the purpose of asking, encouraging, suggesting, urging or persuading a specific business, Full On-Premises Sales licensee or other entity to purchase distilled spirits from a particular retail liquor store.

(b) "Full On-Premises Sales licensee" means any person or entity holding a Full On-Premises Sales license.

(c) "Commercial Accounts" means any business or association that purchases more than fifty 750 ml bottles of distilled spirits from the store in the twelve months immediately preceding turnover of the store to the incoming agent.

(d) "Domestic Partner" means an individual who, along with another individual of the same sex, has received a Certificate of Registered Domestic Partnership pursuant to the Oregon Family Fairness Act.

(3) Calculating the Buy-Out. The Resignation Buy-Out Program requires the incoming retail sales agent to pay the outgoing agent, or the agent's estate, an amount of money (called the buy-out). Except as provided in section (4), the Commission calculates the buy-out by taking three percent of the stores average annual gross distilled spirits sales for the last five years. If a Retail Sales Agent's most current Annual Evaluation is outstanding, they will be eligible for a four percent buy-out percentage. The Commission includes the buy-out amount as part of the financial requirement in the information sheet that all applicants receive.

(4) Recruiting Qualified Applicants. The outgoing agent may supplement the Commission's recruiting process to assure finding qualified applicants. If the Commission's recruiting process does not generate a qualified applicant the outgoing agent will choose to postpone the resignation or to accept a lower buy-out amount. If the agent chooses to accept a lower buy-out, then the outgoing agent and the Commission will agree on a reasonable buy-out amount reduction. The Commission will then re-advertise the store vacancy with the reduced buy-out amount.

(5) Paying the Buy-Out. An incoming agent must pay a buy-out if the effective date of the incoming agent's appointment occurs when the program is in effect. The incoming agent provides payment to the outgoing agent once the Commission has estimated any debt reimbursements to the Commission or the State of Oregon. As a condition of eligibility for the buy-out, the outgoing agent must allow the incoming agent to spend a minimum of 12 working days at the store working productively together before the store takeover, unless the incoming agent declines the opportunity in writing. During the 12-day period, the outgoing agent will introduce the incoming agent to Full On-Premises Sales licensees and commercial accounts, and orient the incoming agent to all aspects of the store operation except the required training and information provided by Commission staff. The Commission may waive the buy-out requirement at the written request of the outgoing agent.

(6) Family Transfer of Retail Liquor Store When Agent Dies or is Disabled. If an agent dies or becomes unable to operate a retail liquor store due to the agent's disability, ORS 471.752(2) allows the Commission to give preference to a qualified surviving spouse, Domestic Partner, or child, or a qualified spouse, Domestic Partner, or child of the disabled agent, in the appointment of a successor agent. If the Commission does appoint a spouse, Domestic Partner, or child in this situation, the Commission may



# ADMINISTRATIVE RULES

waive the buy-out requirement at the request of the outgoing agent or the agent's estate after the Commission has estimated any debt reimbursements to the Commission or the State of Oregon.

(7) Probationary Agents. Except as provided in section (9), an agent who resigns during their probationary period is eligible for a buy-out.

(8) Relocating, Adding, or Closing Stores. The Commission reserves the right to relocate any store, and to add or close stores. Neither the State of Oregon nor the Commission is liable for any changes in the volume of distilled spirits sales that may occur following the relocation of one or more stores, or from the addition or closure of one or more stores.

(9) Exceptions. Despite sections (1) and (3), a retail sales agent is not eligible for a buy-out if:

(a) The Commission has terminated the agent for cause relating to fiscal irresponsibility, a history of high shortages exists, or the final estimated audit shortage exceeds the estimated amount of compensation due that agent. In these situations, the incoming agent will be instructed to hold payment until the Commission calculates any dollars owed the Commission or the State of Oregon. At that time the Commission will instruct the incoming agent as to the disbursal of the buy-out fund to the outgoing agent and the Commission. Any amount sent to the Commission in excess of the amount due to the Commission or the State of Oregon will be returned to the outgoing agent upon final financial settlement;

(b) The agent is under suspension;

(c) The agent is a temporary retail sales agent;

(d) The Commission takes over a store for reasons other than suspension or termination. In this situation, the outgoing agent is not eligible for a buy-out until the agent resigns and a permanent incoming agent is appointed and takes over the store; or

(e) The store does not turn over during the time the program is in effect; turnover occurs on the date the Commission conducts the final audit of the permanent outgoing agent.

(10) Non-Compete Provision. If an outgoing agent participates in the buy-out program, the outgoing agent shall not solicit any Full On-Premises Sales licensee or commercial account (customers) of the retail liquor store the outgoing agent is leaving (store) for the purpose of selling or attempting to sell distilled spirits to such customers. The outgoing agent is also prohibited from using a customer list or any other information about the stores customers to assist any agent (other than the incoming agent) in soliciting the stores customers for the purpose of selling distilled spirits. The outgoing agent recognizes that she/he receives consideration for compliance with this section. The prohibitions in this section:

(a) Are limited to a two-year period. The Commission calculates the two-year prohibition beginning on the date the store is turned over to the incoming agent;

(b) Relate only to Full On-Premises Sales licensees and commercial accounts that have made a purchase from the store within the twelve months immediately preceding turnover of the store to the incoming agent;

(c) Apply only within:

(A) A geographic radius of ten miles from the location of the store if the store is located in a metropolitan or suburban area;

(B) A geographic radius of twenty-five miles from the location of the store for all other areas of the state;

(d) Do not prohibit an agent's ability to advertise under OAR 845-015-0130.

(11) Violation of Section (10). If, during the two-year period:

(a) An outgoing agent violates section (10) of this rule, the incoming agent may take legal action against the outgoing agent;

(b) An outgoing agent violates section (10) of this rule, the Commission may take legal action against the outgoing agent;

(c) The Commission terminates the Resignation Buy-Out Program, the non-competes provisions in section (10) remain in effect.

(12) No Contract Rights in Buy-Out. No agent shall have any entitlement to, or expectation of receiving, any buy-out. The institution and continuation or termination of the buy-out program constitutes unilateral regulatory action by the Commission, and gives no agent any contractual right or expectation in any buy-out payment. The Commission reserves the right to repeal or modify this rule, or otherwise terminate the buy-out program at any time.

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

Stats. Implemented: ORS 471.750 & 471.752(2)

Hist.: OLCC 14-1996, f. 10-1-96, cert. ef. 1-1-97; OLCC 8-1998(Temp), f. & cert. ef. 9-18-98 thru 3-16-99; OLCC 4-1999, f. 2-16-99, cert. ef. 3-17-99; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0032; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08; OLCC 15-2011, f. 12-6-11, cert. ef. 1-1-12

## 845-015-0196

### Appointment of a Temporary Sales Agent

(1) The Commission may appoint a temporary agent or operate a store temporarily with Commission staff when the Commission determines a retail sales agent is unable to operate a retail liquor store, is suspended, or a retail sales agent agreement is proposed for termination. In these circumstances the Commission considers any candidate for temporary agent nominated by a retail sales agent but may choose someone else. A temporary agent or Commission staff operates a retail liquor store until the Commission determines the current retail sales agent can resume store duties or until a new retail sales agent is appointed and can assume retail liquor store operations.

(2) The Commission may also appoint a temporary agent or may operate a store temporarily with Commission staff when a new store has been established and the retail sales agent has not yet been selected or has been selected but is unable to begin operating the store, or in other similar circumstances where the Commission finds it necessary to do so.

(3) All of the rules that apply to a retail sales agent apply to a temporary agent except OAR 845-015-0110, 845-015-0120 and 845-015-0125.

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

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 15-1978, f. 11-30-78, ef. 12-1-78; Renumbered from 845-010-0347; LCC 16-1986, f. 10-16-86, ef. 1-1-87; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0030; OLCC 15-2011, f. 12-6-11, cert. ef. 1-1-12

## 845-015-0210

### Pilot Programs

(1) The Commission may establish pilot programs of up to three years duration in order to test new marketing concepts or retail sales models or to respond to fluctuations in customer demand for distilled spirits products. As part of a pilot program the Commission may establish pilot liquor stores and may appoint retail sales agents to operate the pilot liquor stores.

(2) All statutes and administrative rules governing retail liquor agents will apply to such pilot programs, with the following exceptions:

(a) OAR 845-015-0110 Establishment of a Retail Liquor Store;

(b) OAR 845-015-0120 Retail Sales Agent Selection Procedure;

(c) OAR 845-015-0135 Public Opinion on Retail Liquor Store Location;

(d) OAR 845-015-0140 Hours and Days of Operation;

(e) OAR 845-015-0190 Resignation Buy-Out Program for Retail Liquor Agents;

(f) OAR 845-015-0193(1) & (2) Terminating an Agency Agreement.

(3) The Retail Operations Manual, including any Pilot Program Appendix, and other relevant Commission policies will apply to the pilot program, unless otherwise provided in the Pilot Program Agreement.

(4) Measuring Success of a Pilot Program. Factors the Commission will consider in measuring the success of a pilot program include but are not limited to:

(a) Economic viability of the pilot program's retail sales model, for both retail sales agents and the Commission;

(b) Public safety impacts;

(c) Public response to the pilot program, including customer satisfaction and convenience.

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

Stats. Implemented: ORS 471.750(1)

Hist.: OLCC 15-2011, f. 12-6-11, cert. ef. 1-1-12

\*\*\*\*\*

## Oregon Medical Board Chapter 847

**Rule Caption:** Supervising physicians required to update existing practice agreements during registration.

**Adm. Order No.:** OMB 31-2011(Temp)

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 1-1-12 thru 6-29-12

**Notice Publication Date:**

**Rules Amended:** 847-008-0040

**Subject:** SB 224, passed by the 2011 Legislature, requires practice agreements to be updated every 2 years. This rule amendment clarifies when a supervising physician must provide the practice agreement update to the board.

**Rules Coordinator:** Nicole Krishnaswami—(971) 673-2667

# ADMINISTRATIVE RULES

## 847-008-0040

### Process of Registration

(1) The application for registration shall be made on a form provided by the Board.

(2) Except as provided in OAR 847-008-0015 and 847-008-0025, the application shall be accompanied by the appropriate fee as listed in 847-005-0005.

(3) If the licensee is the supervising physician of a physician assistant or the primary supervising physician of a supervising physician organization for a physician assistant, the application must include any updates to existing practice agreements for every physician assistant the licensee supervises.

(4) The satisfactorily complete application for registration shall be filed with the Board by the first day of the month in which the license or certification is due to expire.

(5) At its discretion, the Board may waive the fee for good and sufficient reason.

(6) If the licensee has been out-of-practice for more than 12 consecutive months and/or there are other concerns regarding the licensee's medical competency or fitness to practice, the Board may renew licensee at Inactive status once the license renewal form has been completed satisfactorily.

(7) The Board shall mail to all licensees who have complied with this section a certificate of registration which shall remain in effect until the end of the last business day of the registration period.

(8) Such certificate shall be displayed in a prominent place in the holder's primary place of practice.

Stat. Auth.: ORS 677.265  
Stats. Implemented: ORS 677.175, 677.265 & 677.510  
Hist.: ME 5-1990, f. & cert. ef. 4-25-90; BME 14-2004, f. & cert. ef. 7-13-04; BME 14-2004, f. & cert. ef. 7-13-04; BME 16-2008, f. & cert. ef. 7-21-08; BME 2-2009, f. & cert. ef. 1-22-09; OMB 19-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OMB 27-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12; OMB 31-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

\*\*\*\*\*

**Rule Caption:** Changes to physician assistant practice and licensing rules per SB 224.

**Adm. Order No.:** OMB 32-2011(Temp)

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 1-1-12 thru 6-29-12

**Notice Publication Date:**

**Rules Amended:** 847-050-0005, 847-050-0010, 847-050-0015, 847-050-0020, 847-050-0023, 847-050-0025, 847-050-0026, 847-050-0027, 847-050-0029, 847-050-0035, 847-050-0037, 847-050-0038, 847-050-0040, 847-050-0041, 847-050-0042, 847-050-0043, 847-050-0046, 847-050-0050, 847-050-0055, 847-050-0060, 847-050-0063, 847-050-0065

**Subject:** The proposed rule amendment clarifies the requirements of physician assistants and supervising physicians based on the statutory changes made by SB 224. SB 224, passed by the 2011 Legislature, changed the practice standards and licensing procedures for physician assistants. These changes required changes to OAR Chapter 847, Division 050, the Oregon Medical Board rules governing physician assistants.

The new law separates physician assistant licenses from employment and the Oregon Medical Board no longer approves the physician assistant/supervising physician relationship or "practice agreement" contents. The proposed rule changes explain the requirements established by the new law and establishes the process for licensure, practice, and supervision of physician assistants, including: approval by the Board of supervising physicians; supervision requirements; physician assistant methods and requirements of practice; physician assistant prescription privileges and requirements; practice agreement contents and requirements; procedures for changes to practice and termination of practice agreements; and the roll of the Oregon Medical Board's Physician Assistant Advisory Committee.

**Rules Coordinator:** Nicole Krishnaswami—(971) 673-2667

## 847-050-0005

### Preamble

(1) A physician assistant is a person qualified by education, training, experience, and personal character to provide medical services under the direction and supervision of a physician licensed under ORS Chapter 677,

in active practice and in good standing with the Board. The purpose of the physician assistant program is to enable physicians licensed under ORS 677 to extend high quality medical care to more people throughout the state.

(2) The licensed physician is in all cases regarded as the supervisor of the physician assistant.

Stat. Auth.: ORS 677.265  
Stats. Implemented: ORS 677.495 - 677.535  
Hist.: ME 23(Temp), f. & cert. ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & cert. ef. 1-29-79; ME 5-1979, f. & cert. ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & cert. ef. 11-3-80; ME 4-1981(Temp), f. & cert. ef. 10-20-81; ME 2-1982, f. & cert. ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; BME 13-2003, f. & cert. ef. 7-15-03; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0010

### Definitions

As used in OAR 847-050-0005 to 847-050-0065:

(1) "Agent" means a physician designated in writing and retained at the primary practice location by the supervising physician who provides direction and regular review of the medical services of the physician assistant when the supervising physician is unavailable for short periods of time, such as but not limited to when the supervising physician is on vacation.

(2) "Board" means the Oregon Medical Board for the State of Oregon.

(3) "Committee" means Physician Assistant Committee.

(4) "Grandfathered physician assistant" means the physician assistant registered prior to July 12, 1984 who does not possess the qualifications of OAR 847-050-0020. Grandfathered physician assistants may retain all practice privileges which have been granted prior to July 12, 1984.

(5) "Physician assistant" means a person who is licensed as such in accordance with ORS 677.265, 677.495, 677.505, 677.510, 677.515, 677.520, and 677.525.

(6) "Practice agreement" means a written agreement between a physician assistant and a supervising physician or supervising physician organization that describes the manner in which the services of the physician assistant will be used.

(7) "Practice description" means a written description of the duties and functions of the physician assistant in relation to the physician's practice, submitted by the supervising physician and the physician assistant to the Board and approved prior to January 1, 2012.

(8) "Supervising physician organization" means a group of supervising physicians who collectively supervises a physician assistant. One physician within the supervising physician organization must be designated as the primary supervising physician of the physician assistant.

(9) "Supervising physician" means a physician licensed under ORS Chapter 677, actively registered and in good standing with the Board as a Medical Doctor or Doctor of Osteopathic Medicine, and approved by the Board as a supervising physician, who provides direction and regular review of the medical services provided by the physician assistant.

(10) "Supervision" means the routine review by the supervising physician or designated agent, as described in the practice agreement or Board-approved practice description of the medical services provided by the physician assistant. The supervising physician or designated agent and the physician assistant must maintain direct communication, either in person, by telephone, or other electronic means. There are three categories of supervision:

(a) "General Supervision" means the supervising physician or designated agent is not on-site with the physician assistant, but must be available for direct communication, either in person, by telephone, or other electronic means.

(b) "Direct Supervision" means the supervising physician or designated agent must be in the facility when the physician assistant is practicing.

(c) "Personal Supervision" means the supervising physician or designated agent must be at the side of the physician assistant at all times, personally directing the action of the physician assistant.

Stat. Auth.: ORS 677.265  
Stats. Implemented: ORS 677.495  
Hist.: ME 23(Temp), f. & cert. ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & cert. ef. 1-29-79; ME 5-1979, f. & cert. ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & cert. ef. 11-3-80; ME 4-1981(Temp), f. & cert. ef. 10-20-81; ME 2-1982, f. & cert. ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; BME 4-2002, f. & cert. ef. 4-23-02; BME 13-2003, f. & cert. ef. 7-15-03; BME 12-2006, f. & cert. ef. 5-8-06; BME 19-2010, f. & cert. ef. 10-25-10; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

# ADMINISTRATIVE RULES

## 847-050-0015

### Application

(1) Each application for the licensure of a physician assistant must meet the licensing requirements as set forth in ORS 677.512.

(2) No applicant is entitled to licensure who:

(a) Has failed an examination for licensure in the State of Oregon;

(b) Has had a license or certificate revoked or suspended in this or any other state unless the said license or certificate has been restored or reinstated and the applicant's license or certificate is in good standing in the state which had revoked the same;

(c) Has been refused a license or certificate in any other state on any grounds other than failure in a medical licensure examination; or

(d) Has been guilty of conduct similar to that which would be prohibited by or to which ORS 677.190 would apply.

(3) A person applying for licensure under these rules who has not completed the licensure process within a 12 month consecutive period from date of receipt of the application must file a new application, documents, letters and pay a full filing fee as if filing for the first time.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265 & 677.512

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; BME 4-2002, f. & cert. ef. 4-23-02; BME 13-2010(Temp), f. & cert. ef. 7-26-10 thru 1-10-11; BME 19-2010, f. & cert. ef. 10-25-10; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0020

### Qualifications

On or after January 25, 2008, an applicant for licensure as a physician assistant in this state must possess the following qualifications:

(1) Have successfully completed a physician assistant education program which is approved by the American Medical Association Committee on Allied Health Education and Accreditation (C.A.H.E.A.), the Commission on Accreditation for Allied Health Education Programs (C.A.A.H.E.P.), or the Accreditation Review Commission on Education for the Physician Assistant (A.R.C.P.A.).

(2) Have passed the Physician Assistant National Certifying Examination (PANCE) given by the National Commission on Certification of Physician Assistants (N.C.C.P.A.).

(a) The applicant may take the PANCE once in a 90-day period or three times per calendar year, whichever is fewer.

(A) The applicant has no more than four attempts in six years to pass the PANCE. If the applicant does not pass the PANCE within four attempts, the applicant is not eligible for licensure.

(B) An applicant who has passed the NCCPA certification exam, but not within the four attempts required by this rule, may request a waiver of this requirement if he/she has current certification by the NCCPA.

(b) Those who have met the requirements of section (1) of this rule may make application for a Limited License, Postgraduate before passing the PANCE examination with the stipulation that if the examination is not passed within one year from the date of application, the Board withdraws its approval.

(3) Applicants seeking prescription privileges must meet the requirements specified in OAR 847-050-0041.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265 & 677.512

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 10-1984, f. & ef. 7-20-84; ME 5-1986, f. & ef. 4-23-86; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 5-1993, f. & cert. ef. 4-22-93; ME 17-1994, f. & cert. ef. 10-25-94; BME 1-1998, f. & cert. ef. 1-30-98; BME 2-2000, f. & cert. ef. 2-7-00; BME 1-2001, f. & cert. ef. 1-25-01; BME 6-2003, f. & cert. ef. 1-27-03; BME 6-2008, f. & cert. ef. 1-22-08; BME 10-2010(Temp), f. & cert. ef. 4-26-10 thru 10-15-10; BME 14-2010, f. & cert. ef. 7-26-10; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0023

### Limited License, Postgraduate

(1) An applicant for a Physician Assistant license who has successfully completed a physician assistant education program approved by the American Medical Association Council on Allied Health Education and Accreditation (C.A.H.E.A.), or the Commission on Accreditation for Allied Health Education Programs (C.A.A.H.E.P.), or the Accreditation Review Commission on Education for the Physician Assistant (A.R.C.P.A.) but has not yet passed the Physician Assistant National Certifying Examination (PANCE) given by the National Commission for the Certification of

Physician Assistants (N.C.C.P.A.) may be issued a Limited License, Postgraduate, if the following are met:

(a) The application file is complete with the exception of certification by the N.C.C.P.A.; and

(b) The applicant has submitted the appropriate form and fee prior to being issued a Limited License, Postgraduate.

(2) A Limited License, Postgraduate may include prescriptive privileges for Schedules III through V if the supervising physician specifies these prescription privileges for the physician assistant in the practice agreement;

(3) A Limited License, Postgraduate may be granted for one year, and may not be renewed.

(4) Upon receipt of verification that the applicant has passed the N.C.C.P.A. examination, and if their application file is otherwise satisfactorily complete, the applicant will be considered for a permanent license.

(5) The Limited License, Postgraduate will automatically expire if the applicant fails the N.C.C.P.A. examination.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.132 & 677.535

Hist.: ME 5-1993, f. & cert. ef. 4-22-93; ME 9-1995, f. & cert. ef. 7-28-95; BME 14-2002, f. & cert. ef. 10-25-02; BME 13-2003, f. & cert. ef. 7-15-03; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0025

### Interview and Examination

(1) In addition to all other requirements, the Board may require prior to original licensure the applicant to appear for a personal interview if there are questions concerning the application.

(2) The applicant is required to pass an open-book examination on the Medical Practice Act (ORS Chapter 677) and Oregon Administrative Rules (OAR) chapter 847, division 050. If an applicant fails the open-book examination three times, the applicant's application will be reviewed by the Physician Assistant Committee of the Oregon Medical Board. An applicant who has failed the open-book examination three times must also attend an informal meeting with a Board member, a Board investigator and/or the Medical Director of the Board to discuss the applicant's failure of the examination, before being given a fourth and final attempt to pass the examination. If the applicant does not pass the examination on the fourth attempt, the applicant may be denied licensure.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265

Hist.: ME 23(Temp), f. & ef. 1-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 8-1985, f. & ef. 8-5-85; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 9-1995, f. & cert. ef. 7-28-95; BME 11-1998, f. & cert. ef. 7-22-98; BME 13-2003, f. & cert. ef. 7-15-03; BME 13-2006, f. & cert. ef. 5-8-06; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0026

### Limited License, Special

(1) Under the authority of the Oregon Medical Board, the Physician Assistant Committee may grant a Limited License, Special to physician assistants not previously licensed in the state, subject to final Board approval.

(2) A Limited License, Special is valid until the approval of permanent licensure and may be granted only if the following criteria are met:

(a) The applicant meets the qualifications of OAR 857-050-0020(1) and (2);

(b) The application file is complete; and

(c) The applicant has submitted the appropriate form and fee for a Limited License, Special.

(3) Prescribing, administering and dispensing medications, and remote supervision in a medically disadvantaged, underserved, or health professional shortage area may be included with a Limited License, Special if specified in the practice agreement.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.535

Hist.: ME 21-1989, f. & cert. ef. 10-20-89; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 5-1993, f. & cert. ef. 4-22-93; ME 5-1994, f. & cert. ef. 1-24-94; ME 9-1995, f. & cert. ef. 7-28-95; BME 1-1998, f. & cert. ef. 1-30-98; BME 2-2000, f. & cert. ef. 2-7-00; BME 6-2006, f. & cert. ef. 2-8-06; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12



# ADMINISTRATIVE RULES

## 847-050-0027

### Approval of Supervising Physician

(1) Prior to using the services of a physician assistant, a supervising physician or primary supervising physician of a supervising physician organization must be approved as a supervising physician by the Board.

(2) The primary supervising physician of a supervising physician organization must apply as a supervising physician with the Board and must attest that each supervising physician in the supervising physician organization has reviewed statutes and rules relating to the practice of physician assistants and the role of a supervising physician.

(3) Physicians applying to be a supervising physician or the primary supervising physician of a supervising physician organization must:

(a) Submit a supervising physician application and application fee to the Board; and

(b) Take an online course and pass an open-book exam on the supervising physician requirements and responsibilities given by the Board. A passing score on the exam is 75%. If the supervising physician applicant fails the exam three times, the physician's application will be reviewed by the Board. A supervising physician applicant who has failed the exam three times must also attend an informal meeting with a Board member, a Board investigator and/or the Medical Director of the Board to discuss the applicant's failure of the exam, before being given a fourth and final attempt to pass the examination. If the applicant does not pass the exam on the fourth attempt, the physician's application may be denied.

(4) The physician may be subject to Board investigation prior to approval or may be limited or denied approval as a supervising physician for the following:

(a) There are restrictions upon or actions against the physician's license;

(b) Fraud or misrepresentation in applying to use the services of a physician assistant.

(5) The Board may defer taking action upon a request for approval as a supervising physician pending the outcome of the investigation of the physician for violations of ORS 677.010-990.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.510

Hist.: ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 5-1984, f. & ef. 1-20-84; ME 8-1985, f. & ef. 8-5-85; ME 5-1986, f. & ef. 4-23-86; ME 21-1989, f. & cert. ef. 10-20-89; ME 2-1990, f. & cert. ef. 1-29-90; ME 5-1994, f. & cert. ef. 1-24-94; ME 9-1995, f. & cert. ef. 7-28-95; BME 13-2003, f. & cert. ef. 7-15-03; OMB 2-2011, f. & cert. ef. 2-11-11; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0029

### Locum Tenens Assignments

Locum tenens means a temporary absence by the physician assistant or supervising physician which is filled by a substitute physician assistant or supervising physician. The following is required for a locum tenens assignment:

(1) Within ten days of the start of the locum tenens assignment, the supervising physician of the practice which desires the substitute must submit a notification of locum tenens assignment to the Board.

(2) The notification of locum tenens assignment must include the name of the substitute physician assistant or supervising physician who is filling the locum tenens assignment, duration of the locum tenens assignment, a description of how supervision of the physician assistant will be maintained, and any changes in the practice agreement or Board-approved practice description for the practice during the locum tenens assignment.

(3) The substitute physician assistant or supervising physician who is filling the locum tenens assignment must be currently licensed in Oregon, with active, locum tenens, or emeritus registration status, and be in good standing with the Board.

(4) The physician assistant must be qualified to provide the same type of service as described in the current practice agreement or Board-approved practice description for the locum tenens.

(5) The supervising physician who is filling the locum tenens assignment must be approved as a supervising physician by the Board in accordance with OAR 847-050-0027 (Approval of Supervising Physician).

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265 & 677.510

Hist.: ME 1-1986, f. & ef. 1-21-86; ME 2-1990, f. & cert. ef. 1-29-90; ME 7-1990, f. & cert. ef. 4-25-90; BME 6-2003, f. & cert. ef. 1-27-03; BME 11-2005, f. & cert. ef. 10-12-05; BME 14-2010, f. & cert. ef. 7-26-10; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0035

### Grounds for Discipline

(1) The performance of unauthorized medical services by the physician assistant constitutes a violation of the Medical Practice Act. The supervising physician and/or agent is responsible for the acts of the physician assistant and may be subject to disciplinary action for such violations by the physician assistant. The physician assistant is also subject to disciplinary action for violations. Proceedings under these rules are conducted in the manner specified in ORS 677.200.

(2) In addition to any of the reasons cited in ORS 677.190, the Board may refuse to grant, or may suspend or revoke a license to practice as a physician assistant for any of the following reasons:

(a) The physician assistant has held himself/herself out, or permitted another to represent the physician assistant to be a licensed physician.

(b) The physician assistant has in fact performed medical services without the direction or under the supervision of a Board-approved supervising physician or agent.

(c) The physician assistant has performed a task or tasks beyond the physician assistant's competence or outside the scope of practice of the supervising physician or outside the practice agreement as stated in OAR 847-050-0040. This is not intended to limit the ability of a physician assistant to learn new procedures under personal supervision.

Stat. Auth.: ORS 677.190, 677.205 & 677.265

Stats. Implemented: ORS 677.190, 677.205, 677.265 & 677.505

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; BME 23-2007, f. & cert. ef. 10-24-07; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0037

### Supervision

(1) A physician may not use the services of a physician assistant without first obtaining Board approval as a supervising physician.

(2) The supervising physician, agent, or in the case of a supervising physician organization, the primary supervising physician and acting supervising physician, are personally responsible for the direction, supervision and regular review of the medical services provided by the physician assistant, in keeping with the practice agreement or Board-approved practice description.

(3) The type of supervision and maintenance of supervision provided for each physician assistant must be described in the practice agreement or Board-approved practice description. The supervising physician must provide for maintenance of verbal communication with the physician assistant at all times, whether the supervising physician and physician assistant practice in the same practice location or a practice location separate from each other, as described in the following:

(a) The practice setting is listed in the practice agreement or Board-approved practice description of the physician assistant.

(b) Practice locations, other than primary or secondary practice locations, such as schools, sporting events, health fairs and long term care facilities, are not required to be listed in the practice agreement or Board-approved practice description if the duties are the same as those listed in the practice agreement or Board-approved practice description. The medical records for the patients seen at these additional practice locations must be held either at the supervising physician's primary practice location or the additional practice locations. The supervision of the physician assistant at locations other than the primary or secondary practice location must be the same as for the primary or secondary practice location.

(c) The supervising physician or designated agent must provide a minimum of eight (8) hours of on-site supervision every month, or as approved by the Board.

(d) The supervising physician or designated agent must provide chart review of a number or a percentage of the patients the physician assistant has seen as stated in the practice agreement or Board-approved practice description.

(4) The supervising physician may limit the degree of independent judgment that the physician assistant uses but may not extend it beyond the limits of the practice agreement or Board-approved practice description.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.510 & 677.515

Hist.: ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 8-1985, f. & ef. 8-5-85; ME 2-1990, f. & cert. ef. 1-29-90; BME 1-1998, f. & cert. ef. 1-30-98; BME 9-1999, f. & cert. ef. 4-22-99; BME 2-2000, f. & cert. ef. 2-7-00; BME 4-2002, f. & cert. ef. 4-23-02; BME 4-2005, f. & cert. ef. 4-21-05; BME 20-2008, f. & cert. ef. 7-21-08; BME 12-2009(Temp), f. & cert. ef. 7-14-09 thru 12-14-09; BME 19-2009, f. & cert. ef. 10-23-09; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

# ADMINISTRATIVE RULES

## 847-050-0038

### Agents

(1) The supervising physician who is not a member of a supervising physician organization may designate an agent or agents to direct and supervise the physician assistant when the supervising physician is unavailable for short periods of time. The agents must meet the following requirements:

(a) Be licensed as a medical or osteopathic physician under ORS 677, actively registered and in good standing with the Board;

(b) Practice in the same city or practice area as the supervising physician or physician assistant.

(c) Be qualified to supervise as designated in the practice agreement, and be competent to perform the duties delegated to the physician assistant.

(2) The supervising physician is responsible for informing the agent of the duties of an agent. Prior to such time as the physician assistant is acting under the direction of an agent, the supervising physician must determine that the agent understands and accepts supervisory responsibility. The agent must sign an acknowledgement of all practice agreements between the supervising physician and the physician assistant(s) the agent will supervise, and a copy must be kept at the primary practice location. Supervision by the agent will continue for a certain, predetermined, limited period of time, after which supervisory duties revert to the supervising physician.

(3) In the absence of the supervising physician, the agent assumes the same responsibilities as the supervising physician.

Stat. Auth.: ORS 183 & 677

Stats. Implemented: ORS 677.495 & 677.510

Hist.: ME 8-1985, f. & ef. 8-5-85; ME 5-1986, f. & ef. 4-23-86; ME 2-1990, f. & cert. ef. 1-29-90; BME 4-2002, f. & cert. ef. 4-23-02; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0040

### Method of Performance

(1) The physician assistant may perform at the direction of the supervising physician and/or agent only those medical services as included in the practice agreement or Board-approved practice description.

(2) The physician assistant must be clearly identified as such when performing duties. The physician assistant must at all times when on duty wear a name tag with the designation of "physician assistant" thereon.

(3) The supervising physician must furnish reports, as required by the Board, on the performance of the physician assistant or student.

(4) The practice agreement must be submitted to the Board within ten days after the physician assistant begins practice with the supervising physician or supervising physician organization.

(5) The supervising physician must notify the Board of any changes to the practice agreement within ten days of the effective date of the change.

(6) Supervising physicians must update the practice agreement biennially during the supervising physician's license renewal process.

(7) A supervising physician and physician assistant who have a Board-approved practice description that was approved prior to January 1, 2012 and who wish to make changes to the practice description must enter into a practice agreement in accordance with ORS 677.510(6)(a).

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.510

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 8-1985, f. & ef. 8-5-85; ME 5-1986, f. & ef. 4-23-86; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0041

### Prescription Privileges

(1) An Oregon grandfathered physician assistant may issue written, electronic or oral prescriptions for medications, Schedule III-V, which the supervising physician has determined the physician assistant is qualified to prescribe commensurate with the practice agreement or Board-approved practice description if the physician assistant has passed a specialty examination approved by the Board prior to July 12, 1984, and the following conditions are met:

(a) The Oregon grandfathered physician assistant has passed the Physician Assistant National Certifying Examination (PANCE); and

(b) The Oregon grandfathered physician assistant has documented adequate education or experience in pharmacology commensurate with the practice agreement or Board-approved practice description.

(2) A physician assistant may issue written, electronic or oral prescriptions for medications, Schedule III-V, which the supervising physician

has determined the physician assistant is qualified to prescribe commensurate with the practice agreement or Board-approved practice description, if the physician assistant has met the requirements of OAR 847-050-0020(1).

(3) A physician assistant may issue written, electronic or oral prescriptions for medications, Schedule II if the requirements in (1) or (2) are fulfilled and if the following conditions are met:

(a) A statement regarding Schedule II controlled substances prescription privileges is included in the practice agreement or Board-approved practice description. The Schedule II controlled substances prescription privileges of a physician assistant are limited by the practice agreement or Board-approved practice description and may be restricted further by the supervising physician at any time.

(b) The physician assistant is currently certified by the National Commission for the Certification of Physician Assistants and must complete all required continuing medical education coursework.

(4) All prescriptions given whether written, electronic, or oral must include the name, office address, and telephone number of the supervising physician and the name of the physician assistant. The prescription must also bear the name of the patient and the date on which the prescription was written. The physician assistant must sign the prescription and the signature must be followed by the letters "P.A." Also the physician assistant's Federal Drug Enforcement Administration number must be shown on prescriptions for controlled substances.

(5) A licensed physician assistant may make application to the Board to dispense emergency medications.

(a) The application must be submitted to the Board by the supervising physician and must explain the need for the request, as follows:

(A) Location of the practice site;

(B) Accessibility to the nearest pharmacy; and

(C) Medical necessity for emergency dispensing.

(b) The dispensed medication must be pre-packaged by a licensed pharmacist, manufacturing drug outlet or wholesale drug outlet authorized to do so under ORS 689 and the physician assistant must maintain records of receipt and distribution.

(c) A supervising physician or primary supervising physician of a supervising physician organization for a physician assistant who is applying for emergency dispensing privileges must be registered with the Oregon Medical Board as a dispensing physician.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 409.560, 677.470, 677.515 & 677.545

Hist.: ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 6-1982, f. & ef. 10-27-82; ME 10-1984, f. & ef. 7-20-84; ME 5-1986, f. & ef. 4-23-86; ME 16-1987, f. & ef. 8-3-87; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 5-1994, f. & cert. ef. 1-24-94; BME 2-2000, f. & cert. ef. 2-7-00; BME 4-2002, f. & cert. ef. 4-23-02; BME 4-2002, f. & cert. ef. 4-23-02; BME 13-2003, f. & cert. ef. 7-15-03; BME 8-2004, f. & cert. ef. 4-22-04; BME 3-2005, f. & cert. ef. 1-27-05; BME 6-2006, f. & cert. ef. 2-8-06; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0042

### Registration

(1) The registration renewal form and fee must be received in the Board office during regular business hours and must be satisfactorily complete on or before December 31 of each odd-numbered year in order for the physician assistant's registration to be renewed for the next 24 months. This application must also include submission of an updated practice agreement or validation of an existing practice agreement or Board-approved practice description.

(2) Upon failure to comply with section (1) of this rule, the license will automatically lapse as per ORS 677.228.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.512

Hist.: ME 1-1979, f. & ef. 1-2-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 7-1984, f. & ef. 1-26-84; ME 2-1990, f. & cert. ef. 1-29-90; ME 7-1990, f. & cert. ef. 4-25-90; ME 7-1991, f. & cert. ef. 7-24-91; ME 5-1994, f. & cert. ef. 1-24-94; BME 6-2003, f. & cert. ef. 1-27-03; BME 25-2008, f. & cert. ef. 10-31-08; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0043

### Inactive Registration and Re-Entry to Practice

(1) Any physician assistant licensed in this state who changes location to some other state or country, or who is not in a current supervisory relationship with a licensed physician for six months or more, will be listed by the Board as inactive.

(2) If the physician assistant wishes to resume active status to practice in Oregon, the physician assistant must submit the Affidavit of Reactivation

# ADMINISTRATIVE RULES

and processing fee, satisfactorily complete the reactivation process and be approved by the Board before beginning active practice in Oregon.

(3) The Board may deny active registration if it judges the conduct of the physician assistant during the period of inactive registration to be such that the physician assistant would have been denied a license if applying for an initial license.

(4) If a physician assistant applicant has ceased practice for a period of 12 or more consecutive months immediately preceding the application for licensure or reactivation, the applicant may be required to do one or more of the following:

(a) Obtain certification or re-certification by the National Commission on the Certification of Physician Assistants (N.C.C.P.A.);

(b) Provide documentation of current N.C.C.P.A. certification;

(c) Complete 30 hours of Category I continuing medical education acceptable to the Board for every year the applicant has ceased practice;

(d) Agree to increased chart reviews upon re-entry to practice.

(5) The physician assistant applicant who has ceased practice for a period of 24 or more consecutive months may be required to complete a re-entry plan to the satisfaction of the Board. The Board must review and approve a re-entry plan prior to the applicant beginning the re-entry plan. Depending on the amount of time out of practice, the re-entry plan may contain one or more of the requirements listed in section (4) of this rule and such additional requirements as determined by the Board.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.512

Hist.: ME 12-1986, f. & ef. 7-31-86; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 5-1996, f. & cert. ef. 7-26-96; BME 11-1998, f. & cert. ef. 7-22-98; BME 2-2000, f. & cert. ef. 2-7-00; BME 25-2008, f. & cert. ef. 10-31-08; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 29-2011, f. & cert. ef. 10-27-11; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0046

### Active Status for Temporary, Rotating Assignments

(1) A physician assistant, upon notification to the Board, may retire from active, permanent practice and change to Emeritus status which allows the physician assistant to practice temporary, volunteer assignments. A physician assistant with Emeritus status who wishes to volunteer at a medical facility must have a practice agreement or Board-approved practice description prior to starting practice at each assignment.

(2) A physician assistant, upon notification to the Board, may retire from active, permanent practice and maintain Active status by practicing at medical facilities for assignments on a rotating basis. A physician assistant who wishes to maintain active status and practice in rotating assignments at permanent locations must have a practice agreement or Board-approved practice description and must provide the Board with timely notification of the dates of each assignment prior to beginning each rotating assignment.

Stat. Auth.: ORS 677.265 & 677.545

Stats. Implemented: ORS 677.265, 677.510 & 677.515

Hist.: BME 9-2010, f. & cert. ef. 4-26-10; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0050

### Termination of Supervision

Upon termination of a supervisory relationship both the supervising physician and the physician assistant must submit to the Board a written report concerning the reason(s) for termination of the relationship. Such report must be submitted to the Board within 15 days following termination of supervision.

Stat. Auth.: ORS 677

Stats. Implemented: ORS 677.510

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0055

### Professional Corporation or Partnership

Whenever the supervising physician is a member of a professional corporation or employee of a professional corporation or partnership, the primary supervising physician and any acting supervising physician are in all cases personally responsible for the direction and supervision of the physician assistant's work. Such responsibility for supervision cannot be transferred to the corporation or partnership even though such corporation or partnership may pay the supervising physician and the physician assistant's salaries or enter into an employment agreement with such physician assistant or supervising physician.

Stat. Auth.: ORS 677

Stats. Implemented: ORS 58.185

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0060

### Physician Assistant Student

(1) Where applicable, any person who is enrolled as a student in any school offering an accredited physician assistant education program must comply with OAR 847-050-0005 to 847-050-0065.

(2) Notwithstanding any other provisions of these rules, a physician assistant student may perform medical services when such services are rendered within the scope of an accredited physician assistant education program.

Stat. Auth.: ORS 677

Stats. Implemented: ORS 677.515

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0063

### Physician Assistant Committee

(1) There is created a Physician Assistant Committee consisting of five members. Members of the committee are appointed as follows:

(a) The Oregon Medical Board for the State of Oregon must appoint one of its members and one physician. The physician who is not a member of the Board must supervise a physician assistant.

(b) The Oregon Medical Board must appoint three physician assistants after considering persons nominated by the Oregon Society of Physician Assistants.

(2) The term of each member of the committee is three years. A member must serve until a successor is appointed. If a vacancy occurs, it must be filled for the unexpired term by a person with the same qualifications as the retiring member.

(3) If any vacancy under subsection (1) of this section is not filled within 45 days, the Governor must make the necessary appointment from the category which is vacant.

(4) The committee elects its own chairperson with such powers and duties as fixed by the committee.

(5) A quorum of the committee is three members. The committee must hold a meeting at least once quarterly and at such other times the committee considers advisable to review requests to use the services of physician assistants and for dispensing privileges and to review applications for licensure or renewal.

(6) The chairperson may call a special meeting of the Physician Assistant Committee upon at least 10 days' notice in writing to each member, to be held at any place designated by the chairperson.

(7) The committee members are entitled to compensation and expenses as provided in ORS 677.292.495.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.540

Hist.: BME 15-1999, f. & cert. ef. 10-28-99; BME 1-2001, f. & cert. ef. 1-25-01; BME 25-2008, f. & cert. ef. 10-31-08; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

## 847-050-0065

### Duties of the Committee

(1) The Physician Assistant Committee must:

(a) Review applications for physician assistants' licensure and for renewal thereof.

(b) Review applications of physician assistants for dispensing privileges.

(c) Recommend approval or disapproval of applications submitted under subsection (1) or (2) of this section to the Oregon Medical Board for the State of Oregon.

(d) Recommend criteria to be used in granting dispensing privileges under ORS 677.515.

(e) Review requests to use the services of physician assistants.

(2) All actions of the physician assistant committee are subject to review and approval by the Board.

(3) Any other matters related to the physician assistant practice in Oregon.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.540 & 677.545



# ADMINISTRATIVE RULES

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; BME 15-1999, f. & cert. ef. 10-28-99; BME 6-2006, f. & cert. ef. 2-8-06; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12

\*\*\*\*\*

## Oregon Public Employees Retirement System Chapter 459

**Rule Caption:** Adopt temporary new rule on uncollectible debt owed to PERS as mandated by HB 2252.

**Adm. Order No.:** PERS 9-2011(Temp)

**Filed with Sec. of State:** 11-23-2011

**Certified to be Effective:** 11-23-11 thru 5-20-12

**Notice Publication Date:**

**Rules Adopted:** 459-005-0620

**Subject:** House Bill 2252, which became effective on June 2, 2011, provides a state agency direct authority to write off uncollectible debts on its accounts under its own criteria (previously, the Secretary of State and Attorney General had to approve the criteria). The new rule establishes the criteria which are mandated by HB 2252 for PERS. As the agency's criteria must still be approved by the Attorney General, the new rule adopts the model criteria that they provided.

**Rules Coordinator:** Daniel Rivas—(503) 603-7713

### 459-005-0620

#### Uncollectible Debt Owed to PERS

Any debt, including interest, penalties, or any portion of the debt, may be considered to be uncollectible when the debtor has no money or other thing of value owing or held by PERS that has not been credited to the debt, and it is reasonable to conclude, after all reasonable efforts to collect the debt have been made, that one or more of the following is true:

(1) The debtor does not and will not for the foreseeable future own or have the right to own assets from which PERS could collect the debt.

(2) It is reasonably estimated that the cost of collecting the debt would equal or exceed the amount of the debt.

(3) The debtor is deceased, and there are no assets in the debtor's estate from which PERS could collect the debt.

(4) The debtor is a corporation or a limited liability company that is not and for the foreseeable future will not be engaged in any income-producing activity, and there are no assets from which PERS could collect the debt.

(5) The debt has previously been discharged in bankruptcy.

(6) The debtor's estate is subject to a pending bankruptcy proceeding in which it is reasonable to conclude that the debt will be discharged and that PERS will receive none or an insubstantial share of the assets of the bankruptcy estate.

(7) PERS is and will be for the foreseeable future unable to collect from the debtor or from anyone owing the debtor money or holding assets of or from the debtor.

(8) PERS is unable to locate the debtor despite having made reasonable efforts to do so.

(9) The debt has been liquidated by reduction to a court judgment, administrative order or distraint warrant, which has subsequently expired.

Stat. Auth.: ORS 238.650, 293.240 & 238A.450

Stats. Implemented: ORS 293.240(2)

Hist.: PERS 9-2011(Temp), f. & cert. ef. 11-23-11 thru 5-20-12

\*\*\*\*\*

**Rule Caption:** Repeal obsolete rule regarding continuous service.

**Adm. Order No.:** PERS 10-2011

**Filed with Sec. of State:** 11-23-2011

**Certified to be Effective:** 11-23-11

**Notice Publication Date:** 7-1-2011

**Rules Repealed:** 459-010-0005

**Subject:** OAR 459-010-0005, Continuous Service, provides a standard for determining prior service credit for periods of employment before an employer began participating in PERS, service credit for a political subdivision which had withdrawn before July 1, 1956, and service credit with the state for a period before July 1, 1946. In addition, the rule clarifies continuity of service for employees returning

to service of a participating employer or who returned from the Armed Forces as of January 1, 1945.

This rule is now obsolete. Any eligible employer who is not currently participating in PERS would not be allowed to integrate into the PERS Chapter 238 Program. Administrative rules already exist for crediting service for employees while serving in the uniformed services or Armed Forces under OAR Chapter 459, Division 11 - Retirement Credit.

**Rules Coordinator:** Daniel Rivas—(503) 603-7713

\*\*\*\*\*

**Rule Caption:** Clarify disability retirement standards at the recommendation of Internal Audit findings and make other improvements.

**Adm. Order No.:** PERS 11-2011

**Filed with Sec. of State:** 11-23-2011

**Certified to be Effective:** 11-23-11

**Notice Publication Date:** 7-1-2011

**Rules Amended:** 459-015-0005, 459-076-0005

**Subject:** In 2005, PERS adopted changes to its administrative rules governing the disability retirement program for Tier One and Tier Two members, and adopted new rules for the administration of OPSRP Disability Benefits. PERS' Internal Auditors, in Report #2011-03 dated October 12, 2010, reviewed the agency's periodic review and contested case process for the Tier One/Tier Two disability program and recommended further clarifications to the administrative rules. These modifications are in response to that audit finding. Staff is also proposing rule modifications to the OPSRP Disability rules to align the rules where applicable, and make other improvements.

**Rules Coordinator:** Daniel Rivas—(503) 603-7713

### 459-015-0005

#### Eligibility for Disability Retirement Allowances

(1) A member must be totally, not partially, disabled and unable to perform any work for which qualified for an extended duration to be eligible for a disability retirement allowance.

(2) In determining a member's eligibility for a disability retirement allowance, the burden of proof is upon the applicant. The Board is not required to prove whether the applicant is or is not eligible for a disability retirement allowance.

(3) Eligibility requirements for duty disabilities.

(a) To be eligible for a duty disability a member must prove:

(A) The mental or physical incapacitation arose out of and in the course of duty and was not intentionally self-inflicted; and

(B) The on the job injury must be the material contributing cause of the disability even if the member has a pre-existing condition.

(b) For work related stress to be considered the material contributing cause of the disability all of the following criteria must be met:

(A) The employment conditions producing the work-related stress exist in a real and objective sense;

(B) The employment conditions producing the work-related stress are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles;

(C) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community; and

(D) There is evidence that the work-related stress arose out of and in the course of employment.

(4) Eligibility requirements for non-duty disabilities. A member applying for non-duty disability retirement must have a minimum of 10 years of employment in a PERS qualifying position as calculated pursuant to ORS 238.320(6).

(5) A member's disability retirement allowance shall be calculated based on:

(a) Creditable service; and

(b) Granted service if the member had not attained:

(A) Age 55 if the last qualifying position was as a police officer or a firefighter.

(B) Age 58 if the last qualifying position was as other than a police officer or firefighter.

(6) Granted service is:

# ADMINISTRATIVE RULES

(a) Not included in the calculation of increased benefits payable under ORS 238.380.

(b) Included in the calculation of increased benefits payable under ORS 238.385.

(7) Termination of membership. Disability retirement allowances are available only to PERS members. Former PERS members who have terminated their membership pursuant to ORS 238.095 are not eligible to receive PERS disability retirement allowances.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.320 - 238.345

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92; PERS 15-2005, f. & cert. ef. 10-3-05; PERS 3-2010, f. & cert. ef. 5-28-10; PERS 11-2011, f. & cert. ef. 11-23-11

## 459-076-0005

### Eligibility for Disability Benefits

(1) An active member must be totally, not partially, disabled and unable to perform any work for which qualified for an extended duration to be eligible for a disability benefit.

(2) A member with disabilities arising after the member's date of termination from a qualifying position(s) is not eligible for a disability benefit.

(3) In determining a member's eligibility for disability benefits, the burden of proof is upon the applicant. The Board is not required to prove whether the applicant is or is not eligible for disability benefits.

(4) Eligibility requirements for duty disabilities.

(a) To be eligible for a duty disability a member must prove:

(A) The mental or physical incapacitation arose out of and in the course of duty and was not intentionally self-inflicted; and

(B) The on the job injury must be the material contributing cause of the disability, even if the member has a pre-existing condition.

(b) For work related stress to be considered the material contributing cause of the disability all of the following criteria must be met:

(A) The employment conditions producing the work related stress exist in a real and objective sense;

(B) The employment conditions producing the work related stress are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles;

(C) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community; and

(D) There is evidence that the work related stress arose out of and in the course of employment.

(5) Eligibility requirements for non-duty disabilities. A member applying for non-duty disability benefit must meet the 10 or more years of service requirements pursuant to ORS 238A.235(2)(a) or (b).

(6) Termination of OPSRP membership. Disability benefits are available only to active OPSRP Pension Program members. Former OPSRP Pension Program members who have terminated membership pursuant to ORS 238A.110 are not eligible to receive OPSRP disability benefit.

(7) Return to work. If a member who is receiving a disability benefit becomes employed or receives earned income, the member's disability benefit will be terminated, effective the first of the month following employment or issuance of earned income. PERS will invoice the member for, or recover under ORS 238.715, any overpayment of benefits.

(8) PERS may contact other public or private agencies, such as the Oregon Employment Department, the Oregon Department of Revenue, or the U.S. Internal Revenue Service to obtain employment information.

(9) Upon request by PERS, a member must provide PERS with a copy of the member's federal income tax returns, together with copies of IRS forms W-2.

Stat. Auth.: ORS 238A.120 & 238A.450

Stats. Implemented: ORS 238A.140 & 238A.235

Hist.: PERS 16-2005, f. & cert. ef. 10-3-05; PERS 11-2011, f. & cert. ef. 11-23-11

.....

**Rule Caption:** Amend rule to reference judgments impacting disclosure of retired members' records.

**Adm. Order No.:** PERS 12-2011

**Filed with Sec. of State:** 11-23-2011

**Certified to be Effective:** 11-23-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 459-060-0020

**Subject:** This rulemaking conforms the agency's administrative rules to the circuit court judgments entered in *PERS v. Oregonian Publishing Company LLC* and *PERS v. Multimedia Holdings Corporation, dba Statesman Journal and Statesman Journal Media*. The

judgments are a result of the settlement of the litigation between the agency and the newspapers that began last year, after the Oregon Attorney General issued Public Records Orders (PROs) directing PERS to disclose data about individually identified PERS benefit recipients.

The amendments to OAR 459-060-0020 incorporate the judgments into the administrative rule by specific reference. Thus, the resulting OAR makes clear that, notwithstanding any other confidentiality provision in rule or statute, the agency will disclose member information as set forth in the judgments.

**Rules Coordinator:** Daniel Rivas—(503) 603-7713

## 459-060-0020

### Confidentiality of Member's Records

(1) ORS 192.502(12) unconditionally exempts from public disclosure a member's nonfinancial membership records and an active or inactive member's financial records maintained by PERS. PERS may not release such records to anyone other than the member, an authorized representative of the member, or the member's estate except:

(a) Upon the written authorization of the member, or an individual that is legally authorized to act on behalf of the member or the member's estate as to PERS matters; or

(b) As otherwise provided in OAR 459-060-0030.

(2) ORS 192.502(2) conditionally exempts from public disclosure a retired member's financial information maintained by PERS. PERS may not release such records to anyone other than the member, an authorized representative of the member, or the member's estate unless:

(a) To do so would not constitute an unreasonable invasion of privacy and there is clear and convincing evidence that disclosure is in the public's interest;

(b) PERS receives written authorization from the member, or an individual that is legally authorized to act on behalf of the member or the member's estate as to PERS matters; or

(c) Release is provided for under OAR 459-060-0030 or as required under the judgments in *PERS v. Oregonian Publishing Company LLC* and *PERS v. Multimedia Holdings Corporation, dba Statesman Journal and Statesman Journal Media*.

(3) Information distributed pursuant to the judgments referenced in section (2)(c) of this rule will be updated not less than annually.

(4)(a) Subject to subsection (b) of this section, PERS may provide a member's current or former employer with information from the member's records that is otherwise exempt from public disclosure to the extent necessary to enable the employer:

(A) To determine whether a non-PERS retirement plan maintained by the employer complies with any benefit or contribution limitations or nondiscrimination requirement imposed by applicable federal or state law;

(B) To apply any coordination of benefits requirement contained in any non-PERS benefit plan maintained by the employer;

(C) To perform any necessary account reconciliation following an integration of the employer's retirement plan into PERS; or

(D) To reconcile an actuarial valuation by providing the employer with the following member information:

(i) Salary information;

(ii) Employment history; or

(iii) Contribution history.

(b) PERS will not provide the information described in subsection (a) of this section unless the employer demonstrates to the satisfaction of PERS that the information is necessary to accomplish one of the purposes described in paragraphs (A), (B), (C) and (D) of subsection (a) and the employer certifies in writing that it will not disclose the information to any third party except to the extent permitted under this division and ORS 192.502(10).

(5) To enable an employer to comply with OAR 459-070-0100, PERS may disclose to the employer an employee's status as an active, inactive, or retired member, or a non-member.

(6) PERS will not provide a mailing list of its members or their dependents to any individual or enterprise.

Stat. Auth.: ORS 192.502 & 238.650

Stats. Implemented: ORS 192.410-505, 237.410-520, 237.610-620, 237.950-980 & 238

Hist.: PERS 8-1996, f. & cert. ef. 11-12-96; PERS 7-2002, f. & cert. ef. 5-24-02; PERS 16-2003, f. & cert. ef. 12-15-03; PERS 12-2010, f. & cert. ef. 11-24-10; PERS 12-2011, f. & cert. ef. 11-23-11

# ADMINISTRATIVE RULES

## Oregon State Lottery Chapter 177

**Rule Caption:** Establishes requirements for Oregon Lottery® second chance drawings.

**Adm. Order No.:** LOTT 7-2011

**Filed with Sec. of State:** 11-21-2011

**Certified to be Effective:** 12-1-11

**Notice Publication Date:** 10-1-2011

**Rules Adopted:** 177-052-0000, 177-052-0010, 177-052-0020, 177-052-0030, 177-052-0040, 177-052-0050, 177-052-0060, 177-052-0070

**Rules Repealed:** 177-052-0000(T), 177-052-0010(T), 177-052-0020(T), 177-052-0030(T), 177-052-0040(T), 177-052-0050(T), 177-052-0060(T), 177-052-0070(T)

**Subject:** The Oregon State Lottery initiated permanent rulemaking to set for the requirements for second chance drawing conducted by the Lottery, which are drawings in which an eligible, non-winning Oregon Lottery® ticket is submitted to the Lottery for entry into a drawing for the chance to win a prize. These new rules set forth eligibility and entry requirements, the method for selecting winners, how the odds of winning are determined, winner notification, the method and time period for claiming a second chance drawings prize, and the governing law.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

### 177-052-0000

#### Purpose

The purpose of this division of OAR chapter 177 is to authorize and set forth the provisions for second chance drawings that the Oregon Lottery® may conduct from time to time. This division is not applicable to any second chance drawings that a Lottery retailer may operate under OAR 177-040-0200.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.220, 461.230 & 461.250

Hist.: LOTT 5-2011(Temp), f. & cert. ef. 9-2-11 thru 1-29-12; LOTT 7-2011, f. 11-21-11, cert. ef. 12-1-11

### 177-052-0010

#### Definitions

(1) “**Active Scratch-it™ game**” means a Lottery Scratch-it™ game that has not officially ended as set forth in OAR 177-050-0100.

(2) “**Entry Requirements**” means the instructions that specify how to enter a second chance drawing.

(3) “**Second Chance Drawing**” or “**2nd Chance Drawing**” means a drawing in which an eligible non-winning Oregon Lottery® ticket is submitted to the Oregon Lottery® for entry into a drawing for a chance to win a prize.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.220, 461.230 & 461.250

Hist.: LOTT 5-2011(Temp), f. & cert. ef. 9-2-11 thru 1-29-12; LOTT 7-2011, f. 11-21-11, cert. ef. 12-1-11

### 177-052-0020

#### Eligibility

(1) **Requirements:** To be eligible to win a prize in a second chance drawing, a person must meet the following eligibility requirements:

- (a) Be a natural person 18 years of age or older;
- (b) Must reside in the United States;
- (c) Must not be:

(A) An employee or representative of the Oregon Lottery®, or the spouse, child, brother, sister, or parent of any such employee or representative;

(B) An employee or representative of the Oregon State Police, Gaming Enforcement Division; or

(C) A Lottery vendor who is prohibited by contract with the Oregon Lottery® from participating in a second chance drawing or is prohibited from playing Oregon Lottery® games.

(d) Must submit a valid entry with the required information through whichever method for entry the Lottery requires for the particular second chance drawing. All entries must be submitted by the deadline specified for the second chance drawing.

(2) **Person Ineligible:** If at any time the Lottery determines that a person who submitted a second chance drawing entry does not meet the requirements listed in section (1) of this rule, that person is disqualified and is ineligible for a prize. If the Lottery determines that a person is disquali-

fied before the second chance drawing is conducted, any entries submitted by that person are void, may be removed from the drawing, or any prize won may be forfeited and may be awarded to an alternate eligible winner at the discretion of the Lottery. If a person who receives a prize in a second chance drawing is later disqualified, the person may be required to forfeit the prize and return it to the Lottery.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.220, 461.230 & 461.250

Hist.: LOTT 5-2011(Temp), f. & cert. ef. 9-2-11 thru 1-29-12; LOTT 7-2011, f. 11-21-11, cert. ef. 12-1-11

### 177-052-0030

#### Entry Requirements

(1) **Method of Entry:** The Lottery will determine the method of entry for any second chance drawing, which may include, but is not limited to, electronic entry through a website, mail, or walk-in entries.

(2) **Electronic Entry:** To submit a valid electronic entry, a person must:

- (a) Register as a member on a Lottery designated website;
- (b) Enter the Game ID number, the box code, and the ticket code from the Lottery game ticket that is eligible for the particular second chance drawing;
- (c) Provide any additional information as required by the Lottery; and
- (d) Submit the electronic entry prior to the deadline for submission of entries for the second chance drawing as announced by the Lottery.

(3) **Mail or Walk-in Entry:** To submit an entry by mail or personal delivery to the Lottery, if such entry is specifically authorized by the Lottery for a particular second chance drawing, a person must:

(a) Submit an entry with the required information provided legibly and accurately in all blanks on the form. The entry may contain only one entrant’s name. Illegible entries are invalid.

(b) Mail the entry to the Oregon Lottery®, P.O. Box 14515, Salem, Oregon 97309 or deliver the entry to the Oregon Lottery® Headquarters, 500 Airport Road SE, Salem, Oregon 97301 by the deadline specified in the second chance drawing. The entry must be received during the Lottery’s business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m. PST, excluding holidays and furlough closure days.

(4) **Ticket Requirements:** Only one Lottery game ticket may be used for each entry. If the second chance drawing specifies use of a Scratch-it™ ticket for entry into the drawing, only a Lottery Scratch-it™ game ticket from an active Scratch-it™ game is eligible for entry into the second chance drawing.

(5) **Single Entrant:** Only one person per entry may submit an entry for a second chance drawing. An entry with more than one name on the entry form is invalid.

(6) **Other Entry Requirements:** The Lottery may establish additional entry requirements for any second chance drawing. These additional requirements will be posted on a Lottery website or as otherwise announced by the Lottery.

(7) **Invalid Entry:** Failure to follow any of the entry requirements of a second chance drawing will invalidate the entry. An invalid entry is void and is not eligible for a second chance drawing prize. Invalid entries will not be returned to the entrant.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.220, 461.230 & 461.250

Hist.: LOTT 5-2011(Temp), f. & cert. ef. 9-2-11 thru 1-29-12; LOTT 7-2011, f. 11-21-11, cert. ef. 12-1-11

### 177-052-0040

#### Odds of Winning

(1) **General:** The odds of winning a second chance drawing depend on the total number of entries received.

(2) **Multiplier:** The Lottery may use a multiplier to increase the number of entries a single second chance drawing entry receives. When a multiplier is used, the odds of winning depend on the total number of entries received plus the calculations of the multiplier, which increases the total number of entries.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.220, 461.230 & 461.250

Hist.: LOTT 5-2011(Temp), f. & cert. ef. 9-2-11 thru 1-29-12; LOTT 7-2011, f. 11-21-11, cert. ef. 12-1-11

### 177-052-0050

#### Selection of Winners

(1) **When Drawing Held:** A second chance drawing will be held at such date, time, place, and in such manner as is determined by the Lottery and will be conducted only after the deadline for submitting entries has closed, as announced by the Lottery.



# ADMINISTRATIVE RULES

(2) **Random Drawing:** During the drawing for each available prize in a second chance drawing, the Lottery will randomly select a winner from all the entries submitted for that drawing. Only valid entries that have been submitted to the Lottery are eligible for selection as a winner.

(3) **Selection of Winning Ticket:** To select a winner, the Lottery or its authorized agents, may conduct a manual or electronic drawing, or may use any other selection procedure as determined by the Lottery that ensures a random selection of a winner for a prize in the particular second chance drawing.

(4) **Suspension or Cancellation of Drawing:** At the discretion of the Lottery Director, a second chance drawing may be suspended. If the Director suspends a drawing the Director may hold a replacement drawing or cancel the drawing. If the second chance drawing is canceled, the Lottery, in its sole discretion, may provide an entrant who entered the drawing with a coupon for a Lottery product, or a promotional reward, the value of which shall be solely determined by Oregon Lottery. This is an entrant's sole and exclusive remedy.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)  
Stats. Implemented: ORS 461.220, 461.230 & 461.250  
Hist.: LOTT 5-2011(Temp), f. & cert. ef. 9-2-11 thru 1-29-12; LOTT 7-2011, f. 11-21-11, cert. ef. 12-1-11

## 177-052-0060

### Winner Notification and Claiming of Prizes

(1) **Second Chance Prize Notification:** The Lottery will notify the winner of a second chance drawing by e-mail. The Lottery may also notify the winner by telephone or by mailing a certified letter through the U.S. Postal Service. The effective date of notification is the date the initial e-mail notification is sent by the Lottery as noted electronically within the Lottery's information processing system.

(2) **Time Limits for Claiming Prize:** A winner of a second chance drawing has 60 days from the date of the e-mail notification in which to claim the prize.

(3) **Forfeiture of Prize:** If the winner of a second chance drawing is determined by the Lottery to be ineligible or fails to respond to the notification to claim the prize within 60 days, then the winner forfeits the prize.

(4) **Claim Forms:** As a condition of receiving a prize, the Lottery may require the winner to submit a claim form to the Lottery. To be valid, the claim form must contain the required information, such as name, address, signature or identifying mark, social security number (if applicable), and a valid reference number. Only the person who submitted the entry may claim the prize. A second chance drawing prize may not be claimed by multiple owners. A valid claim form must be received by the Lottery within the applicable time period for claiming a prize. An invalid claim form will not be accepted by the Lottery and will be returned to the claimant. The claimant may resubmit a valid claim form as long as the time for claiming the prize has not expired.

(a) **Electronic Claim Form:** The Lottery may require that the claimant submit an electronic claim form through the Internet. The electronic claim form is received by the Lottery when the form enters the Lottery's information processing system in a retrievable form. The electronic claim form will be deemed received at the time and date noted electronically by the Lottery's information processing system. An electronic claim form must include the claimant's electronic signature that meets the requirements specified by the Lottery on the instructions for the claim form.

(b) **Paper Claim Form:** Unless specified otherwise, the Lottery may permit a claimant to submit a paper claim form. The paper claim form is deemed received by fax to (503) 540-1001 or upon physical delivery to the Oregon Lottery® Headquarters, 500 Airport Road SE, Salem, Oregon 97301, either in person, or by delivery service, or through the U.S. mail to the Oregon Lottery®, P.O. Box 14515, Salem, Oregon 97309. The claim form must be received by the Lottery during the Lottery's business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m. PST, excluding holidays and furlough closure days.

(5) **Identification:** The Lottery may require that a prize be claimed in person at the Oregon Lottery® Headquarters, 500 Airport Road SE, Salem, Oregon 97301. At any time, the Lottery may require the claimant to present valid proof of identity to confirm that the claimant is the person who submitted the second chance drawing entry. A claimant who is unable to present valid identification upon request is ineligible to receive a prize.

(6) **Delivery of Prize:** The Lottery may require the winner of a second chance drawing prize to claim the winner's prize at the Oregon Lottery® Headquarters, 500 Airport Road SE, Salem, Oregon 97301, or the Lottery may mail or otherwise deliver the prize to the winner's address if it is within the United States.

(7) **Taxes and Fees:** Unless otherwise stated by the Lottery in the terms for a particular second chance drawing, all taxes and fees are the responsibility of the winner claiming the prize.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)  
Stats. Implemented: ORS 461.220, 461.230 & 461.250  
Hist.: LOTT 5-2011(Temp), f. & cert. ef. 9-2-11 thru 1-29-12; LOTT 7-2011, f. 11-21-11, cert. ef. 12-1-11

## 177-052-0070

### Governing Law

(1) **Compliance with Law and Terms:** By entering a second chance drawing, a person agrees to abide by and comply with Oregon law, including the statutes and administrative rules governing second chance drawings, and any additional terms and entry requirements for a second chance drawing as posted by the Lottery, which are in effect, and which may be amended from time to time.

(2) **Decisions of the Director:** The decisions of the Director, including, but not limited to, the amount or nature of a prize, the validity of an entry, whether an entry is a winner, whether it was submitted in error, and whether an entrant has won a prize, are final.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)  
Stats. Implemented: ORS 461.220, 461.230 & 461.250  
Hist.: LOTT 5-2011(Temp), f. & cert. ef. 9-2-11 thru 1-29-12; LOTT 7-2011, f. 11-21-11, cert. ef. 12-1-11

.....

**Rule Caption:** Describes how Lottery collects cash slip amounts from video retailer's EFT account, limits reimbursement.

**Adm. Order No.:** LOTT 8-2011

**Filed with Sec. of State:** 11-21-2011

**Certified to be Effective:** 12-1-11

**Notice Publication Date:** 10-1-2011

**Rules Amended:** 177-200-0020, 177-200-0032

**Rules Repealed:** 177-200-0020(T), 177-200-0032(T)

**Subject:** The amendments clarify when a Video Lottery<sup>SM</sup> retailer may not validate and pay a cash slip, and describe how the Lottery collects from a retailer's EFT account the amount for cash slips that are not paid by the retailer. Other amendments clarify when a retailer will not be reimbursed for improperly paying a cash slip.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

## 177-200-0020

### Payment of Video Lottery<sup>SM</sup> Game Cash Slips

(1) **Original Cash Slip:** Except as set forth in sections (7) and (8) of this rule, an original cash slip is the only valid receipt for claiming prizes or for redeeming credits remaining on a terminal. A copy of a cash slip has no pecuniary or prize value and does not constitute evidence of a cash slip.

(2) **Retailer Validation Requirements:** A retailer shall pay a cash slip only if:

(a) The cash slip is presented for payment at the retailer location that issued the cash slip.

(b) The individual presenting the cash slip is 21 years of age or older and authorized to play under these rules and Oregon statutes.

(c) The cash slip is presented to the retailer within 28 days of the date it was properly issued.

(d) It is intact and legible and meets all the Lottery's security requirements.

(e) It is not counterfeit, fraudulent, lacking the correct captions, altered, tampered with in any manner, or obtained from the Lottery or Lottery retailer by any fraudulent means.

(f) The information appearing on the cash slip corresponds with the computer record of the cash slip data recorded in the Lottery's central computer system.

(g) It has not been previously paid, and

(h) It is not a prize that must be validated and paid at Lottery Headquarters in Salem, such as a Jackpot Prize.

(3) **Retailer Validation Exception:** If a cash slip is not intact or legible, the prize or credits that would have otherwise appeared on the cash slip may nevertheless be paid by the retailer as follows:

(a) **Software Validation:** Upon notification by a player that a Video Lottery<sup>SM</sup> game terminal issued a cash slip that is not intact or legible, the retailer shall obtain a validation number from the terminal. If the retailer is able to obtain a validation number from the terminal that corresponds to the time and amount of the credits claimed by the player, then the retailer shall validate the prize or credits that would otherwise have appeared on the cash slip through the validation terminal and pay the player.

# ADMINISTRATIVE RULES

(A) **Software Validation Report:** If the retailer pays the player pursuant to section (3)(a) of this rule, the retailer must complete a Retailer Software Validation Report signed by the player and the retailer. The retailer must retain the report for one year. The retailer must group the reports by month and must make them available for audit by the Lottery immediately upon request. The retailer must retain and attach the damaged or illegible cash slips to the reports.

(B) **Validation Number Unavailable:** If the retailer is unable to obtain a validation number from the terminal that corresponds to the time and amount of the credits claimed by the player as required by subsection (3)(a), the player may request payment of the cash slip from the Lottery as provided in section (8) of this rule.

(b) **Jackpot Prize Cash Slip Not Issued, Intact, or Legible:** If a cash slip for a Jackpot Prize is not intact or legible, the player and the retailer must complete a Video Problem Report form, attach the cash slip or all available portions of the cash slip to the form if available, and must submit the form and the cash slip to the Lottery for investigation. The Jackpot Prize may be paid as set forth in section (7) and (8) of this rule.

(4) **Limitation on Retailer Validation and Payment of Cash Slip:** A retailer must not attempt to validate, and may not pay, a cash slip for any Jackpot Prize. A retailer shall only validate and pay non-Jackpot Prize cash slips issued by Video Lottery<sup>SM</sup> game terminals located on its premises.

(5) **Retailer Payment of Cash Slip:** Upon validation of a cash slip as set forth in sections (2) and (3) of this rule, a retailer may pay the amount due in cash or check, or any combination thereof. A retailer must not pay a cash slip in tokens, chips, or merchandise, or charge a fee for paying a cash slip or for issuing payment.

(a) **Dishonored Retailer Check:** If a retailer's check is dishonored, the player may seek payment from the Lottery by presenting a copy of the dishonored check to Lottery Headquarters, Player Services Office, 500 Airport Road SE, Salem, Oregon during Lottery business hours, or by mailing a copy of the dishonored check with a winner claim form to Lottery Headquarters, P.O. Box 14515, Salem, Oregon 97309. If the Lottery determines that payment of the cash slip is authorized, the retailer has not paid the cash slip, and it is unlikely that the retailer will pay the cash slip, the Lottery may then issue a check to the claimant in the amount of the cash slip.

(b) **Possible Contract Termination:** A retailer that pays a cash slip with a check that is dishonored may be subject to termination of the Lottery Retailer Contract.

(6) **Lottery Validation and Payment of Cash Slips:** Payment of a cash slip may be made at Lottery Headquarters, Player Services, 500 Airport Road SE, Salem, Oregon. Validation and payment of a cash slip for a Jackpot Prize must be made at Lottery Headquarters in Salem. The cash slip must be presented for payment no sooner than the next Lottery business day after it is issued, must meet all of the requirements in sections (1) and (2) of this rule, and must be delivered to the Lottery in person or by mail at P.O. Box 14515, Salem, Oregon 97309 (registered mail recommended) before 5:00 p.m. within one year of the date that the cash slip was issued. If the final day of the one-year claim period falls on a day when the Oregon Lottery Headquarters is not open to the general public, such as a weekend, Lottery holiday, or furlough closure day, the claim period shall be extended until 5:00 p.m. on the next day the Oregon Lottery Headquarters is open to the general public. Upon validation of a cash slip, the Lottery will pay the amount due less any applicable tax withholding. For cash slips of \$600 or less, payment may be made by check, cash card, or any combination thereof. For cash slips of more than \$600, payment will be made by check. Payment may be made in person or by mail.

(7) **Lack of Cash Slip or Validation Number:** If a player does not have a cash slip, or a retailer was unable to obtain a validation number, the Lottery will conduct an investigation of a claim presented for payment to the Lottery. The investigation will determine the reasons or causes for the failure of the terminal to produce a cash slip or to print an intact and legible cash slip, and why the retailer was unable to obtain a validation number.

(a) **Payment:** The Lottery may pay the claim if the Lottery can determine from its investigation that the credit was on the terminal identified by the player at the time claimed, and that no cash slip has been paid on the claim.

(b) **Signed Statement:** The Lottery will not pay any such claim without a signed statement by a player. The player's statement must contain game play information that can be compared to data in the Lottery's central computer system that substantiates that the player won a prize in the amount and at the time claimed, and information from which the Lottery reasonably can determine that the claim has not been paid.

(c) **Jackpot Prize:** The Lottery will not pay the claim for a Jackpot Prize without receipt of a Video Problem Report form as described in section (3)(b) of this rule.

(8) **Lottery Validation Exceptions:** If a cash slip cannot be validated because the cash slip data is not recorded on the Lottery's central computer system, the Director may still authorize payment if:

(a) The Lottery conducts an investigation of the claim, and

(b) The Director concludes that the claimant was an authorized player and that the absence of a record of the cash slip data in the Lottery's central computer system was the result of either a technical problem in the Video Lottery<sup>SM</sup> game terminal or a communications problem that prevented the recording of the credits in the Lottery's central computer system.

(9) **Subsequent Claims:** If a cash slip improperly paid by a retailer is later submitted for payment to the Lottery, the Lottery may collect the amount of the cash slip from the retailer's EFT account. The Lottery may conduct an investigation to determine if the Lottery properly made payment.

(10) **Withholding of Payment:** The Lottery may withhold payment of any cash slip claim presented to it until the expiration of the 28-day prize claim period at the retailer's location for prizes payable by the retailer or until the completion of any investigation by the Lottery to determine if payment is proper.

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

Stats. Implemented: ORS 461.250

Hist.: LC 8-1991, f. & cert. ef. 11-25-91; LC 9-1993, f. 11-18-93, cert. ef. 12-1-93; LC 9-1994, f. 8-19-94, cert. ef. 9-1-94; LC 1-1995, f. 1-25-95, cert. ef. 3-1-95; LC 6-1996, f. 5-30-96, cert. ef. 6-1-96; LC 4-1997, f. & cert. ef. 4-25-97; LOTT 7-2003(Temp), f. & cert. ef. 6-5-03 thru 11-28-03; LOTT 15-2003, f. & cert. ef. 9-29-03; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 2-2010, f. 1-29-10, cert. ef. 2-1-10; LOTT 4-2010(Temp), f. 3-10-10, cert. ef. 3-15-10 thru 9-4-10; LOTT 9-2010, f. 8-30-10, cert. ef. 9-5-10; LOTT 6-2011(Temp), f. 9-15-11, cert. ef. 9-18-11 thru 3-5-12; LOTT 8-2011, f. 11-21-11, cert. ef. 12-1-11

## 177-200-0032

### Collection from EFT Account for Cash Slips Not Paid by Retailer and Limitation on Reimbursement

(1) **Jackpot Prize Cash Slips:** The Lottery shall collect the amount of any Jackpot Prize cash slip issued at a retailer establishment through the retailer's EFT account for the same business week the Jackpot Prize cash slip is issued.

(2) **All Other Cash Slips:**

(a) For a non-Jackpot Prize cash slip that is presented to the Lottery and which has been recorded in the Lottery's central computer system, the Lottery shall collect the amount of the cash slip through the retailer's EFT account for the business week that the Lottery issues payment, unless the amount has already been collected through the retailer's EFT account under subsection (c) of this section.

(b) For a non-Jackpot Prize cash slip payment made by the Lottery under OAR 177-200-0020(7) or (8), the Lottery shall collect the amount of the cash slip through the retailer's EFT account for the business week the Lottery issues payment, unless the amount has already been collected through the retailer's EFT account.

(c) If a non-Jackpot Prize cash slip is not redeemed within 28 days of the date it was issued, the Lottery will collect the amount of the cash slip through the retailer's EFT account during the business week following the end of the 28 day period.

(d) If a cash slip that is not properly validated and is paid by a retailer is later submitted for payment to the Lottery and the Lottery pays the cash slip, the Lottery may collect the amount of the cash slip from the retailer's EFT account.

(3) **Limitation on Reimbursement for Payment of Cash Slip:** As set forth in OAR 177-200-0020, a retailer may not attempt to validate and may not pay a cash slip for any Jackpot Prize, and may only validate and pay a non-Jackpot Prize cash slip issued by a Video Lottery<sup>SM</sup> game terminal located on its premises. If a retailer validates and pays a cash slip issued from another location, or pays a cash slip for a Jackpot Prize, the Lottery will not reimburse the retailer's EFT account for the payment.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.215 & 461.217

Hist.: LOTT 7-2003(Temp), f. & cert. ef. 6-5-03 thru 11-28-03; LOTT 15-2003, f. & cert. ef. 9-29-03; LOTT 4-2010(Temp), f. 3-10-10, cert. ef. 3-15-10 thru 9-4-10; LOTT 9-2010, f. 8-30-10, cert. ef. 9-5-10; LOTT 6-2011(Temp), f. 9-15-11, cert. ef. 9-18-11 thru 3-5-12; LOTT 8-2011, f. 11-21-11, cert. ef. 12-1-11

\*\*\*\*\*

## Oregon State Marine Board Chapter 250

**Rule Caption:** Prohibit boating and establish a 5-mph slow-no-wake zone on the Willamette River.

# ADMINISTRATIVE RULES

**Adm. Order No.:** OSMB 16-2011(Temp)

**Filed with Sec. of State:** 11-22-2011

**Certified to be Effective:** 12-1-11 thru 5-28-12

**Notice Publication Date:**

**Rules Amended:** 250-020-0280

**Subject:** This rule will prohibit boating within a specified area of the Sellwood Bridge Construction Project and also establish a 5- mph-slow-no-wake zone.

**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 1,5000 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 recreational 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 commercially operated vessels including those owned or operated for sand and gravel operations, nor to 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 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 830.110, 830.175 & 830.195

Stats. Implemented: ORS 830.110 & 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

## Oregon University System, Eastern Oregon University Chapter 579

**Rule Caption:** To create rules for Color Printing/Photocopying Fees.

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

**Filed with Sec. of State:** 12-1-2011



# ADMINISTRATIVE RULES

**Certified to be Effective:** 12-1-11 thru 5-6-12  
**Notice Publication Date:**  
**Rules Amended:** 579-020-0006  
**Subject:** Create rule for Color Printing/Photocopying Fee.  
**Rules Coordinator:** Teresa Carson-Mastrude—(541) 962-3773

## 579-020-0006

### Special Student Fees

Eastern Oregon University intends to adopt by reference Special Student Fees effective November 9, 2011

Replacement ID Card: \$10  
Transcript – International Postage Fee: \$2.50 per transcript  
Transcript – Rush Delivery Fee: \$15 + actual delivery cost  
Color Copying/Printing: \$0.75 per page  
Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: EOSC 3, f. & ef. 6-23-76; EOSC 8, f. & ef. 6-16-77; EOSC 6-1978, f. & ef. 10-2-78; EOSC 1-1979, f. & ef. 6-27-79; EOSC 1-1981, f. & ef. 1-12-81; EOSC 3-1981, f. & ef. 7-1-81; EOSC 2-1983, f. & ef. 12-16-83; EOSC 2-1984, f. & ef. 10-25-84; EOSC 1-1986, f. & ef. 2-13-86; EOSC 2-1988, f. & cert. ef. 10-28-88; EOSC 2-1989, f. & cert. ef. 7-31-89; EOSC 2-1990, f. & cert. ef. 10-9-90; EOSC 3-1991, f. & cert. ef. 9-20-91; EOSC 5-1990, f. & cert. ef. 12-20-91 (and corrected 1-2-92); EOSC 1-1992, f. & cert. ef. 5-13-92; EOSC 2-1992, f. & cert. ef. 8-24-92; EOSC 4-1993, f. & cert. ef. 8-2-93; EOSC 4-1994, f. & cert. ef. 7-25-94; EOSC 1-1996, f. & cert. ef. 8-15-96; EOU 1-2001, f. & cert. ef. 9-28-01; EOU 1-2003, f. & cert. ef. 7-31-03; EOU 1-2005, f. & cert. ef. 5-16-05; EOU 1-2006, f. & cert. ef. 4-14-06; EOU 1-2007, f. & cert. ef. 5-14-07; EOU 4-2007(Temp), f. & cert. ef. 8-15-07 thru 1-15-08; Administrative Correction 1-24-08; EOU 1-2008, f. & cert. ef. 3-14-08; EOU 5-2008, f. & cert. ef. 8-15-08; EOU 1-2009, f. & cert. ef. 3-12-09; EOU 2-2009, f. & cert. ef. 8-14-09; EOU 3-2009, f. & cert. ef. 12-15-09; EOU 1-2010, f. & cert. ef. 5-13-10; EOU 2-2010, f. & cert. ef. 7-15-10; EOU 1-2011, f. & cert. ef. 6-6-11; EOU 3-2011, f. & cert. ef. 8-5-11; EOU 4-2011(Temp), f. & cert. ef. 11-14-11 thru 5-6-12; EOU 5-2011(Temp), f. & cert. ef. 12-1-11 thru 5-6-12

.....  
**Oregon Youth Authority**  
**Chapter 416**

**Rule Caption:** OYA adopts standards set by the ICJ for interstate transfer of youth offender supervision and services.

**Adm. Order No.:** OYA 7-2011

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

**Certified to be Effective:** 12-14-11

**Notice Publication Date:** 8-1-2011

**Rules Adopted:** 416-115-0025

**Rules Amended:** 416-115-0010, 416-115-0020, 416-115-0030

**Rules Repealed:** 416-115-0000, 416-115-0040, 416-115-0050, 416-115-0060, 416-115-0070, 416-115-0080, 416-115-0090, 416-115-0100, 416-115-0110, 416-115-0120, 416-115-0130, 416-115-0140, 416-115-0150, 416-115-0160, 416-115-0170, 416-115-0180, 416-115-0190, 416-115-0200, 416-115-0210, 416-115-0220, 416-115-0230, 416-115-0240, 416-115-0250, 416-115-0260, 416-115-0270, 416-115-0280

**Subject:** The Oregon Youth Authority adopts by reference standards for the interstate transfer of youth offender supervision and services set in the official ICJ rules, published by the Interstate Commission for Juveniles, as updated to reflect all amendments through February 4, 2011. OYA is repealing rules that were adopted prior to those set in the official ICJ rules.

**Rules Coordinator:** Winifred Skinner—(503) 373-7570

## 416-115-0010

### Definitions

(1) Absconder: A juvenile on probation or parole who hides, conceals, or absents him/herself with the intent to avoid legal process or authorized control.

(2) Adjudicated Delinquent: A person found to have committed an offense that, if committed by an adult, would be a criminal offense.

(3) Deputy Compact Administrator: The Oregon Youth Authority Assistant Director of Community Services, appointed by the Director of the Oregon Youth Authority to serve as the general coordinator of activities and rule and policy development to carry out the terms and provisions of the ICJ.

(4) Escapee: A Juvenile who has made an unauthorized flight from a facility or agency's custody to which the Juvenile has been committed by the court.

(5) Home State: The state where the parent(s), guardian(s), person, or agency having legal custody of the juvenile is residing or undertakes to reside.

(6) Interstate Compact for Juveniles (ICJ): The agreement pertaining to the legally authorized transfer of supervision and care, as well as the return of juveniles from one state to another, which has been adopted by all member states that have enacted legislation in substantially the same language.

(7) Juvenile: Any person within the juvenile jurisdictional age limit of any court in the Home/Sending State, or any individual adjudicated delinquent within the Home/Sending state and who remains under custodial care or community supervision of the juvenile authority.

(8) Runaway: A child under the juvenile jurisdictional age limit established by the state, who has run away from his/her place of residence, without the consent of the parent, guardian, person, or agency entitled to his/her legal custody.

(9) Sending State: A state which has sent or is in the process of sending a juvenile to another state for supervision under the provisions of the ICJ.

Stat. Auth.: ORS 420A.025  
Stats. Implemented: ORS 417.010 - 417.080  
Hist.: OYA 1-2007, f. & cert. ef. 2-13-07; OYA 7-2011, f. 12-12-11, cert. ef. 12-14-11

## 416-115-0020

### Eligibility for Services through the Interstate Compact for Juveniles

(1) Juveniles under juvenile jurisdiction in the Sending State of any state that is a party to the ICJ are eligible for services pursuant to the provisions of the ICJ.

(2) All Runaways, Absconders, and Escapees are eligible for services pursuant to the provisions of the ICJ.

Stat. Auth.: ORS 420A.025  
Stats. Implemented: ORS 417.010 - 417.080  
Hist.: OYA 1-2007, f. & cert. ef. 2-13-07; OYA 7-2011, f. 12-12-11, cert. ef. 12-14-11

## 416-115-0025

### Standards for Juvenile Interstate Transfer of Supervision

The Oregon Youth Authority adopts by this reference standards for the interstate transfer of Youth Offender supervision and services set in the official ICJ rules, published by the Interstate Commission for Juveniles, as updated to reflect all amendments through February 4, 2011. The rules may be viewed at the Interstate Commission for Juveniles website at <http://juvenilecompact.org/>.

Stat. Auth.: ORS 420A.025  
Stats. Implemented: ORS 417.010 - 417.080  
Hist.: OYA 7-2011, f. 12-12-11, cert. ef. 12-14-11

## 416-115-0030

### Administration of the Interstate Compact for Juveniles

The Oregon Youth Authority (OYA) Deputy Compact Administrator will provide interpretation of the ICJ and coordination of all referrals or requests to:

(1) Permit out-of-state supervision of a juvenile who should be sent to another state when eligible for parole or probation;

(2) Permit out-of-state travel for an Adjudicated Delinquent;

(3) Provide for the return of Absconders and Escapees to the states they left;

(4) Provide for return of Runaways to their Home States who have not as yet been adjudged delinquent;

(5) Extradite a juvenile who has committed a serious criminal offense and fled to another state before the court took jurisdiction; and

(6) Return juveniles to Oregon when ICJ placement fails.

Stat. Auth.: ORS 420A.025  
Stats. Implemented: ORS 417.010 - 417.080  
Hist.: OYA 1-2007, f. & cert. ef. 2-13-07; OYA 7-2011, f. 12-12-11, cert. ef. 12-14-11

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

**Rule Caption:** Addition of recreational immunity language to division 15 rules and redefining Express Check-In.

**Adm. Order No.:** PRD 7-2011

**Filed with Sec. of State:** 11-28-2011

**Certified to be Effective:** 11-28-11

**Notice Publication Date:** 5-1-2010

**Rules Amended:** 736-015-0010, 736-015-0020, 736-015-0026, 736-015-0030

**Subject:** Language is added to the division 15 rules which will: (1) provide users who are charged a fee the notice now required by law, and (2) protect the public interest in limiting exposure of the state

# ADMINISTRATIVE RULES

park system to claims that could be brought absent recreational immunity.

A minor housekeeping change is also included in this action, changing the term Express Check-In to Pre-Registration, which is the current terminology used by the reservation system.

**Rules Coordinator:** Vanessa DeMoe—(503) 986-0719

## 736-015-0010

### General Regulations

(1) The commission shall establish fees through rule to promote department financial self-sufficiency and based on the following criteria:

- (a) Prevailing rates for comparable facilities;
- (b) Day of week;
- (c) Season of year;
- (d) Amenities of the park area and site;
- (e) Marketing opportunities to encourage use and revenues.

(2) Unless posted otherwise, a person shall pay established rates prior to use.

(3) The director may establish rates and rental charges for services, facilities and products that are optional, nonessential or complement the basic services described in this division. The director shall establish rates that take into consideration comparable services by other providers and marketing opportunities to encourage use and revenues.

(4) Pursuant to ORS 105.672 to 105.696, fees charges under this division are for use of the assigned area or park facility of the state park land for camping, picnicking, or boating and not for any other recreational purpose or area of state park land. The immunities provided under ORS 105.682 apply to use of state park land for any other recreational purpose.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83; PR 10-1983(Temp), f. & ef. 12-28-83; PR 3-1984, f. & ef. 3-5-84; PR 11-1986, f. & ef. 7-9-86; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 1-1992, f. & cert. ef. 2-14-92; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 7-1994, f. & cert. ef. 7-11-94; PR 2-1995, f. & cert. ef. 1-23-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0098, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 7-2007, f. & cert. ef. 8-28-07; PRD 6-2010(Temp), f. & cert. ef. 4-15-10 thru 10-8-10; Administrative correction 10-26-10; PRD 7-2011, f. & cert. ef. 11-28-11

## 736-015-0020

### Overnight Rentals

The director may designate a Type I campsite rental schedule at selected high use campgrounds. All remaining campgrounds will be set at the Type II campsite rental schedule. The director is authorized by the commission to include transient lodging taxes in the nightly rental rate and to increase the rental rate to the nearest whole dollar. The department shall retain the additional revenue. Campsite Rental rates (per night per site before tax):

(1) Full Hookup Campsite: Provides campsite with individual water supply, electrical and sewage hookups, table, stove, and access to a restroom.

- (a) Type I: \$24.
- (b) Type II: \$20.

(2) Electrical Hookup Campsite: Provides campsite with individual water supply and electrical hookups, table, stove, and access to a restroom.

- (a) Type I: \$24.
- (b) Type II: \$20.

(3) Tent Campsite: Provides campsite with water supply nearby but does not have electricity or sewage hookup. Provides table, stove, and access to a restroom.

- (a) Type I: \$19.
- (b) Type II: \$17.

(4) Primitive Campsite: Provides campsite with table and stove; water and sanitary facilities may be some distance away. All primitive campsites: \$9.

(5) Yurt: Rustic units provide a temporary tent structure, covered deck, heat, lights and beds along with outdoor picnic facilities. Deluxe units add kitchen facilities, bathrooms and showers.

- (a) Rustic: \$36.
- (b) Deluxe: \$75.

(6) Cabin: Rustic units provide a hard-walled wooden structure, covered deck, heat, lights and beds along with outdoor picnic facilities. Totem units are primitive log units. Deluxe 1 units add kitchen facilities, bathrooms and showers. Deluxe 2 units add additional rooms.

- (a) Totem: \$24.
- (b) Rustic: \$39.

(c) Deluxe 1: \$75.

(d) Deluxe 2: \$85.

(7) Tepee: Tepee replica units vary in diameter from 18' to 26' and provide heat, lights and beds along with outdoor picnic facilities. All tepees: \$36.

(8) Wagon: Covered wagon replica units vary in size and provide heat, lights and beds along with outdoor picnic facilities. All wagons: \$36.

(9) Hiker/Boater/Bicyclist Campsite: Provides cleared area for campers without motor vehicles; water and sanitary facilities may be some distance away. All hiker/boater/bicyclist campsites: \$5 per camper per night.

(10) Extra Vehicle in Campground: An additional rental rate of \$5 per vehicle is charged when an extra vehicle is driven into the campground and remains overnight.

(11) Extra Motorcycle in Campground: If the initial campsite rental is to a person riding a motorcycle, and the first extra vehicle is a motorcycle, the second motorcycle will not be charged. Each additional motorcycle will be charged \$5 as an extra vehicle.

(12) Pre-Registration (where available): The department may allow a person with a reservation for individual tent, electrical or full hook-up campsites to expedite the check-in process by registering on-line prior to or upon arrival at the park area.

(13) Pursuant to ORS 105.672 to 105.696, overnight rental charges under this rule are for use of the assigned area or park facility of the state park land for camping and not for any other recreational purpose or area of state park land. The immunities provided under ORS 105.682 apply to use of state park land for any other recreational purpose.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121, 390.124 & HB 3673 (2010)

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23(Temp), f. 2-19-74; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 86(Temp), f. 7-21-77, ef. 7-25-77; 1 OTC 90, f. & ef. 9-26-77; 1 OTC 1-1978, f. & ef. 2-23-78; 1 OTC 4-1979, f. & ef. 2-9-79; 1 OTC 6-1979, f. & ef. 3-29-79; 1 OTC 8-1979 (Temp), f. & ef. 5-17-79; 1 OTC 14-1979(Temp), f. & ef. 6-21-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 1-1981(Temp), f. 1-8-81, ef. 1-12-81; PR 9-1981, f. & ef. 4-6-81; PR 14-1981, f. & ef. 10-23-81; PR 5-1983, f. & ef. 3-30-83; PR 3-1984, f. & ef. 3-5-84; PR 11-1986, f. & ef. 7-9-86; PR 2-1987, f. & ef. 3-27-87; PR 1-1988, f. & cert. ef. 3-25-88; PR 6-1989(Temp), f. 12-29-89, cert. ef. 1-8-90; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 1-1992, f. & cert. ef. 2-14-92; PR 16-1992, f. & cert. ef. 12-1-92; PR 2-1994, f. & cert. 2-9-94; PR 6-1995, f. & cert. ef. 7-14-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0100, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 2-2009, f. & cert. ef. 2-10-09; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 1-2010, f. & cert. ef. 1-5-10; PRD 6-2010(Temp), f. & cert. ef. 4-15-10 thru 10-8-10; Administrative correction 10-26-10; PRD 7-2011, f. & cert. ef. 11-28-11

## 736-015-0026

### Group Day Use

(1) At designated park areas, a person may reserve a group picnic area(s) by calling Reservations Northwest during normal business hours. The park manager will determine the maximum group size for each park facility.

(2) The department will charge group picnic rental rates to offset additional park administration and maintenance costs:

(a) Base rate (0–50 people) – \$50;

(b) Charges for persons in excess of the 50 person base rate will be \$1 per person

(3) The park manager may make advance arrangements with the group leader for parking, supervision, cleanup, checkout time, and other pertinent details.

(4) Upon arrival, the group leader will check in with the park manager who will direct the group to the reserved area.

(5) The group must have adult supervision at all times.

(6) Pursuant to ORS 105.672 to 105.696, group day use rental charges under this rule are for use of the assigned area or park facility of the state park land for picnicking and not for any other recreational purpose or area of state park land. The immunities provided under ORS 105.682 apply to use of state park land for any other recreational purpose.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121, 390.124 & HB 3673 (2010)

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 83(Temp), f. 5-19-77, ef. 6-1-77; 1 OTC 85, f. & ef. 7-20-77; 1 OTC 3-1979, f. & ef. 2-9-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1992, f. & cert. ef. 2-14-92; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0115, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 6-2010(Temp), f. & cert. ef. 4-15-10 thru 10-8-10; Administrative correction 10-26-10; PRD 7-2011, f. & cert. ef. 11-28-11

## 736-015-0030

### Day Use Parking Permit

(1) Purpose: Based on the department's goal to manage increased use of park areas, the director may require a motor vehicle day use parking per-

# ADMINISTRATIVE RULES

mit at selected park areas. This charge is a parking fee and not a charge for recreational purposes under ORS 105.672 to ORS 105.696. The immunities provided under ORS 105.682 apply to use of state park land for recreational purpose.

(2) General Regulations:

(a) Parking permits are to be clearly displayed through the windshield of motor vehicles with the expiration date visible;

(b) Persons with motorcycles or other motor vehicles, such as convertibles, where the permits could be subject to theft, may keep the permit with them and must show it to an enforcement officer or park employee upon request.

(3) Day Use Parking Permit Fees:

(a) Daily Motor Vehicle – \$5;

(b) 12-month Permit – \$30;

(c) 24-month Permit – \$50;

(4) The department may enter into a written agreement with privately owned commercial vendors and non-profit cooperative associations affiliated with the department under ORS 390.143 to sell 12-month and 24-month permits:

(a) The director shall establish a minimum allowable fee of \$1 for vendors who sell the 12-month and 24-month permits;

(b) Non-profit cooperative associations affiliated with the department may by agreement retain fees in excess of the minimum vendor fee for use in funding interpretive programs in park areas;

(c) The vendor's fee will be included in the price of the permit;

(d) Only a park employee may issue replacement permits in the event an original permit is lost, stolen, or mutilated.

(5) Daily Access Exceptions: The director may grant exceptions to the day-use permit requirement under the following circumstances:

(a) Emergency vehicles;

(b) Government vehicles on official business;

(c) Business and delivery vehicles on official business;

(d) A person who is currently a registered camper at a park area and clearly displays the overnight rental receipt;

(e) Park concessionaires and their employees;

(f) A person entering the park to engage in specially permitted non-recreation activities;

(g) Park volunteers on duty in the park;

(h) A person with a permit issued by another entity with which the department has a written agreement to honor their passes;

(i) Other persons as designated by the director.

(6) Park Areas Subject to Day-Use Fees: Park areas at which a day use fee shall be charged include: Fort Stevens State Park, Cape Lookout State Park, Ecola State Park, Nehalem Bay State Park, Honeyman Memorial State Park (West side), L.L. "Stub" Stewart Memorial State Park, Heceta Head Lighthouse, Shore Acres State Park, Milo McIver State Park, Viento State Park, Benson State Recreation Area, Dabney State Recreation Area, Historic Columbia River Highway State Trail, Mayer State Park, Rooster Rock State Park, Champoeg State Heritage Area, Detroit Lake State Recreation Area, Fall Creek State Recreation Area (Winberry), Silver Falls State Park, Jasper State Recreation Site, Mongold Day-use Area, Willamette Mission State Park, Tou Velle State Recreation Site, The Cove Palisades State Park, Tumalo State Park, Smith Rock State Park, Farewell Bend State Recreation Area.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & HB 3673 (2010)

Hist.: 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 7-2007, f. & cert. ef. 8-28-07; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 1-2010, f. & cert. ef. 1-5-10; PRD 5-2010, f. & cert. ef. 3-24-10; PRD 6-2010(Temp), f. & cert. ef. 4-15-10 thru 10-8-10; Administrative correction 10-26-10; PRD 7-2011, f. & cert. ef. 11-28-11

\*\*\*\*\*

## Psychiatric Security Review Board Chapter 859

**Rule Caption:** Establishes Exception for Petition Requirements for Persons Who Previously Received Judicial Relief for Firearm Bar.

**Adm. Order No.:** PSRB 3-2011

**Filed with Sec. of State:** 12-13-2011

**Certified to be Effective:** 12-13-11

**Notice Publication Date:** 8-1-2011

**Rules Amended:** 859-300-0050

**Rules Repealed:** 859-300-0050(T)

**Subject:** Oregon Laws 2009, Ch. 826 requires the PSRB to administer a hearings process for persons who are disqualified from trans-

porting, shipping, possessing, or receiving a firearm under federal and certain state laws. Prior to the passage of this legislation, persons previously civilly committed could seek judicial relief from state court to request that their state firearms privilege be restored. However, this judicial relief never restored their federal firearm privileges. On August 3, 2009, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) certified Oregon's PSRB Gun Relief Program as having authority to restore a person's federal firearm privilege. The purpose of this administrative rule is to streamline the petition process for those individuals who have previously been granted State relief who now seek to have their federal mental health prohibitor lifted.

**Rules Coordinator:** Mary Claire Buckley—(503) 229-5596

### 859-300-0050

#### Petition for Relief

(1) An individual who is barred from transporting, shipping, possessing, or receiving a firearm under federal law due to a State of Oregon mental health determination may petition for relief of the firearm bar to the PSRB for the limited purpose of having his or her federal gun rights restored as it pertains only to the mental health determination firearm disqualification.

(2) An individual who is barred from possessing or purchasing a firearm under ORS 166.250(1)(c)(D) or (E), or 166.470(1)(e) or (f), may petition for relief of the firearm bar to the PSRB for the purpose of having his or her state gun rights restored as it pertains only to the firearm disqualification as a result of either a commitment to the Oregon Health Authority or the Department of Human Services under ORS 426.130 or 427.290, or an order of a court under 426.130 after a finding of mental illness that the petitioner is prohibited from purchasing or possessing a firearm as a result of petitioner's mental illness.

(3) A petition for relief shall be made on forms developed by the PSRB, which shall be available on the PSRB's public website, e-mail, or through U.S. Mail. The petition for relief shall be submitted in its entirety before a hearing will be scheduled. In addition to the forms provided, the petitioner shall submit:

(a) A certified copy of all mental health records pertaining to the disqualifying mental health determination;

(b) A certified copy of all court records related to the circumstances surrounding the firearms disability. If the county courthouse is unable to locate petitioner's records, petitioner must obtain a letter from the courthouse records department stating that it is unable to locate the court records related to petitioner's mental health determination;

(c) A certified copy of petitioner's national criminal history, including juvenile adjudications;

(d) An independent forensic mental health assessment performed no more than 90 calendar days prior to submission of the petition for relief to the PSRB. This assessment may not be performed by petitioner's current or previous mental health provider. The assessment shall be performed by a licensed psychiatrist or psychologist. The assessment shall include, at a minimum, an opinion and a basis for that opinion, of petitioner's interpersonal violence and self-harm risk. If petitioner has previously been granted judicial gun relief under ORS 166.274, for his or her civil commitment mental health determination prior to August 3, 2009, this independent forensic mental health assessment is not required as a prerequisite for scheduling a hearing. Proof of judicial relief shall be submitted with the petition. This waiver does not bar the Board from later ordering an assessment if deemed appropriate under OAR 859-300-0160.

(4) In addition to the required forms and documents in subsection (3), the petitioner may submit additional information in support of the petition for relief including, but not limited to:

(a) A certified copy of all mental health records detailing the petitioner's psychiatric history.

(b) A certified copy of medical records from all of the petitioner's current and former mental health treatment providers, including alcohol/substance abuse providers if the petitioner is receiving or has received such treatment. The records may also include a letter from petitioner's current treating mental health practitioner, if any. The letter may contain the petitioner's current medical health diagnosis, a list of psychiatric medicines and dosage, if any, the petitioner is currently prescribed, history of compliance with the medication, and any other information the practitioner deems relevant to petitioner possessing a firearm.

(c) If petitioner is currently on probation/parole for a criminal offense, a letter from the petitioner's probation/parole officer providing a history of



# ADMINISTRATIVE RULES

petitioner's compliance with terms of probation/parole and any other relevant information he or she deems relevant to petitioner's risk for harm if granted a firearm.

(d) Written evidence of the petitioner's reputation, such as notarized letters of reference from current and past employers, family members or personal friends or other character evidence.

(5) In addition to submitting a petition and required documents to the PSRB, petitioner shall serve a copy of the petition and required documents on the Department of Human Services/Oregon Health Authority and the district attorney in the county in which the court made the mental health determination.

(6) The petitioner shall ensure that all required information accompanies the petition for relief at the time it is submitted to the PSRB and served on the Department of Human Services/Oregon Health Authority and the district attorney in the county in which the court made the mental health determination.

(7) Failure to provide truthful information in the petition and application materials shall result in denial of the petition.

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11; PSRB 2-2011(Temp), f. & cert. ef. 7-5-11 thru 12-27-11; PSRB 3-2011, f. & cert. ef. 12-13-11

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

**Rule Caption:** In the Matter of Revising Electric Service Reliability Rules to Reflect Current National Standards.

**Adm. Order No.:** PUC 12-2011

**Filed with Sec. of State:** 12-9-2011

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

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

**Rules Repealed:** 860-023-0080, 860-023-0090, 860-023-0100, 860-023-0110, 860-023-0120, 860-023-0130, 860-023-0140, 860-023-0150, 860-023-0160

**Subject:** On October 13, 2011, the Public Utility Commission of Oregon (Commission) adopted new electric service reliability rules to be effective January 1, 2012. The existing electric service reliability rules were left in place to govern until the new rules become effective. By Order No. 1-491, the Commission repealed effective January 1, 2012, the rules that were left in place to govern until the new rules became effective.

**Rules Coordinator:** Diane Davis—(503) 378-4372

\*\*\*\*\*  
**Teacher Standards and Practices Commission**  
**Chapter 584**

**Rule Caption:** Adopts new License for Conditional Assignment (LCA).

**Adm. Order No.:** TSPC 8-2011

**Filed with Sec. of State:** 12-15-2011

**Certified to be Effective:** 1-15-12

**Notice Publication Date:** 9-1-2011

**Rules Adopted:** 584-060-0250

**Subject:** 584-060-0250 *License for Conditional Assignment* – New license adopted to replace the existing 584-036-0081, Conditional Assignment Permit.

**Rules Coordinator:** Lynn Beaton—(503) 373-0981

**584-060-0250**

**License for Conditional Assignment**

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a school district, registered charter school or registered private school in Oregon may request a for Conditional Assignment (LCA) for any educator holding an Initial, Continuing, Basic, Standard or Five-year License. The purpose of an LCA is to allow a school district to request an educator be misassigned to teach an out-of-field endorsement while the educator completes requirements necessary either to add the same endorsement to the underlying license or to obtain a new license type.

(2) Use of a License for Conditional Assignment by a charter school or private school is voluntary. However, an LCA may be necessary for an educator teaching out of field in order for the educator to use that experi-

ence for addition of a new subject-matter endorsement or grade authorization area.

(3) The LCA is required when teaching out-of-field under any of the following circumstances:

(a) Teaching assignments for more than 10 hours weekly in one subject-matter area without the appropriate subject-matter endorsement;

(b) Assignment at any grade level not held on the underlying license;  
**EXAMPLE:** A high school authorized teacher teaching in grade 4 would require an LCA for any amount of time teaching outside of her grade level.

**EXAMPLE:** A physical education teacher without a health endorsement teaching health three periods of the day would require a LCA for health. If only teaching two periods a day; that would fall under the 10 hours per week threshold.

(c) Teaching in more than one unendorsed subject-matter endorsement area; or

**EXAMPLE:** If the physical education teacher above was teaching one period of health and one period of math; then an LCA would be required for both areas regardless of the 10 hours per week rule. The 10 hours per week rule applies to one subject only.

(d) Moving from one license to another;

**EXAMPLE:** A teacher moving to administration; an administrator moving to teaching (if educator does not hold a valid teaching license); a teacher moving to school psychology.

(4) Duration of the LCA: The LCA is a license, but it is unique in that it provides temporary conditional approval to teach out-of-field under the following conditions:

(a) One year for endorsements requiring only a test and experience to be added to a teaching license.

(b) Three years for endorsements requiring coursework exceeding nine quarter or six semester hours through an academic program.

(c) The LCA will not be "back dated." Time spent on assignments where the district failed to request the LCA will be deducted from the allowable LCA total (either one year or three years). Violation of this provision may be grounds for disciplinary action by the commission (see subsection (8) below.)

(d) The LCA is not renewable and is not eligible for a 120 day extension beyond its expiration date.

(e) The LCA is not a stand-alone license. An underlying license must be kept current in order for the LCA to remain active. The LCA will not be issued for a duration that exceeds the expiration date of the underlying license. In cases where there is a lapse in the underlying license, the LCA may be re-activated for a time as determined by the Executive Director upon reinstatement of the underlying license.

(5) The district, charter school or private school applying for an LCA is assumed to have informed the educator for which the LCA is being requested. Failure to inform the educator may result in an invalid LCA upon a finding by the Commission that the educator did not grant the district, charter school or private school permission to add the LCA to the educator's license.

(6) Licenses not eligible for an LCA include, but are not limited to the following provisional licenses:

- (a) Any Restricted Transitional
- (b) Limited Teaching License;
- (c) American Indian Language;
- (d) Teaching Associate License;
- (e) Career and Technical Education Teaching License;
- (f) NCLB Alternative Route License;
- (g) Substitute Teaching License
- (h) Restricted Substitute Teaching License; or
- (i) Exceptional Administrator License.

(7) Districts and educators who violate the provisions of this rule may be subject to discipline pursuant to OAR 584-020-0040 or forfeiture of state school funds pursuant to ORS 342.173 and OAR 584-050-0060 to 584-050-0070.

(8) Other Special LCA Limitations:

(a) An administrator, school counselor, or school psychologist who has never held a non-provisional teaching license in any state may not be issued an LCA to teach.

(b) An educator seeking conditional assignment as an administrator must hold a master's degree in education to be eligible for the LCA.

(c) An educator seeking conditional assignment in either school counseling or school psychology must hold at least a bachelor's degree or master's degree in the respective field of counseling or psychology.

(d) Educators holding a Basic or Standard Teaching License must only seek a LCA for school counseling if the assignment exceeds .50 FTE.

(e) An educator must have completed some coursework in an accredited special education program or have had some other significant experience related to special education as determined by the Executive Director to be eligible for an LCA in Special Education.

# ADMINISTRATIVE RULES

(9) The conditional assignment permit is restricted to use within the district, charter school or private school that has applied for it. However, a new district, charter school or private school may request the same type of conditional assignment so long as there is time remaining since the date the LCA was first issued.

(10) A district, charter school or private school must:

(a) Apply for an LCA by October 31 for the fall term or otherwise within two weeks after the assignment has begun; and

(b) Agree to provide professional assistance specific to the assignment for the educator during the first year of the conditional assignment.

(11) LCAs submitted in error by the district, charter school or private school may be removed upon contacting TSPC in writing and indicating the nature of the error.

(12) An LCA cannot be renewed or later re-issued for the same authorization level or specialty endorsement approved.

(13) After an LCA has expired, the educator must have completed all requirements necessary to add the appropriate endorsement, grade-level authorization or new licensure program in order to continue working in the area in which the educator is not properly licensed. Continuing to work as an educator on an expired LCA is a violation of licensure law and is unauthorized. The license-holder or the assigning administrator or both may be subject to sanctions by the commission pursuant to OAR 584-020-0040.

(14) Districts, charter schools or private schools and co-applicant educators may jointly petition the Executive Director for a hardship extension for up to one year under the following conditions:

(a) The district, charter school or private school and educator must explain hardship and the exact circumstances that have prevented the educator from obtaining the endorsement, authorization level or license needed to remain in the conditional assignment; and

(b) The educator has made significant progress toward completing the requirements which includes but is not limited to:

(A) Having taken any applicable subject-matter tests at least two times; or

(B) Has completed at least half of the coursework for any program required to continue to teach the subject; or

(C) Has taken steps toward completing an alternative assessment as part of meeting the LCA requirements; and

(c) The educator and the district, charter school or private school has a plan for completing the requirements for the assignment within the next calendar year.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120–342.143, 342.153, 342.165, 342.223–342.232

Hist.: TSPC 8-2011, f. 12-15-11, cert. ef. 1-15-12

\*\*\*\*\*

## Veterinary Medical Examining Board Chapter 875

**Rule Caption:** Reestablishes Board's authority to issue Certified Euthanasia Technician licenses.

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

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

**Certified to be Effective:** 12-12-11 thru 6-9-12

**Notice Publication Date:**

**Rules Adopted:** 875-040-0005

**Rules Amended:** 875-005-0005

**Subject:** 875-005-0005(19) Amends definition of 'Certified Euthanasia Technician'.

875-040-0005 Reestablishes Board's authority to issue Certified Euthanasia Licenses.

**Rules Coordinator:** Lori V. Makinen—(971) 673-0224

### 875-005-0005

#### Definitions

(1) "Agency": Any animal control department, humane society, or facility which contracts with a public agency or arranges to provide animal sheltering services and is certified by the Euthanasia Task Force and registered by the State Board of Pharmacy.

(2) "Board": The Oregon State Veterinary Medical Examining Board.

(3) "Board of Pharmacy": The Oregon State Board of Pharmacy.

(4) "Certified Euthanasia Technician or "CET". A person who is recognized by an agency as a paid or volunteer staff member and is instructed and certified by the Euthanasia Task Force pursuant to ORS 475.190(4). Any person who was trained prior to October 15, 1983 in euthanasia methods, in the course provided by Multnomah County Animal Control and the

Oregon Humane Society, and who has been subsequently certified by the Euthanasia Task Force.

(5) "Comprehensive": Pertaining to all animal species.

(6) "Conviction of Cruelty to Animals": for purposes of ORS 686.130(11) is defined to include but not limited to animal abuse in the first or second degree, aggravated animal abuse in the first degree, and animal neglect in the first degree.

(7) "Client": An entity, person, group or corporation that has entered into an agreement with a veterinarian for the purpose of obtaining veterinary medical services.

(8) "Designated Agent": A CET who is responsible for the withdrawal and return of sodium pentobarbital from the drug storage cabinet.

(9) "Good Standing and Repute": As used in ORS 686.045(1), means:

(a) A university accredited by the American Veterinary Medical Association (AVMA); or

(b) A foreign school listed by the AVMA whose graduates are eligible to apply for a certificate through the Educational Commission for Foreign Veterinary Graduates (ECFVG) committee of the AVMA, or other programs approved by the Board.

(10) "Herd or Flock Animal": Animals managed as a group only for economic gain including but not limited to breeding, sale, show, food production, or racing.

(11) "Lethal Drug": Sodium pentobarbital or any other drug approved by the Task Force, the Board and the Board of Pharmacy, and used for the purpose of humanely euthanizing injured, sick, homeless or unwanted domestic pets and other animals.

(12) "Mobile Clinic": A vehicle, including but not limited to a camper, motor home, trailer, or mobile home, used as a veterinary medical facility. A mobile clinic is not required for house calls or farm calls.

(13) Surgery Procedure:

(a) "Aseptic Surgery": Aseptic surgical technique exists when everything that comes in contact with the surgical field is sterile and precautions are taken to ensure sterility during the procedure.

(b) "Antiseptic Surgery": Antiseptic surgical technique exists when care is taken to avoid bacterial contamination.

(c) Any injection or implant of a small permanent identification device is considered surgery.

(14) "Supervision" means that each act shall be performed by any employee or volunteer in the practice only after receiving specific directions from a licensed veterinarian.

(a) "Direct" supervision under this provision means both the certified veterinary technician and the licensed veterinarian are on the premises at the same time;

(b) "Immediate" supervision under this provision means that the supervising veterinarian is in the immediate vicinity of where the work is being performed and is actively engaged in supervising this work throughout the entire period it is being performed;

(15) "Task Force": The Euthanasia Task Force appointed by the Board pursuant to ORS 686.510 consisting of no fewer than five members, and who are either certified euthanasia technicians or licensed veterinarians.

(16) "Veterinary Client Patient Relationship (VCPR)": Except where the patient is a wild or feral animal or its owner is unknown; a VCPR shall exist when the following conditions exist: The veterinarian must have sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has seen the animal within the last year and is personally acquainted with the care of the animal by virtue of a physical examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept.

(17) "Veterinary Medical Facility": Any premise, unit, structure or vehicle where any animal is received and/or confined and veterinary medicine is practiced, except when used for the practice of veterinary medicine pursuant to an exemption under ORS 686.040.

(18) "Veterinary Technician": a person licensed by the Board as a Certified Veterinary Technician.

(19) "Certified Euthanasia Technician or "CET". A person who is employed by or a volunteer at a humane society or animal control agency and is certified by the Board pursuant to ORS 475.190(4). Any person who is trained prior to October 15, 1983 in euthanasia methods, in the course provided by Multnomah County Animal Control and the Oregon Humane Society, and who has been subsequently certified by the Board.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 475.190, 609.405, 686.130, 686.255 & 686.510

Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 2-2006, f. & cert. ef. 5-11-06; VMEB 1-2008, f. & cert. ef. 2-11-08; VMEB 6-2008, f. & cert. ef. 5-21-08; VMEB 7-2008, f. & cert. ef. 7-22-08; VMEB 5-2011(Temp), f. & cert. ef. 12-12-11 thru 6-9-12

# ADMINISTRATIVE RULES

---

## 875-040-0005

### Certified Euthanasia Technicians

(1) In order for a person to become a Certified Euthanasia Technician (CET), the person must:

(a) Be an employee or a volunteer at a humane society, animal control agency or animal holding facility;

(b) Complete Board-approved training;

(c) Pay an annual certification fee of \$25.00.

(2) Applicability of 875-005-0005(19) and 875-040-0005(1)(a) & (b) are retroactive to February 28, 2011 and any CET licensed as of February 28, 2011 is relicensed as a CET retroactively through December 31, 2011.

Stat. Auth.: ORS 686, 475.190(4)

Stats. Implemented: ORS 686.110 - 170, 475

Hist.: VMEB 5-2011(Temp), f. & cert. ef. 12-12-11 thru 6-9-12



## OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
111-010-0015	12-14-2011	Amend	1-1-2012	137-048-0220	1-1-2012	Amend	1-1-2012
111-010-0015(T)	12-14-2011	Repeal	1-1-2012	137-048-0230	1-1-2012	Amend	1-1-2012
111-040-0001	12-14-2011	Amend	1-1-2012	137-048-0240	1-1-2012	Amend	1-1-2012
111-040-0001(T)	12-14-2011	Repeal	1-1-2012	137-048-0250	1-1-2012	Amend	1-1-2012
111-040-0005	12-14-2011	Amend	1-1-2012	137-048-0260	1-1-2012	Amend	1-1-2012
111-040-0005(T)	12-14-2011	Repeal	1-1-2012	137-048-0270	1-1-2012	Adopt	1-1-2012
111-040-0015	12-14-2011	Amend	1-1-2012	137-048-0300	1-1-2012	Amend	1-1-2012
111-040-0015(T)	12-14-2011	Repeal	1-1-2012	137-048-0310	1-1-2012	Amend	1-1-2012
111-040-0025	12-14-2011	Amend	1-1-2012	137-048-0320	1-1-2012	Amend	1-1-2012
111-040-0025(T)	12-14-2011	Repeal	1-1-2012	137-049-0380	1-1-2012	Amend	1-1-2012
111-040-0040	12-14-2011	Amend	1-1-2012	137-049-0650	1-1-2012	Amend	1-1-2012
111-040-0040(T)	12-14-2011	Repeal	1-1-2012	137-049-0860	1-1-2012	Amend	1-1-2012
111-050-0015	12-14-2011	Amend	1-1-2012	137-055-1140	12-5-2011	Amend(T)	1-1-2012
111-050-0015(T)	12-14-2011	Repeal	1-1-2012	137-055-1145	12-5-2011	Suspend	1-1-2012
111-050-0025	12-14-2011	Amend	1-1-2012	141-110-0080	12-13-2011	Amend	1-1-2012
111-050-0025(T)	12-14-2011	Repeal	1-1-2012	150-315.HB 3672	11-29-2011	Adopt(T)	1-1-2012
111-050-0030	12-14-2011	Amend	1-1-2012	150-315.HB 3672(T)	11-29-2011	Suspend	1-1-2012
111-050-0030(T)	12-14-2011	Repeal	1-1-2012	161-002-0000	11-17-2011	Amend	1-1-2012
111-050-0045	12-14-2011	Amend	1-1-2012	161-006-0000	11-17-2011	Amend	1-1-2012
111-050-0045(T)	12-14-2011	Repeal	1-1-2012	161-006-0025	11-17-2011	Amend	1-1-2012
111-050-0050	12-14-2011	Amend	1-1-2012	161-006-0025(T)	11-17-2011	Repeal	1-1-2012
111-050-0050(T)	12-14-2011	Repeal	1-1-2012	161-006-0160	11-17-2011	Amend	1-1-2012
111-080-0005	12-14-2011	Amend	1-1-2012	161-006-0175	11-17-2011	Amend	1-1-2012
111-080-0005(T)	12-14-2011	Repeal	1-1-2012	161-008-0040	11-17-2011	Amend	1-1-2012
123-011-0035	12-8-2011	Amend(T)	1-1-2012	161-010-0020	11-17-2011	Amend	1-1-2012
123-011-0045	12-8-2011	Amend(T)	1-1-2012	161-010-0025	11-17-2011	Amend	1-1-2012
123-021-0000	12-8-2011	Amend(T)	1-1-2012	161-010-0035	11-17-2011	Amend	1-1-2012
123-021-0010	12-8-2011	Amend(T)	1-1-2012	161-010-0045	11-17-2011	Amend	1-1-2012
123-021-0015	12-8-2011	Amend(T)	1-1-2012	161-010-0085	11-17-2011	Amend	1-1-2012
123-021-0020	12-8-2011	Amend(T)	1-1-2012	161-020-0015	11-17-2011	Amend	1-1-2012
123-021-0040	12-8-2011	Amend(T)	1-1-2012	161-020-0045	11-17-2011	Amend	1-1-2012
123-021-0080	12-8-2011	Amend(T)	1-1-2012	161-020-0055	11-17-2011	Amend	1-1-2012
123-021-0090	12-8-2011	Amend(T)	1-1-2012	161-020-0140	11-17-2011	Amend	1-1-2012
123-021-0110	12-8-2011	Amend(T)	1-1-2012	161-020-0150	11-17-2011	Amend	1-1-2012
123-021-0130	12-8-2011	Amend(T)	1-1-2012	161-025-0060	11-17-2011	Amend	1-1-2012
137-045-0030	1-1-2012	Amend	1-1-2012	161-030-0000	1-1-2012	Amend	1-1-2012
137-045-0090	1-1-2012	Amend	1-1-2012	177-052-0000	12-1-2011	Adopt	1-1-2012
137-046-0110	1-1-2012	Amend	1-1-2012	177-052-0000(T)	12-1-2011	Repeal	1-1-2012
137-046-0300	1-1-2012	Amend	1-1-2012	177-052-0010	12-1-2011	Adopt	1-1-2012
137-047-0257	1-1-2012	Amend	1-1-2012	177-052-0010(T)	12-1-2011	Repeal	1-1-2012
137-047-0260	1-1-2012	Amend	1-1-2012	177-052-0020	12-1-2011	Adopt	1-1-2012
137-047-0261	1-1-2012	Amend	1-1-2012	177-052-0020(T)	12-1-2011	Repeal	1-1-2012
137-047-0262	1-1-2012	Repeal	1-1-2012	177-052-0030	12-1-2011	Adopt	1-1-2012
137-047-0263	1-1-2012	Repeal	1-1-2012	177-052-0030(T)	12-1-2011	Repeal	1-1-2012
137-047-0310	1-1-2012	Amend	1-1-2012	177-052-0040	12-1-2011	Adopt	1-1-2012
137-047-0430	1-1-2012	Amend	1-1-2012	177-052-0040(T)	12-1-2011	Repeal	1-1-2012
137-047-0460	1-1-2012	Amend	1-1-2012	177-052-0050	12-1-2011	Adopt	1-1-2012
137-047-0600	1-1-2012	Amend	1-1-2012	177-052-0050(T)	12-1-2011	Repeal	1-1-2012
137-047-0620	1-1-2012	Amend	1-1-2012	177-052-0060	12-1-2011	Adopt	1-1-2012
137-047-0800	1-1-2012	Amend	1-1-2012	177-052-0060(T)	12-1-2011	Repeal	1-1-2012
137-048-0100	1-1-2012	Amend	1-1-2012	177-052-0070	12-1-2011	Adopt	1-1-2012
137-048-0110	1-1-2012	Amend	1-1-2012	177-052-0070(T)	12-1-2011	Repeal	1-1-2012
137-048-0120	1-1-2012	Amend	1-1-2012	177-200-0020	12-1-2011	Amend	1-1-2012
137-048-0130	1-1-2012	Amend	1-1-2012	177-200-0020(T)	12-1-2011	Repeal	1-1-2012
137-048-0200	1-1-2012	Amend	1-1-2012	177-200-0032	12-1-2011	Amend	1-1-2012
137-048-0210	1-1-2012	Amend	1-1-2012	177-200-0032(T)	12-1-2011	Repeal	1-1-2012

## OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
250-020-0280	12-1-2011	Amend(T)	1-1-2012	291-180-0465	12-7-2011	Repeal	1-1-2012
255-032-0035	11-30-2011	Amend	1-1-2012	291-180-0475	12-7-2011	Repeal	1-1-2012
255-032-0037	11-30-2011	Adopt	1-1-2012	291-180-0485	12-7-2011	Repeal	1-1-2012
257-010-0060	12-15-2011	Adopt(T)	1-1-2012	291-180-0495	12-7-2011	Repeal	1-1-2012
259-008-0069	11-28-2011	Amend(T)	1-1-2012	291-180-0505	12-7-2011	Repeal	1-1-2012
291-024-0081	11-17-2011	Adopt(T)	1-1-2012	291-180-0515	12-7-2011	Repeal	1-1-2012
291-105-0005	12-7-2011	Amend	1-1-2012	291-180-0525	12-7-2011	Repeal	1-1-2012
291-105-0010	12-7-2011	Amend	1-1-2012	291-180-0535	12-7-2011	Repeal	1-1-2012
291-105-0013	12-7-2011	Amend	1-1-2012	291-180-0545	12-7-2011	Repeal	1-1-2012
291-105-0015	12-7-2011	Amend	1-1-2012	291-180-0555	12-7-2011	Repeal	1-1-2012
291-105-0021	12-7-2011	Amend	1-1-2012	291-180-0565	12-7-2011	Repeal	1-1-2012
291-105-0026	12-7-2011	Amend	1-1-2012	291-180-0575	12-7-2011	Repeal	1-1-2012
291-105-0028	12-7-2011	Amend	1-1-2012	291-180-0585	12-7-2011	Repeal	1-1-2012
291-105-0031	12-7-2011	Amend	1-1-2012	291-180-0595	12-7-2011	Repeal	1-1-2012
291-105-0036	12-7-2011	Amend	1-1-2012	291-180-0605	12-7-2011	Repeal	1-1-2012
291-105-0041	12-7-2011	Amend	1-1-2012	291-180-0615	12-7-2011	Repeal	1-1-2012
291-105-0046	12-7-2011	Amend	1-1-2012	291-180-0625	12-7-2011	Repeal	1-1-2012
291-105-0066	12-7-2011	Amend	1-1-2012	291-180-0635	12-7-2011	Repeal	1-1-2012
291-105-0069	12-7-2011	Amend	1-1-2012	291-180-0645	12-7-2011	Repeal	1-1-2012
291-105-0081	12-7-2011	Amend	1-1-2012	291-180-0655	12-7-2011	Repeal	1-1-2012
291-105-0100	12-7-2011	Amend	1-1-2012	291-180-0665	12-7-2011	Repeal	1-1-2012
291-180-0115	12-7-2011	Repeal	1-1-2012	309-032-0175	11-22-2011	Suspend	1-1-2012
291-180-0125	12-7-2011	Repeal	1-1-2012	309-032-0180	11-22-2011	Suspend	1-1-2012
291-180-0135	12-7-2011	Repeal	1-1-2012	309-032-0185	11-22-2011	Suspend	1-1-2012
291-180-0145	12-7-2011	Repeal	1-1-2012	309-032-0190	11-22-2011	Suspend	1-1-2012
291-180-0155	12-7-2011	Repeal	1-1-2012	309-032-0195	11-22-2011	Suspend	1-1-2012
291-180-0165	12-7-2011	Repeal	1-1-2012	309-032-0200	11-22-2011	Suspend	1-1-2012
291-180-0175	12-7-2011	Repeal	1-1-2012	309-032-0205	11-22-2011	Suspend	1-1-2012
291-180-0185	12-7-2011	Repeal	1-1-2012	309-032-0210	11-22-2011	Suspend	1-1-2012
291-180-0195	12-7-2011	Repeal	1-1-2012	309-032-0301	11-22-2011	Adopt(T)	1-1-2012
291-180-0205	12-7-2011	Repeal	1-1-2012	309-032-0311	11-22-2011	Adopt(T)	1-1-2012
291-180-0215	12-7-2011	Repeal	1-1-2012	309-032-0321	11-22-2011	Adopt(T)	1-1-2012
291-180-0225	12-7-2011	Repeal	1-1-2012	309-032-0331	11-22-2011	Adopt(T)	1-1-2012
291-180-0235	12-7-2011	Repeal	1-1-2012	309-032-0341	11-22-2011	Adopt(T)	1-1-2012
291-180-0245	12-7-2011	Repeal	1-1-2012	309-032-0351	11-22-2011	Adopt(T)	1-1-2012
291-180-0252	12-7-2011	Adopt	1-1-2012	309-035-0100	12-5-2011	Amend(T)	1-1-2012
291-180-0255	12-7-2011	Repeal	1-1-2012	309-035-0105	12-5-2011	Amend(T)	1-1-2012
291-180-0262	12-7-2011	Adopt	1-1-2012	309-035-0250	12-5-2011	Amend(T)	1-1-2012
291-180-0285	12-7-2011	Repeal	1-1-2012	309-035-0260	12-5-2011	Amend(T)	1-1-2012
291-180-0295	12-7-2011	Repeal	1-1-2012	309-040-0300	12-5-2011	Amend(T)	1-1-2012
291-180-0305	12-7-2011	Repeal	1-1-2012	309-040-0305	12-5-2011	Amend(T)	1-1-2012
291-180-0315	12-7-2011	Repeal	1-1-2012	330-090-0133	11-30-2011	Amend	1-1-2012
291-180-0325	12-7-2011	Repeal	1-1-2012	330-090-0160	11-30-2011	Adopt	1-1-2012
291-180-0335	12-7-2011	Repeal	1-1-2012	330-180-0010	11-22-2011	Adopt	1-1-2012
291-180-0345	12-7-2011	Repeal	1-1-2012	330-180-0020	11-22-2011	Adopt	1-1-2012
291-180-0355	12-7-2011	Repeal	1-1-2012	330-180-0030	11-22-2011	Adopt	1-1-2012
291-180-0365	12-7-2011	Repeal	1-1-2012	330-180-0040	11-22-2011	Adopt	1-1-2012
291-180-0375	12-7-2011	Repeal	1-1-2012	330-180-0050	11-22-2011	Adopt	1-1-2012
291-180-0385	12-7-2011	Repeal	1-1-2012	330-180-0060	11-22-2011	Adopt	1-1-2012
291-180-0395	12-7-2011	Repeal	1-1-2012	330-180-0070	11-22-2011	Adopt	1-1-2012
291-180-0405	12-7-2011	Repeal	1-1-2012	331-705-0072	11-22-2011	Adopt(T)	1-1-2012
291-180-0415	12-7-2011	Repeal	1-1-2012	333-019-0041	12-14-2011	Amend	1-1-2012
291-180-0425	12-7-2011	Repeal	1-1-2012	333-019-0042	12-14-2011	Adopt	1-1-2012
291-180-0435	12-7-2011	Repeal	1-1-2012	334-001-0000	1-1-2012	Amend	1-1-2012
291-180-0445	12-7-2011	Repeal	1-1-2012	334-001-0005	1-1-2012	Amend	1-1-2012
291-180-0455	12-7-2011	Repeal	1-1-2012	334-001-0020	1-1-2012	Amend	1-1-2012

## OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
334-001-0025	1-1-2012	Adopt	1-1-2012	410-120-1510	1-1-2012	Amend	1-1-2012
334-001-0028	1-1-2012	Adopt	1-1-2012	410-120-1920	1-1-2012	Amend	1-1-2012
334-001-0032	1-1-2012	Adopt	1-1-2012	410-120-1960	1-1-2012	Amend	1-1-2012
334-001-0035	1-1-2012	Repeal	1-1-2012	410-125-0045	1-1-2012	Amend	1-1-2012
334-001-0036	1-1-2012	Adopt	1-1-2012	410-125-0047	1-1-2012	Amend	1-1-2012
334-001-0060	1-1-2012	Amend	1-1-2012	410-125-0080	1-1-2012	Amend	1-1-2012
334-010-0005	1-1-2012	Amend	1-1-2012	410-125-0085	1-1-2012	Amend	1-1-2012
334-010-0008	1-1-2012	Amend	1-1-2012	410-125-0140	1-1-2012	Amend	1-1-2012
334-010-0009	1-1-2012	Adopt	1-1-2012	410-125-0220	1-1-2012	Amend	1-1-2012
334-010-0010	1-1-2012	Amend	1-1-2012	410-127-0060	1-1-2012	Amend	1-1-2012
334-010-0012	1-1-2012	Amend	1-1-2012	410-131-0040	1-1-2012	Amend	1-1-2012
334-010-0015	1-1-2012	Amend	1-1-2012	410-131-0060	1-1-2012	Repeal	1-1-2012
334-010-0017	1-1-2012	Amend	1-1-2012	410-131-0080	1-1-2012	Amend	1-1-2012
334-010-0018	1-1-2012	Adopt	1-1-2012	410-131-0100	1-1-2012	Amend	1-1-2012
334-010-0025	1-1-2012	Amend	1-1-2012	410-131-0120	1-1-2012	Amend	1-1-2012
334-010-0027	1-1-2012	Adopt	1-1-2012	410-131-0140	1-1-2012	Repeal	1-1-2012
334-010-0033	1-1-2012	Amend	1-1-2012	410-131-0160	1-1-2012	Amend	1-1-2012
334-010-0046	1-1-2012	Amend	1-1-2012	410-131-0180	1-1-2012	Repeal	1-1-2012
334-010-0050	1-1-2012	Amend	1-1-2012	410-131-0200	1-1-2012	Repeal	1-1-2012
334-020-0015	1-1-2012	Amend	1-1-2012	410-131-0270	1-1-2012	Repeal	1-1-2012
334-030-0001	1-1-2012	Amend	1-1-2012	410-131-0275	1-1-2012	Repeal	1-1-2012
334-030-0005	1-1-2012	Amend	1-1-2012	410-131-0280	1-1-2012	Repeal	1-1-2012
334-040-0001	1-1-2012	Amend	1-1-2012	410-140-0080	12-6-2011	Amend	1-1-2012
334-040-0010	1-1-2012	Amend	1-1-2012	410-140-0260	12-6-2011	Amend	1-1-2012
340-045-0100	11-18-2011	Amend	1-1-2012	410-140-0400	12-6-2011	Amend	1-1-2012
407-045-0250	12-5-2011	Amend	1-1-2012	410-141-0070	11-21-2011	Amend(T)	1-1-2012
407-045-0260	12-5-2011	Amend	1-1-2012	410-141-0080	1-1-2012	Amend(T)	1-1-2012
407-045-0280	12-5-2011	Amend	1-1-2012	410-142-0020	1-1-2012	Amend	1-1-2012
407-045-0290	12-5-2011	Amend	1-1-2012	410-142-0040	1-1-2012	Amend	1-1-2012
407-045-0320	12-5-2011	Amend	1-1-2012	410-148-0060	1-1-2012	Amend	1-1-2012
407-045-0400	12-1-2011	Amend	1-1-2012	411-360-0130	12-1-2011	Amend(T)	1-1-2012
407-045-0400(T)	12-1-2011	Repeal	1-1-2012	411-360-0170	12-1-2011	Amend(T)	1-1-2012
407-045-0410	12-1-2011	Repeal	1-1-2012	411-360-0190	12-1-2011	Amend(T)	1-1-2012
407-045-0420	12-1-2011	Repeal	1-1-2012	416-115-0000	12-14-2011	Repeal	1-1-2012
407-045-0430	12-1-2011	Repeal	1-1-2012	416-115-0010	12-14-2011	Amend	1-1-2012
407-045-0440	12-1-2011	Repeal	1-1-2012	416-115-0020	12-14-2011	Amend	1-1-2012
407-045-0450	12-1-2011	Repeal	1-1-2012	416-115-0025	12-14-2011	Adopt	1-1-2012
407-045-0460	12-1-2011	Repeal	1-1-2012	416-115-0030	12-14-2011	Amend	1-1-2012
407-045-0470	12-1-2011	Repeal	1-1-2012	416-115-0040	12-14-2011	Repeal	1-1-2012
407-045-0480	12-1-2011	Repeal	1-1-2012	416-115-0050	12-14-2011	Repeal	1-1-2012
407-045-0490	12-1-2011	Repeal	1-1-2012	416-115-0060	12-14-2011	Repeal	1-1-2012
407-045-0500	12-1-2011	Repeal	1-1-2012	416-115-0070	12-14-2011	Repeal	1-1-2012
407-045-0510	12-1-2011	Repeal	1-1-2012	416-115-0080	12-14-2011	Repeal	1-1-2012
407-045-0520	12-1-2011	Repeal	1-1-2012	416-115-0090	12-14-2011	Repeal	1-1-2012
409-050-0110	12-1-2011	Amend	1-1-2012	416-115-0100	12-14-2011	Repeal	1-1-2012
409-050-0110(T)	12-1-2011	Repeal	1-1-2012	416-115-0110	12-14-2011	Repeal	1-1-2012
409-050-0120	12-1-2011	Amend	1-1-2012	416-115-0120	12-14-2011	Repeal	1-1-2012
409-050-0120(T)	12-1-2011	Repeal	1-1-2012	416-115-0130	12-14-2011	Repeal	1-1-2012
410-120-0000	1-1-2012	Amend	1-1-2012	416-115-0140	12-14-2011	Repeal	1-1-2012
410-120-0006	1-1-2012	Amend	1-1-2012	416-115-0150	12-14-2011	Repeal	1-1-2012
410-120-0006(T)	1-1-2012	Repeal	1-1-2012	416-115-0160	12-14-2011	Repeal	1-1-2012
410-120-1160	1-1-2012	Amend	1-1-2012	416-115-0170	12-14-2011	Repeal	1-1-2012
410-120-1200	1-1-2012	Amend	1-1-2012	416-115-0180	12-14-2011	Repeal	1-1-2012
410-120-1210	1-1-2012	Amend	1-1-2012	416-115-0190	12-14-2011	Repeal	1-1-2012
410-120-1340	1-1-2012	Amend	1-1-2012	416-115-0200	12-14-2011	Repeal	1-1-2012
410-120-1340(T)	1-1-2012	Repeal	1-1-2012	416-115-0210	12-14-2011	Repeal	1-1-2012



## OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
416-115-0220	12-14-2011	Repeal	1-1-2012	437-004-1110	12-8-2011	Amend	1-1-2012
416-115-0230	12-14-2011	Repeal	1-1-2012	437-005-0001	12-8-2011	Amend	1-1-2012
416-115-0240	12-14-2011	Repeal	1-1-2012	437-005-0002	12-8-2011	Amend	1-1-2012
416-115-0250	12-14-2011	Repeal	1-1-2012	437-005-0003	12-8-2011	Amend	1-1-2012
416-115-0260	12-14-2011	Repeal	1-1-2012	441-505-3046	12-15-2011	Amend(T)	1-1-2012
416-115-0270	12-14-2011	Repeal	1-1-2012	441-710-0540	12-15-2011	Amend(T)	1-1-2012
416-115-0280	12-14-2011	Repeal	1-1-2012	441-730-0246	12-15-2011	Amend(T)	1-1-2012
436-009-0080	1-1-2012	Amend	1-1-2012	441-830-0010	11-23-2011	Repeal	1-1-2012
436-010-0210	1-1-2012	Amend	1-1-2012	441-830-0015	11-23-2011	Repeal	1-1-2012
436-010-0230	1-1-2012	Amend	1-1-2012	441-830-0020	11-23-2011	Repeal	1-1-2012
436-010-0280	1-1-2012	Amend	1-1-2012	441-830-0030	11-23-2011	Repeal	1-1-2012
436-015-0008	1-1-2012	Amend	1-1-2012	441-830-0040	11-23-2011	Repeal	1-1-2012
436-030-0003	1-1-2012	Amend	1-1-2012	441-850-0042	12-15-2011	Amend(T)	1-1-2012
436-030-0036	1-1-2012	Amend	1-1-2012	441-880-0005	11-23-2011	Adopt	1-1-2012
436-030-0145	1-1-2012	Amend	1-1-2012	441-880-0006	11-23-2011	Adopt	1-1-2012
436-030-0165	1-1-2012	Amend	1-1-2012	441-880-0007	11-23-2011	Adopt	1-1-2012
437-002-0005	12-8-2011	Amend	1-1-2012	441-880-0008	11-23-2011	Adopt	1-1-2012
437-002-0120	12-8-2011	Amend	1-1-2012	441-910-0000	1-1-2012	Amend	1-1-2012
437-002-0123	12-8-2011	Repeal	1-1-2012	441-910-0092	1-1-2012	Repeal	1-1-2012
437-002-0125	12-8-2011	Repeal	1-1-2012	459-005-0620	11-22-2011	Adopt(T)	1-1-2012
437-002-0127	12-8-2011	Repeal	1-1-2012	459-010-0005	11-23-2011	Repeal	1-1-2012
437-002-0128	12-8-2011	Repeal	1-1-2012	459-015-0005	11-23-2011	Amend	1-1-2012
437-002-0130	12-8-2011	Repeal	1-1-2012	459-060-0020	11-23-2011	Amend	1-1-2012
437-002-0134	12-8-2011	Adopt	1-1-2012	459-076-0005	11-23-2011	Amend	1-1-2012
437-002-0135	12-8-2011	Repeal	1-1-2012	461-155-0575	12-1-2011	Amend(T)	1-1-2012
437-002-0136	12-8-2011	Repeal	1-1-2012	461-155-0575(T)	12-1-2011	Suspend	1-1-2012
437-002-0137	12-8-2011	Repeal	1-1-2012	471-030-0053	12-5-2011	Amend	1-1-2012
437-002-0140	12-8-2011	Amend	1-1-2012	471-030-0053(T)	12-5-2011	Repeal	1-1-2012
437-002-0220	12-8-2011	Amend	1-1-2012	579-020-0006	12-1-2011	Amend(T)	1-1-2012
437-002-0340	12-8-2011	Amend	1-1-2012	581-015-2570	12-15-2011	Amend	1-1-2012
437-002-0360	12-8-2011	Amend	1-1-2012	581-015-2571	12-15-2011	Amend	1-1-2012
437-002-0360	7-1-2012	Amend	1-1-2012	581-015-2572	12-15-2011	Amend	1-1-2012
437-002-0364	12-8-2011	Amend	1-1-2012	581-015-2573	12-15-2011	Amend	1-1-2012
437-002-1001	7-1-2012	Adopt	1-1-2012	581-015-2574	12-15-2011	Amend	1-1-2012
437-002-1017	7-1-2012	Adopt	1-1-2012	581-020-0334	12-15-2011	Amend	1-1-2012
437-002-1018	7-1-2012	Adopt	1-1-2012	581-020-0336	1-1-2012	Amend	1-1-2012
437-002-1025	7-1-2012	Adopt	1-1-2012	581-020-0339	12-15-2011	Repeal	1-1-2012
437-002-1027	7-1-2012	Adopt	1-1-2012	581-020-0342	12-15-2011	Adopt	1-1-2012
437-002-1028	7-1-2012	Adopt	1-1-2012	581-020-0342(T)	12-15-2011	Repeal	1-1-2012
437-002-1029	7-1-2012	Adopt	1-1-2012	581-020-0343	12-15-2011	Adopt	1-1-2012
437-002-1043	7-1-2012	Adopt	1-1-2012	581-020-0343(T)	12-15-2011	Repeal	1-1-2012
437-002-1044	7-1-2012	Adopt	1-1-2012	581-021-00032	1-1-2012	Repeal	1-1-2012
437-002-1045	7-1-2012	Adopt	1-1-2012	581-021-0034	1-1-2012	Repeal	1-1-2012
437-002-1047	7-1-2012	Adopt	1-1-2012	581-021-0035	1-1-2012	Repeal	1-1-2012
437-002-1048	7-1-2012	Adopt	1-1-2012	581-021-0042	1-1-2012	Repeal	1-1-2012
437-002-1050	7-1-2012	Adopt	1-1-2012	581-021-0044	1-1-2012	Repeal	1-1-2012
437-002-1051	7-1-2012	Adopt	1-1-2012	581-021-0255	1-1-2012	Amend	1-1-2012
437-002-1052	7-1-2012	Adopt	1-1-2012	581-022-1060	1-1-2012	Amend	1-1-2012
437-003-0001	12-8-2011	Amend	1-1-2012	581-022-1330	12-15-2011	Amend	1-1-2012
437-003-0001	7-1-2012	Amend	1-1-2012	581-022-1369	1-1-2012	Repeal	1-1-2012
437-003-0015	12-8-2011	Amend	1-1-2012	581-022-1680	1-1-2012	Repeal	1-1-2012
437-003-0062	7-1-2012	Adopt	1-1-2012	581-022-1720	12-15-2011	Amend	1-1-2012
437-003-0096	12-8-2011	Amend	1-1-2012	581-022-1723	12-15-2011	Adopt	1-1-2012
437-003-1101	7-1-2012	Adopt	1-1-2012	581-022-1724	12-15-2011	Adopt	1-1-2012
437-003-1127	7-1-2012	Adopt	1-1-2012	581-022-1725	12-15-2011	Adopt	1-1-2012
437-003-3060	7-1-2012	Adopt	1-1-2012	581-023-0012	1-1-2012	Repeal	1-1-2012

## OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
581-023-0040	12-15-2011	Amend	1-1-2012	603-076-0052	12-8-2011	Amend(T)	1-1-2012
581-023-0110	1-1-2012	Repeal	1-1-2012	629-035-0105	1-1-2012	Amend	1-1-2012
581-023-0112	1-1-2012	Amend	1-1-2012	632-001-0020	12-14-2011	Adopt	1-1-2012
581-040-0000	12-15-2011	Repeal	1-1-2012	635-005-0045	12-1-2011	Amend(T)	1-1-2012
581-044-0080	12-15-2011	Repeal	1-1-2012	635-005-0045	12-15-2011	Amend(T)	1-1-2012
581-044-0090	12-15-2011	Repeal	1-1-2012	635-005-0045(T)	12-15-2011	Suspend	1-1-2012
581-044-0100	12-15-2011	Repeal	1-1-2012	635-005-0055	12-1-2011	Amend(T)	1-1-2012
581-044-0110	12-15-2011	Repeal	1-1-2012	635-006-1010	12-1-2011	Amend(T)	1-1-2012
581-044-0120	12-15-2011	Repeal	1-1-2012	635-006-1015	12-1-2011	Amend(T)	1-1-2012
581-044-0130	12-15-2011	Repeal	1-1-2012	635-006-1065	12-1-2011	Amend(T)	1-1-2012
581-044-0140	12-15-2011	Repeal	1-1-2012	635-008-0123	1-1-2012	Amend	1-1-2012
581-044-0200	12-15-2011	Repeal	1-1-2012	635-008-0135	1-1-2012	Amend	1-1-2012
581-060-0005	12-15-2011	Repeal	1-1-2012	635-008-0155	1-1-2012	Amend	1-1-2012
581-060-0010	12-15-2011	Repeal	1-1-2012	635-012-0020	12-25-2011	Amend(T)	1-1-2012
581-060-0015	12-15-2011	Repeal	1-1-2012	635-012-0020(T)	12-25-2011	Suspend	1-1-2012
581-060-0020	12-15-2011	Repeal	1-1-2012	635-012-0030	12-25-2011	Suspend	1-1-2012
581-070-0000	12-15-2011	Repeal	1-1-2012	635-012-0040	12-25-2011	Suspend	1-1-2012
581-070-0010	12-15-2011	Repeal	1-1-2012	635-012-0050	12-25-2011	Suspend	1-1-2012
581-070-0020	12-15-2011	Repeal	1-1-2012	635-012-0060	12-25-2011	Suspend	1-1-2012
581-070-0030	12-15-2011	Repeal	1-1-2012	635-017-0090	1-1-2012	Amend(T)	1-1-2012
581-070-0040	12-15-2011	Repeal	1-1-2012	635-039-0090	12-1-2011	Amend(T)	1-1-2012
581-070-0050	12-15-2011	Repeal	1-1-2012	635-039-0090	12-15-2011	Amend(T)	1-1-2012
581-070-0060	12-15-2011	Repeal	1-1-2012	635-039-0090(T)	12-1-2011	Suspend	1-1-2012
581-070-0070	12-15-2011	Repeal	1-1-2012	635-039-0090(T)	12-15-2011	Suspend	1-1-2012
581-070-0080	12-15-2011	Repeal	1-1-2012	635-065-0001	1-1-2012	Amend	1-1-2012
581-070-0090	12-15-2011	Repeal	1-1-2012	635-065-0015	1-1-2012	Amend	1-1-2012
581-070-0110	12-15-2011	Repeal	1-1-2012	635-065-0090	1-1-2012	Amend	1-1-2012
581-070-0130	12-15-2011	Repeal	1-1-2012	635-065-0401	1-1-2012	Amend	1-1-2012
581-070-0140	12-15-2011	Repeal	1-1-2012	635-065-0625	1-1-2012	Amend	1-1-2012
581-070-0150	12-15-2011	Repeal	1-1-2012	635-065-0635	1-1-2012	Amend	1-1-2012
581-070-0170	12-15-2011	Repeal	1-1-2012	635-065-0733	1-1-2012	Amend	1-1-2012
581-070-0180	12-15-2011	Repeal	1-1-2012	635-065-0740	1-1-2012	Amend	1-1-2012
581-070-0190	12-15-2011	Repeal	1-1-2012	635-065-0760	1-1-2012	Amend	1-1-2012
581-070-0200	12-15-2011	Repeal	1-1-2012	635-066-0000	1-1-2012	Amend	1-1-2012
581-070-0210	12-15-2011	Repeal	1-1-2012	635-066-0010	1-1-2012	Amend	1-1-2012
581-070-0220	12-15-2011	Repeal	1-1-2012	635-067-0000	1-1-2012	Amend	1-1-2012
581-070-0230	12-15-2011	Repeal	1-1-2012	635-067-0004	1-1-2012	Amend	1-1-2012
581-070-0240	12-15-2011	Repeal	1-1-2012	635-067-0030	1-1-2012	Amend	1-1-2012
581-070-0250	12-15-2011	Repeal	1-1-2012	635-067-0040	1-1-2012	Amend	1-1-2012
581-070-0380	12-15-2011	Repeal	1-1-2012	635-072-0000	1-1-2012	Amend	1-1-2012
581-070-0390	12-15-2011	Repeal	1-1-2012	656-010-0000	11-30-2011	Amend	1-1-2012
581-070-0400	12-15-2011	Repeal	1-1-2012	656-010-0010	11-30-2011	Amend	1-1-2012
581-070-0410	12-15-2011	Repeal	1-1-2012	660-033-0120	11-23-2011	Amend	1-1-2012
581-070-0420	12-15-2011	Repeal	1-1-2012	660-033-0130	11-23-2011	Amend	1-1-2012
581-070-0500	12-15-2011	Repeal	1-1-2012	735-062-0016	11-23-2011	Amend	1-1-2012
581-070-0510	12-15-2011	Repeal	1-1-2012	735-070-0004	11-23-2011	Amend	1-1-2012
581-071-0005	12-15-2011	Repeal	1-1-2012	735-070-0054	11-23-2011	Amend	1-1-2012
581-071-0010	12-15-2011	Repeal	1-1-2012	736-015-0010	11-28-2011	Amend	1-1-2012
584-060-0250	1-15-2012	Adopt	1-1-2012	736-015-0020	11-28-2011	Amend	1-1-2012
589-007-0700	12-9-2011	Amend	1-1-2012	736-015-0026	11-28-2011	Amend	1-1-2012
589-007-0800	12-9-2011	Adopt	1-1-2012	736-015-0030	11-28-2011	Amend	1-1-2012
603-027-0410	12-14-2011	Amend	1-1-2012	740-055-0100	11-23-2011	Amend	1-1-2012
603-027-0420	12-14-2011	Amend	1-1-2012	740-300-0010	11-23-2011	Amend	1-1-2012
603-027-0430	12-14-2011	Amend	1-1-2012	812-002-0260	1-1-2012	Amend	1-1-2012
603-027-0440	12-14-2011	Amend	1-1-2012	812-005-0800	1-1-2012	Amend	1-1-2012
603-027-0490	12-14-2011	Amend	1-1-2012	812-008-0000	1-1-2012	Amend	1-1-2012

## OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
812-008-0020	1-1-2012	Amend	1-1-2012	853-010-0025	1-1-2012	Repeal	1-1-2012
812-008-0030	1-1-2012	Amend	1-1-2012	853-010-0035	1-1-2012	Repeal	1-1-2012
812-021-0015	11-18-2011	Amend(T)	1-1-2012	853-010-0040	1-1-2012	Repeal	1-1-2012
833-120-0011	12-15-2011	Amend	1-1-2012	853-010-0045	1-1-2012	Repeal	1-1-2012
833-120-0021	12-15-2011	Amend	1-1-2012	853-010-0050	1-1-2012	Repeal	1-1-2012
833-120-0031	12-15-2011	Amend	1-1-2012	853-010-0055	1-1-2012	Repeal	1-1-2012
833-120-0041	12-15-2011	Amend	1-1-2012	853-010-0060	1-1-2012	Repeal	1-1-2012
836-200-0250	1-1-2012	Adopt	1-1-2012	853-010-0065	1-1-2012	Repeal	1-1-2012
836-200-0255	1-1-2012	Adopt	1-1-2012	853-010-0070	1-1-2012	Repeal	1-1-2012
836-200-0300	1-1-2012	Adopt	1-1-2012	853-010-0074	1-1-2012	Repeal	1-1-2012
836-200-0305	1-1-2012	Adopt	1-1-2012	853-010-0075	1-1-2012	Repeal	1-1-2012
836-200-0310	1-1-2012	Adopt	1-1-2012	853-010-0076	1-1-2012	Repeal	1-1-2012
836-200-0315	1-1-2012	Adopt	1-1-2012	853-010-0077	1-1-2012	Repeal	1-1-2012
845-005-0425	1-1-2012	Amend	1-1-2012	853-010-0078	1-1-2012	Repeal	1-1-2012
845-009-0135	1-1-2012	Amend	1-1-2012	853-010-0079	1-1-2012	Repeal	1-1-2012
845-015-0101	1-1-2012	Amend	1-1-2012	853-010-0080	1-1-2012	Repeal	1-1-2012
845-015-0120	1-1-2012	Amend	1-1-2012	853-020-0000	1-1-2012	Adopt	1-1-2012
845-015-0185	1-1-2012	Amend	1-1-2012	853-030-0000	1-1-2012	Adopt	1-1-2012
845-015-0190	1-1-2012	Amend	1-1-2012	853-030-0010	1-1-2012	Adopt	1-1-2012
845-015-0196	1-1-2012	Amend	1-1-2012	853-030-0020	1-1-2012	Adopt	1-1-2012
845-015-0210	1-1-2012	Adopt	1-1-2012	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	855-080-0100	12-15-2011	Amend(T)	1-1-2012
847-050-0035	1-1-2012	Amend(T)	1-1-2012	855-080-0100(T)	12-15-2011	Suspend	1-1-2012
847-050-0037	1-1-2012	Amend(T)	1-1-2012	855-080-0103(T)	12-15-2011	Suspend	1-1-2012
847-050-0038	1-1-2012	Amend(T)	1-1-2012	855-110-0005	12-15-2011	Amend	1-1-2012
847-050-0040	1-1-2012	Amend(T)	1-1-2012	855-110-0007	12-15-2011	Amend	1-1-2012
847-050-0041	1-1-2012	Amend(T)	1-1-2012	855-110-0010	12-15-2011	Amend	1-1-2012
847-050-0042	1-1-2012	Amend(T)	1-1-2012	859-300-0050	12-13-2011	Amend	1-1-2012
847-050-0043	1-1-2012	Amend(T)	1-1-2012	859-300-0050(T)	12-13-2011	Repeal	1-1-2012
847-050-0046	1-1-2012	Amend(T)	1-1-2012	860-023-0080	1-1-2012	Repeal	1-1-2012
847-050-0050	1-1-2012	Amend(T)	1-1-2012	860-023-0090	1-1-2012	Repeal	1-1-2012
847-050-0055	1-1-2012	Amend(T)	1-1-2012	860-023-0100	1-1-2012	Repeal	1-1-2012
847-050-0060	1-1-2012	Amend(T)	1-1-2012	860-023-0110	1-1-2012	Repeal	1-1-2012
847-050-0063	1-1-2012	Amend(T)	1-1-2012	860-023-0120	1-1-2012	Repeal	1-1-2012
847-050-0065	1-1-2012	Amend(T)	1-1-2012	860-023-0130	1-1-2012	Repeal	1-1-2012
850-050-0120	12-23-2011	Amend	1-1-2012	860-023-0140	1-1-2012	Repeal	1-1-2012
850-060-0215	12-23-2011	Amend	1-1-2012	860-023-0150	1-1-2012	Repeal	1-1-2012
851-002-0000	11-22-2011	Amend	1-1-2012	860-023-0160	1-1-2012	Repeal	1-1-2012
853-001-0000	1-1-2012	Repeal	1-1-2012	875-005-0005	12-12-2011	Amend(T)	1-1-2012
853-001-0005	1-1-2012	Repeal	1-1-2012	875-040-0005	12-12-2011	Adopt(T)	1-1-2012
853-001-0020	1-1-2012	Repeal	1-1-2012	943-014-0300	12-1-2011	Adopt	1-1-2012
853-001-0025	1-1-2012	Repeal	1-1-2012	943-014-0300(T)	12-1-2011	Repeal	1-1-2012
853-001-0030	1-1-2012	Repeal	1-1-2012	943-014-0305	12-1-2011	Adopt	1-1-2012
853-010-0010	1-1-2012	Repeal	1-1-2012	943-014-0305(T)	12-1-2011	Repeal	1-1-2012
853-010-0015	1-1-2012	Repeal	1-1-2012	943-014-0310	12-1-2011	Adopt	1-1-2012
853-010-0017	1-1-2012	Repeal	1-1-2012	943-014-0310(T)	12-1-2011	Repeal	1-1-2012
853-010-0020	1-1-2012	Repeal	1-1-2012	943-014-0315	12-1-2011	Adopt	1-1-2012



## OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
943-014-0315(T)	12-1-2011	Repeal	1-1-2012	943-045-0310(T)	12-5-2011	Repeal	1-1-2012
943-014-0320	12-1-2011	Adopt	1-1-2012	943-045-0320	12-5-2011	Adopt	1-1-2012
943-014-0320(T)	12-1-2011	Repeal	1-1-2012	943-045-0320(T)	12-5-2011	Repeal	1-1-2012
943-045-0000	12-4-2011	Adopt	1-1-2012	943-045-0330	12-5-2011	Adopt	1-1-2012
943-045-0000(T)	12-4-2011	Repeal	1-1-2012	943-045-0330(T)	12-5-2011	Repeal	1-1-2012
943-045-0250	12-5-2011	Adopt	1-1-2012	943-045-0340	12-5-2011	Adopt	1-1-2012
943-045-0250(T)	12-5-2011	Repeal	1-1-2012	943-045-0340(T)	12-5-2011	Repeal	1-1-2012
943-045-0260	12-5-2011	Adopt	1-1-2012	943-045-0350	12-5-2011	Adopt	1-1-2012
943-045-0260(T)	12-5-2011	Repeal	1-1-2012	943-045-0350(T)	12-5-2011	Repeal	1-1-2012
943-045-0280	12-5-2011	Adopt	1-1-2012	943-045-0360	12-5-2011	Adopt	1-1-2012
943-045-0280(T)	12-5-2011	Repeal	1-1-2012	943-045-0360(T)	12-5-2011	Repeal	1-1-2012
943-045-0290	12-5-2011	Adopt	1-1-2012	943-045-0370	12-5-2011	Adopt	1-1-2012
943-045-0290(T)	12-5-2011	Repeal	1-1-2012	943-045-0370(T)	12-5-2011	Repeal	1-1-2012
943-045-0300	12-5-2011	Adopt	1-1-2012	951-004-0003	1-1-2012	Amend	1-1-2012
943-045-0300(T)	12-5-2011	Repeal	1-1-2012	951-004-0004	1-1-2012	Amend	1-1-2012
943-045-0310	12-5-2011	Adopt	1-1-2012				