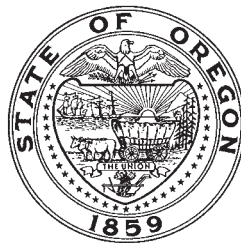


# OREGON BULLETIN

Supplements the 2013 *Oregon Administrative Rules Compilation*

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Secretary of State  
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# INFORMATION AND PUBLICATION SCHEDULE

## General Information

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

## Background on Oregon Administrative Rules

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

## How to Cite

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

## Understanding an Administrative Rule’s “History”

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

## Locating the Most Recent Version of an Administrative Rule

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

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

## Locating Administrative Rules Unit Publications

The *Oregon Administrative Rules Compilation* and the *Oregon Bulletin* are available on-line at <<http://arcweb.sos.state.or.us/pages/rules/index.html>>. 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](mailto:Julie.A.Yamaka@state.or.us)

## 2012–2013 Oregon Bulletin Publication Schedule

The Administrative Rules Unit accepts rulemaking notices and filings through its on-line filing system accessible on the OAR web site at <<http://arcweb.sos.state.or.us/pages/rules/index.html>>. 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 14, 2012	January 1, 2013
January 15, 2013	February 1, 2013
February 15, 2013	March 1, 2013
March 15, 2013	April 1, 2013
April 15, 2013	May 1, 2013
May 15, 2013	June 1, 2013
June 14, 2013	July 1, 2013
July 15, 2013	August 1, 2013
August 15, 2013	September 1, 2013
September 13, 2013	October 1, 2013
October 15, 2013	November 1, 2013
November 15, 2013	December 1, 2013

## Reminder for Agency Rules Coordinators

Each agency that engages in rulemaking must appoint a rules coordinator and file an “Appointment of Agency Rules Coordinator” form, ARC 910-2011, with the Administrative Rules Unit, Archives Division, Secretary of State. Agencies which delegate rulemaking authority to an officer or employee within the agency must also file a “Delegation of Rulemaking Authority” form, ARC 915-2005. It is the agency’s responsibility to monitor the rulemaking authority of selected employees and to keep the appropriate forms updated. The Administrative Rules Unit does not verify agency signatures as part of the rulemaking process. Forms are available from the Administrative Rules Unit, Archives Division, 800 Summer Street NE, Salem, Oregon 97301, (503) 373-0701, or are downloadable at <<http://arcweb.sos.state.or.us/pages/rules/index.html>>

## Publication Authority

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

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

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# EXECUTIVE ORDERS

## EXECUTIVE ORDER NO. 13 - 04

### PROVIDING EMPLOYMENT SERVICES TO INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

Individuals with disabilities persistently face higher rates of unemployment than their non-disabled fellow citizens.

As Oregon's economy continues to recover from the 2008 recession, we must strive to ensure that all Oregonians benefit from the recovery, including those with intellectual and developmental disabilities.

Oregon is a leader in providing supported employment services to individuals with intellectual and developmental disabilities. Oregon adopted an Employment First Policy in 2008, making it one of the first states to do so. The Employment First Policy makes integrated employment the goal for all Oregonians with intellectual and developmental disabilities.

In April 2012, Oregon was awarded a competitive grant from the United States Department of Labor to provide resources to assist in the strategic planning and implementation of the Employment First Policy. Oregon was one of only three states awarded the grant.

While the state cannot guarantee a job to any Oregonian, the state can and should consistently work to continue to improve its provision of employment services to provide the best possible opportunities for success and choice for individuals receiving those services. This requires new approaches and partnerships with government, the non-profit services sector, and potential employers in the business community.

Improving Oregon's delivery of employment services, with the goal of achieving integrated employment for individuals with intellectual and developmental disabilities, consistent with their abilities and choices, will benefit individuals with disabilities, their families, our communities, the economy, and the state.

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

Following the strategies set forth in further detail below, the Oregon Department of Human Services and the Oregon Department of Education shall work to further improve Oregon's systems of designing and delivering employment services to those with intellectual and developmental disabilities toward fulfillment of Oregon's Employment First Policy, including a significant reduction over time of state support of sheltered work and an increased investment in employment services.

#### I. DEFINITIONS

For the purposes of this Executive Order only, as used below, the following terms have the following meanings:

1. "The State" means the State of Oregon, including the Office of Developmental Disability Services ("ODDS") and the Office of Vocational Rehabilitation Services ("OVRs"), as administered through the Department of Human Services ("DHS"), and the Oregon Department of Education ("ODE").

2. A "sheltered workshop" is a facility-based service that congregates more than eight adults with intellectual or developmental disabilities ("I/DD"). Sheltered workshops are operated by service provider entities. In general, a sheltered workshop employs only individuals with I/DD or other disabilities except for service support staff. However, assessments, instruction, and activities that typically occur in public schools and that are provided either directly or by contract by the public school districts, by public charter schools, by an educational

service district, or ODE in a school setting are not considered sheltered workshops.

3. "Intellectual disability" and "developmental disability" are defined in Oregon Administrative Rules by the ODDS (OAR Chapter 411, Division 320).

4. "Individuals with I/DD" are persons who are found eligible for publicly-funded developmental disability services provided by ODDS.

5. "Employment Services" provided by ODDS or OVRs are services that are intended to assist a person with I/DD to choose, get, learn, and keep work in an integrated employment setting. Employment services shall be "individualized," meaning that services shall be individually planned, based on person-centered planning principles and evidence-based practices, where applicable.

6. A "career development plan" is part of an Individual Support Plan ("ISP") regarding ODDS services and an Individual Plan for Employment ("IPE") regarding OVRs services. A "career development plan" identifies the individual's employment goals and objectives, the services and supports needed to achieve those goals, the persons, agencies, and providers assigned to assist the person to attain those goals, the obstacles to the individual working in an individualized job in an integrated employment setting, and the services and supports necessary to overcome those obstacles. Career development plans shall be based on person-centered planning principles. Career development plans are created through various strategies and tools, must include vocational assessments, and may also include situational assessments, discovery, and other strategies and tools.

a. A "vocational assessment" is an assessment administered to provide employment-related information essential to the development of, or revision of, an individual's employment-related planning documents, including the IPE and ISP, where applicable.

b. A "situational assessment" is an assessment that maintains the qualities of a vocational assessment but is administered on-site in an integrated employment setting, where an individual is evaluated in the performance of work activities that are typical to the setting where the assessment is administered.

c. "Discovery" is the time-limited process (up to six months) by which an individual's planning team assists an individual to identify his/her interests, strengths, and abilities relating to employment, with the goal of attaining and maintaining employment in an integrated employment setting, including self-employment.

7. "Person-centered planning" is the process by which an individual, with the assistance of the person's planning team, identifies the direction of his/her future vocational and employment related activities based on his/her skills, interests, strengths, and abilities, regardless of whether the individual has the verbal ability to express such information.

8. A "qualified employment services provider" is a provider of Employment Services that meets the qualification requirements to deliver employment services consistent with OAR 411-323-0010 to 0070 and OAR 411-345-030, and any rule subsequently issued by DHS.

9. An "integrated employment setting" is a setting that allows an individual to interact with non-disabled persons in the employment setting. An integrated employment setting cannot be facility-based work in a sheltered workshop or non-work activities, such as Alternatives to Employment (ATE). An integrated employment setting is a typical work environment, including self-employment or small business models, in the community. An integrated employment

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setting can include a group enclave or mobile crew but must allow an individual to interact with non-disabled persons in the employment setting.

10. “Working age individuals” are adults with I/DD between the ages of 21 and 60, individuals with I/DD who are younger than 21 and who are no longer receiving public school services, and those with I/DD over 60 who choose to continue employment.

11. “Evidence-based practices” means well-defined best practices, which have been demonstrated to be effective with the I/DD population or the relevant subset of that population, such as youth sixteen or older, by multiple peer-reviewed research studies that are specific to the I/DD population or subset of that population.

### II. TARGET POPULATIONS

1. ODDS/OVRS Target Population. At a minimum, the following individuals will receive Employment Services described in this Order:

- a. Working age individuals with I/DD who receive sheltered workshop services on or after the effective date of this Order; and
- b. Transition aged individuals with I/DD who are found eligible for ODDS or OVRS services. For the purpose of this provision, transition age means (1) at least 16 years of age for OVRS services and at least 18 years of age for ODDS services, and (2) no older than the date two years after an individual has ceased receiving public school services in the Oregon secondary schools.

2. Education Target Population. The expectations for ODE described in Section X. below are intended to benefit the following target populations, to the extent described in Section X. below:

- a. School age children and youth with I/DD who are found eligible for ODDS or OVRS services;
- b. All youth receiving services in public schools who are eligible for services under the Individuals with Disabilities in Education Act (“IDEA”) who are of transition age. Transition age for purposes of this provision begins at the start of the one-year period of a student’s Individual Education Plan (“IEP”) during which the student reaches 16 years of age. Transition age ends when a student leaves school.

### III. SHELTERED WORKSHOPS

1. By July 1, 2014, ODDS and OVRS shall no longer purchase or fund vocational assessments for individuals with I/DD that occur in sheltered workshop settings.

2. By July 1, 2015, ODDS and OVRS shall no longer purchase or fund sheltered workshop placements for:

- a. transition-age youth with I/DD, as defined under Section II.1.b. above;
- b. any working age adult with I/DD who is newly eligible for ODDS or OVRS services; and
- c. any working age adult with I/DD who is already utilizing ODDS or OVRS services who is not already working in a sheltered workshop.

### IV. EMPLOYMENT SERVICES PROVIDED THROUGH ODDS AND OVRS

1. ODDS and OVRS will establish and implement a policy that Employment Services shall be evidence-based and individualized. Where such evidence-based practices have not been identified,

Oregon may adopt practices used in other states that are generally recognized as effective practices.

2. Employment Services shall be based on an individual’s capabilities, choices, and strengths and shall be individually tailored to each person.

3. ODDS and OVRS will provide Employment Services to at least 2000 individuals in the ODDS/OVRS Target Population, in accordance with the following schedule:

- a. By July 1, 2014, ODDS and/or OVRS will provide Employment Services to at least 50 individuals.
- b. By July 1, 2015, ODDS and/or OVRS will provide Employment Services to at least an additional 100 individuals.
- c. By July 1, 2016, ODDS and/or OVRS will provide Employment Services to at least an additional 200 individuals.
- d. By July 1, 2017, ODDS and/or OVRS will provide Employment Services to at least an additional 275 individuals.
- e. By July 1, 2018, ODDS and OVRS will provide Employment Services to at least an additional 275 individuals.
- f. By July 1, 2019, ODDS and OVRS will provide Employment Services to at least an additional 275 individuals.
- g. By July 1, 2020, ODDS and OVRS will provide Employment Services to at least an additional 275 individuals.
- h. By July 1, 2021, ODDS and OVRS will provide Employment Services to at least an additional 275 individuals.
- i. By July 1, 2022, ODDS and OVRS will provide Employment Services to at least an additional 275 individuals.

4. The intent of paragraph 3 above is that, over the next nine years, approximately half of the persons receiving Employment Services under this provision will be those in the Section II.1.b. ODDS/OVRS Target Population, and half will be those in the Section II.1.a. ODDS/OVRS Target Population, recognizing that numbers and percentages may change each year based on changing demographics, demand, and the choices of consumers.

5. OVRS shall not be required to provide services in a way that violates federal regulations that govern vocational rehabilitation services.

### V. CAREER DEVELOPMENT PLANNING

1. No later than six (6) months after the effective date of this Order, ODDS shall adopt and implement policies and procedures for developing career development plans. The policies will include a presumption that all individuals in the ODDS/OVRS Target Populations are capable of working in an integrated employment setting.

2. The career development plan shall prioritize employment in integrated settings. The career development process shall focus on the strengths of the individual and shall be conducted with the goal of maximizing the number of hours spent working, consistent with an individual’s abilities and choices. The primary purpose of all vocational assessments shall be to determine an individual’s interests, strengths, and abilities, in order to identify a suitable match between the person and an integrated employment setting. If an individual has an existing vocational assessment that is current, accurate and relevant to establishing individual goals and services, it need not be redone or revised.

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3. Working age individuals in sheltered workshops in the ODDS/OVRS Target Population shall receive a career development plan as part of the Employment Services they receive under Section IV., pursuant to the schedule set in that section. The expectation for transition-age persons in that Target Population is that they should have a career development plan no later than the date of their anticipated departure from the Oregon public schools, and in any event no later than one year after their departure. The provision of Employment Services by ODDS will not be delayed or denied due to the lack of a career development plan.

### VI. TRAINING

1. By January 1, 2014, ODDS and OVRS will establish competencies for the provision of Employment Services, and will adopt and implement competency-based training standards for career development plans, job creation, job development, job coaching, and coordination of those services.

2. By July 1, 2016, ODDS and OVRS will purchase Employment Services for people with I/DD only from agencies or individual providers that are licensed, certified, credentialed or otherwise qualified as required by Oregon Administrative Rule. Such requirements for the provision of Employment Services will be competency-based and may include, as applicable, such national credentialing programs as the APSE Certified Employment Support Professional exam or a substantial equivalent.

### VII. OUTREACH AND AWARENESS

By January 1, 2014, ODDS and OVRS will develop an outreach and informational education program for all persons in the ODDS/OVRS Target Population that explains the benefits of employment, addresses concerns of families and perceived obstacles to participating in Employment Services, and is designed to encourage individuals with I/DD and their families to seek Employment Services.

### VIII. PROVIDER CAPACITY

State agencies will make good faith efforts, within available budgetary resources, to ensure that there are a sufficient number of qualified employment providers to deliver the services and supports necessary for individuals in the ODDS/OVRS Target Population to receive Employment Services consistent with the terms of this Order.

### IX. STATE AGENCY ACTIONS

1. Consistent with its authority and the Oregon Administrative Procedures Act, DHS will update ODDS and OVRS policies and administrative rules related to employment to be consistent with this Order.

2. Within six (6) months of the effective date of this Order, DHS shall designate a statewide Employment Coordinator to oversee and coordinate its employment services program and all activities required by DHS, ODDS, and/or OVRS under this Order. The Employment Coordinator will coordinate with the ODE employees referenced in Section X.3.b. below.

3. By January 1, 2014, DHS will support new or existing technical assistance provider(s) or use other available training resources to provide leadership, training and technical assistance to employment providers and to provider, county, support services brokerage, and vocational rehabilitation staff to support the performance of this Order.

4. By November 1, 2013, DHS shall adopt an "Integrated Employment Plan" to further carry out the goals of this Order. This Order and the Plan itself are not admissions that such a Plan is legally required, nor are they admissions on any legal issue that is currently the subject of (a) *Lane v. Kitzhaber*, a class action lawsuit

alleging violations of the Americans with Disabilities Act, or (b) a parallel United States Department of Justice ("USDOJ") investigation of a complaint to USDOJ made by persons involved in the Lane case. Given those matters and Oregon's longstanding commitment to integrated services for individuals with disabilities, however, adopting a Plan is a prudent step. The Policy Group described in Section XIV. below shall provide comments on the Plan before it issues.

### X. EDUCATION PROVISIONS

1. Intent. This Order, including these Education Provisions, is not intended to expand the obligations of the State or its schools under the IDEA.

2. Definitions. For purposes of this Section X., the following definitions apply:

a. "Education Goals" means the following goals:

(1) Families, students, and educators will have the expectation that individuals with I/DD will work in integrated, community-based settings.

(2) Students transitioning to adult services through OVRS or ODDS will be prepared to transition to integrated work experiences.

(3) Statewide systems will be coordinated to reach the goal of integrated employment opportunities as an outcome of students' education.

b. "Transition-aged student" means a student who fits within the Education Target Population Section II.2.b.

c. "Transition services" means a coordinated set of activities for transition-aged students with I/DD that:

(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate the student's movement from school to post school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual student's needs, taking into account the student's preferences and interests; and

(3) Includes:

(A) Instruction;

(B) Related services;

(C) Community experiences;

(D) The development of employment and other post school adult living objectives; and

(E) If appropriate, acquisition of daily living skills and functional vocational evaluation; and

(4) May be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

d. "Transition Technical Assistance" will be the substance of the work of the Statewide Transition Technical Assistance Network, described in Section X.3.c. below, and will include development of competencies for teachers, administrators, and other educational service providers that include:

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- (1) Transition-related curriculum and instructional approaches which are consistent with the Education Goals.
- (2) Outcome-based transition planning approaches that use precepts of discovery and person-centered planning.
- (3) Implementation of transition-related instructional approaches for I/DD target students, such as those that are community based, and which can include authentic experiences such as internships, mentorships, youth work experiences, job skill related instruction, and job shadowing.
- (4) Facilitation and management of interagency teams and resources to help ensure students and families can utilize resources from ODDS, OVRS, and local education agencies.
- (5) Encouraging the implementation of Transition Services in the schools that are consistent with the Education Goals.

### 3. Strategies

- a. ODE will implement, through contract with Oregon's federally-funded Parent Training and Information Center, or other similar entity, an ongoing program of outreach to students, families, and communities to seek to ensure that all individuals in the Education Target populations are familiar with the Education Goals.
- b. ODE will designate staff specialists whose work will be focused on systems-change efforts in schools and communities to focus on liaisons with partner agencies, data quality and tracking, local capacity development, and working with local education agencies to help ensure that the Education Goals are reflected in the provision of Transition Services. ODE staff will also coordinate the work of a Statewide Transition Technical Assistance Network.
- c. ODE will establish a Statewide Transition Technical Assistance Network to assist high schools in Oregon to provide Transition Services. The Transition Technical Assistance Network shall seek to ensure that the Education Goals of this order are implemented in assessment, curriculum, and instruction for students of transition age.
- d. ODE will partner with OVRS and ODDS to ensure that individuals with I/DD who are in the Education Target Population are individually tracked so that the effects of these activities can be assessed.
- e. Consistent with its authority, ODE shall support proposed legislative or rule changes that will prohibit local education agencies from contracting with adult service providers for employment or vocational assessment services in sheltered workshops.

### XI. INTERAGENCY COLLABORATION

1. Within six (6) months of the effective date of this Order, the State will develop and implement one or more inter-agency agreements or memorandum(a) of understanding among ODDS, OVRS, and ODE designed to assist in accomplishing the implementation of this Order that generally addresses the following issues:
  - a. Allocation of responsibility, funding commitments, and authority for conducting and ensuring the performance of this Order, including career planning, transition planning, outreach, training, Employment Services, data collection and sharing, and service gaps.
  - b. Employment outcomes through collaboration among ODDS, OVRS, and the Policy Group described in Section XIV. below.

- c. Coordination of funding ("braiding and blending") to accomplish the goals of this Order.
- d. Coordinated outreach efforts to individuals in the ODDS/OVRS Target Populations by vocational rehabilitation counselors, personal agents, and service coordinators.

2. ODDS will include specific provisions in its contracts with each support services brokerage and each community developmental disability program ("CDDP") to accomplish the full implementation of this Order.

### XII. QUALITY ASSESSMENT AND IMPROVEMENT

By July 1, 2014, DHS will develop and implement a quality improvement initiative that is designed to promote Employment Services developed in accordance with this Order and to evaluate the quality of Employment Services provided to persons with I/DD under this Order statewide.

### XIII. DATA COLLECTION AND REPORTING

1. Starting January 1, 2014, and semi-annually (twice a year) thereafter, the Employment Coordinator will monitor the progress of implementation of this Order through data collection, data analysis, and quality improvement activities.
2. Starting January 1, 2014, and semi-annually (twice a year) thereafter, ODDS and OVRS shall collect data and report to the Employment Coordinator and the Policy Group the following data for working age individuals in the ODDS/OVRS Target Populations:
  - a. The number of individuals receiving Employment Services;
  - b. The number of persons working in the following settings: individual integrated employment, self-employment, sheltered employment, and group employment (8 or less);
  - c. The number of individuals working in an integrated employment setting;
  - d. The number of hours worked per week and hourly wages paid to those persons;
  - e. The choices made by individuals between integrated work, sheltered work, and not working; and
  - f. Complaints and grievances.
3. Starting January 1, 2014, and semi-annually (twice a year) thereafter, OVRS, ODDS, and ODE will report to the Employment Coordinator and the Policy Group on the progress made on the terms of this Order and the results of the data collected under this Section.

4. Starting July 1, 2013, ODDS, OVRS, and ODE will begin a program of regularly collecting and analyzing data described above in this Section XIII., and will identify problems or barriers to placement in or retaining jobs in an integrated employment setting, as well as service gaps, and will recommend to DHS, ODE, and the Legislature actions to improve services. ODDS, OVRS, and ODE will review this information on a semi-annual basis and develop and implement measures to improve services with respect to the problems and barriers identified.

### XIV. ASSURING SUCCESS

1. The involvement of stakeholders is critical to success. Following execution of this Order, a group consisting of representatives of ODE and DHS, legislators, and stakeholders shall be formed to make recommendations to the Director of DHS and the Deputy Superintendent of Public Instruction regarding design and implementation

## EXECUTIVE ORDERS

on issues including but not limited to education, outreach, development of provider capacity, training, and processes for assessment and discovery. This group is referred to throughout this Order as the Policy Group. Disability Rights Oregon is also invited to attend and is expressly encouraged to participate in the Policy Group.

2. The Policy Group shall be formed no later than July 1, 2013.

3. The Policy Group shall recommend outcome metrics to the State, review the State's performance under those metrics, and make annual recommendations to the Governor for improving performance. Metrics developed by the Policy Group shall not create enforceable rights.

### XV. OTHER LAWS

1. State agencies are not directed by this Order to act in a way that would jeopardize the State's federal funding, such as funding from United States Department of Education, Centers for Medicare & Medicaid Services, and/or Rehabilitation Services Administration, or that would violate federal law or regulations.

2. Performance of this Order is subject to Oregon law, including Article XI, section 7 of the Oregon Constitution. To the extent that this Order is not consistent with Oregon state statutes or administrative rules, the Order should be read as requesting a change in state law, so long as that request is consistent with federal law. This Order does not attempt to override any provision of state law but reflects a desired policy change.

3. Wherever possible, this Order shall be read as consistent with federal law. In the event any provision of this Order is declared by a court to be in violation of any Oregon or federal law, that law will prevail and the remaining terms of this Executive Order will remain in full force and effect.

### XVI. EFFECTIVE DATE AND EFFECT OF THIS ORDER

1. This Order shall take effect on July 1, 2013.

2. This Order addresses employment services for those who have intellectual or developmental disabilities. Because various state agencies provide services to these persons, this Order is intended to promote agency coordination by providing a statement of my executive policy preferences, to assist the agencies in working together towards a common goal of better enabling those with intellectual or development disabilities to locate and maintain employment in community-based jobs. This Order states my policy preferences and directions to DHS and ODE. Directives that certain measures "shall" or "will" occur are not substitutes for rulemaking, which should occur where necessary to implement this Order and satisfy the requirements of the Oregon Administrative Procedures Act ("APA"). The Order is my request to DHS and the State Board of Education to engage in any rulemaking necessary to implement the terms of this Order, consistent with the terms of this Order, the agencies' rule-making authority, and the APA.

3. Nothing in this Order is intended to or does create enforceable rights that do not already exist under current state or federal law. The terms of this Order do not provide a right to any person to individually claim that he or she has not received services required under any state or federal statute or regulation.

Done at Salem, Oregon, this 10th day of April, 2013.

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

ATTEST

/s/ Kate Brown  
Kate Brown  
SECRETARY OF STATE

### EXECUTIVE ORDER NO. 13 - 05

#### DETERMINATION OF A STATE OF DROUGHT EMERGENCY IN KLAMATH COUNTY DUE TO DROUGHT AND LOW WATER CONDITIONS

Pursuant to ORS 401.165 and ORS 536.740, I find that ongoing drought and low water conditions and weather patterns have the potential to cause local adverse natural and economic disaster conditions in Klamath County. I find a need exists for statewide coordination of water resource conservation measures by municipal and other political subdivisions of this state in order to minimize problems caused by this severe shortage of water. Projected weather patterns are not expected to significantly alleviate these conditions and drought conditions are continuing. These conditions are expected to have significant economic impact on the affected basin's agricultural, livestock, and natural resources.

Current conditions are being addressed by state agencies including the Department of Agriculture, the Department of Water Resources, and Oregon Office of Emergency Management.

A timely response to this situation being vital to the well being and economic security of the citizens and businesses of Klamath County, I am therefore declaring a "state of drought emergency" in Klamath County and directing the following activities;

#### IT IS HEREBY ORDERED AND DIRECTED:

I. The Oregon Department of Agriculture is directed to coordinate and provide assistance in seeking federal resources available to mitigate conditions resulting from drought and affecting agricultural recovery in the affected basin.

II. The Department of Water Resources is directed to coordinate and provide assistance and regulation for the affected basin as it determines is necessary in accordance with ORS 536.700 to 536.780.

III. The Office of Emergency Management is directed to coordinate and assist as needed with assessment and mitigation activities to address current and projected conditions in the affected basin.

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

V. This Executive Order expires on December 31, 2013.

Done at Salem, Oregon this 18th day of April, 2013.

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

ATTEST

/s/ Kate Brown  
Kate Brown  
SECRETARY OF STATE



## OTHER NOTICES

### SELECTED SEDIMENT CLEANUP PORTLAND WILLAMETTE SLOUGH INLET

**PROJECT LOCATION:** Inlet off the Whitaker Slough, an arm of the Columbia Slough between NE 59th Place and NE 63rd Ave

**DECISION:** The DEQ cleanup action includes dredging metal-contaminated sediment from the central portion of the inlet and entombing it within a protective cap along the adjacent shoreline area. The cap will be designed to create wetland benches which will be planted with native vegetation. If sufficient space is not available to contain all contaminated sediment in these areas, excess sediment will be removed from the inlet and disposed of at a permitted location.

This action is consistent with the remedial approach for the Columbia Slough which includes cleanup of "hot spot" areas of sediment contamination. Once the most highly contaminated sediment is addressed, DEQ expects contaminant concentrations in surface sediments to decline over time as clean sediment covers residual contamination.

The selected remedy is consistent with Oregon rule and statute and, if properly implemented, protective of public health and the environment – Revised Statutes 465.200 ets seq. and Oregon Administrative Rules Chapter 340, Division 122, Sections 0010 through 0115.

A DEQ staff report outlining the proposed cleanup approach was made available for public review in March. Two comments were received. A summary of the comments and DEQ's responses are provided in the Record of Decision.

To access the site Record of Decision and other documents in the DEQ Environmental Cleanup Site Information database, go to [www.deq.state.or.us/lq/ECSI/ecsi.htm](http://www.deq.state.or.us/lq/ECSI/ecsi.htm), then enter 1283 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 1283 in the Site ID/Info column.

To review the project file, call the DEQ file specialist at 503-229-6729 for a file review appointment. For further information you may contact DEQ Project Manager Jennifer Sutter at 2020 SW 4th Ave., Suite 4000, Portland, OR 97201, [sutter.jennifer@deq.state.or.us](mailto:sutter.jennifer@deq.state.or.us) or 503-229-6148.

**THE NEXT STEP:** DEQ will initiate contracts to conduct a site survey and prepare remedial design documents with implementation planned for the summer 2013.

**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.

### REQUEST FOR COMMENTS PROPOSED CLEANUP APPROVAL AT CHARLES H. LILLY IN PORTLAND

**COMMENTS DUE:** 5 p.m., May 30, 2013

**PROJECT LOCATION:** 7737 and 8021 NE Killingsworth Street in Portland, OR

**PROPOSAL:** The Department of Environmental Quality proposes to issue Certificates of Completion for both onsite and offsite properties, based on results of site investigation and cleanup activities performed at the Charles H. Lilly site located at 7737 and 8021 NE Killingsworth Street in Portland. DEQ has determined that the cleanup is complete and residual pesticide contamination does not pose risks to human health and the environment exceeding the acceptable levels defined in ORS 465.315.

**HIGHLIGHTS:** Beginning in 1970 the Chas H. Lilly Company operations included formulating, packaging, and warehousing commercial pesticide products. Products were blended on-site, using a variety of ingredients. Over the years hazardous substances were released to the ground and groundwater at the property.

Following extensive investigation the onsite cleanup included abandonment of existing dry wells, soil removal and capping of remaining contaminated soil, installation of a new stormwater management system, re-paving of the site, and implementation of

institutional controls to maintain the asphalt cap and restrict future use of groundwater, stipulated in an Equitable Easement and Servitude (EES) recorded by Multnomah County with the deed for the property.

Contamination also moved offsite onto the neighboring property owned by KIP Holdings Company (KIP), an affiliate of Hoffman Construction Company. The offsite cleanup included excavating soil containing pesticides deemed hazardous for construction workers, placing the soil behind an engineered wall constructed along the common property line, and capping the wall cell with asphalt. Soil with lower levels of contamination remained in place under the existing asphalt surface and buildings on the property. Long term management and maintenance of the capped areas is specified in an EES recorded with the property deed by Multnomah County.

Stormwater monitoring and long term groundwater monitoring followed cleanup and results were approved by DEQ. DEQ concludes that environmental conditions at the site do not pose an unacceptable risk to human health and the environment, and therefore, meet the requirements of the Oregon Environmental Cleanup Laws.

**HOW TO COMMENT:** Send comments by 5 p.m., May 30, 2013, to DEQ Project Manager Robert Williams, at 2020 SW 4th Ave, Suite 400, Portland, OR 97201; [williams.robert.k@deq.state.or.us](mailto:williams.robert.k@deq.state.or.us) or (503) 229-6899 (fax).

To review the project file, call Dawn Weinberger at 503-229-6729 for a file review appointment. To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to <http://www.deq.state.or.us/lq/ECSI/ecsi.htm>, then enter 102 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 102 in the Site ID/Info column.

**THE NEXT STEP:** DEQ will consider all public comments received by the date and time stated above, before making a final decision regarding the Certificates of Completion. In the absence of comments, DEQ will issue the Certificates of Completion for the Charles H. Lilly site.

**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.

### REQUEST FOR COMMENT PROPOSED CONSENT JUDGMENT FOR PROSPECTIVE PURCHASE AGREEMENT FOR SUMMIT CHEVRON BY LITTLE TRAIL RESORT, LLC, CLACKAMAS COUNTY, OREGON

**COMMENTS DUE:** May 31, 2013

**PROJECT LOCATION:** 90149 E. Government Camp Loop, Government Camp, Oregon

**PROPOSAL:** The Department of Environmental Quality (DEQ) is proposing to enter into a Consent Order for a Prospective Purchaser Agreement (PPA) with Little Trail Resort, LLC concerning its acquisition of real property located at 90149 E. Government Camp Loop, Government Camp, Oregon (Property). The Property is currently a retail service station (Summit Chevron). Little Trail Resort, LLC intends to purchase the property and develop it and adjoining parcels it has previously acquired into a mountain village style resort that includes a boutique hotel and spa, condominium units, conference hall, commercial storefronts, and family recreation amenities. Approximately 200 hotel/condominium units are projected. The resort will feature pedestrian amenities, enhanced sidewalk connectivity to the Summit Ski Area, and below grade parking.

The property is an approximately 0.22-acre commercial property located on the southern slope of Mt. Hood at an elevation of approximately 3,900 feet above mean sea level. Currently, the property is occupied by an approximately 800-square foot, operating retail service station and convenience store and the remainder of the property is covered by asphalt and concrete except for small areas of vegetation at the northeast corner and eastern edge of the property.

## OTHER NOTICES

In April 1989, a petroleum release was discovered at the property and the release was assigned file number 03-89-0205. An investigation and remediation of the release was performed and the cleanup was issued a no further action determination in January 1990 under DEQ's soil matrix rules.

In August 2006, petroleum contamination was detected in soil during Phase I and Phase II Environmental Site Assessments. The undocumented release was reported to DEQ and assigned DEQ file number 03-06-1571. Subsequently, additional investigations were performed in order to determine the magnitude and extent of the release. The cleanup was closed with the understanding that the property would continue with its current use or a similar use and a no further action determination was issued in December 2011. The proposed redevelopment includes mixed urban residential and commercial uses. Because remaining petroleum concentrations on the property exceed risk-based screening levels for potential vapors entering into buildings, additional investigation, evaluation, cleanup, and institutional and/or engineering controls may be necessary.

Little Trail Resort, LLC is acquiring the Property and has agreed to perform the following tasks: 1) demolish the existing structure and redevelop the property into a mountain village style resort; 2) complete any necessary on-site investigation, risk evaluation, and cleanup related to the redevelopment and record any necessary property use restrictions as set forth in the December 2011 no further action determination; and 3) pay DEQ oversight costs associated with review of construction and contaminated media management plans for the Property.

Little Trail Resort, LLC's development and remediation plans will provide a substantial public benefit to the community by bringing significant employment opportunities to the Government Camp area, initially in construction and then in the hospitality and retail sectors. The resort is expected to generate considerable economic activity in the area, attracting condominium purchasers, tourists, and recreational visitors from both the Portland area and from outside the region.

DEQ's prospective purchaser agreement program was created in 1995 through amendments to the state's Environmental Cleanup Law. The prospective purchase agreement is a tool that expedites the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a contaminated site.

The proposed Consent Judgment will provide Little Trail Resort, LLC with a release from liability for claims by the State of Oregon under ORS 465.200 to 465.545 and 465.990, 466.640, and 468B.310 regarding existing hazardous substance releases at or from the property. The proposed consent judgment will also provide Little Trail Resort, LLC with third party liability protection.

**HOW TO COMMENT:** The project file may be reviewed by appointment at DEQ's Northwest Region office at 2020 SW 4th Avenue, Suite 400, Portland, OR 97201. To schedule an appointment to review the file or to ask questions, please contact Rob Hood at 503-229-5617. Summary information and copies of the documents referenced above are available in DEQ's Leaking Underground Storage Tank (LUST) Cleanup Site database on the Internet. To review this material, go to <http://www.deq.state.or.us/lq/tanks/lust/LustPublicLookup.asp>, then enter 03-06-1571 in the LUST Number box and click "Lookup" at the bottom of the page. Next, click the link labeled 03-06-1571 in the Log Number column. To be considered, written comments should be sent Rob Hood, Project Manager, at the address listed above or by email at [hood.robert@deq.state.or.us](mailto:hood.robert@deq.state.or.us) and must be received by 5:00 PM on May 31, 2013. A public meeting will be held upon written request by ten or more persons or by a group with a membership of 10 or more.

**THE NEXT STEP:** DEQ will consider all public comments received by the date and time stated above before making a final decision regarding the prospective purchaser agreement. A public notice of DEQ's final decision will be issued in this publication.

**ACCESSIBILITY INFORMATION:** DEQ is committed to accommodating people with disabilities. Please notify DEQ of any

special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications & Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us). People with hearing impairments may call DEQ's TTY number, (800) 735-2900 or 711.

### REQUEST FOR COMMENTS NO FURTHER ACTION PROPOSAL FOR UNION STATION — PARCEL A NORTH, LOT 1

**COMMENTS DUE:** May 30, 2013

**PROJECT LOCATION:** 1207 NW Naito Parkway, Portland, OR  
**PROPOSAL:** The Department of Environmental Quality invites public comment on a proposed no further action decision for Lot 1 of the Union Station — Parcel A North site.

**HIGHLIGHTS:** From the late 1800s to 1987 the site was used as a rail yard. The property was purchased by the Portland Development Commission in the 1970s for redevelopment. Environmental investigation in the 1990s identified contaminants in site soil including petroleum and metals. A 1997 risk assessment concluded that contamination poses a potential risk to site users. Groundwater beneath the site is not impacted. Site capping was selected to mitigate site risk, documented in a 1998 Record of Decision by DEQ. Lot 1 of the site was capped during construction of OSU's Food Innovation Center in 1998. Cap inspections since that time have confirmed that the OSU building, pavement, and clean soil in landscape areas are effectively isolating soil contaminants. A Lot 1 closure report was approved by DEQ in March 2013, and a deed restriction is being developed for recording with the property deed requiring inspection of the cap every five years. DEQ has determined that no further action is necessary at Lot 1 provided the cap is maintained. The remaining portion of the site — Lot 2 — has been temporarily capped with clean soil. Final capping will occur when the lot is redeveloped.

**HOW TO COMMENT:** The project file may be reviewed by appointment at DEQ's Northwest Region office at 2020 SW Fourth Ave., Suite 400, Portland, Oregon 97201. To access site summary information including a DEQ staff report discussing the proposed remedy in DEQ's ECSI database on the Internet, go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter 1962 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 1962 in the Site ID/Info column. Send written comments by 5 p.m. Thursday, May 30, 2013 to Daniel Hafley, Senior Project Manager, at the address listed above. If ten or more people or by a group with a membership of 10 or more submit a request, DEQ will hold a public meeting to receive verbal comments.

**THE NEXT STEP:** DEQ will consider all public comments received by the close of the comment period before making a final decision regarding the proposed site remedy.

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

People with hearing impairments may call 711.

### REQUEST FOR COMMENTS DEQ PROPOSES CONDITIONAL NO FURTHER ACTION FOR MC CHUCKWAGON LLC (FORMER FRANKO #62)

**COMMENTS DUE:** 5 p.m., May 31, 2013

**PROJECT LOCATION:** MC Chuckwagon LLC, 350 N F St., Lakeview, Lake County

## OTHER NOTICES

**PROPOSAL:** The Department of Environmental Quality proposes to issue a conditional no further action determination for the Leaking Underground Storage Tank Program #19-91-0030, MC Chuckwagon LLC site (Former Franko #62). DEQ issues a no further action determination when an environmental cleanup has met regulatory requirements.

**HIGHLIGHTS:** A gas station operated on the property from the 1920s to 1992. Petroleum releases from the former station contaminated soil and groundwater. DEQ was initially notified of the contamination in April 1991. Three gasoline USTs, fuel dispensers and associated piping were decommissioned by removal in August 1992. A waste oil UST was removed in February 1993. A Prospective Purchaser Agreement between DEQ and MC Chuckwagon LLC was recorded with Lake County on February 19, 2013. This agreement in the form of a consent order facilitated the beneficial reuse of the site, including institutional controls on the property to address contamination. Conditions of the proposed no further action include institutional controls on the property that preclude usage of the property for residential purposes or the use of the groundwater and requirement of a vapor barrier beneath any future structure built on the property. The site will also be capped through use of buildings, asphalt, concrete or landscaping. DEQ has determined that the cleanup meets the requirements of Oregon Administrative Rules 340-122-0010 through 340-122-0140 and 340-122-0205 through 340-122-0360. Pollutant levels remaining in soil and groundwater are protective of human health and the environment.

**HOW TO COMMENT:** Send comments by 5 p.m., May 31, 2013, to DEQ Project Manager Katie Robertson by phone at 541-278-4620, by mail at 700 SE Emigrant, Suite 330, Pendleton, OR 97801, by e-mail at [Robertson.Katie@deq.state.or.us](mailto:Robertson.Katie@deq.state.or.us) or by fax at 541-278-0168.

To access site summary information and other documents in DEQ's Leaking Underground Storage Tank database, go to [www.deq.state.or.us/lq/tanks/lust/LustPublicLookup.asp](http://www.deq.state.or.us/lq/tanks/lust/LustPublicLookup.asp), enter 19-91-0030 in the LUST Number box and click "Lookup" at the bottom of the form. Next, click the link labeled 19-91-0030 in the Log Number column. To review the project file, contact the project manager above for a file review appointment.

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

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

### REQUEST FOR COMMENTS PROPOSED CONDITIONAL NO FURTHER ACTION FOR FORMER GOODMAN OIL SERVICE STATION & BULK PLANT

**COMMENTS DUE:** 5 p.m., May 31, 2013

**PROJECT LOCATION:** 252 N Glenn St., Vale

**PROPOSAL:** The Oregon Department of Environmental Quality's Voluntary Cleanup Program proposes to issue a conditional no further action determination for the former Goodman Oil service station and bulk plant site located at 252 N Glenn St., Vale. DEQ issues a conditional no further action determination when a cleanup has met regulatory standards.

**HIGHLIGHTS:** A gasoline service station and petroleum bulk plant operated on the property from the 1950s to 2002. Petroleum releases from the service station contaminated soil and groundwater. DEQ was initially notified of the contamination in 2002. DEQ has performed multiple phases of investigations at the property since 2010 to determine the extent of contamination.

The site is proposed for a risk-based closure and issuance of a Conditional No Further Action determination. All of the potential exposure concerns were addressed during the development of the site-specific conceptual site model, the Contaminated Media Management Plan, or will be addressed through institutional controls in the form of Easement and Equitable Servitudes (E&ES). The E&ES will prohibit beneficial use of groundwater, residential use, and require the installation of a vapor barrier beneath any future structures.

**HOW TO COMMENT:** Send comments by 5 p.m., May 31, 2013, to DEQ Project Manager Katie Robertson by phone at 541-278-4620, by mail at 700 SE Emigrant, Suite 330, Pendleton, OR 97801, by e-mail at [robertson.katie@deq.state.or.us](mailto:robertson.katie@deq.state.or.us) or by fax at 541-278-0168.

To access site summary information and other documents in DEQ's Environmental Cleanup Site Information database, go to [www.deq.state.or.us/lq/ECSI/ecsi.htm](http://www.deq.state.or.us/lq/ECSI/ecsi.htm), select "Search complete ECSI database" link, enter 3049 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 3049 in the Site ID/Info column. To review the project file, contact the project manager above for a file review appointment.

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

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

# 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 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. 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 Chiropractic Examiners**  
**Chapter 811**

**Rule Caption:** Prepaid Treatment Plans amendments and Guide to Policy and Practice Questions.

**Date:** 5-23-13      **Time:** 9 a.m.      **Location:** Red Lion Hotel  
200 N Riverside Ave.  
Medford, OR

**Hearing Officer:** Dave McTeague

**Stat. Auth.:** ORS 684.100

**Other Auth.:** ORS 684.100

**Stats. Implemented:** ORS 684.155(1)(b)

**Proposed Amendments:** 811-015-0002, 811-010-0093

**Last Date for Comment:** 5-23-13, 9 a.m.

**Summary:** The board updates the Policy and Practice Guide annually and "re-adopts" the rule intermittently.

**Rules Coordinator:** Kelly J. Beringer

**Address:** Board of Chiropractic Examiners, 3218 Pringle Rd. SE, Suite 150, Salem, OR 97302

**Telephone:** (503) 373-1573

.....  
**Board of Geologist Examiners**  
**Chapter 809**

**Rule Caption:** Adoption of 2013–2015 Operating Budget

**Date:** 5-16-13      **Time:** 9 a.m.      **Location:** 707 13th St. SE  
Conf. Rm. B, 2nd Floor  
Salem, OR

**Hearing Officer:** Christine Valentine

**Stat. Auth.:** ORS 670.310, 672.705, 182.462

**Stats. Implemented:** ORS 672.505 & 182.462

**Proposed Amendments:** 809-010-0025

**Last Date for Comment:** 05-16-13, 5 p.m.

**Summary:** This rule revision will adopt the 2013–2015 biennial budget of the Board with a spending limit of \$557,159. The Board

approved the 2013–2015 budget on March 22, 2013. The Board is now presenting the budget for review by its registrants and other interested parties. Individuals may view a copy of the budget rule and details on the Board's web page or may request copies by contacting the Board's office.

**Rules Coordinator:** Christine Valentine

**Address:** Board of Geologist Examiners, 707 13th St. SE, Suite 114, Salem, OR 97301

**Telephone:** (503) 566-2837

.....  
**Board of Psychologist Examiners**  
**Chapter 858**

**Rule Caption:** Modifies definition of "in-residence" for the clinical psychology educational requirements.

**Stat. Auth.:** ORS 675.010–675.150

**Stats. Implemented:** ORS 675.030 & 675.110

**Proposed Amendments:** 858-010-0010

**Last Date for Comment:** 6-28-13, 5 p.m.

**Summary:** The proposed amendment applies to applicants who possess a doctoral degree from a regionally accredited, provincially chartered, or foreign program and can verify that they enrolled in their program prior to August 12, 2011. The change will allow such applicants to apply the "old rule" definition of one continuous year "in-residence" at the institution from which the degree is granted. This provision will be effective through August 12, 2015.

**Rules Coordinator:** LaRee Felton

**Address:** Board of Psychologist Examiners, 3218 Pringle Rd. SE, Suite 130, Salem, OR 97302

**Telephone:** (503) 373-1196

.....  
**Department of Agriculture,**  
**Oregon Dairy Products Commission**  
**Chapter 617**

**Rule Caption:** Establishes Commission fiscal year as beginning on January 1 and ending on December 31.

**Date:** 5-31-13      **Time:** 11 a.m.      **Location:** Oregon Dairy Center  
10505 SW Barbur Blvd.  
Portland, OR 97219

**Hearing Officer:** Pete Kent

**Stat. Auth.:** ORS 576.304 & 2013 OL Ch. 12 (SB 348), effective March 21, 2013.

**Other Auth.:** Motion made & approved by Oregon Dairy Products Commission Board of Commissioners, April 05, 2013 Commissioners' meeting, by conference call held in Portland, Oregon.

**Stats. Implemented:** ORS 576.416 to 576.445

**Proposed Adoptions:** 617-020-0010

**Last Date for Comment:** 5-31-13, Close of Business

**Summary:** Establishes the Commission's fiscal year for the 12-month period commencing January 1 and ending on December 31.

**Rules Coordinator:** Pete Kent

**Address:** Department of Agriculture, Dairy Products Commission, 10505 SW Barbur Blvd., Portland, OR 97219

**Telephone:** (503) 229-5033

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

**Rule Caption:** Removes Adult Gender Identity Disorder Treatment Exclusion from Required Coverage of Mental or Nervous Conditions.

**Date:** 5-29-13      **Time:** 1:30 p.m.      **Location:** Labor & Industries Bldg.,  
Conference Rm. E  
350 Winter St. NE  
Salem, OR 97301

**Hearing Officer:** Jeannette Holman

**Stat. Auth.:** ORS 731.244, 743A.168

# NOTICES OF PROPOSED RULEMAKING

**Stats. Implemented:** ORS 743A.168

**Proposed Amendments:** 836-053-1404, 836-053-1405

**Last Date for Comment:** 6-7-13, 5 p.m.

**Summary:** This rulemaking amends rules adopted by the Department of Consumer and Business Services (DCBS) in 2006 related to mandatory coverage of mental and nervous conditions. Currently the rules allow carriers to exclude treatment of gender identity disorder in adults over the age of 18. With the passage of Senate Bill 2 in 2007, the stated public policy of the state prohibits discrimination on the basis of gender identity. This exclusion violates that prohibition and must be removed from the Department's rules. The rules also amend references in the rules to pertinent statutes renumbered in 2007.

**Rules Coordinator:** Shelley Greiner

**Address:** Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Salem, OR 97301-3383

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

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

**Rule Caption:** Preferred Worker Program: return-to-work pilot projects

Date:	Time:	Location:
5-21-13	9 a.m.	Labor & Industries Bldg., Rm B 350 Winter St. NE, Salem, OR

**Hearing Officer:** Fred Bruyns

**Stat. Auth.:** ORS 656.622 & 656.726(4)

**Stats. Implemented:** ORS 656.622

**Proposed Adoptions:** 436-110-0150

**Last Date for Comment:** 5-22-13, Close of Business

**Summary:** The agency proposes to amend OAR chapter 436, division 110, "Preferred Worker Program," to provide that the director may develop one or more pilot projects to test alternatives to the current system of reemploying preferred workers.

**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

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## Department of Corrections Chapter 291

**Rule Caption:** Tours in Department of Corrections Institutions

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

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

**Proposed Amendments:** 291-009-0005, 291-009-0010, 291-009-0015

**Last Date for Comment:** 6-10-13, 5 p.m.

**Summary:** These amendments clarify requirements for interested groups and individuals to be allowed tours in DOC institutions. The rules have not been revised since 1999. Most amendments are house-keeping — updating terminology and operational and organizational changes that have occurred since the last revision.

**Rules Coordinator:** Janet R. Worley

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

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

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**Rule Caption:** Access to Board of Parole and Post-Prison Supervisions Hearings held in DOC institutions

**Stat. Auth.:** ORS 144.123, 179.040, 423.020, 423.030 & 423.075

**Stats. Implemented:** ORS 144.123, 179.040, 423.020, 423.030 & 423.075

**Proposed Adoptions:** 291-153-0025

**Proposed Amendments:** 291-153-0005, 291-153-0020

**Last Date for Comment:** 6-10-13, 5 p.m.

**Summary:** Reorganization of the rules that relate to inmate accompaniment to Board hearings is necessary to separate the rule that requires joint rulemaking with the Board into a discrete section to promote efficiency and clarity.

**Rules Coordinator:** Janet R. Worley

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

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

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**Rule Caption:** Use of Force and Security Equipment by DOC Employees

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

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

**Proposed Amendments:** 291-013-0010, 291-013-0055, 291-013-0070, 291-013-0104, 291-013-0110, 291-013-0130, 291-013-0140, 291-013-0206, 291-013-0215

**Last Date for Comment:** 6-10-13, 5 p.m.

**Summary:** These amendments are necessary to remove language for the pepperball launching system, as this security equipment is no longer used within DOC; revise the process for preliminary reviews on use of force incidents to promote efficiencies; and other house-keeping items to update the language to current terminology and reflect organizational changes that have occurred since the last revision.

**Rules Coordinator:** Janet R. Worley

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

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

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## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Amend Rules Relating to Habitat Conservation Stamp Retention.

Date:	Time:	Location:
6-6-13	8 a.m.	9000 SW Washington Square Rd. Tigard, OR 97223
6-7-13	8 a.m.	9000 SW Washington Square Rd. Tigard, OR 97223

**Hearing Officer:** Oregon Fish & Wildlife Commission

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

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

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

**Proposed Repeals:** 635-095-0125(T)

**Last Date for Comment:** 6-5-13, Close of Business

**Summary:** NOTE: Commission/Hearing dates for June are June 6 and 7, 2013 beginning at 8:00 a.m. Exhibits for the Wildlife Division are expected to complete on June 6, 2013. However, should additional time be needed, the Commission reserves the right to carry over Wildlife Division exhibits on June 7, 2013.

Amend rules to allow retention of the Habitat Conservation stamps that correspond with the prints signed by the artist and the Governor.

**Rules Coordinator:** Therese Kucera

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

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

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**Rule Caption:** Modify 2012–2014 Furbearer Trapping and Hunting Regulations.

Date:	Time:	Location:
6-6-13	8 a.m.	9000 SW Washington Square Rd. Tigard, OR 97223
6-7-13	8 a.m.	9000 SW Washington Square Rd. Tigard, OR 97223

**Hearing Officer:** Oregon Fish & Wildlife Commission

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

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

# NOTICES OF PROPOSED RULEMAKING

**Proposed Amendments:** Rules in 635-050, 635-200  
**Last Date for Comment:** 6-5-13, Close of Business  
**Summary:** NOTE: Commission/Hearing dates for June are June 6 and 7, 2013 beginning at 8:00 a.m. Exhibits for the Wildlife Division are expected to complete on June 6, 2013. However, should additional time be needed, the Commission reserves the right to carry over Wildlife Division exhibits on June 7, 2013.

Amend rule to clarify definitions for furbearing and unprotected mammal regulations.

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

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**Rule Caption:** 2014 Annual Changes to Game Mammal Hunting Regulations, plus 2013 Controlled Hunt Tag Numbers.

Date:	Time:	Location:
6-6-13	8 a.m.	9000 SW Washington Square Rd. Tigard, OR 97223
6-7-13	8 a.m.	9000 SW Washington Square Rd. igard, OR 97223

**Hearing Officer:** Oregon Fish & Wildlife Commission  
**Stat. Auth.:** ORS 496.012, 496.138, 496.146, 496.162  
**Stats. Implemented:** ORS 496.012, 496.138, 496.146, 496.162  
**Proposed Amendments:** Rules in 635-002, 635-008, 635-043, 635-045, 635-049, 635-060, 635-065, 635-066, 635-067, 635-068, 635-069, 635-070, 635-071, 635-072, 635-073, 635-075, 635-078, 635-080

**Last Date for Comment:** 6-5-13, Close of Business  
**Summary:** NOTE: Commission/Hearing dates for June are June 6 and 7, 2013 beginning at 8:00 a.m. Exhibits for the Wildlife Division are expected to complete on June 6, 2013. However, should additional time be needed, the Commission reserves the right to carry over Wildlife Division exhibits on June 7, 2013.

2013 controlled hunt tag numbers, plus 2014 annual changes to game mammal hunting regulations.

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

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**Rule Caption:** Oregon Ocean Commercial, Terminal Area, and Coastal Zone Sport Salmon Fisheries.

Date:	Time:	Location:
6-6-13	8 a.m.	Embassy Suites Hotel Washington Square 9000 SW Washington Square Rd. Tigard, OR 97223

**Hearing Officer:** Oregon Fish and Wildlife Commission  
**Stat. Auth.:** ORS 496.138, 496.146, 506.036, 506.119, 506.129 & 506.750, et. Seq.  
**Other Auth.:** Magnusson-Stevens Sustainable Fisheries Act.  
**Stats. Implemented:** ORS 496.162, 506.036, 506.109, 506.129 & 506.750, et. Seq.

**Proposed Adoptions:** Rules in 635-003, 635-013, 635-014, 635-016  
**Proposed Amendments:** Rules in 635-003, 635-013, 635-014, 635-016

**Proposed Repeals:** Rules in 635-003, 635-013, 635-014, 635-016  
**Last Date for Comment:** 6-6-13, 8 a.m.

**Summary:** Amend rules relating to commercial and sport salmon fishing in the Oregon ocean terminal areas; and in the Marine, Northwest and Southwest zones consistent with guidelines established by the Oregon Fish and Wildlife Commission and Pacific Fishery Management Council; and enacted Federal Regulations. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

NOTE: Hearing dates are June 6 and 7, beginning at 8:00 a.m. each day. If the schedule allows, Fish Division's exhibits may start on June 6 and continue on Friday, June 7, 2013.

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

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## Department of Human Services, Aging and People with Disabilities and Developmental Disabilities Chapter 411

**Rule Caption:** Late Contested Case Hearing Requests

**Stat. Auth.:** ORS 409.050 & 411.103  
**Stats. Implemented:** ORS 409.010 & 411.103  
**Proposed Amendments:** 411-001-0520

**Last Date for Comment:** 5-28-13, 5 p.m.

**Summary:** The Department of Human Services (Department) is proposing to amend OAR 411-001-0520 about contested case hearing requests to correct a scrivener's error reflected in the permanent rule language that became effective April 2, 2013.

**Rules Coordinator:** Christina Hartman  
**Address:** Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E-10, Salem, OR 97301-1074  
**Telephone:** (503) 945-6398

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## Department of Human Services, Self-Sufficiency Programs Chapter 461

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

Date:	Time:	Location:
5-21-13	10 a.m.	500 Summer St. NE, Rm. 255 Salem, OR

**Hearing Officer:** Annette Tesch  
**Stat. Auth.:** ORS 409.050, 411.060, 411.070, 411.095, 411.116, 411.400, 411.404, 411.660, 411.700, 411.704, 411.706, 411.710, 411.816, 412.006, 412.009, 412.014, 412.016, 412.049, 412.124, 414.025, 414.231, 414.826, 414.831 & 414.839  
**Other Auth.:** 7 CFR 273.11, 45 CFR 400.58(a)

**Stats. Implemented:** ORS 409.010, 409.050, 409.610, 411.010, 411.060, 411.070, 411.087, 411.116, 411.122, 411.141, 411.400, 411.404, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.700, 411.704, 411.706, 411.710, 411.816, 412.006, 412.009, 412.014, 412.016, 412.049, 412.064, 412.124, 414.025, 414.231, 414.826, 414.831, 414.839, 416.350, 418.485 & 2009 OL Ch. 827

**Proposed Amendments:** 461-115-0430, 461-130-0310, 461-135-0070, 461-135-0400, 461-135-0900, 461-145-0250, 461-150-0060, 461-155-0150, 461-155-0180, 461-155-0710, 461-160-0040, 461-175-0222, 461-193-0320, 461-195-0521, 461-195-0541

**Last Date for Comment:** 5-23-13, 5 p.m.

**Summary:** OAR 461-115-0430 about periodic redeterminations is being amended to state that benefits Temporary Assistance for Needy Families (TANF) end on the last day of the certification period.

OAR 461-130-0310 about the exempt, mandatory, and volunteer participation classifications is being amended to expand who is required to participate in the JOBS program as a condition of receiving benefits in the Refugee and TANF program. The expanded mandate includes caretaker relatives as well caretaker relatives when there is a pregnancy but no dependent child.

OAR 461-135-0070 about eligibility requirements for Temporary Assistance for Needy Families (TANF) is being amended to expand who is eligible for TANF when there is a pregnancy in the family.

OAR 461-135-0400 about specific requirements in the Employment Related Day Care (ERDC) program is being amended to make permanent a temporary rule change effective January 1, 2013 specifying the requirement for verification if eligibility is based on an unemployed adult being physically or mentally unable to provide adequate child care when there are two adults in the filing group (the

## NOTICES OF PROPOSED RULEMAKING

individuals whose circumstances are considered in the eligibility process).

OAR 461-135-0900 and 461-193-0320 are being amended to increase cash assistance for refugees who are receiving Refugee Assistance program (REF) benefits by not prorating the first month of assistance; and to clarify under what circumstances non-proration of the first month of REF assistance will occur. OAR 461-135-0900 is also being amended to clarify the impact of TANF program eligibility on REF program eligibility and the impact of eligibility for other medical assistance programs on eligibility for the REFM (Refugee Assistance Medical) program.

OAR 461-145-0250 about how income producing property affects income for several Department programs is being amended to clarify how to treat income received from property for the SNAP program. The rule does not currently address how to calculate the income when an individual has more than one property for income that is not self-employment income (when the individual is managing the property less than 20 hours each week) Under this amendment, the exclusions for one property may not be used to offset income from a different property.

OAR 461-150-0060 about prospective budgeting and eligibility is being amended to limit the use of actual income to the initial month of eligibility for the Refugee and Temporary Assistance for Needy Families (TANF) programs when actual income does not reflect later months in the certification period.

OAR 461-155-0150 about child care eligibility standard, payment rates, and copayments is being amended to adjust the policy in place under a temporary rule change effective January 1, 2013 and broaden the sources of acceptable documentation required to verify the special needs rate eligibility of a child. This rule is also being amended to remove the requirement that a provider can only bill for an absent day if they were unable to fill the absent child's slot with another child.

OAR 461-155-0180 about the poverty related income standards is being amended to identify for the SNAP program the standard amounts representing 185 percent of the federal poverty level for 2013. This increase went into effect February 1, 2013 and is currently covered under the temporary rule.

OAR 461-155-0710 about diversion and transition Services in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) is being amended to remove the requirement that payments authorized by this rule be approved by Senior and People with Disabilities Division central office staff.

OAR 461-160-0040 about the deduction and coverage dependent care costs is being amended to state the policy about when job search can lead to allowable child care costs in the Employment Related Day Care (ERDC) program. This rule supersedes prior DHS policies on this topic in the Family Services Manual.

OAR 461-175-0222 about notice requirements at the expiration of a certification period is being amended to include notice requirements for expiration of the certified eligibility period for Temporary Assistance for Needy Families (TANF) benefits.

OAR 461-195-0521 about the calculation of overpayments is being amended to state that in the ERDC, MAA, MAF, REF, SNAP, and TANF programs a client's actual self-employment income should be annualized retrospectively to calculate an overpayment. This rule is also being amended to clarify how earned income deductions are treated in the context of an overpayment.

OAR 461-195-0541 about liability overpayments is being to clarify the age of adults who are liable for overpayments in the SNAP program.

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

Written comments may be submitted until May 23, 2013 at 5:00 p.m. Written comments may be e-mailed to [Annette.Tesch@state.or.us](mailto:Annette.Tesch@state.or.us), faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS — Self-Sufficiency Programs, 500 Summer Street

NE, E-48, Salem, Oregon, 97301. The Department provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

**Rules Coordinator:** Annette Tesch

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

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

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**Department of State Lands**  
**Chapter 141**

**Rule Caption:** Add a new rule restricting public recreational use on state-owned land at Jones Beach

Date:	Time:	Location:
5-22-13	5 p.m.	Clatskanie People's Utility District Community Meeting Rm. 495 E. Columbia River Hwy. Clatskanie, OR 97016

**Hearing Officer:** Chris Castelli or Jim Paul

**Stat. Auth.:** ORS 183 – regarding administrative procedures & rules of state agencies; ORS 273 – regarding the creation & general powers of the Land Board; ORS 274 – regarding submerged & submersible land.

**Other Auth.:** Oregon Constitution, Art. VIII, Sec.5

**Stats. Implemented:** ORS 273 & 274

**Proposed Adoptions:** 141-088-0190

**Last Date for Comment:** 6-28-13, 5 p.m.

**Summary:** This rulemaking will amend the Department's public recreational use rules relative to state-owned land at Jones Beach, in Columbia County. On April 9, 2012 the Department received a petition for rulemaking from Mr. Scott Fraser, pursuant to ORS 183.390 and OAR 137-001-0070. The petition sought adoption of a rule closing Jones Beach to overnight uses and limiting use of all-terrain vehicles to specific times and days. The petition asserted that use of motorized vehicles within the wetted river channel "poses a significant risk of harm and damage to the natural resource of the land and to the public." The Department recommended to the State Land Board that it grant the petition and authorize the Department to initiate rulemaking to impose restrictions on the public recreational use of state-owned land at Jones Beach as part of the Department's rules on "Public Recreational Use of State-Owned Property" found in Oregon Administrative Rules at OAR 141-088. The State Land Board approved this request at the June 12, 2012 meeting.

OAR 141-088-\_\_\_\_\_  
RESTRICTIONS FOR STATE-OWNED PROPERTY AT JONES BEACH

(Columbia River)

All State-owned land that is under the jurisdiction of the Department in the area known as Jones Beach, between Columbia River mile 46.0 and Columbia River mile 48.0 lying North of River Front Road, in Sections 33 and 34 Township 8 North, Range 5 West, Willamette Meridian, in Columbia County, Oregon is closed to:

(1) All uses between 10 p.m. and 5 a.m. throughout the year.

(2) All Class I, II, III, and IV ATV's that are not licensed for highway use. Except Wednesday and Saturday from 9 a.m. to 9 p.m.

Excepted from these restrictions are Government-owned vehicles on official business, public and private vehicles performing company business, vehicles involved in rescue or emergency activities, district authorized persons and landowners inspection or maintain levees and fences.

Mr. Fraser has also requested an emergency closure as stated in his petition: "Due to the large number of people using the beach as a toilet, we feel it is a health and safety emergency that should be addressed under the authority of OAR 141-088-0007 before this years camping season begins."

This is a petition for a new rule under OAR 141-088. The petition meets the requirements of OAR 137-001-0070. The Department has reviewed the proposal as required in OAR 141-088-0005(2). Department staff met with the petitioner and the Oregon State Police at

# NOTICES OF PROPOSED RULEMAKING

Jones Beach on April 3, 2012. The Oregon State Police indicated that they would be in support of restrictions on the public recreational use of state-owned land at Jones Beach, and they would provide further input moving forward.

The Department met with state and local law enforcement on August 8, 2012 in St. Helens.

Two rulemaking advisory committee meetings were also held on October 22, 2012, and February 25, 2013. The draft rule language below was developed out of those meetings:

141-088-0190 Restrictions for the State-Owned Property at Jones Beach (Columbia River)

All state-owned land that is under the jurisdiction of the Department in the area known as Jones Beach, between Columbia River Mile 46.0 and Columbia River Mile 48.0, lying north of River Front Road, in Sections 33 and 34, Township 8 North, Range 5 West, in Columbia County, Oregon, is closed to:

- (1) All uses between 10 p.m. and 5 a.m. throughout the year, and
- (2) All-terrain vehicles as defined in ORS 801.190-.194 throughout the year.

Excepted from these restrictions are Government-owned vehicles on official business, street legal class II all-terrain vehicles during open use hours, public and private vehicles performing company business, vehicles involved in rescue or emergency activities, district authorized persons and landowners inspecting or maintaining levees and fences.

The Department is seeking public comment on the proposed rule.

The Department also specifically requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business pursuant to ORS 183.335(2)(b)(G).

For additional information on this rulemaking process please visit the following link on the Departments website [http://www.oregon.gov/dsl/Pages/rules\\_activity](http://www.oregon.gov/dsl/Pages/rules_activity)

To comment on this rulemaking, submit your comments by mail to:

Tiana Teeters, Rules Coordinator  
Jones Beach Rulemaking  
Department of State Lands  
775 Summer Street N.E., Suite 100  
Salem, Oregon 97301

To comment on this rulemaking, submit your comments by e-mail to: [jonesbeach.rulemaking@dsl.state.or.us](mailto:jonesbeach.rulemaking@dsl.state.or.us)

**Rules Coordinator:** Tiana Teeters  
**Address:** Department of State Lands, 775 Summer St. NE, Suite 100, Salem, OR 97301  
**Telephone:** (503) 986-5239

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

**Rule Caption:** Intrastate household goods transportation regulations

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

**Stats. Implemented:** ORS 823.101, 823.103, 825.127 825.202, 825.204, 825.224, 825.234, 825.325 & 825.240

**Proposed Adoptions:** 740-060-0035, 740-060-0085, 740-060-0090

**Proposed Amendments:** 740-060-0010, 740-060-0020, 740-060-0040, 740-060-0045, 740-060-0055, 740-060-0060, 740-060-0070, 740-060-0080, 740-060-0100, 740-060-0110

**Proposed Repeals:** 740-060-0030

**Last Date for Comment:** 5-21-13, Close of Business

**Summary:** These rules govern the transportation of intrastate household goods. The proposed changes are needed to clarify the scope and intent of division 60 rules and reflect current practices of household goods regulations. Amendments, Adoptions and repeal were made to the following:

1. Proposed repeal of OAR 740-060-0030, General Information Bulletin for Moving Household Goods in Oregon (Bulletin) for the reason the rule is written as a consumer guide to household goods. The Bulletin has been prepared as a form and given an ODOT form number which will be available for public use after the approval of this rulemaking.

2. Proposed adoptions of rules have been written for Cargo Insurance and Valuation Declaration proposed rule 740-060-0035, Hourly Rate Local Moves proposed rule 740-060-0085, Hourly Rate Distance Move proposed rule 740-060-0090.

a) OAR 740-060-0035, Cargo Insurance and Valuation Declaration rules are needed to explain that a carrier liability is altered by selecting a valuation protection option. The proposed new rule removes depreciated value protection as a valuation option. In addition, the proposed rule specifies if the shipper does not select a valuation option, replacement cost protection will be the charged by the carrier at the expense of the shipper.

b) OAR 740-060-0085, Hourly Rate Local Moves clarifies the rates and areas used for commercial zones and moves wholly within a city.

c) OAR 740-060-0090, Hourly Rate Distance Move is the proposed permanent rulemaking from a rule temporary rule approved in January 2013. The rule is needed to correct the concern of using hourly charges for distance move by limiting the amount of time a mover can charge for transit time by using a mileage software program to determine the travel time.

3. OAR 740-060-0020, Inventories and 740-060-0040, Estimates of Charges are amended to allow a carrier to complete an inventory or estimate when requested by the shipper. The proposed rule is needed to ensure the shipper can receive an estimate or inventory when the shipper requires it. In addition, inventories are required when household goods are placed into storage in transit.

4. 740-060-0045, Criminal Background Checks rules are revised to specify that background checks must be done every three years to coincide with the retention requirements of the background checks. In addition, background checks must cover each state the subject individual has resided in for the last five years.

5. 740-060-0055, Additional Fees are amended to remove the two percent per month penalty charge per month for late reports based on a statutory change that had been made to ORS 825.247 passed in 2009 from House Bill 2817. A fee of one hundred dollars collected at the time the household goods application is received has been proposed to be removed because the fee is currently being collected in April of each year.

6. 740-060-0100, Cartage Areas Exempt from Economic Regulation is amended to include the requirement to obtain a permit (1B) needed to make these types of moves and adding the supporting statute of 825.127.

Housekeeping amendments revise language to be in compliance with Secretary of State standards. The proposed rule amendments are needed to clarify the scope and intent of division 60 rules, reflect current practices and provide uniformity for safety regulations.

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

**Rules Coordinator:** Lauri Kunze  
**Address:** Department of Transportation, Motor Carrier Transportation Division, 355 Capitol St. NE, MS 51, Salem, OR 97301  
**Telephone:** (503) 986-3171

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**Landscape Contractors Board  
Chapter 808**

**Rule Caption:** Adopts July 1, 2013 through June 30, 2015 budget.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-22-13	9 a.m.	Landscape Contractors Board 2111 Front St. NE, Suite 2-101 Salem, OR 97301

**Hearing Officer:** Shelley Sneed  
**Stat. Auth.:** ORS 670.310 & 671.670



# NOTICES OF PROPOSED RULEMAKING

**Stats. Implemented:** ORS 182.462  
**Proposed Amendments:** 808-001-0008  
**Last Date for Comment:** 5-22-13 Close of Hearing  
**Summary:** Adopts July 1, 2013 through June 30, 2015 budget.  
**Rules Coordinator:** Kim Gladwill-Rowley  
**Address:** Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301  
**Telephone:** (503) 967-6291, ext. 223

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**Rule Caption:** Increases amount of landscaping work a general contractor may perform from \$3,400 to \$3,800.

Date:	Time:	Location:
6-11-13	9 a.m.	Landscape Contractors Board 2111 Front St. NE, Suite 2-101 Salem, OR 97301

**Hearing Officer:** Shelley Sneed  
**Stat. Auth.:** ORS 670.310 & 671.670  
**Stats. Implemented:** ORS 671.640(1)(h)  
**Proposed Amendments:** 808-003-0210

**Last Date for Comment:** 7-19-13, Close of Business  
**Summary:** Beginning September 1, 2013 Increases amount of landscaping work a general contractor may perform without an LCB business license from \$3,400 to \$3,800 as required by ORS 671.640(1)(h).

**Rules Coordinator:** Kim Gladwill-Rowley  
**Address:** Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301  
**Telephone:** (503) 967-6291, ext. 223

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**Rule Caption:** Creates a new license for planting only

Date:	Time:	Location:
6-11-13	9 a.m.	Landscape Contractors Board 2111 Front St. NE, Suite 2-101 Salem, OR, 97301

**Hearing Officer:** Shelley Sneed  
**Stat. Auth.:** ORS 670.310 & 671.670  
**Stats. Implemented:** ORS 671.570  
**Proposed Amendments:** 808-003-0035, 808-003-0040, 808-003-0045, 808-003-0060

**Last Date for Comment:** 7-19-13, 1:30 p.m.  
**Summary:** 808-003-0035 — Adds a Planting license category and clarifies it is part of the All Phase license.

808-003-0040 — Defines what landscaping work a Planting limited license holder may perform and removes a previous contract minimum standard regarding subcontracting.

808-003-0045 — Clarifies which exam sections must be passed to change the phase of license.

808-003-0060 — Renames the exam sections.

**Rules Coordinator:** Kim Gladwill-Rowley  
**Address:** Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301  
**Telephone:** (503) 967-6291, ext. 223

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**Rule Caption:** Removing actions that are not consistent with the definition of Dishonest or Fraudulent Conduct.

**Stat. Auth.:** ORS 670.310 & 671.670  
**Stats. Implemented:** ORS 671.610(1)(q)  
**Proposed Amendments:** 808-002-0330

**Last Date for Comment:** 5-22-13, Close of Business  
**Summary:** Removing actions that are not consistent with the definition of Dishonest or Fraudulent Conduct.

**Rules Coordinator:** Kim Gladwill-Rowley  
**Address:** Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301  
**Telephone:** (503) 967-6291, ext. 223

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

**Rule Caption:** Regarding permanent amendments to OAR 415-050, entitled "Standards for Alcohol Detoxification Centers."

Date:	Time:	Location:
5-21-13	9 a.m.	Human Services Bldg. 500 Summer St. NE, Rm. 352 Salem, OR 97301

**Hearing Officer:** Donna Smith  
**Stat. Auth.:** ORS 413.042 & 430.256

**Stats. Implemented:** ORS 430.306 & 430.345–430.375  
**Proposed Amendments:** 415-050-0000, 415-050-0005, 415-050-0010, 415-050-0015, 415-050-0020, 415-050-0025, 415-050-0030, 415-050-0035, 415-050-0040, 415-050-0045, 415-050-0050, 415-050-0055, 415-050-0060, 415-050-0065, 415-050-0070, 415-050-0075, 415-050-0080, 415-050-0085, 415-050-0090, 415-050-0095

**Last Date for Comment:** 5-24-13, Close of Business  
**Summary:** These rules prescribe standards for the development and operation of substance use disorder detoxification programs and services approved by the Addictions and Mental Health Division (AMH).

The current rulemaking activity adds provisions for medically monitored level of care, social detox and a comprehensive review of the remaining text.

**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

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

**Rule Caption:** Permanent amendments to OAR 309-016, entitled "Medicaid Payment For Rehabilitative Mental Health Services."

Date:	Time:	Location:
5-23-13	1 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 252 Salem Oregon

**Hearing Officer:** Donna Smith  
**Stat. Auth.:** ORS 413.042 & 430.640  
**Stats. Implemented:** ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715

**Proposed Adoptions:** 309-016-0825, 309-016-0830, 309-016-0835, 309-016-0840, 309-016-0845, 309-016-0850

**Proposed Repeals:** 309-016-0825(T)

**Last Date for Comment:** 5-28-13, Close of Business  
**Summary:** These rules specify standards for authorized appropriate reimbursement of Medicaid or State Children's Health Plan funded addictions and mental health services and supports. for acute inpatient services in a general medical setting or a freestanding facility meeting The requirements must be met in order for Medicaid payment to have been made appropriately.

This particular rule activity adds language regarding Supported Employment services and Assertive Community Treatment services.

**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

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**Rule Caption:** Some rules in Division 309-039 are being repealed as they are no longer valid.

**Stat. Auth.:** ORS 413.042  
**Stats. Implemented:**

# NOTICES OF PROPOSED RULEMAKING

**Proposed Repeals:** 309-039-0700, 309-039-0710, 309-039-0720, 309-039-0730, 309-039-0740, 309-039-0750, 309-039-0760, 309-039-0770, 309-039-0780, 309-039-0790

**Last Date for Comment:** 5-22-13, Close of Business

**Summary:** Division 309-039 rules — Standards For The Approval Of Providers Of Non-Inpatient Mental Health Treatment Services: parts are no longer valid and are being repealed.

**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

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**Rule Caption:** Establishing the Consumer Advisory Council 309-011-0120 and 309-011-0125, to be repealed as a housekeeping action.

**Stat. Auth.:** ORS 413.042 & 430.078

**Stats. Implemented:** ORS 413.042

**Proposed Repeals:** 309-011-0120, 309-011-0125

**Last Date for Comment:** 5-22-13, Close of Business

**Summary:** AMH is repealing these rules as they have been replaced with new rules already in place.

**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

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

**Rule Caption:** Implement Federal and state requirements in nursing facility with payment rate changes rule language clarification

Date:	Time:	Location:
6-17-13	10:30 a.m.	500 Summer St. NE, Rm. 137C Salem, OR 97301,

**Hearing Officer:** Cheryl Peters

**Stat. Auth.:** ORS 413.042, 414.065, Federal statute, Title XIX (Sec. 1902 [42 U.S.C. 139a(a) & Sec. 1905(o)(3)])

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-142-0020, 410-142-0290

**Last Date for Comment:** 6-19-13, 5 p.m.

**Summary:** This program will be implemented May 1, 2013. The Division needs to amend the rules listed to incorporate federal compliance requirements for payment when a client resides in a nursing facility (NF) and elects hospice care; make rate changes, clarify language, and update definitions based on provider, stakeholder, and Oregon Hospice Association participation and input in the Rules Advisory Committee (RAC) held on March 28, 2013.

**Rules Coordinator:** Cheryl Peters

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

**Telephone:** (503) 945-6527

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**Rule Caption:** Medical Transportation for Recipients of Medical Assistance Programs

Date:	Time:	Location:
5-15-13	10:30 a.m.	500 Summer St. NE, Rm. 137C Salem, OR 97301

**Hearing Officer:** Cheryl Peters

**Stat. Auth.:** ORS 413.042

**Stats. Implemented:** ORS 414.065

**Proposed Adoptions:** 410-136-3000, 410-136-3020, 410-136-3040, 410-136-3060, 410-136-3080, 410-136-3100, 410-136-3120, 410-136-3140, 410-136-3160, 410-136-3180, 410-136-3200, 410-136-3220, 410-136-3240, 410-136-3260, 410-136-3280, 410-136-3300, 410-136-3320, 410-136-3340, 410-136-3360, 410-136-3380

**Proposed Repeals:** 410-136-0030, 410-136-0040, 410-136-0045, 410-136-0050, 410-136-0060, 410-136-0070, 410-136-0080, 410-136-0100, 410-136-0120, 410-136-0140, 410-136-0160, 410-136-0180, 410-136-0200, 410-136-0220, 410-136-0240, 410-136-0245, 410-136-0260, 410-136-0280, 410-136-0300, 410-136-0320, 410-136-0340, 410-136-0350, 410-136-0360, 410-136-0420, 410-136-0440, 410-136-0800, 410-136-0820, 410-136-0840, 410-136-0860

**Last Date for Comment:** 5-17-13, 5 p.m.

**Summary:** These rules establish the requirements for transportation brokerages and the Authority to coordinate and pay for the delivery of medical transportation for OHP recipients to and from locations providing OHP covered medical services.

**Rules Coordinator:** Cheryl Peters

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

**Telephone:** (503) 945-6527

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

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

Date:	Time:	Location:
6-12-13	9 a.m.	1225 Ferry St. SE, 1st Floor Mt. Neahkanie Rm. Salem, Oregon 97301

**Hearing Officer:** Zarie Haverkate

**Stat. Auth.:** ORS 413.042, 414.655 & 442.210

**Stats. Implemented:** ORS 413.042, 414.655 & 442.210

**Proposed Amendments:** 409-055-0030, 409-055-0040, 409-055-0050, 409-055-0060, 409-055-0070

**Last Date for Comment:** 6-14-13, 5 p.m.

**Summary:** The Oregon Health Authority, Office for Oregon Health Policy and Research is proposing to make amendments relating to the recognition criteria for the Primary Care Home (PCPCH) Program.

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

**Rules Coordinator:** Zarie Haverkate

**Address:** Oregon Health Authority, Office for Oregon Health Policy and Research, 1225 Ferry St. SE, Salem, OR 97301

**Telephone:** (503) 373-1574

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## Oregon Health Licensing Agency Chapter 331

**Rule Caption:** Establish fee for temporary licensure and repeal trainee registration fee.

Date:	Time:	Location:
5-13-13	9 a.m.	700 Summer St. NE Salem, OR 97304

**Hearing Officer:** Samantha Patnode

**Stat. Auth.:** ORS 676.607, 676.615, 680.515 & 680.525

**Stats. Implemented:** ORS 676.607 & 680.525

**Proposed Ren. & Amends:** 331-405-0030 to 331-440-0000

**Last Date for Comment:** 6-1-13, 5 p.m.

**Summary:** Establish application and license fee for temporary license and repeal trainee registration fee.

House Bill 2045 was approved during the 2011 Legislative Session giving permissive authority to the Oregon Health Licensing Agency to establish a temporary license. As the fees were established through the Agency's budget, House Bill 5026-policy package 203.

Administrative rules have been proposed to establish a temporary trainee license in order to obtain 1,000 hours of training and a temporary license to allow individuals who have obtained the required education and training to continue to gain competency while waiting to take the board approved practical examination. The practical examination is held one time per year.

# NOTICES OF PROPOSED RULEMAKING

The trainee registration fee is being repealed to align with statutory requirements.

**Rules Coordinator:** Samantha Patnode

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

**Telephone:** (503) 373-1917

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## **Oregon Medical Board Chapter 847**

**Rule Caption:** Authorizes Executive Director and Medical Director to approve suspensions and terminations by operation of law

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 25.750, 25.774, 677.190, 677.225 & 677.265

**Proposed Adoptions:** 847-001-0035

**Last Date for Comment:** 5-21-13, Close of Business

**Summary:** The proposed rule delegates authority to the Executive Director and Medical Director to approve Suspensions and Terminations of Orders that occur by operation of law. Currently, Suspensions that occur by operation of law are those required by statute for licensees who are in arrears for child support, licensees who do not comply with CME audit requirements, licensees who are adjudged to be mentally ill or admitted to a treatment facility for mental illness for more than 25 consecutive days, and licensees who are inmates in a penal institution. Currently, Terminations of Orders that occur by operation of law are those required by statute for licensees who come into compliance with child support or come into compliance with the CME audit requirements after the minimum 90 day suspension.

**Rules Coordinator:** Nicole Krishnaswami

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

**Telephone:** (971) 673-2667

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**Rule Caption:** Defines office-based procedures and clarifies provider qualifications and requirements

**Stat. Auth.:** ORS 677.265 & 679.255

**Stats. Implemented:** OAR 677.060, 677.085, 677.097 & 677.265

**Proposed Adoptions:** 847-017-0003, 847-017-0008, 847-017-0037

**Proposed Amendments:** 847-017-0000, 847-017-0005, 847-017-0010, 847-017-0015, 847-017-0020, 847-017-0025, 847-017-0030, 847-017-0035, 847-017-0040

**Last Date for Comment:** 5-21-13, Close of Business

**Summary:** The proposed rule amendments classify levels of office-based surgeries and set forth the corresponding requirements; reorganize and add new definitions; establish a standard of practice for licensees performing office-based surgery; set forth requirements for where a licensee may perform office-based surgery; clarify the assessment and informed consent procedures prior to the performance of an office-based surgery; clarify the requirements for patient medical records; expand the emergency care and transfer protocol requirements; require reporting of specified office-based surgical adverse events; and contain general grammar and language house-keeping changes.

**Rules Coordinator:** Nicole Krishnaswami

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

**Telephone:** (971) 673-2667

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**Rule Caption:** Corrects the term of office for members of the Acupuncture Advisory Committee

**Stat. Auth.:** ORS 677.265 & 677.759

**Stats. Implemented:** ORS 677.235, 677.265, 677.759 & 677.780

**Proposed Amendments:** 847-070-0050

**Last Date for Comment:** 5-21-13, Close of Business

**Summary:** The proposed rule amendment corrects the term of office for members of the Acupuncture Advisory Committee, specifies that the Committee elects its own chairperson, and provides the statutory authority for Committee member compensation and expenses.

**Rules Coordinator:** Nicole Krishnaswami

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

**Telephone:** (971) 673-2667

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**Rule Caption:** Reorganizes and updates the rules podiatry licensure

**Stat. Auth.:** ORS 677.245, 677.265 & 677.820

**Stats. Implemented:** ORS 181.534, 677.100, 677.190, 677.265, 677.810, 677.812, 677.820, 677.825, 677.830 & 677.840

**Proposed Adoptions:** 847-080-0021, 847-080-0028

**Proposed Amendments:** 847-080-0002, 847-080-0010, 847-080-0013, 847-080-0017, 847-080-0018, 847-080-0022, 847-080-0030

**Last Date for Comment:** 5-21-13, Close of Business

**Summary:** The proposed rule amendments update the name of the licensing examination, clarify that applicants must pass the MPA and DEA exams and a criminal records check, streamline and clarify the qualifications and documentation requirements to reflect a simplified application process that has evolved with advancements in technology and availability of electronic documents, and clarify the requirement for a clinical competency assessment for applicants who have not had sufficient postgraduate training or specialty board certification or recertification within the past 10 years.

**Rules Coordinator:** Nicole Krishnaswami

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

**Telephone:** (971) 673-2667

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

**Rule Caption:** Minor edits to clarify administration of retirement benefit payments.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-25-13	2 p.m.	Oregon State Archives 800 Summer St. NE Salem, OR 97310

**Hearing Officer:** Daniel Rivas

**Stat. Auth.:** ORS 238.650

**Stats. Implemented:** ORS 238.300 & 238.305

**Proposed Amendments:** 459-013-0060

**Last Date for Comment:** 7-2-13, 5 p.m.

**Summary:** The housekeeping edits delete obsolete language and clarify the current administration of retirement benefit payments.

**Rules Coordinator:** Daniel Rivas

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

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

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## **Oregon State Marine Board Chapter 250**

**Rule Caption:** Restricts motorized boat operation on the Siletz River upstream of Morgan's Park boat ramp.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-5-13	6 p.m.	City of Lincoln City, City Hall, 3rd Floor 801 SW Hwy. 101 Lincoln City, OR 97367
6-25-13	6 p.m.	Oregon State Marine Board 435 Commercial St. NE, Suite 400 Salem, OR 97309

**Hearing Officer:** Rachel Bullene

**Stat. Auth.:** ORS 830.175

**Stats. Implemented:** ORS 830.110 & 830.175

**Proposed Amendments:** 250-020-0231

**Last Date for Comment:** 6-25-13, Close of Hearing

# NOTICES OF PROPOSED RULEMAKING

**Summary:** The agency proposes to amend OAR 250-020-0231 to restrict the operation of motorboats with greater than 10 horsepower on the Siletz River upstream of Morgan's Park boat ramp.

**Rules Coordinator:** June LeTarte

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

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

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

**Rule Caption:** Amend Special Student and Course Fees

**Stat. Auth.:** ORS 351.070

**Stats. Implemented:**

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

**Last Date for Comment:** 5-21-13, 5 p.m.

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

**Rules Coordinator:** Teresa Carson-Mastrude

**Address:** Oregon University System, Eastern Oregon University, One University Blvd., Inlow Hall 202A, La Grande, OR 97850

**Telephone:** (541) 962-3773

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**Oregon University System,  
Oregon State University  
Chapter 576**

**Rule Caption:** Sets fees/charges at Oregon State University, fiscal year 2013–2014.

Date:	Time:	Location:
5-28-13	1 p.m.	Memorial Union, Rm. 206 Oregon State University 2501 SW Jefferson Way Corvallis, OR 97331

**Hearing Officer:** Beth Giddens

**Stat. Auth.:** ORS 351.070, 352.360

**Other Auth.:** OAR 580-040-0010

**Stats. Implemented:** ORS 351.070, 352.360

**Proposed Amendments:** 576-010-0000

**Last Date for Comment:** 5-29-13, Close of Business

**Summary:** The proposed amendment will set fees and charges for designated services at Oregon State University for fiscal year 2013–2014. The rule states: "The University hereby adopts by reference a list of fees and charges for fiscal year 2013–2014. The list of fees and charges is available at Oregon State University's Valley Library, and is hereby incorporated by reference in this rule."

**Rules Coordinator:** Beth Giddens

**Address:** Oregon University System, Oregon State University, 638 Kerr Administration Bldg., Corvallis, OR 97331

**Telephone:** (541) 737-2449

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**Rule Caption:** Updating rule covering Time, Manner and Place for Speech Activities to reflect current procedures.

Date:	Time:	Location:
5-28-13	1 p.m.	Memorial Union, Rm. 206 Oregon State University 2501 SW Jefferson Way Corvallis, OR 97331

**Hearing Officer:** Beth Giddens

**Stat. Auth.:** ORS 351.070

**Stats. Implemented:** ORS 351.070

**Proposed Amendments:** 576-005-0032

**Last Date for Comment:** 5-29-13, Close of Business

**Summary:** OSU is updating the rule to make it consistent with current OSU procedures.

**Rules Coordinator:** Beth Giddens

**Address:** Oregon University System, Oregon State University, 638 Kerr Administration Bldg., Corvallis, OR 97331

**Telephone:** (541) 737-2449

**Oregon University System,  
Portland State University  
Chapter 577**

**Rule Caption:** Schedule of Fines and Fees for General Services and Other Charges.

**Stat. Auth.:** ORS 351.070

**Stats. Implemented:** ORS 352.360

**Proposed Amendments:** 577-060-0020

**Last Date for Comment:** 5-20-13, 5 p.m.

**Summary:** Portland State University (PSU) hereby adopts by reference a list of fees and other charges for fiscal year 2013–2014.

The list of fees and other charges is available at Portland State University's Office of Finance and Administration website at <http://www.pdx.edu/fadm/rulemaking-portland-state> and is hereby incorporated by reference in the rule.

**Rules Coordinator:** Lorraine D. Baker

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

**Telephone:** (503) 725-8050

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**Oregon University System,  
Southern Oregon University  
Chapter 573**

**Rule Caption:** Parking Enforcement and Appeals

**Stat. Auth.:** ORS 351.070

**Stats. Implemented:** ORS 352.360

**Proposed Amendments:** 573-050-0015, 573-050-0016, 573-050-0025, 573-050-0030, 573-050-0040

**Last Date for Comment:** 5-28-13, 3 p.m.

**Summary:** This amendment in Div. 050 edits language to correct subsections of the rule.

**Rules Coordinator:** Treasa Sprague

**Address:** Oregon University System, Southern Oregon University, 1250 Siskiyou Blvd., Ashland, OR 97520

**Telephone:** (541) 552-6319

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**Rule Caption:** Code of Student Conduct

**Stat. Auth.:** ORS 351.070

**Stats. Implemented:** ORS 352.360

**Proposed Amendments:** 573-076-0040, 573-076-0050, 573-076-0060, 573-076-0070, 573-076-0080, 573-076-0090, 573-076-0100, 573-076-0110, 573-076-0120, 573-076-0130

**Last Date for Comment:** 5-28-13, 3 p.m.

**Summary:** Southern Oregon University's published expectations for the conduct of its students, as well as processes and procedures for adjudicating matters in which students are alleged to have violated prohibited student conduct. Revisions are made to this document on an annual basis to bring it into compliance with legislation, organizational change, and nationally-recognized best practices.

**Rules Coordinator:** Treasa Sprague

**Address:** Oregon University System, Southern Oregon University, 1250 Siskiyou Blvd., Ashland, OR 97520

**Telephone:** (541) 552-6319

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**Oregon University System,  
University of Oregon  
Chapter 571**

**Rule Caption:** Amend special fees, fines, penalties, and service charges to include FY 2013–2014 rates

Date:	Time:	Location:
5-15-13	2 p.m.	Erb Memorial Union Walnut Room University of Oregon Eugene, OR

**Hearing Officer:** Kathie Stanley

**Stat. Auth.:** ORS 351 & 352

# NOTICES OF PROPOSED RULEMAKING

**Other Auth.:** Delegation granted in OSBHE Finance & Administration Committee meeting of November 4, 2011

**Stats. Implemented:** ORS 351.070

**Proposed Amendments:** 571-060-0005

**Last Date for Comment:** 5-16-13, 12 p.m.

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

Copies of proposed amendments to General & Family Housing Rates, Room and Board Rates, Course Fees, and Non-Course Fees may be obtained from Amanda Hatch, Rules Coordinator, at ahatch@uoregon.edu or 541.346.3082.

Other proposed amendments can be found at the following website: <http://brp.uoregon.edu/special-fees-fines-book>

**Rules Coordinator:** Amanda Hatch

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

**Telephone:** (541) 346-3082

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## Oregon Watershed Enhancement Board Chapter 695

**Rule Caption:** Revisions to water acquisition grant rules to implement an efficient, transparent, streamlined grant-making process.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-22-13	1 p.m.	Department of State Lands 775 Summer St. NE Land Board Rm. Salem OR 97301

**Hearing Officer:** Renee Davis-Born

**Stat. Auth.:** ORS 541.932

**Stats. Implemented:** ORS 541.932(9) & 541.956

**Proposed Adoptions:** 695-046-0175, 695-046-0180, 695-046-0185, 695-046-0190, 695-046-0195, 695-046-0200, 695-046-0205, 695-046-0210, 695-046-0215, 695-046-0220, 695-046-0225, 695-046-0230.

**Proposed Amendments:** 695-046-0010, 695-046-0020

**Proposed Repeals:** 695-046-0025, 695-046-0030, 695-046-0040, 695-046-0050, 695-046-0060, 695-046-0070, 695-046-0080, 695-046-0090, 695-046-0100, 695-046-0110, 695-046-0120, 695-046-0130, 695-046-0140, 695-046-0150, 695-046-0160, 695-046-0170

**Last Date for Comment:** 5-17-13, 5 p.m.

**Summary:** OWEB is proposing rule amendments and rulemaking related to the administration of the water acquisition grant program. The purpose of this process is to develop an efficient, streamlined process for grant-making. Specifically, minor revisions will be made to purpose [695-046-0010] and definitions [695-046-0020]. Rules outlining the previous water acquisition grant process [i.e., 695-046-0025 through 695-046-0170] will be repealed. These rules will be replaced by newly adopted rules describing the following components and requirements of the streamlined grant-making process: Nature of Application [695-046-0175]; Application and Subsequent Grant Processing and Agreement Requirements [695-046-0180]; Use of Grant Funds [695-046-0185]; Matching Contributions [695-046-0190]; Coordinating and Partnering with Other Funders [695-046-0195]; Application Evaluation Process [695-046-0200]; Public Involvement [695-046-0205]; Board Approval and Delegation of Authority [695-046-0210]; Director Funding Approval and Distribution of Funds [695-046-0215]; Compliance and Enforcement [695-046-0220]; Subsequent Conveyances [695-046-0225]; and Waiver and Periodic Review of Rules [695-046-0230].

Public comment will be accepted on the proposed rules from May 1, 2013 through 5 p.m. on May 17, 2013. Copies of the proposed amendments will be available by May 1, 2013, on OWEB's website ([http://www.oregon.gov/OWEB/pages/admin\\_rules\\_statutes.aspx](http://www.oregon.gov/OWEB/pages/admin_rules_statutes.aspx)).

**Rules Coordinator:** Renee Davis-Born

**Address:** Oregon Watershed Enhancement Board, 775 Summer St. NE, Suite 360, Salem, OR 97301

**Telephone:** (503) 986-0029

## Secretary of State, Archives Division Chapter 166

**Rule Caption:** Administrative Rule Filing Requirements — change of deadline time of day

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-23-13	9 a.m.	Archives Bldg., Conference Rm. 800 Summer St., NE Salem, OR 97310

**Hearing Officer:** Julie Yamaka

**Stat. Auth.:** ORS 183.360

**Stats. Implemented:** ORS 183.335 & 183.360

**Proposed Amendments:** 166-500-0020

**Last Date for Comment:** 5-23-13, Close of Business

**Summary:** Administrative Rules are now filed on-line with the Secretary of State's office and are electronically date/time stamped upon submission. Since filing is no longer dependent upon the Secretary of State, Archives Building being open to accept hand-delivered filings, the requirement that Administrative Rules be filed by the time the building closes is no longer of consequence. The filing deadline will continue to be the 15th of each month, but the time of 5:00 p.m., which was written into rule, will be eliminated. Filings date stamped by the on-line filing system, anytime on or before the 15th of the month, will meet the filing deadline.

**Rules Coordinator:** Julie Yamaka

**Address:** Secretary of State, Archives Division, 800 Summer St. NE, Salem, OR 97310

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

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## Secretary of State, Elections Division Chapter 165

**Rule Caption:** Updating the Uniform Billing System for State, County, City and District Elections

**Stat. Auth.:** ORS 246.150, 246.179, 246.305

**Stats. Implemented:** ORS 246.179, 246.540, 251.365, 254.046, 255.305

**Proposed Amendments:** 165-020-0050

**Proposed Repeals:** 165-020-0060

**Last Date for Comment:** 5-31-13, Close of Business

**Summary:** OAR 165-020-0050 will incorporate detailed descriptions of the cost worksheets counties use to calculate out the cost billed to each district for conducting the election. OAR 165-020-0060 will be repealed. Additionally the allocation formula used to calculate the cost of a county voters' pamphlet billed to each district is proposed for update to account for ORS 251.365.

**Rules Coordinator:** Brenda Bayes

**Address:** Secretary of State, Elections Division, 255 Capitol St. NE, Suite 501, Salem, OR 97310

**Telephone:** (503) 986-1518

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**Rule Caption:** Repealing Division 18 Election Boards and Persons with Physical Disabilities

**Stat. Auth.:** ORS 246.150

**Stats. Implemented:** ORS 246.120, 246.150

**Proposed Repeals:** 165-018-0005, 165-018-0010, 165-018-0015, 165-018-0020, 165-018-0030

**Last Date for Comment:** 5-31-13, Close of Business

**Summary:** These rules are proposed for repeal because Oregon no longer conducts elections at polling places and the authorizing statutes that the rules implemented have been repealed.

**Rules Coordinator:** Brenda Bayes

**Address:** Secretary of State, Elections Division, 255 Capitol St. NE, Suite 501, Salem, OR 97310

**Telephone:** (503) 986-1518

# ADMINISTRATIVE RULES

## Board of Architect Examiners Chapter 806

**Rule Caption:** Board of Architect Examiners 2013–15 Budget  
**Adm. Order No.:** BAE 2-2013  
**Filed with Sec. of State:** 4-8-2013  
**Certified to be Effective:** 7-1-13  
**Notice Publication Date:** 3-1-2013  
**Rules Amended:** 806-001-0003  
**Subject:** Adopts the Board of Architect Examiners 2013–15 Budget of \$1,144,449  
**Rules Coordinator:** Jim Denno—(503) 763-0662

### 806-001-0003 Biennial Budget

Pursuant to the provisions of ORS 182.462, the Board adopts by reference the Oregon State Board of Architect Examiners' 2013–2015 Biennial Budget of \$1,144,449 covering the period July 1, 2013, through June 30, 2015. The Board Administrator will amend budgeted accounts as necessary, within the approved budget of \$1,144,449, for the effective operation of the Board. The Board will not exceed the approved budget amount without amending this rule, notifying holders of licenses, and holding a public hearing. Copies of the budget are available from the Board's office.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 671.120, 671.125, 182.462 & 183.705  
Stats. Implemented: ORS 671.125 & 182.462  
Hist.: AE 1-1997(Temp), f. & cert. ef. 7-25-97; AE 3-1997, f. & cert. ef. 12-11-97; BAE2-1998, f. & cert. ef. 6-22-98; BAE 2-1999, f. & cert. ef. 5-25-99; BAE 2-2001, f. 6-6-01, cert. ef. 7-1-01; BAE 2-2003, f. 4-11-03 cert. ef. 7-1-03; BAE 1-2005, f. 3-14-05, cert. ef. 7-1-05; BAE 1-2007, f. 5-8-07, cert. ef. 7-1-07; BAE 2-2009, f. & cert. ef. 5-14-09; BAE 3-2009, f. 5-22-09, cert. ef. 7-1-09; BAE 1-2011, f. 6-6-11, cert. ef. 7-1-11; BAE 4-2012, f. 10-25-12, cert. ef. 11-1-12; BAE 2-2013, f. 4-8-13, cert. ef. 7-1-13

## Board of Examiners for Engineering and Land Surveying Chapter 820

**Rule Caption:** To clarify continuing professional development requirements for certified water right examiners.  
**Adm. Order No.:** BEELS 2-2013(Temp)  
**Filed with Sec. of State:** 3-18-2013  
**Certified to be Effective:** 3-18-13 thru 7-15-13  
**Notice Publication Date:**  
**Rules Adopted:** 820-050-0001  
**Subject:** OAR 820-050-0001 — Temporarily adopts language to clarify the continuing professional development requirements, and provides guidance related to the qualifying and non-qualifying activities to obtain PDH units for a certified water right examiner; especially for a registered geologist who also holds certification as a water right examiner.  
**Rules Coordinator:** Mari Lopez—(503) 362-2666, ext. 26

### 820-050-0001 Continuing Professional Development — Certified Water Right Examiner (CWRE)

The purpose of professional development requirements is to demonstrate a continuing level of competency of certified water right examiners (CWRE).

(1) Requirements:

(a) A Registered Geologist that holds certification as a CWRE is required to obtain 10 professional development hour (PDH) units during the current biennial renewal period in order to renew for the next biennial renewal period.

(b) Every CWRE will report their PDH units on the Continuing Professional Development (CPD) Organizational form and submit to the Board office with the renewal form and fee. The CPD Organizational form must be completed in its entirety.

(c) Supporting documentation to verify the PDH units recorded on the CPD Organizational form must be submitted to the Board office when requested to participate in an audit. Supporting documentation may include, but are not limited to:

- (A) Completion certificate(s);
  - (B) Paid receipt(s);
  - (C) Attendance log;
  - (D) Other documents supporting evidence of attendance.
- (d) The CPD Organizational form and supporting documentation must be submitted to the Board in English or translated to English.

- (e) Records must be retained for five (5) years.
- (2) PDH units must be obtained in qualifying activities related to the individual's certification. A qualifying activity is any course or activity with a clear purpose and objective which improves, or expands the skills and knowledge relevant to the professional activities of a certified water right examiner as defined in ORS Chapter 537 and OAR chapter 690.
- (3) Non-qualifying activities may include, but are not limited to:
  - (a) Regular employment;
  - (b) Personal self improvement;
  - (c) Equipment demonstrations or trade show displays;
  - (d) Enrollment without attendance at courses, seminars, etc.
  - (e) Repetitive attendance at the same course;
  - (f) Repetitive teaching of the same course;
  - (g) Attending committee meetings or general business meetings of any organization;
  - (h) Taking professional or required examinations.
- (4) Units — The conversion of other units of credit to PDH units is as follows:

- (a) 1 College Semester hour equals 45 PDH;
- (b) 1 College Quarter hour equals 30 PDH;
- (c) 1 Continuing Education unit equals 10 PDH.
- (5) Sources of PDH units — One (1) PDH unit may be obtained for each contact hour of instruction or presentation. Unless otherwise noted, there is no maximum amount of PDH units a CWRE may earn per biennial renewal period. Sources of PDH units include, but are not limited to the following:

- (a) Successful completion of college courses;
- (b) Successful completion of short courses, tutorials, correspondence, web based courses, televised and videotaped courses;
- (c) Active participation in seminars, in-house courses, workshops, and professional conventions;
- (d) Teaching or instructing a course, seminar, or workshop one time only. (This does not apply to full-time faculty teaching college courses);
- (e) Authoring or co-authoring published papers, articles or books. Maximum of 3 PDH units per biennial renewal period;
- (f) Active participation in professional or technical society, committee, or board. Maximum of 2 PDH units per biennial renewal period;
- (g) Self study. Maximum of 2 PDH units per biennial renewal period;
- (h) Non-technical educational activities related to employment.
- (6) Determination of Credit — Credit determination for activities is the responsibility of the CWRE and is subject to review by the Board. The Board has final authority with respect to approval of courses, credit, PDH units for courses and other methods of earning credit.
- (7) If a CWRE exceeds the requirement in any renewal period, a maximum of 5 PDH units in courses/activities may be carried forward into the next renewal period.
- (8) Delinquent, retired or inactive certificate holders must provide evidence of holding active registration as a professional engineer, professional land surveyor, registered geologist, in addition to completing the PDH requirements as outlined in OAR 820-010-0520 in order to attain active status.

Stat. Auth.: ORS 670.310 & 672.255  
Stats. Implemented: ORS 672.002 - 672.375  
Hist.: BEELS 2-2013(Temp), f. & cert. ef. 3-18-13 thru 7-15-13

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

**Rule Caption:** Revises professional development (PD) requirements for new applicants, reactivating and renewing licensees; other miscellaneous updates  
**Adm. Order No.:** SPA 1-2013  
**Filed with Sec. of State:** 4-1-2013  
**Certified to be Effective:** 5-1-13  
**Notice Publication Date:** 1-1-2013  
**Rules Amended:** 335-005-0020, 335-060-0005, 335-060-0006, 335-060-0007, 335-060-0010, 335-070-0020, 335-070-0040, 335-070-0050, 335-070-0080, 335-080-0005, 335-080-0010, 335-080-0015, 335-080-0025, 335-095-0030  
**Rules Repealed:** 335-070-0010, 335-070-0030, 335-070-0055, 335-070-0060, 335-070-0065, 335-070-0070, 335-070-0075, 335-070-0085

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**Subject:** Requires licensees to provide current email address and proof of legal and professional names used.

Modifies professional development (PD) and English language proficiency requirements for applicants for licensure.

Clarifies accepted PD activities, topics, and providers/sponsors, and those requiring special approval.

Requires licensees switching to inactive status during the licensure period to report PD as for an active license renewal.

Changes and simplifies PD requirements for reactivation of inactive and expired licenses.

Streamlines PD rules for brevity and clarity.

Specifies requirements for renewing conditional licenses that have previously been agency policy.

Reinforces circumstances in which a conditional license is required.

Clarifies requirement for Competency Checklist for speech-language pathology assistant (SLPA) certification.

**Rules Coordinator:** Sandy Leybold—(971) 673-0220

## 335-005-0020

### Professional Competence

(1) Individuals shall engage in only those aspects of the professions that are within the scope of their competence, considering their level of education, training, and experience.

(2) Individuals shall continue their professional development throughout their careers.

(3) Individuals who supervise shall prohibit any of their professional staff from providing services that exceed the staff member's competence, considering the staff member's level of education, training, and experience.

(4) Individuals shall ensure that all equipment used in the provision of services is in proper working order and is properly calibrated.

(5) Individuals shall prohibit anyone under their supervision from engaging in any practice that violates the Professional and Ethical Standards.

(6) Individuals shall not provide professional services without exercising independent professional judgment, regardless of referral source or prescription.

(7) Individuals shall not discriminate in their relationships with colleagues, students, and members of allied professions on the basis of race or ethnicity, gender, age, religion, national origin, sexual orientation, or disability.

(8) Licensees will provide current home and business addresses and telephone numbers, an electronic mail address, and proof of legal name and any name used professionally within thirty (30) days of the effective date of change.

(9) Individuals shall cooperate fully with the Board in every matter related to these Professional and Ethical Standards.

(10) Speech-Language Pathology Assistants and Conditional Licensees shall report a change in supervisor within thirty (30) days of the effective date of change.

Stat. Auth.: ORS 681

Stats. Implemented: ORS 681.330

Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 2-2008, f. & cert. ef. 4-10-08; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09; SPA 1-2013, f. 4-1-13, cert. ef. 5-1-13

## 335-060-0005

### Definitions

(1) An Inactive License or Certificate may be obtained by those otherwise qualified individuals who meet the conditions for exemption from licensure under ORS 681.230, or do not require a license under 681.250 or a certificate under 681.360.

(2) A Conditional License is a license certificate issued by the Board to applicants who have completed degree requirements in OAR 335-060-0006, and are engaged in post-graduate supervised clinical experience until they obtain regular licensure. The examination is not required for a conditional license.

(3) Equivalent credentials for licensure are defined as follows:

(a) For regular licenses in speech-language pathology, if completing a doctoral program in which a master's degree has not been conferred, an applicant must submit a transcript showing completion of course work equivalent to, or exceeding, a master's degree that meets the requirements in OAR 335-060-0006. In addition to the transcript, the Board may require a letter from the academic department chair or program director documenting that the applicant has completed coursework equivalent to or exceeding a master's degree.

(b) For applicants for conditional licenses in speech-language pathology or initial licenses in audiology, when the applicant has completed all degree requirements, but the university is not scheduled to confer the degree for more than 30 days after the completion of all degree requirements, the Board will accept a letter from the university registrar, documenting that the applicant has completed all degree requirements, and has been approved to receive the degree. An official transcript showing the conferral of the degree must be submitted within 60 days of license issuance.

(c) For applicants who completed their professional training in speech pathology or audiology outside of the United States, the Board requires a determination letter from a credential evaluation service approved by the American Speech-Language Hearing Association to determine equivalency to a master's degree or doctoral degree issued by an accredited program.

(d) Applicants for licensure or certification educated in foreign countries must submit documentation that course work was completed in an institution of higher education that is regionally accredited or recognized by the appropriate regulatory authority for that country.

(4) For the purposes of licensing speech-language pathologists under ORS 681.260 or audiologists under 681.264, and for purposes of student placement in supervised field work under 681.230:

(a) The "accrediting organization" that approves graduate programs is the Council on Academic Accreditation in Audiology and Speech-Language Pathology (CAA) of the American Speech-Language-Hearing Association.

(b) All graduate or undergraduate coursework must be completed at an institution of higher education that is regionally accredited by one of the following:

(A) Commission of Higher Education, Middle States Association of Colleges and Schools;

(B) Commission on Institutions of Higher Education, New England Association of Schools and Colleges;

(C) Commission on Institutions of Higher Education, North Central Association of Colleges and Schools;

(D) Commission on Colleges, Northwest Association of Schools and Colleges;

(E) Commission on Colleges, Southern Association of Colleges and Schools;

(F) Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges.

Stat. Auth.: ORS 681.340, 681.360, 681.420 & 681.460

Stats. Implemented: ORS 681.460

Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2002(Temp), f. 11-8-02, cert. ef. 12-1-02 thru 5-1-03; SPA 1-2003, f. & cert. ef. 5-7-03; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07; SPA 1-2011, f. 1-28-11, cert. ef. 2-1-11; SPA 2-2011, f. & cert. ef. 10-10-11; SPA 2-2012, f. & cert. ef. 12-14-12; SPA 1-2013, f. 4-1-13, cert. ef. 5-1-13

## 335-060-0006

### Licensure of Speech-Language Pathologists

(1) "Degree requirements" under ORS 681.260(2) for those speech-language pathologists completing their professional training after January 1, 2006 are those outlined in the 2005 Certification Standards for Speech-Language Pathologists as promulgated by the Council For Clinical Certification (CFCC) of the American Speech-Language-Hearing Association:

(a) A minimum of 75 semester hours pertinent to speech-language pathology, which include:

(b) At least 36 graduate credits in speech-language pathology;

(c) A clinical practicum of 400 clock hours, of which 25 must be observational hours and 375 must be direct clinical interaction. Supervision must be provided by a speech-language pathologist who holds a Certificate of Clinical competency from the American Speech-Language-Hearing Association. At least 325 of these clock hours must be completed while in an accredited graduate program.

(d) Credit earned for a thesis or capstone project, if part of the accredited graduate program.

(2) For those speech-language pathologists completing their professional training after January 1, 2006 "supervised clinical experience" under ORS 681.260(3) means a program of clinical work that is:

(a) Begun after completing all graduate degree requirements;

(b) Supervised by a speech-language pathologist who holds a Certificate of Clinical competency from the American Speech-Language-Hearing Association;

(c) A minimum of 35 hours per week for 36 weeks of practice, or its equivalent, for a total of not less than 1,260 hours;

(d) A minimum of 80% of the hours spent in direct client/patient contact (assessment/diagnosis/evaluation, screening, treatment, report writing,

# ADMINISTRATIVE RULES

family/client consultation, and/or counseling), with the remainder in related record keeping and administrative duties.

(3) For those speech-language pathologists completing their professional training after January 1, 2006, "examinations" under ORS 681.260(4) means the Praxis Examination in Speech-Language Pathology as administered by the Educational Testing Service. Applicants must attain a passing score to qualify for licensure.

(4) Applicants whose graduate program was not conducted in English may be required to submit scores from the following standardized tests to demonstrate English language proficiency:

(a) The internet-based Test of English as a Foreign Language (TOEFL) with minimum scores of 100 overall, 26 in writing, and 26 in speaking; or

(b) The paper-based TOEFL and Test of Spoken English (TSE) with minimum scores of 600 overall; 5 on the essay; and 50 on the TSE; or

(c) The computer-based TOEFL and TSE with minimum scores of 250 overall; 5 on the essay; and 50 on the TSE.

(5) Applicants must demonstrate current professional competence as follows:

(a) Completion of graduate program within the 12 months prior to application; or

(b) Completion of 15 hours of professional development within the 12 months prior to application.

(c) Any hours completed in the current professional development period may also be counted towards meeting the professional development requirement for the next active license renewal.

(6) For those speech-language pathologists completing their training before January 1, 2006, "degree requirements", "supervised clinical experience" and "examinations" mean those in effect for ASHA certification at the time training was completed.

Stat. Authority: ORS 681

Stats. Implemented: ORS 681.250 & 681.260

Hist.: SPA 2-2011, f. & cert. ef. 10-10-11; SPA 1-2012, f. & cert. ef. 2-23-12; SPA 2-2012, f. & cert. ef. 12-14-12; SPA 1-2013, f. 4-1-13, cert. ef. 5-1-13

## 335-060-0007

### Licensure of Audiologists

(1) "Degree requirements" under ORS 681.264(2):

(a) For those applicants completing their graduate program after 1993 but prior to August 1, 2007 are those outlined in the 1993 Certification Standards for Audiologists as promulgated by the Council For Clinical Certification (CFCC) of the American Speech-Language-Hearing Association.

(A) Completion of at least 75 graduate credits in audiology;

(B) A clinical practicum of 350 clock hours of direct patient care, of which 250 must be at the graduate level. Supervision must be provided by an audiologist who holds a Certificate of Clinical competency from the American Speech-Language-Hearing Association or certification from the American Board of Audiology.

(C) Credit earned for a thesis or capstone project, if part of the accredited graduate program.

(b) For those applicants completing their graduate program after August 1, 2007 are those outlined in the 2007 Certification Standards for Audiologists as promulgated by the Council For Clinical Certification (CFCC) of the American Speech-Language-Hearing Association.

(A) Completion of a coursework required by an accredited program granting the clinical doctorate degree in audiology;

(B) Includes supervised clinical experience of not less than 1,820 hours (52 weeks at 35 hours per week).

(2) "Supervised clinical experience" under ORS 681.264(3) means:

(a) For those applicants completing their graduate program after 1993 but prior to August 1, 2007 a program of clinical work that is:

(A) Begun after completing all graduate degree requirements;

(B) Supervised by an audiologist who holds a Certificate of Clinical competency from the American Speech-Language-Hearing Association or certification from the American Board of Audiology;

(C) A minimum of 35 hours per week for 52 weeks of practice, or its equivalent, for a total of not less than 1,820 hours;

(D) A minimum of 50% of the hours spent in direct client/patient contact (assessment/diagnosis/evaluation, screening, treatment, report writing, family/client consultation, and/or counseling), with the remainder in related record keeping and administrative duties.

(b) For those applicants completing their graduate program after August 1, 2007 a program of clinical work that is:

(A) Incorporated into an accredited graduate program awarding a clinical doctorate (Au.D.) degree in audiology;

(B) Supervised by an audiologist who holds a Certificate of Clinical competency from the American Speech-Language-Hearing Association or certification from the American Board of Audiology;

(C) A minimum of 1,820 hours.

(3) "Examinations" under ORS 681.264(4) means the Praxis Examination in Audiology as administered by the Educational Testing Service. Applicants must attain a passing score to qualify for licensure.

(4) Applicants whose graduate program was not conducted in English may be required to submit scores from the following standardized tests to demonstrate English language proficiency:

(a) The internet-based Test of English as a Foreign Language (TOEFL) with minimum scores of 100 overall, 26 in writing, and 26 in speaking; or

(b) The paper-based TOEFL and Test of Spoken English (TSE) with minimum scores of 600 overall; 5 on the essay; and 50 on the TSE; or

(c) The computer-based TOEFL and TSE with minimum scores of 250 overall; 5 on the essay; and 50 on the TSE.

(5) Applicants must demonstrate current professional competence as follows:

(a) Completion of graduate program within the 12 months prior to application; or

(b) Completion of 15 hours of professional development within the 12 months prior to application.

(c) Any hours completed in the current professional development period may also be counted towards meeting the professional development requirement for the next active license renewal.

(6) For those audiologists completing their graduate program before 1993, "degree requirements", "supervised clinical experience" and "examinations" mean those in effect for ASHA certification at the time training was completed.

Stat. Authority: ORS 681

Stats. Implemented: ORS 681.250 & 681.264

Hist.: SPA 2-2011, f. & cert. ef. 10-10-11; SPA 1-2012, f. & cert. ef. 2-23-12; SPA 2-2012, f. & cert. ef. 12-14-12; SPA 1-2013, f. 4-1-13, cert. ef. 5-1-13

## 335-060-0010

### Fees

In accordance with the provisions of ORS 681.340 and 681.360, the following fees, where applicable, are payable to the Board by check, money order, or electronic payment if available:

(1) All Applicants:

(a) Application fee shall be \$40, non-refundable.

(b) Delinquent fee shall be \$50.

(c) A delinquent fee will be charged for each or all of the following, as applicable:

(A) Renewal applications postmarked or submitted electronically after December 31st of odd-numbered years;

(B) Renewal applications postmarked by December 31st of odd numbered years which are incomplete or otherwise unable to be processed;

(C) Conditional license renewals or conditional license upgrade applications postmarked less than 30 days prior to the expiration date of the conditional license;

(D) Requests for special approval of professional development received 30 days or more after the activity is completed;

(d) A delinquent fee may be charged for each or all of the following, as applicable:

(A) Failure to respond to audit by the prescribed deadline;

(B) Audit responses postmarked by the deadline which are incomplete or otherwise unable to be processed;

(C) Failure to complete all required hours of professional development prior to January 1st of even-numbered years;

(D) Failure to update contact information or provide supervisory changes within 30 days of the change.

(e) The Board may provide for waiver of the license or certificate fee where the license or certificate is issued less than 45 days before the date on which it will expire.

(2) Speech-Language Pathologists and Audiologists:

(a) Biennial license fee and renewal thereof shall be \$160.

(b) Biennial inactive license fee and renewal thereof shall be \$50.

(c) Conditional license fee and renewal thereof shall be \$50.

(3) Speech-Language Pathology Assistants:

(a) Biennial certificate fee and renewal thereof shall be \$50.

(b) Biennial inactive certificate fee and renewal thereof shall be \$20.

Stat. Auth.: ORS 681.340, 681.360, 681.420 & 681.460

Stats. Implemented: ORS 681.340(1), 681.360(2)(b) & 681.360(3)(b)

Hist.: SPA 2-1993(Temp), f. 12-8-93, cert. ef. 12-10-93; SPA 1-1994, f. & cert. ef. 6-10-94; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2002(Temp), f. 11-8-02, cert. ef. 12-1-02 thru 5-1-03; SPA 1-2003, f. & cert. ef. 5-7-03; SPA 1-2005, f. & cert. ef. 9-13-05; SPA 3-2008, f. &



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cert. ef. 4-10-08; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09; SPA 1-2010(Temp), f. & cert. ef. 8-11-10 thru 2-4-11; SPA 1-2011, f. 1-28-11, cert. ef. 2-1-11; SPA 3-2011(Temp), f. 10-10-11, cert. ef. 10-11-11 thru 4-4-12; SPA 1-2012, f. & cert. ef. 2-23-12; SPA 1-2013, f. 4-1-13, cert. ef. 5-1-13

## 335-070-0020

### Professional Development Hours Defined

(1) "Professional development" is defined as the successful completion of accepted types of activities, on accepted topics, provided and verified by accepted sponsors or providers, for the purpose of developing and updating professional skills.

(2) "Accepted types of activities" are organized programs of learning such as academic courses, classes, conferences, programs, and workshops, that are presented electronically, in-person, or in other formats. Self-assessment home study courses accompanied by examination and sponsored by a Board-recognized professional organization in audiology or speech-language pathology are also accepted types of activities. Publishing articles in peer-reviewed professional journals is an accepted type of activity only if special approval is obtained through procedures outlined in OAR 335-070-0020.

(3) Activities not accepted as professional development include but are not limited to:

- (a) Supervision of practicum students or clinical fellows, making presentations, or teaching classes;
- (b) Serving on professional boards or committees;
- (c) Attending professional association business or committee meetings (whether paid or as a volunteer);
- (d) Attending staff meetings;
- (e) Performing other volunteer work; and
- (f) Reading or studying professional journals, unless part of a self-study program that includes an examination to document satisfactory completion, and is sponsored by a Board-recognized professional association in audiology or speech-language pathology.

(4) The content of professional development activities must directly relate to the performance and practice of speech-language pathology or audiology and focus on accepted topics. "Accepted topics" are the following:

- (a) Assessment and intervention for speech-language and hearing disorders;
- (b) Speech, language and hearing science;
- (c) Service delivery issues associated with speech-language and hearing services;
- (d) Issues in pre-professional and professional training, professional ethics, professional regulation, and professional leadership and management;
- (e) Planning, conducting and interpreting research activities, and developing and implementing evidence-based practices;
- (f) Cultural and linguistic diversity in education, training, service delivery, and public policy associated with speech, language, and hearing, including the study of foreign language when needed for direct clinical practice;
- (g) Business practices, regulatory policy, and marketing issues directly related to clinical service delivery;
- (h) Psycho-social issues associated with speech/language/hearing assessment and intervention;
- (i) Patient safety, clinical documentation and prevention of medical errors;
- (j) Other topics included in the Continuing Education Board Registry subject code list published by ASHA in 2008 and as revised;
- (k) Educational strategies and professional knowledge necessary to effectively provide speech-language pathology or audiology services to students within a pre-K to high school setting.

(5) "Accepted sponsors or providers" of professional development are:

- (a) The American Speech-Language Hearing Association (ASHA), the American Academy of Audiology (AAA), or the American Board of Audiology (ABA);
- (b) The Oregon Speech-Language Hearing Association (OSHA), the Oregon Academy of Audiology (OAA), or any other state speech-language-hearing organizations recognized by ASHA, AAA, or ABA;
- (c) Continuing education providers approved by ASHA, AAA, or ABA;
- (d) The Oregon Health Licensing Agency for programs that it provides to hearing aid specialists, or approves for continuing education for its licensed hearing aid specialists, or the Oregon Board of Examiners for

Speech-Language Pathology & Audiology for programs it provides to its licensees;

(e) Institutions of higher education accredited by an appropriate national, state or regional body or approved by the Board, for academic courses;

(f) The American Red Cross for courses on cardio-pulmonary resuscitation or basic life support; and

(g) Public school districts, education service districts, home health care companies, skilled nursing facilities, hospitals, or universities, for programs provided for their employees. When these entities provide programs for non-employees, they are accepted sponsors only if special approval is obtained through procedures outlined in OAR 335-070-0020.

(h) Providers of professional development that are not specified in OAR 335-070-0010(5)(a)-(g) will be accepted sponsors only if special approval is obtained through procedures outlined in OAR 335-070-0020.

(6) Professional development credit will be granted by the Board as follows:

(a) Credit will be granted by the Board for professional development that meets the definitions for accepted types of activities, accepted topics, and accepted sponsors or providers in OAR 335-070-0010, including those that receive special approval from the Board per OAR 335-070-0020.

(b) Credit for professional development will be calculated on an hourly basis. One "professional development hour" is defined as sixty (60) minutes or one (1) clock hour of attendance/participation unless otherwise specified in rule or specially approved by the Board.

(c) Academic course work must be taken for credit, and the licensee must receive a minimum grade of "C", for professional development credit to be granted. One academic semester hour is equivalent to fifteen (15) professional development hours. One academic quarter hour is equivalent to ten (10) professional development hours.

(d) Licensees must complete the required professional development hours within the professional development period. The "professional development period" is the twenty-four months prior to and including December 31st of each odd-numbered year.

(e) Professional development hours completed in excess of the requirement may not be carried over to meet requirements in the subsequent period. Professional development hours completed late for one period may not be counted towards the requirements for the subsequent period.

(f) Credit will not be given for completing in a professional development activity more than once in a professional development period. A conference consisting of many separate workshops on different topics is counted as multiple activities.

(g) Credit will only be granted by the Board for professional development activities that are documented by official transcripts or certificates of attendance issued by the sponsor or provider. Documentation of activities specially approved by the Board must include proof of that approval, and may require other forms of evidence of completion. All professional development documentation must be retained by the licensee for four (4) years after its completion.

Stat. Auth.: ORS 681.420(5) & 681.460

Stats. Implemented: ORS 681.320(1)(a)

Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2003, f. & cert. ef. 5-7-03; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07; SPA 1-2011, f. 1-28-11, cert. ef. 2-1-11; SPA 1-2013, f. 4-1-13, cert. ef. 5-1-13

## 335-070-0040

### Procedures for Special Board Approval of Professional Development

(1) Special approval of professional development as required in OAR 335-070-0020 may be requested from the Board by an institution, organization, agency or individual licensee as follows:

(a) Timely requests may be submitted before or after the professional development activity takes place. A request made later than 30 days after a professional development activity is completed is considered to be late, and will not be considered.

(b) All requests must be submitted on a form provided by the Board.

(2) An activity will qualify for approval if the request was timely and the Board determines that the activity:

- (a) Is an organized program of learning or other accepted activity;
- (b) Focuses on a topic that directly relates to the practice of speech-language pathology and/or audiology;
- (c) Contributes to the professional competency of the licensee; and
- (d) Is conducted by individuals who have education, training or experience acceptable to the Board.

Stat. Auth.: ORS 681.420(5) & 681.460

Stats. Implemented: ORS 681.320(1)(a)

Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2005, f. & cert. ef. 9-13-05; SPA 2-2006, f. & cert. ef. 5-8-06; SPA 4-2006, f. & cert. ef. 11-3-06; SPA

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1-07, f. & cert. ef. 2-1-07; SPA 2-2008, f. & cert. ef. 4-10-08; SPA 1-2013, f. 4-1-13, cert. ef. 5-1-13

## 335-070-0050

### Responsibilities and Professional Development Reporting Requirements of Licensees

(1) Licensees must maintain, for a period of four (4) years, all documentation verifying professional development hours.

(2) As a requirement for license renewal, active licensees must report professional development hours for the professional development period ending on the deadline for license renewal according to their license type:

(a) Speech-Language Pathology or Audiology: Thirty (30) professional development hours completed during the professional development period;

(b) Dual Speech-Language Pathology and Audiology: Thirty (30) professional development hours in speech-language pathology and thirty (30) professional development hours in audiology completed during the professional development period. A maximum of fifteen (15) professional development hours may be applied to both licenses if the topic is applicable to both types of licenses.

(c) Speech-Language Pathology Assistant: Fifteen (15) professional development hours completed during the professional development period;

(d) Conditional Licensees: No professional development hours will be required to renew a conditional license, however, individuals are encouraged to participate in professional development activities.

(3) Licensees must comply with any Board request to audit or review their professional development documentation to determine compliance with professional development requirements.

Stat. Auth.: ORS 681.420(5) & 681.460

Stats. Implemented: ORS 681.320(1)(a)

Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07; SPA 1-2013, f. 4-1-13, cert. ef. 5-1-13

## 335-070-0080

### Requirements to Reactivate Inactive or Expired Licenses

An inactive licensee or an individual whose license has expired who applies to the Board to return to active status must submit documentation of professional development as follows:

(1) If the license has been inactive or expired for less than 23 months, the individual must provide documentation of the professional development hours required for renewal of their license type. These professional development hours must have been completed during the preceding professional development period.

(2) If the license has been inactive for 23 months or more, or expired for 23 months to 47 months, the individual must provide documentation of the one-half of the professional development hours required for renewal of their license type. These professional development hours must have been completed during the 12 months preceding their reactivation request. Any hours completed in the current professional development period may also be counted towards meeting the professional development requirement for the next active license renewal.

(3) If the license has been expired for 48 months or more, the individual must reapply for licensure and meet the professional development requirements for new applicants.

Stat. Auth.: ORS 681.420(5) & 681.460

Stats. Implemented: ORS 681.320(1)(a)

Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2005, f. & cert. ef. 9-13-05; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09; SPA 1-2013, f. 4-1-13, cert. ef. 5-1-13

## 335-080-0005

### Definitions

(1) A Conditional License is a license certificate issued by the Board to applicants who have completed degree requirements in OAR 335-060-0006, and are engaged in post-graduate supervised clinical experience until they obtain regular licensure. The examination is not required for a conditional license.

(2) Supervisor means a licensed speech-language pathologist or audiologist who undertakes responsibility for managing and directing a conditional licensee during their post-graduate supervised clinical experience and until they obtain regular licensure. A supervisor must hold an active license in speech-language pathology issued by the Board or hold their Certificate of Clinical Competency in Speech-Language Pathology issued by the American Speech-Language Hearing Association.

Stat. Auth.: ORS 681

Stat. Implemented: ORS 681.325, 681.260(4) & (3)

Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 2-2006, f. & cert. ef. 5-8-06; SPA 2-2011, f. & cert. ef. 10-10-11; SPA 2-2012, f. & cert. ef. 12-14-12; SPA 1-2013, f. 4-1-13, cert. ef. 5-1-13

## 335-080-0010

### Licensing; Qualifications; Procedure

(1) An individual who intends to practice under a conditional license must apply with the Board on such forms as the Board shall provide for this purpose. Application shall include:

(a) The name and address of the supervisor and place of supervision;

(b) The education, training, and experience of the conditional licensee;

(c) A description of the duties and tasks expected to be performed by the conditional licensee.

(2) Evidence of meeting degree requirements, English language proficiency requirements, and current professional competence requirements as stated in OAR 335-060-0006.

Stat. Auth.: ORS 681

Stat. Implemented: ORS 681.260 & 681.270

Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 2-2011, f. & cert. ef. 10-10-11; SPA 2-2012, f. & cert. ef. 12-14-12; SPA 1-2013, f. 4-1-13, cert. ef. 5-1-13

## 335-080-0015

### Supervisors Responsibility and Nature of Supervision

(1) The supervisor shall manage and direct the duties and functions of the conditional licensee and oversee the work performed by the conditional licensee.

(2) The supervisor shall keep records of the tasks performed by the conditional licensee and whether the work is performed competently.

(3) The Board reserves the right to limit the number of conditional licensees supervised by any one supervisor at any one time.

(4) Any changes in supervision must be reported to the Board within 30 days of the change.

(5) Supervision must be provided to meet requirements for the supervised clinical experience as defined in OAR 335-060-0006.

Stat. Auth.: ORS 681

Stat. Implemented: ORS 681.260(4), 681.325(2) & (3)

Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 2-2011, f. & cert. ef. 10-10-11; SPA 2-2012, f. & cert. ef. 12-14-12; SPA 1-2013, f. 4-1-13, cert. ef. 5-1-13

## 335-080-0025

### Renewal or Upgrade of Conditional License

(1) The conditional license expires 12 months from its issuance. It may be renewed one time if required for the licensee to complete requirements for regular licensure.

(2) No later than 30 days prior to the expiration of their conditional license, a conditional licensee must apply to the Board for its renewal or upgrade to a regular speech-language pathology license. Applications for renewal or upgrade of a conditional license must be accompanied by the relevant license fee, and applications postmarked later than 30 days prior to the expiration must be accompanied by the delinquent fee. No application fee is required.

(3) To qualify for upgrade to a regular license, the conditional licensee must meet all requirements in OAR 335-060-0006.

(4) Conditional licensees may not practice independently until they obtain regular licensure.

Stat. Auth.: ORS 681

Stat. Implemented: ORS 681.260

Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 2-2011, f. & cert. ef. 10-10-11; SPA 2-2012, f. & cert. ef. 12-14-12; SPA 1-2013, f. 4-1-13, cert. ef. 5-1-13

## 335-095-0030

### Certification of Speech-Language Pathology Assistants

Applicants must submit all of the following to be eligible for certification.

(1) Official transcripts showing 45 quarter hours or 30 semester hours of speech-language pathology technical course work; and

(2) Official transcripts showing 45 quarter hours or 30 semester hours of general education credit, and

(3) Written evidence of 100 clock contact hours of clinical interaction that results in an assessment that the applicant meets or exceeds all relevant skills outlined on the Board's Competency Checklist.

(a) Clinical interaction must be face to face interaction with clients and supervised 100% of the time. Activities may include speech and hearing screenings and individual or small group and classroom sessions over a recommended 8-12-week period.

(b) Tasks such as clerical tasks, passive observations, materials preparation and meetings with the supervisor may not be included in the 100 hours.

(c) Clinical interaction documentation must show the date, clinical activity, amount of time and the supervisor's initials and signature. While the practicum student is in training, the supervisor for the clinical interac-

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tion must be licensed by Board, or hold the ASHA Certificate of Clinical Competency.

(d) The supervising speech-language pathologist and the applicant must complete the Board's Competency Checklist upon completion of 100 hours. If there is more than one clinical interaction supervisor, each supervisor must complete and sign a Board Competency Checklist.

(e) In extenuating circumstances where the applicant is unable to obtain the signature of their clinical interaction supervisor, the Board may accept a Board Competency Checklist signed by another supervising speech-language pathologist who is licensed by the Board or holds the ASHA Certificate of Clinical Competency and is able to render a professional opinion of the applicant's level of competence.

(4) Applicants whose academic instruction was not conducted in English may be required to submit scores from the following standardized tests to demonstrate English language proficiency:

(a) The internet-based Test of English as a Foreign Language (TOEFL) with minimum scores of 100 overall, 26 in writing, and 26 in speaking; or

(b) The paper-based TOEFL and Test of Spoken English (TSE) with minimum scores of 600 overall; 5 on the essay; and 50 on the TSE; or

(c) The computer-based TOEFL and TSE with minimum scores of 250 overall; 5 on the essay; and 50 on the TSE.

(5) Applicants must demonstrate current professional competence as follows:

(a) Completion of clinical interaction as described in OAR 335-095-0030(3) within the 12 months prior to application; or

(b) Completion of 7.5 hours of professional development within the 12 months prior to application.

(c) Any hours completed in the current professional development period may also be counted towards meeting the professional development requirement for the next active license renewal.

Stat. Auth.: ORS 681.360, 681.375, 681.420 & 681.460

Stat. Implemented: ORS 681.360 & 681.375

Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 1-2004, f. & cert. ef. 2-6-04; SPA 2-2004, f. & cert. ef. 5-26-04; SPA 3-2006, f. & cert. ef. 5-8-06; SPA 3-2008, f. & cert. ef. 4-10-08; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09; SPA 1-2010(Temp), f. & cert. ef. 8-11-10 thru 2-4-11; SPA 1-2011, f. 1-28-11, cert. ef. 2-1-11; SPA 2-2011, f. & cert. ef. 10-10-11; SPA 2-2012, f. & cert. ef. 12-14-12; SPA 1-2013, f. 4-1-13, cert. ef. 5-1-13

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## Board of Medical Imaging Chapter 337

**Rule Caption:** Update instructor guidelines for limited x-ray school programs.

**Adm. Order No.:** BMI 1-2013

**Filed with Sec. of State:** 4-8-2013

**Certified to be Effective:** 7-1-13

**Notice Publication Date:** 3-1-2013

**Rules Amended:** 337-010-0030

**Subject:** This rule change will authorize the use of an updated version of the Board's official document that provides course content, program requirements and course objectives for schools that provide instruction in limited x-ray machine operation.

**Rules Coordinator:** Ed Conlow—(971) 673-0216

### 337-010-0030

#### Limited X-Ray Machine Operator (LXMO) Permits

(1) Applicants for LXMO Permits Qualifications:

(a) An applicant for a LXMO permit must be at least 18 years of age, pay an application fee, and, effective January 1, 2007, have successfully passed a course of instruction that reflects the current Core Module of the "Content Specifications for the Examination for the Limited Scope of Practice in Radiography" published by the American Registry of Radiologic Technologists. The curriculum must consist of not less than 52 hours of instruction approved by the Board in the following subjects:

- (A) Radiation physics;
- (B) Interaction of radiation with matter;
- (C) Radiation exposure, monitoring, and radiation units;
- (D) Principle of the radiographic equipment;
- (E) Biological effects of radiation;
- (F) Low-dose technique and minimizing patient exposure;
- (G) Applicable Federal and State radiation regulations;
- (H) Darkroom, film processing, and quality assurance;
- (I) Film and image critique;
- (J) Personnel protection;
- (K) Digital and computer-generated radiographic imaging;

(L) Developing and using technique charts; and

(M) Patient care.

(b) Have received a course of instruction in laboratory practice approved by the Board:

(A) Meeting the requirements stated in the Board's publication "Overview of Guidelines for Instructors of Courses in Preparation for the Limited Scope Examination in Diagnostic Radiologic Technology dated "July 2013" which is incorporated by reference and made a part of this rule;

(B) Reflects the current Radiographic Procedure Module(s) of the "Content Specifications for the Examination for the Limited Scope of Practice in Radiography" published by the American Registry of Radiologic Technologists

(C) Taught by a licensed registered technologist specific to each category for which a limited permit is sought and have received the instructor's certification that the applicant has demonstrated all the positions/projections described in the Behavioral Objectives for each category. Effective January 1, 2007, the minimum hours in each category is as follows:

(i) Skull/Sinus, 18 hours;

(ii) Spine, 30 hours;

(iii) Chest, 12 hours;

(iv) Extremities, 60 hours;

(v) Podiatric 10 hours.

(D) An individual must successfully pass a Board-approved Core Module course and successfully complete the didactic portion of a Radiographic Procedure Module (Skull/Sinus, Spine, Chest, Extremities, and Podiatric) relative to the anatomical area the student wishes to radiograph. Student status will continue for one year from the date of completion of the didactic portion of the corresponding Radiographic Procedure Module. Student status expires at the end of the one-year period specified above; or seven days after the date on which an applicant becomes eligible for a permanent LXMO permit.

(c) Radiographic procedures cannot be performed on patients without having passed the ARRT Core exam and corresponding ARRT Radiographic Procedure module. The applicant must obtain a temporary permit to successfully complete a practical experience program approved by the Board specific to each category for which the applicant seeks a LXMO permit. The practical experience component must consist of experience with live patients with a licensed RT, radiologist, or licensed physician, licensed nurse practitioner or licensed physician assistant with adequate training in radiography in accordance with RPS Rules present in the room during radiographic exposures. Processed images made by the students are evaluated and critiqued by an ARRT-registered, Oregon-licensed radiographer Practical Experience Evaluator;

(d) The student may be evaluated for imaging by using the Practical Experience Evaluation Form developed by the Board. If the Practical Experience Evaluator chooses to use a method for evaluation other than the Practical Experience Evaluation Form, that method must receive prior approval from the Board. The Practical Experience Evaluator must provide the student with a certificate of completion in the categories in which the student has successfully completed practical experience.

(2) Applicants for LXMO Permits in X-ray Bone Densitometry: Qualifications:

(a) An applicant for a limited permit in x-ray bone densitometry must be at least 18 years of age, pay an application fee set by the Board, and have successfully passed a Board approved 24 hour course of instruction which includes not less than 20 hours of radiation protection, equipment operation and quality control specific to x-ray bone densitometry, and meets the didactic and practical experience requirements stated in the Board's publication "Behavioral Objectives and Teaching Guide Bone Densitometry Equipment Operators dated October 01, 2008 which is incorporated by reference and made a part of this rule.

(b) An individual must successfully pass a Board-approved course in x-ray bone densitometry. Student status will continue for one year from the date of completion of the "Bone Densitometry Equipment Operators Examination" given by the American Registry of Radiologic Technologists. Student status expires at the end of the one-year period specified above; or seven days after the date on which an applicant becomes eligible for a permanent LXMO permit.

(c) Bone density procedures cannot be performed on patients without having passed the ARRT Bone Densitometry Equipment Operators Examination.

(3) LXMO Permit students who wish to sit for the ARRT Limited Scope of Practice in Radiography Examination need to have a Course Completion Certificate to be eligible to sit for the ARRT "Limited Scope of Practice in Radiography" Examination from a program both approved by

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the board and licensed by the Oregon Department of Education, Private Career School Section or otherwise approved or accredited by the Oregon Department of Higher Education.

(4) Time Frame for Completing Requirements for a LXMO Permit: An applicant has a maximum of one year from the time of completion of a LXMO permit didactic class term to make application for a LXMO permit or add categories to an existing LXMO permanent permit. During the practical experience program after passing the ARRT exam, the applicant may only make x-ray exposures of patients under direct supervision by a licensed RT, radiologist, or licensed physician, licensed nurse practitioner or licensed physician assistant with adequate training in radiography in accordance with RPS Rules present in the room during radiographic exposures.

(5) Students are allowed 3 attempts to pass an ARRT exam.

(6) Limited Scope Examination Fees:

(a) Students can sit for the examination throughout the year. The examination fee is \$20 for each examination category for which the student is tested, combined with an administration fee set by the American Registry of Radiologic Technologists (ARRT). These fees, together with the necessary certifications and verifications that the applicant has completed Board-approved Core Module course and Radiographic Procedure Module courses, must be submitted to the Board office. On submission and acceptance of the application materials, OBMI shall register the applicant with the ARRT, after which the applicant has 90 days in which to sit for the exam. The Board, upon advance request, may approve a student to submit an application for the examination prior to completion of all course requirements, based upon school verification that the student is expected to complete all coursework. Verification must include a preliminary course completion certificate, endorsed by a responsible school official, indicating the courses for which the student is enrolled, expected completion date, and the student's status in each course. The final approved course completion certificate is required as part of the application for a temporary permit. A temporary permit will only be issued for anatomical areas for which the applicant has successfully completed coursework and obtained a passing grade on the ARRT examination.

(b) The examination shall consist of two sections:

(A) Core Section (Radiation Use and Safety, Equipment Operation, Quality Control, Image Production, Image Evaluation, and Patient Care), which all applicants are required to pass; and

(B) Specific Radiographic Procedures (positioning and techniques) in the category or categories (Skull/Sinus, Spine, Chest, Extremities, and Podiatric) for which a limited permit is desired to be obtained. At least one category must be passed to obtain a permanent LXMO Permit (ORS 688.515(h)). The LXMO Permit may be issued only in those categories that are passed.

(c) A score of 70 percent constitutes a minimum passing score for each section of the limited scope examination;

(d) Limited scope examinations will be administered at computer-based testing sites identified by ARRT. The student is subject to rules regarding test administration at the testing site;

(e) The application fee for the LXMO permit examination is non-refundable.

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

Stat. Auth.: ORS 388.555(1)

Stats. Implemented: ORS 688.515(4) & 688.515(8)

Hist.: RT 2-1978, f. & ef. 7-7-78; RT 2-1982, f. & ef. 3-11-82; RT 3-1982, f. & ef. 9-30-82; RT 2-1985, f. & ef. 7-1-85; RT 2-1986, f. & ef. 4-29-86, ef. 7-1-86; RT 1-1987, f. & ef. 1-27-87; RT 3-1987, f. & ef. 4-16-87; RT 5-1987, f. & ef. 10-19-87; RT 1-1988, f. & ef. 4-13-88; RT 2-1988, f. & ef. 11-9-88; RT 3-1988, f. & ef. 11-9-88; RT 1-1989, f. & ef. 1-24-89; RT 3-1990, f. & ef. 11-7-90; RT 4-1990, f. & ef. 11-7-90; RT 1-1991, f. & ef. 1-30-91; RT 1-1992, f. & ef. 1-15-92; BRT 4-1998, f. & ef. 7-15-98; BRT 2-2002, f. & ef. 11-18-02; BRT 1-2006, f. & ef. 2-6-06; BRT 2-2006, f. 12-15-06, cert. ef. 1-1-07; BRT 1-2010, f. & ef. 6-15-10; BMI 1-2012, f. & ef. 1-12-12; BMI 1-2013, f. 4-8-13, cert. ef. 7-1-13

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## Board of Pharmacy Chapter 855

**Rule Caption:** Implements temporary revenue surplus fee reduction pursuant to ORS 291.055(3) for pharmacist licensure fee

**Adm. Order No.:** BP 2-2013(Temp)

**Filed with Sec. of State:** 4-4-2013

**Certified to be Effective:** 4-5-13 thru 9-28-13

**Notice Publication Date:**

**Rules Amended:** 855-110-0005

**Subject:** The Board is implementing a temporary fee reduction for pharmacist licensure fees as allowed by ORS 291.055(3)(a) - ORS

291.055(3)(1Bb)) due to an unexpected surplus in revenue. The license fee will be reduced from \$200 to \$120. This temporary rule will remain in effect until permanent rules are adopted or until this temporary rule expires on September 28, 2013; whichever is first to occur. As required by ORS 291.055(3)(a)(B), fees will not be increased to more than the prior level. This will be determined when the budget surplus is calculated to be at or less than 4% of the Board's gross operating budget.

**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 — \$120\*. Delinquent renewal fee, (postmarked after May 31) — \$50. (\*Temporary revenue surplus fee reduction pursuant to ORS 291.055(3)).

(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)(a) Pharmacy Technician license fee. (This is a one year non-renewable license unless under the age of 19) — \$50.

(b) 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 & 291.055

Stats. Implemented: ORS 689.135, 431.972 & 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; 1PB 2-2013(Temp), f. 4-4-13, cert. ef. 4-5-13 thru 9-28-13

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## Bureau of Labor and Industries Chapter 839

**Rule Caption:** Amends the prevailing rates of wages for the period beginning April 1, 2013

**Adm. Order No.:** BLI 1-2013

**Filed with Sec. of State:** 3-25-2013

**Certified to be Effective:** 3-25-13

**Notice Publication Date:**

**Rules Amended:** 839-025-0700

**Subject:** The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning April 1, 2013.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-025-0700

### Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in the pub-

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lication of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* dated January 1, 2013, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 1, 2013, and the effective dates of the applicable special wage determination and rates amendments: Amendments to Oregon Determination 2013-01 (effective April 1, 2013).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* dated January 1, 2013, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Portland and Salem. Copies are also available on the bureau's webpage at [www.oregon.gov/boli](http://www.oregon.gov/boli) or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002, f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. ef. 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07; BLI 24-2007, f. 9-11-07, cert. ef. 9-12-07; BLI 25-2007, f. 9-19-07, cert. ef. 9-20-07; BLI 26-2007, f. 9-25-07 cert. ef. 9-26-07; BLI 27-2007, f. 9-25-07 cert. ef. 10-1-07; BLI 28-2007, f. 9-26-07 cert. ef. 10-1-07; BLI 31-2007, f. 11-20-07, cert. ef. 11-23-07; BLI 34-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 1-2008, f. & cert. ef. 1-4-08; BLI 2-2008, f. & cert. ef. 1-11-08; BLI 3-2008, f. & cert. ef. 2-21-08; BLI 6-2008, f. & cert. ef. 3-13-08; BLI 8-2008, f. 3-31-08, cert. ef. 4-1-08; BLI 9-2008, f. & cert. ef. 4-14-08; BLI 11-2008, f. & cert. ef. 4-24-08; BLI 12-2008, f. & cert. ef. 4-30-08; BLI 16-2008, f. & cert. ef. 6-11-08; BLI 17-2008, f. & cert. ef. 6-18-08; BLI 19-2008, f. & cert. ef. 6-26-08; BLI 20-2008, f. & cert. ef. 7-1-08; BLI 23-2008, f. & cert. ef. 7-10-08; BLI 26-2008, f. & cert. ef. 7-30-08; BLI 28-2008, f. & cert. ef. 9-3-08; BLI 30-2008, f. & cert. ef. 9-25-08; BLI 31-2008, f. 9-29-08, cert. ef. 10-1-08; BLI 32-2008, f. & cert. ef. 10-8-08; BLI 36-2008, f. & cert. ef. 10-29-08; BLI 41-2008, f. & cert. ef. 11-12-08; BLI 42-2008, f. & cert. ef. 12-1-08; BLI 44-2008, f. & cert. ef. 12-29-08; BLI 45-2008, f. 12-31-08, cert. ef. 1-1-09; BLI 1-2009, f. & cert. ef. 1-6-09, BLI 2-2009, f. & cert. ef. 1-12-09; BLI 4-2009, f. & cert. ef. 2-11-09; BLI 6-2009, f. & cert. ef. 3-17-09; BLI 7-2009, f. & cert. ef. 3-24-09; BLI 8-2009, f. 3-31-09, cert. ef. 4-1-09; BLI 10-2009, f. 6-9-09, cert. ef. 6-10-09; BLI 11-2009, f. 6-29-09, cert. ef. 6-30-09; BLI 12-2009, f. 6-29-09, cert. ef. 7-1-09; BLI 13-2009, f. & cert. ef. 7-1-09; BLI 14-2009, f. & cert. ef. 7-10-09; BLI 15-2009, f. & cert. ef. 7-16-09; BLI 16-2009, f. & cert. ef. 7-22-09; BLI 17-2009, f. & cert. ef. 7-29-09; BLI 19-2009, f. & cert. ef. 8-18-09; BLI 20-2009, f. & cert. ef. 9-14-09; BLI 21-2009, f. & cert. ef. 9-21-09; BLI 22-2009, f. 9-30-09, cert. ef. 10-1-09; BLI 23-2009, f. & cert. ef. 10-8-09; BLI 24-2009, f. & cert. ef. 11-12-09; BLI 25-2009, f. & cert. ef. 11-23-09; BLI 29-2009, f. 12-31-09, cert. ef. 1-1-10; BLI 1-2010, f. 1-8-10, cert. ef. 1-12-10; BLI 2-2010, f. 1-11-10, cert. ef. 1-13-10; BLI 3-2010, f. & cert. ef. 1-19-10; BLI 4-2010, f. & cert. ef. 1-27-10; BLI 13-2010, f. & cert. ef. 4-1-10; BLI 17-2010, f. 6-29-10, cert. ef. 7-1-10; BLI 20-2010, f. & cert. ef. 10-1-10; BLI 24-2010, f. 12-30-10, cert. ef. 1-1-11; BLI 2-2011, f. 3-25-11, cert. ef. 4-1-11; BLI 4-2011, f. 6-30-11, cert. ef. 7-1-11; BLI 7-2011, f. & cert. ef. 10-12-11; BLI 10-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 4-2012, f. & cert. ef. 3-29-12; BLI 6-2012, f. & cert. ef. 7-2-12; BLI 10-2012, f. 9-26-12, cert. ef. 10-1-12; BLI 13-2012, f. 12-28-12, cert. ef. 1-1-13; BLI 1-2013, f. & cert. ef. 3-25-13

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

**Rule Caption:** Clarifies continuing education requirements for licensees, corrects scrivener's errors

**Adm. Order No.:** BCD 4-2013

**Filed with Sec. of State:** 3-29-2013

**Certified to be Effective:** 4-1-13

**Notice Publication Date:** 2-1-2013

**Rules Amended:** 918-030-0100, 918-030-0120, 918-030-0125, 918-030-0130, 918-030-0135

**Subject:** These rules correct the continuing education requirements for persons licensed by the Building Codes Division by clarifying that Oregon Rule and Law hours are in addition to code-change hours for electrical and plumbing licenses that require 16 or 24 hours of continuing education, and correcting the implementation dates for Journeyman Plumbers and Limited Journeyman Manufacturing Plant Electricians.

**Rules Coordinator:** Richard J. Baumann—(503) 373-7559

### 918-030-0100

#### Continuing Education Generally

(1) OAR 918-030-0100 to 918-030-0150 establishes minimum continuing education requirements for licensees.

(2) The hourly continuing education requirements can be met by approved class, online or correspondence courses.

(3) When a continuing education course is taught in more than one session, credit is only granted upon completion of the entire course.

(4) Table 2-A lists the effective dates for the Oregon rule and law course requirements for specific licenses.

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

Stat. Auth.: ORS 455.117

Stats. Implemented: ORS 455.117

Hist.: BCD 2-2004, f. 2-13-04, cert. ef. 4-1-04; BCD 10-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; BCD 9-2012, f. 9-27-12, cert. ef. 10-1-12; BCD 17-2012(Temp), f. 12-21-12, cert. ef. 12-22-12 thru 5-31-13; BCD 4-2013, f. 3-29-13, cert. ef. 4-1-13

### 918-030-0120

#### Licenses Requiring 24 Hours of Continuing Education

(1) During each three-year license cycle, the following license holders are required to complete 24 hours of approved continuing education. The hours must include code-change courses in the amounts below, and after the date listed in Table 2-A must include a 4-hour Oregon rule and law course meeting the standards established in OAR 918-035-0055. The Oregon rule and law course is in addition to the code-change hour requirement:

(a) General Supervising Electrician: must include 12 hours of code change;

(b) Limited Supervising Electrician: must include 12 hours of code change;

(c) General Journeyman Electrician: must include 8 hours of code change;

(d) Journeyman Plumber: must include 4 hours of code change.

(2) During each three-year license cycle, the following license holders are required to complete 24 hours of approved continuing education:

(a) Class 3 Boiler Building Service Mechanic;

(b) Class 4 Boiler Boilermaker;

(c) Class 5 Boiler Pressure-Piping Mechanic;

(d) Class 5A Boiler Process Piping Mechanic; and

(e) Class 5B Boiler Refrigeration Piping Mechanic.

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

Stat. Auth.: ORS 455.117

Stats. Implemented: ORS 455.117

Hist.: BCD 10-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; BCD 10-2008, f. 6-30-08, cert. ef. 7-1-08; BCD 9-2012, f. 9-27-12, cert. ef. 10-1-12; BCD 17-2012(Temp), f. 12-21-12, cert. ef. 12-22-12 thru 5-31-13; BCD 4-2013, f. 3-29-13, cert. ef. 4-1-13

### 918-030-0125

#### Licenses Requiring 16 Hours of Continuing Education

During each three-year license cycle, the following license holders are required to complete 16 hours of approved continuing education. The hours must include code-change courses in the amounts below, and after the date listed in Table 2-A must include a 4-hour Oregon rule and law course meeting the standards established in OAR 918-035-0055. The Oregon rule and law course is in addition to the code-change hours requirement:

(1) Limited Residential Electrician: must include 8 hours of code change.

(2) Limited Journeyman Manufacturing Plant Electrician: must include 8 hours of code change.

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

Stat. Auth.: ORS 455.117

Stats. Implemented: ORS 455.117

Hist.: BCD 10-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; BCD 10-2008, f. 6-30-08, cert. ef. 7-1-08; BCD 9-2012, f. 9-27-12, cert. ef. 10-1-12; BCD 17-2012(Temp), f. 12-21-12, cert. ef. 12-22-12 thru 5-31-13; BCD 4-2013, f. 3-29-13, cert. ef. 4-1-13

# ADMINISTRATIVE RULES

## 918-030-0130

### Licenses Requiring 8 Hours of Continuing Education

(1) During each three-year license cycle, the following license holders are required to complete 8 hours of approved continuing education. The hours must include code-change courses in the amounts below, and after the date listed in Table 2-A code-change courses must include Oregon rule and law material meeting the standards established in OAR 918-035-0055:

- (a) Limited Maintenance Electrician; must include 2 hours of code change;
- (b) Class A Limited Energy Technician; must include 8 hours of code change;
- (c) Class B Limited Energy Technician; must include 2 hours of code change.

(2) During each three-year license cycle, the following license holders are required to complete 8 hours of approved continuing education:

- (a) Solar Heating and cooling System Plumbing Installer; and
- (b) Class 2 Boiler Pressure Vessel Installer.

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

Stat. Auth.: ORS 455.117

Stats. Implemented: ORS 455.117

Hist.: BCD 10-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; BCD 10-2008, f. 6-30-08, cert. ef. 7-1-08; BCD 9-2012, f. 9-27-12, cert. ef. 10-1-12; BCD 17-2012(Temp), f. 12-21-12, cert. ef. 12-22-12 thru 5-31-13; BCD 4-2013, f. 3-29-13, cert. ef. 4-1-13

## 918-030-0135

### Licenses Requiring 4 Hours of Continuing Education

During each three-year license cycle, the following license holders are required to complete 4 hours of approved continuing education. The hours must include code-change in the amounts below, and after the date listed in Table 2-A code-change courses must include Oregon rule and law material meeting the standards established in OAR 918-035-0055:

- (1) Limited Renewable Energy Technician; must include 2 hours of code change; and
- (2) Limited Journeyman Sign Electrician; must include 2 hours of code change.

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

Stat. Auth.: ORS 455.117

Stats. Implemented: ORS 455.117

Hist.: BCD 10-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; BCD 10-2008, f. 6-30-08, cert. ef. 7-1-08; BCD 9-2012, f. 9-27-12, cert. ef. 10-1-12; BCD 17-2012(Temp), f. 12-21-12, cert. ef. 12-22-12 thru 5-31-13; BCD 4-2013, f. 3-29-13, cert. ef. 4-1-13

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**Rule Caption:** Amending the 2011 Oregon Electrical Specialty Code for arc-fault circuit interrupter provisions.

**Adm. Order No.:** BCD 5-2013

**Filed with Sec. of State:** 4-12-2013

**Certified to be Effective:** 5-1-13

**Notice Publication Date:** 2-1-2013

**Rules Amended:** 918-305-0100, 918-305-0105

**Rules Repealed:** 918-305-0105(T)

**Subject:** This rule expands the requirement for arc-fault circuit interrupter (AFCI) protection in dwelling units. The rule also adds an exception to the required AFCI protection for branch circuits supplying one or more outlets in a dwelling unit.

**Rules Coordinator:** Richard J. Baumann—(503) 373-7559

## 918-305-0100

### Adoption of Oregon Electrical Specialty Code

(1) Effective April 1, 2011, the **2011 Oregon Electrical Specialty Code** consists of the following:

- (a) **2011 Edition of the NFPA 70, National Electrical Code (NEC)**, and further amended by the division in Table 1-E;
- (b) **2007 Edition of the IEEE C2-2007, National Electrical Safety Code (NESC)**; and
- (c) The electrical provisions of the Oregon Elevator Specialty Code adopted in OAR 918-400-0455.

(2) In the event of a conflict between the NEC and NESC requirements, the NEC requirement, as amended in subsection (1)(a) of this rule, applies.

(3) As used in this rule:

- (a) “ANSI” is the American National Standards Institute;
- (b) “ASME” is the American Society of Mechanical Engineers;
- (c) “IEEE” is the Institute of Electrical and Electronics Engineers;

and

- (d) “NFPA” is the National Fire Protection Association.

**NOTE:** Table 1-E is printed at the end of Division 305 and is available on the division’s website at <http://www.bcd.oregon.gov/rules.html#oar>

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 13-1987, f. & ef. 5-1-87; Renumbered from 814-022-0600; BCA 17-1990, f. 6-27-90, cert. ef. 7-1-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-290-0010; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08; BCD 3-2011, f. 3-11-11, cert. ef. 4-1-11; BCD 5-2013, f. 4-12-13, cert. ef. 5-1-13

## 918-305-0105

### Amendments to the Oregon Electrical Specialty Code

(1) The **Oregon Electrical Specialty Code** is adopted and amended pursuant to OAR chapter 918, Division 8. Amendments adopted for inclusion into the **Oregon Electrical Specialty Code** are placed in this rule, showing the section reference and a descriptive caption. Amendments to the **Oregon Electrical Specialty Code** are printed in their entirety in Table 1-E.

(2) Effective May 1, 2013 amend Section 210.12(A) Arc-Fault Circuit Interrupter Protection by:

(a) Deleting “hallways”; and

(b) Adding two exceptions and an informational note.

**NOTE:** Table 1-E is printed at the end of Division 305 and is available on the division’s website at <http://www.bcd.oregon.gov/rules.html#oar>

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

Stat. Auth.: ORS 479.730 & 455.610

Stats. Implemented: ORS 479.730 & 455.610

Hist.: BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08; BCD 3-2011, f. 3-11-11, cert. ef. 4-1-11; BCD 5-2012(Temp), f. & cert. ef. 6-7-12 thru 10-31-12; BCD 11-2012(Temp), f. 10-5-12, cert. ef. 1-1-13 thru 6-29-13; BCD 14-2012(Temp), f. 11-16-12, cert. ef. 1-1-13 thru 6-29-13; BCD 5-2013, f. 4-12-13, cert. ef. 5-1-13

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**Rule Caption:** Establishes temporary journeyman plumber’s license equivalency criteria.

**Adm. Order No.:** BCD 6-2013(Temp)

**Filed with Sec. of State:** 4-15-2013

**Certified to be Effective:** 4-15-13 thru 5-15-13

**Notice Publication Date:**

**Rules Adopted:** 918-695-0031

**Subject:** This rule allows the director to review and approve equivalent experience in order to determine that a person has the minimum experience necessary to qualify for licensure as a journeyman plumber.

**Rules Coordinator:** Richard J. Baumann—(503) 373-7559

## 918-695-0031

### Journeyman Plumber Licensing Equivalency

Notwithstanding OAR 918-695-0030, the Department may issue a journeyman plumber’s license to an individual that has been determined to have equivalent experience as described in this rule.

(1) An individual submitting an application under this rule must apply by completing the application process as described in OAR chapter 918, division 030, including paying the applicable fees and verification of experience.

(2) The individual must have a minimum of 15 years experience in the plumbing industry.

(3) The experience described in subsection (2) of this rule must include verification of twice the total amount of work experience required under OAR 918-695-0030 or 10 years of verifiable general plumbing experience.

(4) An individual applying under this rule must pass the division administered plumbing examination as described in OAR chapter 918, division 030. The reapplication for examination in OAR 918-030-0060 does not apply to individuals that qualify for examination under this rule.

(5) This rule expires May 15, 2013.

Stat. Auth.: ORS 183.335(5)

Stats. Implemented: 183.335(5)

Hist.: BCD 6-2013(Temp), f. & cert. ef. 4-15-13 thru 5-15-13

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

**Rule Caption:** Employer-at-Injury program wage subsidies

**Adm. Order No.:** WCD 3-2013

**Filed with Sec. of State:** 4-12-2013

**Certified to be Effective:** 7-1-13

# ADMINISTRATIVE RULES

**Notice Publication Date:** 3-1-2013

**Rules Amended:** 436-105-0003, 436-105-0520

**Subject:** Revised OAR 436-105, "Employer-at-Injury Program":

Reduce the percentage of wage subsidy paid by the Workers' Benefit Fund from 50 percent to 45 percent of gross wages; and

Describe the applicability of OAR 436-105 to individual Employer-at-Injury programs, including wages subsidies, worksite modifications, and program purchases.

**Rules Coordinator:** Fred Bruyns—(503) 947-7717

## 436-105-0003

### Applicability of Rules

(1) These rules apply to:

(a) All individual Employer-at-Injury programs started on or after the effective date of these rules, unless otherwise provided in subsections (b) or (c);

(b) All wage subsidy reimbursement requests when the wage subsidy period began on or after the effective date of these rules; and

(c) All reimbursement requests received by the division on or after the effective date of these rules for worksite modification or program purchases, regardless of when the purchase was made.

(2) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

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

Stats. Implemented: ORS 656.622

Hist.: WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 12-2002(Temp), f. & cert. ef. 12-11-02 thru 6-8-03; WCD 5-2003, f. 5-16-03, cert. ef. 6-8-03; WCD 4-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 9-27-04; WCD 8-2004, f. 7-15-04, cert. ef. 8-1-04; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 5-2012, f. 10-3-12, cert. ef. 11-1-12; WCD 3-2013, f. 4-12-13, cert. ef. 7-1-13

## 436-105-0520

### Assistance Available from the Employer-at-Injury Program

The Employer-at-Injury Program may be used only once per worker per claim opening for a nondisabling claim or a disabling claim. If a nondisabling claim becomes a disabling claim after one year from the date of acceptance, the disabling claim is considered a new opening and the Employer-at-Injury Program may be used again. Assistance available includes:

(1) Wage subsidy, which provides 45 percent reimbursement of the worker's gross wages for the wage subsidy period. Wage subsidy benefits are subject to the following conditions:

(a) A wage subsidy may not exceed 66 workdays and must be completed within a 24 consecutive month period;

(b) A wage subsidy may not start or end with paid leave;

(c) If the worker has hourly restrictions, reimbursable paid leave must be limited up to the maximum number of hours of the worker's hourly restrictions. Paid leave exceeding the worker's hourly restrictions is not subject to reimbursement;

(d) Any day during which the worker exceeds his or her injury-caused limitations will not be reimbursed. If, however, an employer uses a time clock, a reasonable time not to exceed 30 minutes per day will be allowed for the worker to get to and from the time clock and the worksite without exceeding the worker's hourly restrictions.

(2) Worksite modification, which means altering a worksite by renting, purchasing, modifying, or supplementing equipment to enable a worker to perform the transitional work within the worker's limitations that resulted in the worker's EAIP eligibility, or to prevent a worsening of the worker's conditions. Worksite modification assistance is subject to the following conditions:

(a) The insurer determines the appropriate worksite modifications for the worker;

(b) The insurer documents its reasons for approving the modifications;

(c) The worksite modifications must be ordered during the Employer-at-Injury Program; and

(d) Worksite modification items become the employer's property upon the end of the Employer-at-Injury Program.

(3) Employer-at-Injury Program purchases, which are limited to:

(a) Tuition, books, fees, and materials required for a class or course of instruction to enhance an existing skill or develop a new skill when skills building is used as transitional work or when required to meet the requirements of the transitional work position. Maximum expenditure is \$1,000. Tuition, books, fees, and required materials will be provided under the following conditions:

(A) The insurer determines the instruction will help the worker enhance an existing skill or develop a new skill, and documents its decision; and

(B) The worker begins participation in the class or course while eligible for the Employer-at-Injury Program;

(b) Clothing required for the job, except clothing the employer normally provides. Clothing becomes the worker's property. Maximum expenditure is \$400.

(4) Employer-at-Injury Program purchases of tools and equipment, including consumables, must be required for the worker to perform transitional work. These purchases will be the employer's property.

(5) Worksite modification and purchases of tools and equipment are limited to a combined maximum reimbursement of \$5,000.

(6) All modifications and purchases made by the employer in good faith are reimbursable, even if the worker refuses to return to work, or if the worker agreed to take part in training and then later refused to attend training.

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

Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978(Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0041, 436-110-0042 & 436-110-0045; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0200; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01, Renumbered from 436-110-0510; WCD 5-2003, f. 5-16-03, cert. ef. 6-8-03; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 5-2012, f. 10-3-12, cert. ef. 11-1-12; WCD 3-2013, f. 4-12-13, cert. ef. 7-1-13

## Department of Corrections Chapter 291

**Rule Caption:** Death Row Housing Policy and Definitions for Classification of Inmates

**Adm. Order No.:** DOC 4-2013

**Filed with Sec. of State:** 4-15-2013

**Certified to be Effective:** 4-15-13

**Notice Publication Date:** 12-1-2012

**Rules Amended:** 291-093-0005, 291-104-0111

**Subject:** It is the long-standing policy and practice of the Oregon Department of Corrections to house inmates with a sentence of death separately from the general inmate population in a death row housing unit or a death row status cell due to the unique security and management concerns presented by these inmates. These rule amendments are necessary for the department to clarify that its policy in this area includes all inmates confined in a department institution with a sentence of death, including inmates with a death sentence from another state or jurisdiction.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

## 291-093-0005

### Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of this rule is to establish guidelines for the daily operation of death row at the Oregon State Penitentiary.

(3) Policy: It is the policy of the Department of Corrections to assign inmates with a sentence of death to the Death Row Housing Unit or to a Death Row status cell.

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

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

Hist.: CD 14-1989(Temp), f. & cert. ef. 7-11-89; CD 24-1994, f. 12-21-94, cert. ef. 1-3-95; DOC 11-2012(Temp), f. & cert. ef. 11-5-12 thru 5-4-13; DOC 4-2013, f. & cert. ef. 4-15-13

## 291-104-0111

### Definitions

(1) Administrative Review: A review of classification scoring, classification level, or classification override requested by an inmate and completed by the Institution Classification Committee, facility functional unit manager, or Classification Manager.

(2) Classification Action: Initiation of initial classification, classification review or classification override to determine an inmate's custody classification level.

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(3) Classification Manager: An Office of Population Management employee responsible for the development, implementation, training, auditing, oversight and management of the classification function within the Department.

(4) Classification Review: The process used by the Department to re-evaluate an inmate's assigned custody level. The assigned custody level may be changed as a result of the review.

(5) Corrections Information System (CIS): A computer system dedicated to tracking information critical to the management of inmates and offenders under the custody, supervision or both of the Department of Corrections.

(6) Custody Classification Guide (Attachment 1): Criteria and guidelines that assist in assigning inmates to an appropriate custody level utilizing scoring elements determined by the Department of Corrections.

(7) Custody Level: One of five levels of supervision assigned to an inmate through initial and classification review procedures.

(a) Level 5: An inmate assigned at this custody level meets one of the following criteria:

(A) Has demonstrated behaviors causing serious management concerns, or has demonstrated behaviors that in the judgment of the Department present a threat sufficient to require special security housing on intensive management status.

(B) Has a sentence of death.

(b) Level 4: An inmate assigned at this custody level presents a serious risk of escape or institutional violence, or has extensive time remaining.

(c) Level 3: An inmate assigned at this custody level presents a moderate risk of escape, or has demonstrated behavior causing moderate management concern.

(d) Level 2: An inmate assigned at this custody level presents a limited risk of escape, or has demonstrated behavior causing limited management concern.

(e) Level 1: An inmate assigned at this custody level presents a minimal risk of escape and has demonstrated behavior causing minimal management concern.

(8) Department of Corrections (DOC) Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(9) Designators: Information, alerts or statutory designations important for sentence computation and crucial to determining work crew eligibility, unfenced housing assignment, and the management of inmates and offenders both in institutions and in the community.

(10) Initial Classification: The process used by the Department of Corrections to assign an inmate a custody level upon his/her admission to the physical custody of the Department.

(11) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, probation, or post-prison supervision status.

(12) Institution Classification Committee: A committee within each facility consisting of at least three persons (one representative from management service, one representative from security, and one representative from Transitional Services) that reviews classification appeals.

(13) Office of Population Management: The functional unit that is responsible for capacity and resource management, new prison construction, community development, interstate compact, rental bed contracts, international transfers, special needs populations, juveniles sentenced as adults, high risk inmate placement, and overall system development related to classification functions.

(14) Override: An option utilized when there is a documented issue(s) not addressed in the classification scoring elements, or a degree of seriousness in a classification factor that justifies a higher or lower custody level than indicated by the classification action.

(15) Policy Elements: Areas of potential risk listed in the Custody Classification Guide (Attachment 1) that determine the inmate's classification level.

(16) Serious Management Concerns:

(a) Participation, either individually or in a group, in behavior that in the judgment of the Department poses a threat to the safe and secure operation of the facility, including but not limited to, threatening or inflicting serious bodily harm on another inmate or on staff, or that poses an immediate risk of escape;

(b) Promoting or engaging in group disruptive behavior, or being involved in the planning of any activities that in the judgment of the Department would significantly threaten the safe and secure operation of the facility; or

(c) Demonstration in behaviors that in the judgment of the Department pose a threat sufficient to require special secure housing on intensive management status.

(17) Special Population Management (SPM) Committee: A committee composed of at least three Department administrative staff to include a representative from Institution Operations, Counseling & Treatment Services, and the Office of Population Management, who are responsible to review classification status for inmates who score Level 5 in order to determine if assignment to Intensive Management Status is appropriate.

(18) Violence Predictor Score (VPS): A score based on a mathematical equation used to determine an inmate's risk for violence in an institutional setting. The equation includes calculations based on an inmate's age, gender, prior incarcerations, type of crime, aggression, drug history, and certain personality disorders. *This calculation is used only during the twelve months of incarceration.*

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

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

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

Hist.: DOC 4-2006, f. 5-31-06, cert. ef. 6-1-06; DOC 11-2008, f. 5-8-08, cert. ef. 5-13-08;

DOC 11-2012(Temp), f. & cert. ef. 11-5-12 thru 5-4-13; DOC 4-2013, f. & cert. ef. 4-15-13

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## Department of Environmental Quality Chapter 340

**Rule Caption:** 401 Water Quality Certification Fee Schedule Clarification

**Adm. Order No.:** DEQ 3-2013(Temp)

**Filed with Sec. of State:** 3-25-2013

**Certified to be Effective:** 3-25-13 thru 7-30-13

**Notice Publication Date:**

**Rules Amended:** 340-048-0055

**Subject:** The Environmental Quality Commission adopted a temporary rule to clarify that the fee structure the adopted and certified in 2004 applies through July 30, 2013.

The purpose of the fee is to cover the costs associated with the program for certification of activities requiring federal licenses and permits to comply with water quality standards. Most projects involve the removal of material from, or placement into, state waters such as sand and gravel operations, wetland fills for development and navigation dredging but do not apply to hydroelectric projects.

**Rules Coordinator:** Maggie Vandehey — (503) 229-6878

### 340-048-0055

#### Fee Schedule for Certifications

(1) Applicability. The fees established in this rule apply to any person, including a federal agency, submitting an application for certification to DEQ.

(2) Fee Determinations. To determine the appropriate fee to process and review an application for certification, DEQ will do the following:

(a) Perform an initial review of the application and other materials submitted;

(b) Determine the estimated program costs incurred by DEQ in reviewing the proposed project based on the types of tasks expected, the amount of staff time and other expenses, and assign a tier using the criteria in Section (3);

(c) Submit an invoice or, if necessary, multiple invoices, to the applicant based on the appropriate fee schedule provided in Section (4); and

(d) As necessary, revise an assigned tier based on documentation of the expected types of tasks or program costs incurred, if appropriate, and notify the applicant of such revisions.

(3) Project Tiers. The following tier schedule describes the types of tasks expected to appropriately process and review proposed projects for certification:

(a) Tier 1- This tier applies to those projects that incur minimal program costs and impacts to water quality. To qualify under this tier, the project must meet the following:

(A) Potential for minimal impacts to water quality;

(B) Low level of public participation;

(C) No more than standard coordination with federal state or local agencies required;

(D) Stormwater management plan review not required or will be addressed through the National Pollutant Discharge Elimination System permitting process;

(E) Limited technical assistance needed; or,



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(F) Within the scope of a United States Army Corps of Engineers Nationwide 404 category requiring a DEQ 401 certification and involving only a stormwater management plan or sediment evaluation review component;

(G) Within the scope of the proposed application, the project has been modified or altered that the DEQ 401 review and certification requires re-issuance, including DEQ public notice.

(b) Tier 2A - This tier applies to those projects that incur a higher than minimal amount of program costs and impacts to water quality. To qualify under this tier, the project must meet some of the following:

(A) Potential for greater than minimal impacts to water quality;

(B) Basic level of public participation required, including but not limited to response to comment;

(C) No more than standard coordination with federal state or local agencies required;

(D) Limited stormwater management plan review or technical assistance to a reviewing permitted entity or agent required;

(E) Limited technical assistance needed; or

(F) Sediment characterization, if required, finds sediment and new surface suitable for in-water exposure.

(c) Tier 2B - This tier applies to those projects that incur higher program costs due to greater potential impacts on water quality. To qualify for this tier, the project must meet a majority of the following:

(A) Potential for greater water quality impacts if the waterway is identified on DEQ's 303(d) list or is covered by a total maximum daily load, or multiple waters of the state are affected;

(B) High level of public participation required with potential for one or more public meetings or hearings;

(C) More than standard coordination with multiple federal, state or local agencies required, including but not limited to one or more meetings or pre-application site visit;

(D) Complex stormwater management plan review and coordination required;

(E) Moderate and on-going level of technical assistance needed;

(F) Large or complex compensatory mitigation review required;

(G) Sediment characterization, if required, finds sediment or new surface unsuitable for in-water exposure, so that coordination with the DEQ Solid Waste or Environmental Cleanup programs is necessary; or

(H) Preparation of a full evaluation and findings report needed.

(d) Tier 3 — This tier applies to those projects that incur very high program costs because a large area is affected, a high degree of complexity is involved or greater potential water quality impacts may result. To qualify for this tier, the project must meet a majority of the following:

(A) Potential for greater water quality impacts if the waterway is identified on DEQ's 303(d) list or covered by a total maximum daily load, or multiple waters of the state are affected;

(B) High level of public participation required with extensive public comments and the potential for one or more public meetings or hearings;

(C) Substantially more than standard coordination with multiple federal, state or local agencies required, including but not limited to one or more meetings;

(D) Complex stormwater management plan review and coordination required;

(E) High level or iterative technical assistance required or substantive project revisions received;

(F) Large or complex compensatory mitigation review required;

(G) Site visit(s) needed to understand impacts and advise on potential alternatives;

(H) Sediment characterization finds sediment or new surface unsuitable for in-water exposure or contaminated soil is likely to be present, so that coordination with the DEQ Solid Waste or Environmental Cleanup Programs is necessary; or

(I) Preparation of a full evaluation and findings report needed.

(e) Tier 4 — This tier applies to those projects that incur the highest program costs because a very large area is affected, an extremely high degree of complexity is involved, or a very high level of public participation is expected. To qualify for this tier, the project must meet all of the following:

(A) All of the applicable factors identified in Tier 3; and

(B) Coordination with the Governor's Office in conjunction with other state agencies, tribal nations and the federal government;

(C) Review of additional documents such as National Environmental Policy Act Resource Reports, Environmental Assessments and Environmental Impact Statements.

(4) Fee Schedules. The following fees apply to tiers assigned under Sections (2) and (3):

(a) Until July 31, 2013, the fees adopted by the Commission in 2004 and certified on April 15, 2004 apply.

(b) As of July 31, 2013, the following fees apply:

(A) Tier 1 — \$985

(B) Tier 2A — \$4,390

(C) Tier 2B — \$12,105

(D) Tier 3 — \$17,780

(E) Tier 4 — \$14,020 per month or average monthly cost of a senior level technical staff position.

(c) In lieu of fees established by this section, DEQ may at its discretion enter into an intergovernmental agreement with another state or federal agency that provides for the payment of the estimated or actual costs of processing an application for certification.

(5) Review of Fee Determinations. An applicant may seek review of DEQ's determination of the appropriate fee as follows:

(a) An applicant may seek review of the fee determination by submitting a written request to the DEQ regional administrator within 30 days of receipt of an invoice. The request must state the specific reasons and provide documentation that the applicant believes supports a different fee amount. Upon receiving such a request, the DEQ regional administrator must respond within 60 days of receipt and render a decision.

(b) That decision may include:

(A) Determination that a different fee tier will apply subject to making specifically identified modifications to the proposed project;

(B) Denial of a request for a different fee amount; or;

(C) The determination that the proposed project meets the criteria for a different tier.

(c) If an applicant is not satisfied by the decision of the DEQ regional administrator, the applicant is entitled to request review by the DEQ director in the same manner as described in subsections (a) and (b) above.

(d) An applicant who is dissatisfied with the review of the director retains the right to a contested case hearing as provided in ORS chapter 183, provided the applicant has sought relief through subsections (a) through (c).

(6) Certification of Hydroelectric Projects. Fees for certification of a hydroelectric project as proposed to be licensed by the Federal Energy Regulatory Commission must be paid in accordance with ORS 468.065(3). Fees for a certification related to a hydroelectric project but for a license or approval not issued by the Federal Energy Regulatory Commission are based on the actual expenses incurred by the department, including expenses of the Environmental Quality Commission, related to the certification review and decision. In consultation with the applicant, DEQ will establish a periodic basis for billing the applicant.

(7) DEQ may approve a payment schedule for fees, including the submission of multiple invoices, for multi-year projects or projects assigned as a Tier 4.

(8) DEQ must receive the payment of the full invoiced fee before issuing a certification, and a review made pursuant to subsection (5) does not suspend the requirement to pay the appropriate fee. An application for certification is considered withdrawn if the applicant fails to pay the appropriate fee within 90 days of the invoice date. An applicant may request that DEQ grant an extension of time to pay the appropriate fee to an applicant upon a showing of good cause, and DEQ will continue processing the application for certification. DEQ may refund the fee or some portion if it determines that no certification is required, that minimal program costs were not incurred, a revised tier assignment is provided or the wrong application has been filed.

Stat. Auth.: ORS 468.068 & 468B.047

Stats. Implemented: ORS 468.068

Hist.: DEQ 28-1998, f. & cert. ef. 12-22-98; Renumbered from 340-048-0200, DEQ 2-2004, f. & cert. ef. 4-15-04; DEQ 1-2013, f. & cert. ef. 1-16-13; DEQ 3-2013(Temp), f. & cert. ef. 3-25-13 thru 7-30-13

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**Rule Caption:** Updating Oregon's air quality rules to address federal regulations

**Adm. Order No.:** DEQ 4-2013

**Filed with Sec. of State:** 3-27-2013

**Certified to be Effective:** 3-27-13

**Notice Publication Date:** 9-1-2012

**Rules Adopted:** 340-216-0068, 340-244-0239

**Rules Amended:** 340-200-0020, 340-200-0040, 340-210-0100, 340-216-0020, 340-216-0060, 340-216-0062, 340-216-0064, 340-216-0066, 340-228-0602, 340-228-0606, 340-228-0609, 340-228-0635,

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340-228-0637, 340-232-0085, 340-238-0040, 340-238-0060, 340-244-0030, 340-244-0210, 340-244-0220, 340-244-0234, 340-244-0238, 340-244-0240, 340-244-0242, 340-244-0244, 340-244-0246, 340-244-0248, 340-244-0250

**Rules Repealed:** 340-228-0611, 340-228-0613, 340-228-0615, 340-228-0617, 340-228-0619, 340-228-0621, 340-228-0623, 340-228-0625, 340-228-0627, 340-228-0631, 340-228-0633, 340-244-0230, 340-228-0629

**Subject:** As summarized below, the rules adopt new and amended federal air quality regulations and related permit rules, which include new national performance and emission standards for electric utility steam generating units, gold mine ore processing and production, polyvinyl chloride and copolymers production, and sewage sludge incinerators and changes to the federal gasoline dispensing facility rules. The rules also clarify when and if Air Contaminant Discharge Permits are required for sources subject to federal New Source Performance Standards and NESHAPs.

1. Aligns Oregon's rules with recent changes to federal emission standards

a. Adopts the following by reference:

i. New federal area source NESHAPs for gold mine ore processing and production

ii. New federal major source NESHAP for electric utility steam generating units

iii. New federal major source NESHAP for polyvinyl chloride and copolymers production

iv. New federal New Source Performance Standards for sewage sludge incineration units

b. Incorporates changes EPA made to the federal gasoline dispensing facility NESHAP.

c. Updates the adoption by reference of previously adopted NESHAPs and New Source Performance Standards.

d. Removes monitoring, recordkeeping and reporting requirements in Oregon's utility mercury rule and replaces them with references to the monitoring, recordkeeping and reporting requirements in the federal Electric Utility Steam Generating Unit NESHAP.

2. Makes changes to the Air Contaminant Discharge Permitting Program

a. Removes a requirement for DEQ to include federal emission standards in Air Contaminant Discharge Permits even when the federal standards have not been adopted by EQC.

b. Removes a requirement for affected facilities to obtain an Air Contaminant Discharge Permit if the facilities are only subject to federal New Source Performance Standards that have not been adopted by EQC.

c. Exempts the following from permitting:

i. Facilities subject to only procedural requirements, such as notification that the facility is affected by a New Source Performance Standards or a NESHAP

ii. Chemical manufacturing facilities only subject to work practice standards

iii. Paint stripping and surface coating operations using less than 20 gallons of coating and 20 gallons of methylene chloride-containing paint stripper per year

d. Gives DEQ the ability to add new requirements to Simple or Standard Air Contaminant Discharge Permits by assigning the source to an Air Contaminant Discharge Permit Attachment.

3. Clarifies and cleans up rules

a. Changes the late fees for the registration and Air Contaminant Discharge Permit programs to eight days after a source misses a deadline for submitting fees instead of immediately after the deadline.

b. Clarifies the permitting requirements for metal fabrication and finishing operations.

c. Removes redundant general permit fee class assignments for halogenated solvent cleaners.

d. Removes redundant gasoline dispensing facility control requirements in OAR 340 Division 232.

e. Reassigns crematories to General Air Contaminant Discharge Permit fee class one. Crematories were inadvertently assigned to fee class two in a previous rulemaking.

f. Repeals DEQ's accidental release prevention rule.

**Rules Coordinator:** Maggie Vandehey—(503) 229-6878

### 340-200-0020

#### General Air Quality Definitions

As used in divisions 200 through 268, unless specifically defined otherwise:

(1) "Act" or "FCAA" means the Federal Clean Air Act, 42 U.S.C.A. 7401 to 7671q.

(2) "Activity" means any process, operation, action, or reaction (e.g., chemical) at a source that emits a regulated pollutant.

(3) "Actual emissions" means the mass emissions of a pollutant from an emissions source during a specified time period.

(a) For determining actual emissions as of the baseline period:

(A) Except as provided in paragraphs (B) and (C) of this subsection and subsection (b) of this section, actual emissions equal the average rate at which the source actually emitted the pollutant during an applicable baseline period and that represents normal source operation;

(B) DEQ presumes that the source-specific mass emissions limit included in a source's permit that was effective on September 8, 1981 is equivalent to the source's actual emissions during the applicable baseline period if it is within 10% of the actual emissions calculated under paragraph (A) of this subsection.

(C) Actual emissions equal the potential to emit of the source for the sources listed in paragraphs (i) through (iii) of this paragraph. The actual emissions will be reset if required in accordance with subsection (c) of this section.

(i) Any source or part of a source that had not begun normal operations during the applicable baseline period but was approved to construct and operate before or during the baseline period in accordance with OAR 340 division 210, or

(ii) Any source or part of a source of greenhouse gases that had not begun normal operations prior to January 1, 2010, but was approved to construct and operate prior to January 1, 2011 in accordance with OAR 340 division 210, or

(iii) Any source or part of a source that had not begun normal operations during the applicable baseline period and was not required to obtain approval to construct and operate before or during the applicable baseline period.

(b) For any source or part of a source that had not begun normal operations during the applicable baseline period, but was approved to construct and operate in accordance with OAR 340 division 224, actual emissions on the date the permit is issued equal the potential to emit of the source. The actual emissions will be reset if required in accordance with subsection (c) of this section.

(c) Where actual emissions equal potential to emit under paragraph (a)(C) or subsection (b) of this section, the potential emissions will be reset to actual emissions as follows:

(A) Paragraphs (A) through (D) of this subsection apply to sources whose actual emissions of greenhouse gases were determined pursuant paragraph 3(a)(C), and to all other sources of all other regulated pollutants that are permitted in accordance with OAR division 224 on or after May 1, 2011.

(B) Except as provided in paragraph (D) of this subsection, ten years from the end of the applicable baseline period under paragraph (a)(C) or ten years from the date the permit is issued under subsection (b), or an earlier time if requested by the source in a permit application involving public notice, DEQ will reset actual emissions to equal the highest actual emission rate during any consecutive 12-month period during the ten year period or any shorter period if requested by the source.

(C) Any emission reductions achieved due to enforceable permit conditions based on OAR 340-226-0110 and 0120 (highest and best practicable treatment and control) are not included in the reset calculation required in paragraph (B) of this subsection.

(D) DEQ may extend the date of resetting by five additional years upon satisfactory demonstration by the source that construction is ongoing or normal operation has not yet been achieved.

(d) For determining actual emissions for Emission Statements under OAR 340-214-0200 through 340-214-0220 and Oregon Title V Operating Permit Fees under OAR 340 division 220, actual emissions include, but are not limited to, routine process emissions, fugitive emissions, excess emissions from maintenance, startups and shutdowns, equipment malfunction,

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and other activities, except categorically insignificant activities and secondary emissions.

(e) For Oregon Title V Operating Permit Fees under OAR 340 division 220, actual emissions must be directly measured with a continuous monitoring system or calculated using a material balance or verified emission factor determined in accordance with division 220 in combination with the source's actual operating hours, production rates, or types of materials processed, stored, or combusted during the specified time period.

(4) "Adjacent" means interdependent facilities that are nearby to each other.

(5) "Affected source" means a source that includes one or more affected units that are subject to emission reduction requirements or limitations under Title IV of the FCAA.

(6) "Affected states" means all states:

(a) Whose air quality may be affected by a proposed permit, permit modification, or permit renewal and that are contiguous to Oregon; or

(b) That are within 50 miles of the permitted source.

(7) "Aggregate insignificant emissions" means the annual actual emissions of any regulated air pollutant from one or more designated activities at a source that are less than or equal to the lowest applicable level specified in this section. The total emissions from each designated activity and the aggregate emissions from all designated activities must be less than or equal to the lowest applicable level specified:

(a) One ton for total reduced sulfur, hydrogen sulfide, sulfuric acid mist, any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, and each criteria pollutant, except lead;

(b) 120 pounds for lead;

(c) 600 pounds for fluoride;

(d) 500 pounds for PM10 in a PM10 nonattainment area;

(e) 500 pounds for direct PM2.5 in a PM2.5 nonattainment area;

(f) The lesser of the amount established in 40 CFR 68.130 or 1,000 pounds;

(g) An aggregate of 5,000 pounds for all Hazardous Air Pollutants;

(h) 2,756 tons CO2e for greenhouse gases.

(8) "Air Contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter, or any combination thereof.

(9) "Air Contaminant Discharge Permit" or "ACDP" means a written permit issued, renewed, amended, or revised by DEQ, pursuant to OAR 340 division 216.

(10) "Alternative method" means any method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but has been demonstrated to DEQ's satisfaction to, in specific cases, produce results adequate for determination of compliance. An alternative method used to meet an applicable federal requirement for which a reference method is specified must be approved by EPA unless EPA has delegated authority for the approval to DEQ.

(11) "Ambient Air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(12) "Applicable requirement" means all of the following as they apply to emissions units in an Oregon Title V Operating Permit program source or ACDP program source, including requirements that have been promulgated or approved by the EPA through rule making at the time of issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by the EPA through rule-making under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR Part 52;

(b) Any standard or other requirement adopted under OAR 340-200-0040 of the State of Oregon Clean Air Act Implementation Plan that is more stringent than the federal standard or requirement which has not yet been approved by the EPA, and other state-only enforceable air pollution control requirements;

(c) Any term or condition in an ACDP, OAR 340 division 216, including any term or condition of any preconstruction permits issued pursuant to OAR 340 division 224, New Source Review, until or unless DEQ revokes or modifies the term or condition by a permit modification;

(d) Any term or condition in a Notice of Construction and Approval of Plans, OAR 340-210-0205 through 340-210-0240, until or unless DEQ revokes or modifies the term or condition by a Notice of Construction and Approval of Plans or a permit modification;

(e) Any term or condition in a Notice of Approval, OAR 340-218-0190, issued before July 1, 2001, until or unless DEQ revokes or modifies the term or condition by a Notice of Approval or a permit modification;

(f) Any term or condition of a PSD permit issued by the EPA until or unless the EPA revokes or modifies the term or condition by a permit modification;

(g) Any standard or other requirement under section 111 of the Act, including section 111(d);

(h) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(i) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;

(j) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

(k) Any standard or other requirement under section 126(a)(1) and(c) of the Act;

(l) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(m) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(n) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(o) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(p) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an Oregon Title V Operating Permit; and

(q) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

(13) "Baseline Emission Rate" means the actual emission rate during a baseline period. Baseline emission rate does not include increases due to voluntary fuel switches or increased hours of operation that occurred after that baseline period.

(a) A baseline emission rate will be established only for regulated pollutants subject to OAR 340 division 224 as specified in the definition of regulated pollutant. A baseline emission rate will not be established for PM2.5.

(b) The baseline emission rate for greenhouse gases, on a CO2e basis, will be established with the first permitting action issued after July 1, 2011, provided the permitting action involved a public notice period that began after July 1, 2011.

(c) For a pollutant that becomes a regulated pollutant subject to OAR 340 division 224 after May 1, 2011, the initial baseline emission rate is the actual emissions of that pollutant during any consecutive 12 month period within the 24 months immediately preceding its designation as a regulated pollutant if a baseline period has not been defined for the pollutant.

(d) The baseline emission rate will be recalculated if actual emissions are reset in accordance with the definition of actual emissions.

(e) Once the baseline emission rate has been established or recalculated in accordance with subsection (d) of this section, the production basis for the baseline emission rate may only be changed if a material mistake or an inaccurate statement was made in establishing the production basis for baseline emission rate.

(14) "Baseline Period" means:

(a) Any consecutive 12 calendar month period during the calendar years 1977 or 1978 for any regulated pollutant other than greenhouse gases. DEQ may allow the use of a prior time period upon a determination that it is more representative of normal source operation.

(b) Any consecutive 12 calendar month period during the calendar years 2000 through 2010 for greenhouse gases.

(15) "Best Available Control Technology" or "BACT" means an emission limitation, including, but not limited to, a visible emission standard, based on the maximum degree of reduction of each air contaminant subject to regulation under the Act which would be emitted from any proposed major source or major modification which, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air contaminant. In no event may the application of BACT result in emissions of any air contaminant that would exceed the emissions allowed by any applicable new source performance standard or any standard for hazardous air pollutant. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required. Such standard must, to the degree possi-

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ble, set forth the emission reduction achievable and provide for compliance by prescribing appropriate permit conditions.

(16) "Biomass" means non-fossilized and biodegradable organic material originating from plants, animals, and micro-organisms, including products, byproducts, residues and waste from agriculture, forestry, and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic matter.

(17) "Capacity" means the maximum regulated pollutant emissions from a stationary source under its physical and operational design.

(18) "Capture system" means the equipment (including but not limited to hoods, ducts, fans, and booths) used to contain, capture and transport a pollutant to a control device.

(19) "Carbon dioxide equivalent" or "CO<sub>2</sub>e" means an amount of a greenhouse gas or gases expressed as the equivalent amount of carbon dioxide, and shall be computed by multiplying the mass of each of the greenhouse gases by the global warming potential published for each gas at 40 CFR Part 98, subpart A, Table A-1—Global Warming Potentials, and adding the resulting value for each greenhouse gas to compute the total equivalent amount of carbon dioxide.

(20) "Categorically insignificant activity" means any of the following listed pollutant emitting activities principally supporting the source or the major industrial group. Categorically insignificant activities must comply with all applicable requirements.

(a) Constituents of a chemical mixture present at less than 1% by weight of any chemical or compound regulated under divisions 200 through 268 excluding divisions 248 and 262 of this chapter, or less than 0.1% by weight of any carcinogen listed in the U.S. Department of Health and Human Service's Annual Report on Carcinogens when usage of the chemical mixture is less than 100,000 pounds/year;

(b) Evaporative and tail pipe emissions from on-site motor vehicle operation;

(c) Distillate oil, kerosene, and gasoline fuel burning equipment rated at less than or equal to 0.4 million Btu/hr;

(d) Natural gas and propane burning equipment rated at less than or equal to 2.0 million Btu/hr;

(e) Office activities;

(f) Food service activities;

(g) Janitorial activities;

(h) Personal care activities;

(i) Groundskeeping activities including, but not limited to building painting and road and parking lot maintenance;

(j) On-site laundry activities;

(k) On-site recreation facilities;

(l) Instrument calibration;

(m) Maintenance and repair shop;

(n) Automotive repair shops or storage garages;

(o) Air cooling or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment;

(p) Refrigeration systems with less than 50 pounds of charge of ozone depleting substances regulated under Title VI, including pressure tanks used in refrigeration systems but excluding any combustion equipment associated with such systems;

(q) Bench scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analysis, including associated vacuum producing devices but excluding research and development facilities;

(r) Temporary construction activities;

(s) Warehouse activities;

(t) Accidental fires;

(u) Air vents from air compressors;

(v) Air purification systems;

(w) Continuous emissions monitoring vent lines;

(x) Demineralized water tanks;

(y) Pre-treatment of municipal water, including use of deionized water purification systems;

(z) Electrical charging stations;

(aa) Fire brigade training;

(bb) Instrument air dryers and distribution;

(cc) Process raw water filtration systems;

(dd) Pharmaceutical packaging;

(ee) Fire suppression;

(ff) Blueprint making;

(gg) Routine maintenance, repair, and replacement such as anticipated activities most often associated with and performed during regularly

scheduled equipment outages to maintain a plant and its equipment in good operating condition, including but not limited to steam cleaning, abrasive use, and woodworking;

(hh) Electric motors;

(ii) Storage tanks, reservoirs, transfer and lubricating equipment used for ASTM grade distillate or residual fuels, lubricants, and hydraulic fluids;

(jj) On-site storage tanks not subject to any New Source Performance Standards (NSPS), including underground storage tanks (UST), storing gasoline or diesel used exclusively for fueling of the facility's fleet of vehicles;

(kk) Natural gas, propane, and liquefied petroleum gas (LPG) storage tanks and transfer equipment;

(ll) Pressurized tanks containing gaseous compounds;

(mm) Vacuum sheet stacker vents;

(nn) Emissions from wastewater discharges to publicly owned treatment works (POTW) provided the source is authorized to discharge to the POTW, not including on-site wastewater treatment and/or holding facilities;

(oo) Log ponds;

(pp) Storm water settling basins;

(qq) Fire suppression and training;

(rr) Paved roads and paved parking lots within an urban growth boundary;

(ss) Hazardous air pollutant emissions of fugitive dust from paved and unpaved roads except for those sources that have processes or activities that contribute to the deposition and entrainment of hazardous air pollutants from surface soils;

(tt) Health, safety, and emergency response activities;

(uu) Emergency generators and pumps used only during loss of primary equipment or utility service due to circumstances beyond the reasonable control of the owner or operator, or to address a power emergency as determined by DEQ;

(vv) Non-contact steam vents and leaks and safety and relief valves for boiler steam distribution systems;

(ww) Non-contact steam condensate flash tanks;

(xx) Non-contact steam vents on condensate receivers, deaerators and similar equipment;

(yy) Boiler blowdown tanks;

(zz) Industrial cooling towers that do not use chromium-based water treatment chemicals;

(aaa) Ash piles maintained in a wetted condition and associated handling systems and activities;

(bbb) Oil/water separators in effluent treatment systems;

(ccc) Combustion source flame safety purging on startup;

(ddd) Broke beaters, pulp and repulping tanks, stock chests and pulp handling equipment, excluding thickening equipment and repulpers;

(eee) Stock cleaning and pressurized pulp washing, excluding open stock washing systems; and

(fff) White water storage tanks.

(21) "Certifying individual" means the responsible person or official authorized by the owner or operator of a source who certifies the accuracy of the emission statement.

(22) "CFR" means Code of Federal Regulations.

(23) "Class I area" means any Federal, State or Indian reservation land which is classified or reclassified as Class I area. Class I areas are identified in OAR 340-204-0050.

(24) "Commence" or "commencement" means that the owner or operator has obtained all necessary preconstruction approvals required by the Act and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed in a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed in a reasonable time.

(25) "Commission" or "EQC" means Environmental Quality Commission.

(26) "Constant Process Rate" means the average variation in process rate for the calendar year is not greater than plus or minus ten percent of the average process rate.

(27) "Construction":

(a) Except as provided in subsection (b) of this section means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of a source or part of a source;

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(b) As used in OAR 340 division 224 means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of an emissions unit, or change in the method of operation of a source which would result in a change in actual emissions.

(28) "Continuous compliance determination method" means a method, specified by the applicable standard or an applicable permit condition, which:

(a) Is used to determine compliance with an emission limitation or standard on a continuous basis, consistent with the averaging period established for the emission limitation or standard; and

(b) Provides data either in units of the standard or correlated directly with the compliance limit.

(29) "Continuous Monitoring Systems" means sampling and analysis, in a timed sequence, using techniques which will adequately reflect actual emissions or concentrations on a continuing basis in accordance with DEQ's Continuous Monitoring Manual, and includes continuous emission monitoring systems, continuous opacity monitoring system (COMS) and continuous parameter monitoring systems.

(30) "Control device" means equipment, other than inherent process equipment that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere. The types of equipment that may commonly be used as control devices include, but are not limited to, fabric filters, mechanical collectors, electrostatic precipitators, inertial separators, afterburners, thermal or catalytic incinerators, adsorption devices (such as carbon beds), condensers, scrubbers (such as wet collection and gas absorption devices), selective catalytic or non-catalytic reduction systems, flue gas recirculation systems, spray dryers, spray towers, mist eliminators, acid plants, sulfur recovery plants, injection systems (such as water, steam, ammonia, sorbent or limestone injection), and combustion devices independent of the particular process being conducted at an emissions unit (e.g., the destruction of emissions achieved by venting process emission streams to flares, boilers or process heaters). For purposes of OAR 340-212-0200 through 340-212-0280, a control device does not include passive control measures that act to prevent pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics. If an applicable requirement establishes that particular equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular pollutant-specific emissions unit, then that definition will be binding for purposes of OAR 340-212-0200 through 340-212-0280.

(31) "Criteria Pollutant" means nitrogen oxides, volatile organic compounds, particulate matter, PM10, PM2.5, sulfur dioxide, carbon monoxide, or lead.

(32) "Data" means the results of any type of monitoring or method, including the results of instrumental or non-instrumental monitoring, emission calculations, manual sampling procedures, recordkeeping procedures, or any other form of information collection procedure used in connection with any type of monitoring or method.

(33) "De minimis emission levels" mean the levels for the pollutants listed in Table 4.

NOTE: De minimis is compared to all increases that are not included in the PSEL.

(34) "Department":

(a) Means Department of Environmental Quality; except

(b) As used in OAR 340 divisions 218 and 220 means Department of Environmental Quality or in the case of Lane County, Lane Regional Air Protection Agency.

(35) "Device" means any machine, equipment, raw material, product, or byproduct at a source that produces or emits a regulated pollutant.

(36) "Direct PM2.5" has the meaning provided in the definition of PM2.5.

(37) "Director" means the Director of DEQ or the Director's designee.

(38) "Draft permit" means the version of an Oregon Title V Operating Permit for which DEQ or Lane Regional Air Protection Agency offers public participation under OAR 340-218-0210 or the EPA and affected State review under 340-218-0230.

(39) "Effective date of the program" means the date that the EPA approves the Oregon Title V Operating Permit program submitted by DEQ on a full or interim basis. In case of a partial approval, the "effective date of the program" for each portion of the program is the date of the EPA approval of that portion.

(40) "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator,

including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency does not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(41) "Emission" means a release into the atmosphere of any regulated pollutant or any air contaminant.

(42) "Emission Estimate Adjustment Factor" or "EEAF" means an adjustment applied to an emission factor to account for the relative inaccuracy of the emission factor.

(43) "Emission Factor" means an estimate of the rate at which a pollutant is released into the atmosphere, as the result of some activity, divided by the rate of that activity (e.g., production or process rate).

(44)(a) Except as provided in subsection (b) of this section, "Emission Limitation" and "Emission Standard" mean a requirement established by a State, local government, or the EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(b) As used in OAR 340-212-0200 through 340-212-0280, "Emission limitation or standard" means any applicable requirement that constitutes an emission limitation, emission standard, standard of performance or means of emission limitation as defined under the Act. An emission limitation or standard may be expressed in terms of the pollutant, expressed either as a specific quantity, rate or concentration of emissions (e.g., pounds of SO2 per hour, pounds of SO2 per million British thermal units of fuel input, kilograms of VOC per liter of applied coating solids, or parts per million by volume of SO2) or as the relationship of uncontrolled to controlled emissions (e.g., percentage capture and destruction efficiency of VOC or percentage reduction of SO2). An emission limitation or standard may also be expressed either as a work practice, process or control device parameter, or other form of specific design, equipment, operational, or operation and maintenance requirement. For purposes of 340-212-0200 through 340-212-0280, an emission limitation or standard does not include general operation requirements that an owner or operator may be required to meet, such as requirements to obtain a permit, to operate and maintain sources in accordance with good air pollution control practices, to develop and maintain a malfunction abatement plan, to keep records, submit reports, or conduct monitoring.

(45) "Emission Reduction Credit Banking" means to presently reserve, subject to requirements of OAR 340 division 268, Emission Reduction Credits, emission reductions for use by the reserver or assignee for future compliance with air pollution reduction requirements.

(46) "Emission Reporting Form" means a paper or electronic form developed by DEQ that must be completed by the permittee to report calculated emissions, actual emissions, or permitted emissions for interim emission fee assessment purposes.

(47) "Emissions unit" means any part or activity of a source that emits or has the potential to emit any regulated air pollutant.

(a) A part of a source is any machine, equipment, raw material, product, or byproduct that produces or emits regulated air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that emits regulated air pollutants. Except as described in subsection (d) of this section, parts and activities may be grouped for purposes of defining an emissions unit if the following conditions are met:

(A) The group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply; and

(B) The emissions from the emissions unit are quantifiable.

(b) Emissions units may be defined on a pollutant by pollutant basis where applicable.

(c) The term emissions unit is not meant to alter or affect the definition of the term "unit" under Title IV of the FCAA.

(d) Parts and activities cannot be grouped for determining emissions increases from an emissions unit under OAR 340-224-0050 through 340-224-0070, or 340 division 210, or for determining the applicability of any New Source Performance Standard (NSPS).

(48) "EPA" or "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.

(49) "Equivalent method" means any method of sampling and analyzing for an air pollutant that has been demonstrated to DEQ's satisfaction to have a consistent and quantitatively known relationship to the reference

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method, under specified conditions. An equivalent method used to meet an applicable federal requirement for which a reference method is specified must be approved by EPA unless EPA has delegated authority for the approval to DEQ.

(50) "Event" means excess emissions that arise from the same condition and occur during a single calendar day or continue into subsequent calendar days.

(51) "Exceedance" means a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that indicates that emissions (or opacity) are greater than the applicable emission limitation or standard (or less than the applicable standard in the case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring.

(52) "Excess emissions" means emissions in excess of a permit limit or any applicable air quality rule.

(53) "Excursion" means a departure from an indicator range established for monitoring under OAR 340-212-0200 through 340-212-0280 and 340-218-0050(3)(a), consistent with any averaging period specified for averaging the results of the monitoring.

(54) "Federal Land Manager" means with respect to any lands in the United States, the Secretary of the federal department with authority over such lands.

(55) "Federal Major Source" means a source with potential to emit any individual regulated pollutant, excluding hazardous air pollutants listed in OAR 340 division 244, greater than or equal to 100 tons per year if in a source category listed below, or 250 tons per year if not in a source category listed. In addition, for greenhouse gases, a federal major source must also have the potential to emit CO<sub>2e</sub> greater than or equal to 100,000 tons per year. The fugitive emissions and insignificant activity emissions of a stationary source are considered in determining whether it is a federal major source. Potential to emit calculations must include emission increases due to a new or modified source and may include emission decreases.

(a) Fossil fuel-fired steam electric plants of more than 250 million BTU/hour heat input;

(b) Coal cleaning plants with thermal dryers;

(c) Kraft pulp mills;

(d) Portland cement plants;

(e) Primary Zinc Smelters;

(f) Iron and Steel Mill Plants;

(g) Primary aluminum ore reduction plants;

(h) Primary copper smelters;

(i) Municipal Incinerators capable of charging more than 50 tons of refuse per day;

(j) Hydrofluoric acid plants;

(k) Sulfuric acid plants;

(l) Nitric acid plants;

(m) Petroleum Refineries;

(n) Lime plants;

(o) Phosphate rock processing plants;

(p) Coke oven batteries;

(q) Sulfur recovery plants;

(r) Carbon black plants, furnace process;

(s) Primary lead smelters;

(t) Fuel conversion plants;

(u) Sintering plants;

(v) Secondary metal production plants;

(w) Chemical process plants;

(x) Fossil fuel fired boilers, or combinations thereof, totaling more than 250 million BTU per hour heat input;

(y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(z) Taconite ore processing plants;

(aa) Glass fiber processing plants;

(bb) Charcoal production plants.

(56) "Final permit" means the version of an Oregon Title V Operating Permit issued by DEQ or Lane Regional Air Protection Agency that has completed all review procedures required by OAR 340-218-0120 through 340-218-0240.

(57) "Form" means a paper or electronic form developed by DEQ.

(58) "Fugitive Emissions":

(a) Except as used in subsection (b) of this section, means emissions of any air contaminant which escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct, or equivalent opening.

(b) As used to define a major Oregon Title V Operating Permit program source, means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(59) "General permit":

(a) Except as provided in subsection (b) of this section, means an Oregon Air Contaminant Discharge Permit established under OAR 340-216-0060;

(b) As used in OAR 340 division 218 means an Oregon Title V Operating Permit established under OAR 340-218-0090.

(60) "Generic PSEL" means the levels for the pollutants listed in Table 5.

NOTE: Sources are eligible for a generic PSEL if expected emissions are less than or equal to the levels listed in Table 5 under this rule. Baseline emission rate and netting basis do not apply to pollutants at sources using generic PSELs.

(61)(a) "Greenhouse Gases" or "GHGs" means the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Each gas is also individually a greenhouse gas.

(b) The definition of greenhouse gases in subsection (a) of this section does not include, for purposes of division 216, 218, and 224, carbon dioxide emissions from the combustion or decomposition of biomass except to the extent required by federal law.

(62) "Growth Allowance" means an allocation of some part of an airshed's capacity to accommodate future proposed major sources and major modifications of sources.

(63) "Immediately" means as soon as possible but in no case more than one hour after a source knew or should have known of an excess emission period.

(64) "Inherent process equipment" means equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that the owner or operator documents is installed and operated primarily for purposes other than compliance with air pollution regulations. Equipment that must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment. For the purposes of OAR 340-212-0200 through 340-212-0280, inherent process equipment is not considered a control device.

(65) "Insignificant Activity" means an activity or emission that DEQ has designated as categorically insignificant, or that meets the criteria of aggregate insignificant emissions.

(66) "Insignificant Change" means an off-permit change defined under OAR 340-218-0140(2)(a) to either a significant or an insignificant activity which:

(a) Does not result in a re-designation from an insignificant to a significant activity;

(b) Does not invoke an applicable requirement not included in the permit; and

(c) Does not result in emission of regulated air pollutants not regulated by the source's permit.

(67) "Late Payment" means a fee payment which is postmarked after the due date.

(68) "Lowest Achievable Emission Rate" or "LAER" means that rate of emissions which reflects: the most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent. The application of this term cannot permit a proposed new or modified source to emit any air contaminant in excess of the amount allowable under applicable New Source Performance Standards (NSPS) or standards for hazardous air pollutants.

(69) "Maintenance Area" means a geographical area of the State that was designated as a nonattainment area, redesignated as an attainment area by EPA, and redesignated as a maintenance area by the Environmental Quality Commission in OAR 340, division 204.

(70) "Maintenance Pollutant" means a pollutant for which a maintenance area was formerly designated a nonattainment area.

(71) "Major Modification" means any physical change or change in the method of operation of a source that results in satisfying the requirements of both subsections (a) and (b) of this section, or of subsection (c) of this section for any regulated air pollutant. Major modifications for ozone precursors or PM<sub>2.5</sub> precursors also constitute major modifications for ozone and PM<sub>2.5</sub>, respectively.

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(a) Except as provided in subsection (d) of this section, a PSEL that exceeds the netting basis by an amount that is equal to or greater than the significant emission rate.

(b) The accumulation of emission increases due to physical changes and changes in the method of operation as determined in accordance with paragraphs (A) and (B) of this subsection is equal to or greater than the significant emission rate.

(A) Calculations of emission increases in subsection (b) of this section must account for all accumulated increases in actual emissions due to physical changes and changes in the method of operation occurring at the source since the applicable baseline period, or since the time of the last construction approval issued for the source pursuant to the New Source Review Regulations in OAR 340 division 224 for that pollutant, whichever time is more recent. These include fugitive emissions and emissions from insignificant activities.

(B) Emission increases due solely to increased use of equipment or facilities that existed or were permitted or approved to construct in accordance with OAR 340 division 210 during the applicable baseline period are not included, except if the increased use is to support a physical change or change in the method of operation.

(c) Any change at a source, including production increases, that would result in a Plant Site Emission Limit increase of 1 ton or more for any regulated pollutant for which the source is a major source in nonattainment or maintenance areas or a federal major source in attainment or unclassified areas, if the source obtained permits to construct and operate after the applicable baseline period but has not undergone New Source Review.

(A) Subsection (c) of this section does not apply to PM<sub>2.5</sub> and greenhouse gases.

(B) Changes to the PSEL solely due to the availability of better emissions information are exempt from being considered an increase.

(d) If a portion of the netting basis or PSEL (or both) was set based on PTE because the source had not begun normal operations but was permitted or approved to construct and operate, that portion of the netting basis or PSEL (or both) must be excluded from the tests in subsections (a) and (b) of this section until the netting basis is reset as specified in the definitions of baseline emission rate and netting basis.

(e) The following are not considered major modifications:

(A) Except as provided in subsection (c) of this section, proposed increases in hours of operation or production rates that would cause emission increases above the levels allowed in a permit and would not involve a physical change or change in method of operation in the source;

(B) Routine maintenance, repair, and replacement of components;

(C) Temporary equipment installed for maintenance of the permanent equipment if the temporary equipment is in place for less than six months and operated within the permanent equipment's existing PSEL;

(D) Use of alternate fuel or raw materials, that were available and the source was capable of accommodating in the baseline period.

(72) "Major Source":

(a) Except as provided in subsection (b) of this section, means a source that emits, or has the potential to emit, any regulated air pollutant at a Significant Emission Rate. The fugitive emissions and insignificant activity emissions of a stationary source are considered in determining whether it is a major source. Potential to emit calculations must include emission increases due to a new or modified source and may include emission decreases.

(b) As used in OAR 340 division 210, Stationary Source Notification Requirements, OAR 340 division 218, rules applicable to sources required to have Oregon Title V Operating Permits, OAR 340 division 220, Oregon Title V Operating Permit Fees, and 340-216-0066 Standard ACDPs, means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping or supporting the major industrial group and that is described in paragraphs (A), (B), (C) or (D) of this subsection. For the purposes of this subsection, a stationary source or group of stationary sources is considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual (U.S. Office of Management and Budget, 1987) or support the major industrial group.

(A) A major source of hazardous air pollutants, which means:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under

common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutants that has been listed pursuant to OAR 340-244-0040; 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Emissions from any oil or gas exploration or production well, along with its associated equipment, and emissions from any pipeline compressor or pump station will not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" will have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit 100 tpy or more of any regulated air pollutant, except greenhouse gases, including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source are not considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants(furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (xxvii) Any other stationary source category, that as of August 7, 1980 is being regulated under section 111 or 112 of the Act.

(C) Beginning July 1, 2011, a major stationary source of air pollutants, as defined by Section 302 of the Act, that directly emits or has the potential to emit 100 tpy or more of greenhouse gases and directly emits or has the potential to emit 100,000 tpy or more CO<sub>2</sub>e, including fugitive emissions.

(D) A major stationary source as defined in part D of Title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of VOCs or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph of this subsection to 100, 50, 25, and 10 tpy of nitrogen oxides do not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of VOCs;

(iii) For carbon monoxide nonattainment areas:

(I) That are classified as "serious"; and

(II) In which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide.

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(iv) For particulate matter (PM10) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM10.

(73) "Material Balance" means a procedure for determining emissions based on the difference in the amount of material added to a process and the amount consumed and/or recovered from a process.

(74) "Modification," except as used in the term "major modification," means any physical change to, or change in the method of operation of, a stationary source that results in an increase in the stationary source's potential to emit any regulated air pollutant on an hourly basis. Modifications do not include the following:

(a) Increases in hours of operation or production rates that do not involve a physical change or change in the method of operation;

(b) Changes in the method of operation due to using an alternative fuel or raw material that the stationary source was physically capable of accommodating during the baseline period; and

(c) Routine maintenance, repair and like-for-like replacement of components unless they increase the expected life of the stationary source by using component upgrades that would not otherwise be necessary for the stationary source to function.

(75) "Monitoring" means any form of collecting data on a routine basis to determine or otherwise assess compliance with emission limitations or standards. Monitoring may include record keeping if the records are used to determine or assess compliance with an emission limitation or standard (such as records of raw material content and usage, or records documenting compliance with work practice requirements). Monitoring may include conducting compliance method tests, such as the procedures in appendix A to 40 CFR part 60, on a routine periodic basis. Requirements to conduct such tests on a one-time basis, or at such times as a regulatory authority may require on a non-regular basis, are not considered monitoring requirements for purposes of this definition. Monitoring may include one or more than one of the following data collection techniques as appropriate for a particular circumstance:

(a) Continuous emission or opacity monitoring systems.

(b) Continuous process, capture system, control device or other relevant parameter monitoring systems or procedures, including a predictive emission monitoring system.

(c) Emission estimation and calculation procedures (e.g., mass balance or stoichiometric calculations).

(d) Maintaining and analyzing records of fuel or raw materials usage.

(e) Recording results of a program or protocol to conduct specific operation and maintenance procedures.

(f) Verifying emissions, process parameters, capture system parameters, or control device parameters using portable or in situ measurement devices.

(g) Visible emission observations and recording.

(h) Any other form of measuring, recording, or verifying on a routine basis emissions, process parameters, capture system parameters, control device parameters or other factors relevant to assessing compliance with emission limitations or standards.

(76) "Netting Basis" means the baseline emission rate MINUS any emission reductions required by rule, orders, or permit conditions required by the SIP or used to avoid SIP requirements, MINUS any unassigned emissions that are reduced from allowable under OAR 340-222-0045, MINUS any emission reduction credits transferred off site, PLUS any emission increases approved through the New Source Review regulations in OAR 340 division 224 MINUS any emissions reductions required by subsection (g) of this section.

(a) A netting basis will only be established for regulated pollutants subject to OAR 340 division 224 as specified in the definition of regulated pollutant.

(b) The initial PM2.5 netting basis and PSEL for a source that was permitted prior to May 1, 2011 will be established with the first permitting action issued after July 1, 2011, provided the permitting action involved a public notice period that began after July 1, 2011.

(A) The initial netting basis is the PM2.5 fraction of the PM10 netting basis in effect on May 1, 2011. DEQ may increase the initial PM2.5 netting basis by up to 5 tons if necessary to avoid exceedance of the PM2.5 significant emission rate as of May 1, 2011.

(B) Notwithstanding OAR 340-222-0041(2), the initial source specific PSEL for a source with PTE greater than or equal to the SER will be set equal to the PM2.5 fraction of the PM10 PSEL.

(c) The initial greenhouse gas netting basis and PSEL for a source will be established with the first permitting action issued after July 1, 2011, provided the permitting action involved a public notice period that began after July 1, 2011.

(d) Netting basis is zero for:

(A) Any regulated pollutant emitted from a source that first obtained permits to construct and operate after the applicable baseline period for that regulated pollutant, and has not undergone New Source Review for that pollutant;

(B) Any pollutant that has a generic PSEL in a permit;

(C) Any source permitted as portable; or

(D) Any source with a netting basis calculation resulting in a negative number.

(e) If a source relocates to an adjacent site, and the time between operation at the old and new sites is less than six months, the source may retain the netting basis from the old site.

(f) Emission reductions required by rule, order, or permit condition affect the netting basis if the source currently has devices or emissions units that are subject to the rules, order, or permit condition. The baseline emission rate is not affected. The netting basis reduction will be effective on the effective date of the rule, order, or permit condition requiring the reduction. The PSEL reduction will be effective on the compliance date of the rule, order, or permit condition.

(g) For permits issued after May 1, 2011 under New Source Review regulations in OAR 340 division 224, and where the netting basis initially equaled the potential to emit for a new or modified source, the netting basis will be reduced in accordance with the definition of actual emissions. Notwithstanding OAR 340-222-0041(2), this adjustment does not require a reduction in the PSEL.

(h) Emission reductions required by rule do not include emissions reductions achieved under OAR 340-226-0110 and 0120.

(i) Netting basis for a pollutant with a revised definition will be adjusted if the source is emitting the pollutant at the time of redefining and the pollutant is included in the permit's netting basis.

(j) Where EPA requires an attainment demonstration based on dispersion modeling, the netting basis will be established at no more than the level used in the dispersion modeling to demonstrate attainment with the ambient air quality standard (i.e., the attainment demonstration is an emission reduction required by rule).

(77) "Nitrogen Oxides" or "NOx" means all oxides of nitrogen except nitrous oxide.

(78) "Nonattainment Area" means a geographical area of the State, as designated by the Environmental Quality Commission or the EPA, that exceeds any state or federal primary or secondary ambient air quality standard.

(79) "Nonattainment Pollutant" means a pollutant for which an area is designated a nonattainment area.

(80) "Normal Source Operation" means operations which do not include such conditions as forced fuel substitution, equipment malfunction, or highly abnormal market conditions.

(81) "Offset" means an equivalent or greater emission reduction that is required before allowing an emission increase from a proposed major source or major modification of an existing source.

(82) "Opacity" means the degree to which an emission reduces transmission of light and obscures the view of an object in the background as measured in accordance with OAR 340-212-0120 and 212-0140. Unless otherwise specified by rule, opacity shall be measured in accordance with EPA Method 9 or a continuous opacity monitoring system (COMS) installed and operated in accordance with DEQ's Continuous Monitoring Manual. For all standards, the minimum observation period shall be six minutes, though longer periods may be required by a specific rule or permit condition. Aggregate times (e.g. 3 minutes in any one hour) consist of the total duration of all readings during the observation period that equal or exceed the opacity percentage in the standard, whether or not the readings are consecutive.

(83) "Oregon Title V Operating Permit" means any permit covering an Oregon Title V Operating Permit source that is issued, renewed, amended, or revised pursuant to division 218.

(84) "Oregon Title V Operating Permit program" means a program approved by the Administrator under 40 CFR Part 70.

(85) "Oregon Title V Operating Permit program source" means any source subject to the permitting requirements, OAR 340 division 218.

(86) "Ozone Precursor" means nitrogen oxides and volatile organic compounds as measured by an applicable reference method in accordance with DEQ's Source Sampling Manual (January, 1992) or as measured by an EPA reference method in 40 CFR Part 60, appendix A or as measured by a material balance calculation for VOC as appropriate.

(87) "Ozone Season" means the contiguous 3 month period during which ozone exceedances typically occur (i.e., June, July, and August).



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(88) "Particulate Matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air. When used in emission standards, particulate matter is defined by the method specified within the standard or by an applicable reference method in accordance with OAR 340-212-0120 and 340-212-0140. Unless otherwise specified, sources with exhaust gases at or near ambient conditions may be tested with DEQ Method 5 or DEQ Method 8, as approved by DEQ. Direct heat transfer sources shall be tested with DEQ Method 7; indirect heat transfer combustion sources and all other non-fugitive emissions sources not listed above shall be tested with DEQ Method 5.

(89) "Permit" means an Air Contaminant Discharge Permit or an Oregon Title V Operating Permit.

(90) "Permit modification" means a permit revision that meets the applicable requirements of OAR 340 division 216, 340 division 224, or 340-218-0160 through 340-218-0180.

(91) "Permit revision" means any permit modification or administrative permit amendment.

(92) "Permitted Emissions" as used in OAR division 220 means each regulated pollutant portion of the PSEL, as identified in an ACDP, Oregon Title V Operating Permit, review report, or by DEQ pursuant to OAR 340-220-0090.

(93) "Permittee" means the owner or operator of the facility, authorized by the ACDP or the Oregon Title V Operating Permit to operate the source.

(94) "Person" means individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the State of Oregon and any agencies thereof, and the federal government and any agencies thereof.

(95) "Plant Site Emission Limit" or "PSEL" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source. The PSEL for a major source may consist of more than one permitted emission.

(96) "PM10":

(a) When used in the context of emissions, means finely divided solid or liquid material, including condensable particulate, other than uncombined water, with an aerodynamic diameter less than or equal to a nominal 10 micrometers, emitted to the ambient air as measured by an applicable reference method in accordance with DEQ's Source Sampling Manual (January, 1992);

(b) When used in the context of ambient concentration, means airborne finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured in accordance with 40 CFR Part 50, Appendix J.

(97) "PM2.5":

(a) When used in the context of direct PM2.5 emissions, means finely divided solid or liquid material, including condensable particulate, other than uncombined water, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, emitted to the ambient air as measured by EPA reference methods 201A and 202 in 40 CFR Part 51, appendix M.

(b) When used in the context of PM2.5 precursor emissions, means sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) emitted to the ambient air as measured by EPA reference methods in 40 CFR Part 60, appendix A.

(c) When used in the context of ambient concentration, means particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix L, or an equivalent method designated in accordance with 40 CFR Part 53.

(98) "PM2.5 fraction" means the fraction of PM2.5 to PM10 for each emissions unit that is included in the netting basis and PSEL.

(99) "Pollutant-specific emissions unit" means an emissions unit considered separately with respect to each regulated air pollutant.

(100) "Potential to emit" or "PTE" means the lesser of:

(a) The capacity of a stationary source; or

(b) The maximum allowable emissions taking into consideration any physical or operational limitation, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, if the limitation is enforceable by the Administrator.

(c) This definition does not alter or affect the use of this term for any other purposes under the Act or the term "capacity factor" as used in Title IV of the Act and the regulations promulgated thereunder. Secondary emissions are not considered in determining the potential to emit.

(101) "Predictive emission monitoring system (PEMS)" means a system that uses process and other parameters as inputs to a computer program

or other data reduction system to produce values in terms of the applicable emission limitation or standard.

(102) "Process Upset" means a failure or malfunction of a production process or system to operate in a normal and usual manner.

(103) "Proposed permit" means the version of an Oregon Title V Operating Permit that DEQ or a Regional Agency proposes to issue and forwards to the Administrator for review in compliance with OAR 340-218-0230.

(104) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 52, 60, 61 or 63.

(105) "Regional Agency" means Lane Regional Air Protection Agency.

(106) "Regulated air pollutant" or "Regulated Pollutant":

(a) Except as provided in subsections (b) and (c) of this section, means:

(A) Nitrogen oxides or any VOCs;

(B) Any pollutant for which a national ambient air quality standard has been promulgated, including any precursors to such pollutants;

(C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act;

(E) Any pollutant listed under OAR 340-244-0040 or 40 CFR 68.130; and

(F) Greenhouse Gases.

(b) As used in OAR 340 division 220, regulated pollutant means particulates, volatile organic compounds, oxides of nitrogen and sulfur dioxide.

(c) As used in OAR 340 division 224, regulated pollutant does not include any pollutant listed in divisions 244 and 246, unless the pollutant is listed in Table 2 (significant emission rates).

(107) "Renewal" means the process by which a permit is reissued at the end of its term.

(108) "Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(A) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(B) The delegation of authority to such representative is approved in advance by DEQ or Lane Regional Air Protection Agency.

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this division, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA); or

(d) For affected sources:

(A) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated there under are concerned; and

(B) The designated representative for any other purposes under the Oregon Title V Operating Permit program.

(109) "Secondary Emissions" means emissions that are a result of the construction and/or operation of a source or modification, but that do not come from the source itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships and trains coming to or from a facility;

(b) Emissions from off-site support facilities that would be constructed or would otherwise increase emissions as a result of the construction or modification of a source.

(110) "Section 111" means section 111 of the FCAA which includes Standards of Performance for New Stationary Sources (NSPS).

(111) "Section 111(d)" means subsection 111(d) of the FCAA which requires states to submit to the EPA plans that establish standards of per-

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formance for existing sources and provides for implementing and enforcing such standards.

(112) "Section 112" means section 112 of the FCAA which contains regulations for Hazardous Air Pollutants (HAP).

(113) "Section 112(b)" means subsection 112(b) of the FCAA which includes the list of hazardous air pollutants to be regulated.

(114) "Section 112(d)" means subsection 112(d) of the FCAA which directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by the EPA when establishing the emission standards.

(115) "Section 112(e)" means subsection 112(e) of the FCAA which directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.

(116) "Section 112(r)(7)" means subsection 112(r)(7) of the FCAA which requires the EPA to promulgate regulations for the prevention of accidental releases and requires owners or operators to prepare risk management plans.

(117) "Section 114(a)(3)" means subsection 114(a)(3) of the FCAA which requires enhanced monitoring and submission of compliance certifications for major sources.

(118) "Section 129" means section 129 of the FCAA which requires the EPA to establish emission standards and other requirements for solid waste incineration units.

(119) "Section 129(e)" means subsection 129(e) of the FCAA which requires solid waste incineration units to obtain Oregon Title V Operating Permits.

(120) "Section 182(f)" means subsection 182(f) of the FCAA which requires states to include plan provisions in the State Implementation Plan for NO<sub>x</sub> in ozone nonattainment areas.

(121) "Section 182(f)(1)" means subsection 182(f)(1) of the FCAA which requires states to apply those plan provisions developed for major VOC sources and major NO<sub>x</sub> sources in ozone nonattainment areas.

(122) "Section 183(e)" means subsection 183(e) of the FCAA which requires the EPA to study and develop regulations for the control of certain VOC sources under federal ozone measures.

(123) "Section 183(f)" means subsection 183(f) of the FCAA which requires the EPA to develop regulations pertaining to tank vessels under federal ozone measures.

(124) "Section 184" means section 184 of the FCAA which contains regulations for the control of interstate ozone air pollution.

(125) "Section 302" means section 302 of the FCAA which contains definitions for general and administrative purposes in the Act.

(126) "Section 302(j)" means subsection 302(j) of the FCAA which contains definitions of "major stationary source" and "major emitting facility."

(127) "Section 328" means section 328 of the FCAA which contains regulations for air pollution from outer continental shelf activities.

(128) "Section 408(a)" means subsection 408(a) of the FCAA which contains regulations for the Title IV permit program.

(129) "Section 502(b)(10) change" means a change which contravenes an express permit term but is not a change that:

(a) Would violate applicable requirements;

(b) Would contravene federally enforceable permit terms and conditions that are monitoring, recordkeeping, reporting, or compliance certification requirements; or

(c) Is a Title I modification.

(130) "Section 504(b)" means subsection 504(b) of the FCAA which states that the EPA can prescribe by rule procedures and methods for determining compliance and for monitoring.

(131) "Section 504(e)" means subsection 504(e) of the FCAA which contains regulations for permit requirements for temporary sources.

(132) "Significant Air Quality Impact" means an additional ambient air quality concentration equal to or greater than in the concentrations listed in Table 1 of this rule. The threshold concentrations listed in Table 1 are used for comparison against the ambient air quality standard and do not apply for protecting PSD Class I increments or air quality related values (including visibility). For sources of VOC or NO<sub>x</sub>, a major source or major modification has a significant impact if it is located within the Ozone Precursor Distance defined in OAR 340-225-0020.

(133) "Significant Emission Rate" or "SER," except as provided in subsections (a) through (c) of this section, means an emission rate equal to or greater than the rates specified in Table 2 of this rule.

(a) For the Medford-Ashland Air Quality Maintenance Area, the Significant Emission Rate for PM<sub>10</sub> is defined in Table 3.

(b) For regulated air pollutants not listed in Table 2 or 3 of this rule, the significant emission rate is zero unless DEQ determines the rate that constitutes a significant emission rate.

(c) Any new source or modification with an emissions increase less than the rates specified in Table 2 or 3 of this rule associated with a new source or modification which would construct within 10 kilometers of a Class I area, and would have an impact on such area equal to or greater than 1 ug/m<sup>3</sup> (24 hour average) is emitting at a significant emission rate. This provision does not apply to greenhouse gas emissions.

(134) "Significant Impairment" occurs when DEQ determines that visibility impairment interferes with the management, protection, preservation, or enjoyment of the visual experience within a Class I area. DEQ will make this determination on a case-by-case basis after considering the recommendations of the Federal Land Manager and the geographic extent, intensity, duration, frequency, and time of visibility impairment. These factors will be considered along with visitor use of the Class I areas, and the frequency and occurrence of natural conditions that reduce visibility.

(135) "Small scale local energy project" means:

(a) A system, mechanism or series of mechanisms located primarily in Oregon that directly or indirectly uses or enables the use of, by the owner or operator, renewable resources including, but not limited to, solar, wind, geothermal, biomass, waste heat or water resources to produce energy, including heat, electricity and substitute fuels, to meet a local community or regional energy need in this state;

(b) A system, mechanism or series of mechanisms located primarily in Oregon or providing substantial benefits to Oregon that directly or indirectly conserves energy or enables the conservation of energy by the owner or operator, including energy used in transportation;

(c) A recycling project;

(d) An alternative fuel project;

(e) An improvement that increases the production or efficiency, or extends the operating life, of a system, mechanism, series of mechanisms or project otherwise described in this section of this rule, including but not limited to restarting a dormant project;

(f) A system, mechanism or series of mechanisms installed in a facility or portions of a facility that directly or indirectly reduces the amount of energy needed for the construction and operation of the facility and that meets the sustainable building practices standard established by the State Department of Energy by rule; or

(g) A project described in subsections (a) to (f) of this section, whether or not the existing project was originally financed under ORS 470, together with any refinancing necessary to remove prior liens or encumbrances against the existing project.

(h) A project described in subsections (a) to (g) of this section that conserves energy or produces energy by generation or by processing or collection of a renewable resource.

(136) "Source" means any building, structure, facility, installation or combination thereof that emits or is capable of emitting air contaminants to the atmosphere, is located on one or more contiguous or adjacent properties and is owned or operated by the same person or by persons under common control. The term includes all pollutant emitting activities that belong to a single major industrial group (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, (U.S. Office of Management and Budget, 1987) or that support the major industrial group.

(137) "Source category":

(a) Except as provided in subsection (b) of this section, means all the pollutant emitting activities that belong to the same industrial grouping (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, (U.S. Office of Management and Budget, 1987).

(b) As used in OAR 340 division 220, Oregon Title V Operating Permit Fees, means a group of major sources that DEQ determines are using similar raw materials and have equivalent process controls and pollution control equipment.

(138) "Source Test" means the average of at least three test runs conducted in accordance with DEQ's Source Sampling Manual.

(139) "Startup" and "shutdown" means that time during which an air contaminant source or emission-control equipment is brought into normal operation or normal operation is terminated, respectively.

(140) "State Implementation Plan" or "SIP" means the State of Oregon Clean Air Act Implementation Plan as adopted by the Commission under OAR 340-200-0040 and approved by EPA.

(141) "Stationary source" means any building, structure, facility, or installation at a source that emits or may emit any regulated air pollutant.

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(142) "Substantial Underpayment" means the lesser of ten percent (10%) of the total interim emission fee for the major source or five hundred dollars.

(143) "Synthetic minor source" means a source that would be classified as a major source under OAR 340-200-0020, but for limits on its potential to emit air pollutants contained in a permit issued by DEQ under OAR 340 division 216 or 218.

(144) "Title I modification" means one of the following modifications pursuant to Title I of the FCAA:

(a) A major modification subject to OAR 340-224-0050, Requirements for Sources in Nonattainment Areas;

(b) A major modification subject to OAR 340-224-0060, Requirements for Sources in Maintenance Areas;

(c) A major modification subject to OAR 340-224-0070, Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas;

(d) A modification that is subject to a New Source Performance Standard under Section 111 of the FCAA; or

(e) A modification under Section 112 of the FCAA.

(145) "Total Reduced Sulfur" or "TRS" means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides present expressed as hydrogen sulfide(H<sub>2</sub>S).

(146) "Typically Achievable Control Technology" or "TACT" means the emission limit established on a case-by-case basis for a criteria pollutant from a particular emissions unit in accordance with OAR 340-226-0130. For existing sources, the emission limit established will be typical of the emission level achieved by emissions units similar in type and size. For new and modified sources, the emission limit established will be typical of the emission level achieved by well controlled new or modified emissions units similar in type and size that were recently installed. TACT determinations will be based on information known to DEQ while considering pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness, and the age and remaining economic life of existing emission control equipment. DEQ may consider emission control technologies typically applied to other types of emissions units where such technologies could be readily applied to the emissions unit. If an emission limitation is not feasible, a design, equipment, work practice, operational standard, or combination thereof, may be required.

(147) "Unassigned Emissions" means the amount of emissions that are in excess of the PSEL but less than the Netting Basis.

(148) "Unavoidable" or "could not be avoided" means events that are not caused entirely or in part by poor or inadequate design, operation, maintenance, or any other preventable condition in either process or control equipment.

(149) "Upset" or "Breakdown" means any failure or malfunction of any pollution control equipment or operating equipment that may cause excess emissions.

(150) "Visibility Impairment" means any humanly perceptible change in visual range, contrast or coloration from that which existed under natural conditions. Natural conditions include fog, clouds, windblown dust, rain, sand, naturally ignited wildfires, and natural aerosols.

(151) "Volatile Organic Compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions.

(a) This includes any such organic compound except the following, which have been determined to have negligible photochemical reactivity in the formation of tropospheric ozone: methane; ethane; methylene chloride(dichloromethane); dimethyl carbonate, propylene carbonate, 1,1,1-trichloroethane(methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane(CFC-113); trichlorofluoromethane(CFC-11); dichlorodifluoromethane(CFC-12); chlorodifluoromethane(HCFC-22); trifluoromethane(HFC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane(CFC-115); 1,1,1-trifluoro 2,2-dichloroethane(HCFC-123); 1,1,1,2-tetrafluoroethane(HFC-134a); 1,1-dichloro 1-fluoroethane(HCFC-141b); 1-chloro 1,1-difluoroethane(HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane(HCFC-124); pentafluoroethane(HFC-125); 1,1,2,2-tetrafluoroethane(HFC-134); 1,1,1-trifluoroethane(HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride(PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene(tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane(HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane HFC 43-10mee); difluoromethane(HFC-32); ethylfluoride(HFC-161);

1,1,1,3,3,3-hexafluoropropane(HFC-236fa); 1,1,2,2,3-pentafluoropropane(HFC-245ca); 1,1,2,3,3-pentafluoropropane(HFC-245ea); 1,1,1,2,3-pentafluoropropane(HFC-245eb); 1,1,1,3,3-pentafluoropropane(HFC-245fa); 1,1,1,2,3,3-hexafluoropropane(HFC-236ea); 1,1,1,3,3-pentafluorobutane(HFC-365mf); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane(HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane(HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane(C4F9OCH<sub>3</sub> or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane(C4F9OC<sub>2</sub>H<sub>5</sub> or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane(n-C3F7OCH<sub>3</sub>, HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane(HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane(HFC 227ea); methyl formate (HCOOCH<sub>3</sub>); (1) 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane(HFE-7300); and perfluorocarbon compounds that fall into these classes:

(A) Cyclic, branched, or linear, completely fluorinated alkanes;

(B) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For purposes of determining compliance with emissions limits, VOC will be measured by an applicable reference method in accordance with DEQ's Source Sampling Manual, January, 1992. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and DEQ approves the exclusion.

(c) DEQ may require an owner or operator to provide monitoring or testing methods and results demonstrating, to DEQ's satisfaction, the amount of negligibly-reactive compounds in the source's emissions.

(d) The following compound(s) are VOC for purposes of all record-keeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and must be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC control requirements: t-butyl acetate.

(152) "Year" means any consecutive 12 month period of time.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

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

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

Stat. Auth.: ORS 468.020, 468A.025, 468A.035, 468A.055 & 468A.070

Stats. Implemented: ORS 468A.025 & 468A.035

Hist.: [DEQ 15-1978, f. & ef. 10-13-78; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033.04; DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 14-1989, f. & cert. ef. 6-26-89; DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0145, 340-020-0225, 340-020-0305, 340-020-0355, 340-020-0460 & 340-020-0520; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0205, 340-028-0110; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 10-2008, f. & cert. ef. 8-25-08; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 10-2010(Temp), f. 8-31-10, cert. ef. 9-1-10 thru 2-28-11; Administrative correction 3-29-11; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 7-2011(Temp), f. & cert. ef. 6-24-11 thru 12-19-11; Administrative correction, 2-6-12; DEQ 1-2012, f. & cert. ef. 5-17-12; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-200-0040

### State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by DEQ and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for

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approval. The State Implementation Plan was last modified by the Commission on March 20, 2013.

(3) Notwithstanding any other requirement contained in the SIP, DEQ may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after DEQ has complied with the public hearing provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

**NOTE:** Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020, 468A.035 & 468A.070

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99; Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000, f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 2-2010, f. & cert. ef. 3-5-10; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 14-2010, f. & cert. ef. 12-10-10; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 18-2011, f. & cert. ef. 12-21-11; DEQ 1-2012, f. & cert. ef. 5-17-12; DEQ 7-2012, f. & cert. ef. 12-10-12; DEQ 10-2012, f. & cert. ef. 12-11-12; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-210-0100

### Registration in General

(1) Any air contaminant source not subject to Air Contaminant Discharge Permits, OAR 340 division 216, or Oregon Title V Operating Permits, OAR 340 division 218, must register with DEQ upon request pursuant to OAR 340-210-0110 through 340-210-0120.

(2) The owner or operator of an air contaminant source listed in subsection (2)(a) of this rule that is certified through a Department approved environmental certification program and subject to an Area Source NESHAP may register the source with DEQ pursuant to OAR 340-210-0110 through 340-210-0120 in lieu of obtaining a permit in accordance with OAR 340-216-0020, unless DEQ determines that the source has not complied with the requirements of the environmental certification program.

(a) The following air contaminant sources may be registered under this section:

(A) Motor vehicle surface coating operations.

(B) Dry cleaners using perchloroethylene.

(b) Approved environmental certification program. To be approved, the environmental certification program must, at a minimum, require certified air contaminant sources to comply with all applicable state and federal rules and regulations and require additional measures to increase environmental protection.

(c) Fees. In order to obtain and maintain registration, owners and operators of air contaminant sources registered pursuant to this section must pay the following annual fees by March 1 of each year:

(A) Motor vehicle surface coating operations — \$240.00.

(B) Dry cleaners using perchloroethylene — \$180.00.

(C) Late fees.

(i) 8-30 days late: 5% of annual fee.

(ii) 31-60 days late: 10% of annual fee.

(iii) 61 or more days late: 20% of annual fee.

(D) Failure to pay fees. Registration is automatically terminated upon failure to pay annual fees within 90 days of invoice by DEQ, unless prior arrangements for payment have been approved in writing by DEQ.

(d) Recordkeeping. In order to maintain registration, owners and operators of air contaminant sources registered pursuant to this section must maintain records required by the approved environmental performance program under subsection (2)(b) of this rule. The records must be kept on site and in a form suitable and readily available for expeditious inspection and review.

(3) The owner or operator of an air contaminant source that is subject to a federal NSPS or NESHAP in 40 CFR Part 60 or 40 CFR Part 63 and that is not located at a source that is required to obtain a permit under OAR chapter 340, division 216 (Air Contaminant Discharge Permits) or OAR chapter 340, division 218 (Oregon Title V Operating Permits), must register and maintain registration with DEQ pursuant to OAR 340-210-0110 through 340-210-0120 if requested in writing by DEQ (or by EPA at DEQ's request).

(4) Revocation. DEQ may revoke a registration if a source fails to meet any requirement in OAR 340-210-0110.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468.020, 468A.025, 468A.035, 468A.070 & 468A.310

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0005; DEQ 14-1999, f. & cert. ef. 10-14-99; Renumbered from 340-028-0500; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 7-2011(Temp), f. & cert. ef. 6-24-11 thru 12-19-11; Administrative correction, 2-6-12; DEQ 1-2012, f. & cert. ef. 5-17-12; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-216-0020

### Applicability

This division applies to all sources referred to in Table 1 of this rule. This division also applies to Oregon Title V Operating Permit program sources when an ACDP is required by OAR 340-218-0020 or 340-224-0010. Sources referred to in Table 1 are subject to fees as set forth in Table 2.

(1) No person may construct, install, establish, develop or operate any air contaminant source which is referred to in Table 1 of this rule without first obtaining an Air Contaminant Discharge Permit (ACDP) from DEQ or Regional Authority, unless otherwise deferred from the requirement to obtain an ACDP in subsection (1)(c) of this rule or DEQ has granted an exemption from the requirement to obtain an ACDP under subsection (1)(f) of this rule. No person may continue to operate an air contaminant source if the ACDP expires, or is terminated or revoked; except as provided in OAR 340-216-0082.

(a) For portable sources, a single permit may be issued for operating at any area of the state if the permit includes the requirements from both DEQ and Regional Authorities.

(b) DEQ or Regional Authority where the portable source's Corporate offices are located will be responsible for issuing the permit. If the corporate office of a portable source is located outside of the state, DEQ will be responsible for issuing the permit.

(c) An air contaminant source required to obtain an ACDP or ACDP Attachment pursuant to a NESHAP or NSPS adopted by the Commission by rule is not required to submit an application for an ACDP or ACDP Attachment until four months after the effective date of the Commission's adoption of the NESHAP or NSPS, and is not required to obtain an ACDP or ACDP Attachment until six months after the Commission's adoption of the NESHAP or NSPS. In addition, DEQ may defer the requirement to submit an application for, or to obtain an ACDP or ACDP Attachment, or both, for up to an additional twelve months.

(d) Deferrals of Oregon permitting requirements do not relieve an air contaminant source from the responsibility of complying with federal NESHAP or NSPS requirements.

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(e) OAR 340-216-0060(1)(b)(A), 340-216-0062(2)(b)(A), 340-216-0064(4)(a), and 340-216-0066(3)(a), do not relieve a permittee from the responsibility of complying with federal NESHAP or NSPS requirements that apply to the source even if DEQ has not incorporated such requirements into the permit.

(f) DEQ may exempt a source from the requirement to obtain an ACDP if it determines that the source is subject to only procedural requirements, such as notification that the source is affected by an NSPS or NESHAP.

(2) No person may construct, install, establish, or develop any source that will be subject to the Oregon Title V Operating Permit program without first obtaining an ACDP from DEQ or Regional Authority.

(3) No person may modify any source that has been issued an ACDP without first complying with the requirements of OAR 340-210-0205 through 340-210-0250.

(4) No person may modify any source required to have an ACDP such that the source becomes subject to the Oregon Title V Operating Permit program without complying with the requirements of OAR 340-210-0205 through 340-210-0250.

(5) No person may increase emissions above the PSEL by more than the de minimis levels specified in OAR 340-200-0020 without first applying for and obtaining a modified ACDP.

(6) Subject to the requirements in this Division, the Lane Regional Air Protection Agency is designated by the Commission as the permitting agency to implement the Air Contaminant Discharge Permit program within its area of jurisdiction. The Regional Agency's program is subject to DEQ oversight. The requirements and procedures contained in this Division pertaining to the Air Contaminant Discharge Permit program shall be used by the Regional Agency to implement its permitting program until the Regional Agency adopts superseding rules which are at least as restrictive as state rules.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-211-0040.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033; DEQ 125, f. & ef. 12-16-76; DEQ 20-1979, f. & ef. 6-29-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 13-1981, f. 5-6-81, ef. 7-1-81; DEQ 11-1983, f. & ef. 5-31-83; DEQ 3-1986, f. & ef. 2-12-86; DEQ 12-1987, f. & ef. 6-15-87; DEQ 27-1991, f. & cert. ef. 11-29-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0155; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1994, f. & cert. ef. 10-4-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1720; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 7-2007, f. & cert. ef. 10-18-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 9-2009(Temp), f. 12-24-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; DEQ 10-2010(Temp), f. 8-31-10, cert. ef. 9-1-10 thru 2-28-11; DEQ 12-2010, f. & cert. ef. 10-27-10; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 11-2011, f. & cert. ef. 7-21-11; DEQ 13-2011, f. & cert. ef. 7-21-11; DEQ 14-2011, f. & cert. ef. 7-21-11; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-216-0060

### General Air Contaminant Discharge Permits

(1) Applicability.

(a) DEQ may issue a General ACDP under the following circumstances:

(A) There are several sources that involve the same or substantially similar types of operations;

(B) All requirements applicable to the covered operations can be contained in a General ACDP;

(C) The emission limitations, monitoring, recordkeeping, reporting and other enforceable conditions are the same for all operations covered by the General ACDP; and

(D) The pollutants emitted are of the same type for all covered operations.

(b) Permit content. Each General ACDP must include the following:

(A) All relevant requirements for the operations covered by the General ACDP, excluding any federal requirements not adopted by the EQC;

(B) Generic PSELs for all pollutants emitted at more than the de minimis level in accordance with OAR 340, division 222;

(C) Testing, monitoring, recordkeeping, and reporting requirements necessary to ensure compliance with the PSEL and other applicable emissions limits and standards; and

(D) A permit expiration date not to exceed 10 years from the date of issuance.

(c) Permit issuance procedures: A new General ACDP requires public notice and opportunity for comment in accordance with OAR 340 division

209 for Category III permit actions. A reissued General ACDP or a modification to a General ACDP requires public notice and opportunity for comment in accordance with OAR 340 division 209 for Category II permit actions. All General ACDPs are on file and available for review at DEQ's headquarters.

(2) Source assignment:

(a) Application requirements. Any person requesting that a source be assigned to a General ACDP must submit a written application in accordance with OAR 340-216-0040 that includes the information in OAR 340-216-0040(1), specifies the General ACDP source category, and shows that the source qualifies for the General ACDP.

(b) Fees. Applicants must pay the fees set forth in Table 2 of OAR 340-216-0020. The fee class for each General ACDP is as follows:

(A) Hard chrome platers — Fee Class Three;

(B) Decorative chrome platers — Fee Class Two;

(C) Halogenated solvent degreasers — batch cold, batch vapor, and in-line — Fee Class Two;

(D) Perchloroethylene dry cleaners — Fee Class Six;

(E) Asphalt plants — Fee Class Three;

(F) Rock crushers — Fee Class Two;

(G) Ready-mix concrete — Fee Class One;

(H) Sawmills, planing mills, millwork, plywood manufacturing and veneer drying — Fee Class Three;

(I) Boilers — Fee Class Two;

(J) Crematories — Fee Class One;

(K) Grain elevators — Fee Class One;

(L) Prepared feeds, flour, and cereal — Fee Class One;

(M) Seed cleaning — Fee Class One;

(N) Coffee roasters — Fee Class One;

(O) Bulk gasoline plants — Fee Class One;

(P) Electric power generators — Fee Class Two;

(Q) Clay ceramics — Fee Class One;

(R) Hospital sterilizers — Fee Class Four;

(S) Secondary nonferrous metals — Fee Class One;

(T) Gasoline dispensing facilities — stage I — Fee Class Five;

(U) Gasoline dispensing facilities — stage II — Fee Class Four;

(V) Wood preserving — Fee Class Four;

(W) Metal fabrication and finishing — with two or more of the following operations — Fee Class Two;

(i) Dry abrasive blasting performed in a vented enclosure or of objects greater than 8 feet (2.4 meters) in any one dimension that uses materials that contain MFHAP or has the potential to emit MFHAP;

(ii) Spray-applied painting operation using MFHAP containing paints;

(iii) Welding operation that uses materials that contain MFHAP or has the potential to emit MFHAP and uses 2,000 pounds or more per year of MFHAP containing welding wire and rod (calculated on a rolling 12-month basis);

(X) Metal fabrication and finishing — with only one of the operations listed in subparagraphs (2)(b)(Y)(i) through (iii) of this rule — Fee Class One;

(Y) Metal fabrication and finishing — with none of the operations listed in subparagraphs (2)(b)(Y)(i) through (iii) of this rule — Fee Class Four;

(Z) Plating and polishing — Fee Class One;

(AA) Surface coating operations — Fee Class One;

(BB) Paint stripping — Fee Class One;

(CC) Aluminum, copper, and nonferrous foundries — Fee Class Two;

(DD) Paints and allied products manufacturing — Fee Class Two;

(EE) Any General ACDP not listed above — Fee Class One.

(c) Source assignment procedures:

(A) Assignment of a source to a General ACDP is a Category I permit action and is subject to the Category I public notice requirements in accordance with OAR 340, division 209.

(B) A person is not a permittee under the General ACDP until DEQ assigns the General ACDP to the person.

(C) Assignments to General ACDPs and attachment(s) terminate when the General ACDP or attachment expires or is modified, terminated or revoked.

(D) Once a source has been assigned to a General ACDP, if the assigned General ACDP does not cover all requirements applicable to the source, excluding any federal requirements not adopted by the EQC, the other applicable requirements must be covered by assignment to one or more General ACDP Attachments in accordance with OAR 340-216-0062, otherwise the source must obtain a Simple or Standard ACDP.

# ADMINISTRATIVE RULES

(E) A source requesting to be assigned to a General ACDP Attachment, in accordance with OAR 340-216-0062, for a source category in a higher annual fee class than the General ACDP the source is currently assigned to, must be reassigned to the General ACDP for the source category in the higher annual fee class.

(3) DEQ Initiated Modification. If DEQ determines that the conditions have changed such that a General ACDP for a category needs to be modified, DEQ may issue a new General ACDP for that category and assign all existing General ACDP permit holders to the new General ACDP.

(4) Rescission. In addition to OAR 340-216-0082 (Termination or Revocation of an ACDP), DEQ may rescind an individual source's assignment to a General ACDP if the source no longer meets the requirements of this rule or the conditions of the permit, including, but not limited to a source having an ongoing, reoccurring or serious compliance problem. Upon rescinding a source's assignment to a General ACDP DEQ will place the source on a Simple or Standard ACDP. DEQ may also revoke a General ACDP or attachment or both if conditions, standards or rules have changed so the permit or attachment no longer meets the requirements of this rule.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

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

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1725; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 10-2001, f. & cert. ef. 8-30-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-216-0062

### General ACDP Attachments

(1) Purpose. This rule allows a source to be assigned to one General ACDP and one or more General ACDP Attachments, as long as the General ACDP and General ACDP Attachment(s) contain all requirements applicable to the source. This would allow a source to avoid having to obtain a more costly Simple or Standard ACDP if there are no General ACDPs that contain all requirements applicable to the source.

(2) Applicability.

(a) DEQ may issue a General ACDP Attachment under the following circumstances:

(A) There are several sources that involve the same or substantially similar types of operations;

(B) All requirements applicable to the covered operations can be contained in a General ACDP Attachment;

(C) The emission limitations, monitoring, recordkeeping, reporting and other enforceable conditions are the same for all operations covered by the General ACDP Attachment;

(D) The pollutants emitted are of the same type for all covered operations. If a General ACDP and a General ACDP Attachment(s) cannot address all activities at a source, the owner or operator of the source must apply for a Simple or Standard ACDP in accordance with this Division.

(b) Attachment content. Each General ACDP Attachment must include the following:

(A) All relevant requirements for the operations covered by the General ACDP Attachment, excluding any federal requirements not adopted by the EQC;

(B) Testing, monitoring, recordkeeping, and reporting requirements necessary to ensure compliance with the applicable emissions limits and standards; and

(C) An attachment expiration date not to exceed 10 years from the date of issuance.

(c) Attachment issuance procedures: A General ACDP Attachment requires public notice and opportunity for comment in accordance with OAR 340 division 209 for Category II permit actions. All General ACDP Attachments will be on file and available for review at DEQ's headquarters.

(3) Source assignment:

(a) Application requirements. Any person requesting to be assigned to a General ACDP Attachment must submit a written application for each requested General ACDP Attachment that specifies the requested General ACDP Attachment and shows that the source qualifies for the requested General ACDP Attachment.

(b) Fees. Permittees must pay an annual fee of \$120 for each assigned General ACDP Attachment.

(c) Assignment procedures:

(A) Assignment to a General ACDP Attachment is a Category I permit action and is subject to the Category I public notice requirements in accordance with OAR 340, division 209.

(B) A person is not a permittee under the General ACDP Attachment until DEQ assigns the General ACDP Attachment to the person.

(C) Assignments to a General ACDP Attachments terminate when the General ACDP Attachment expires or is modified, terminated or revoked.

(D) A source may not be assigned to a General ACDP Attachment for a source category in a higher annual fee class than the General ACDP the source is currently assigned to. Instead a source must be reassigned to the General ACDP for the source category in the higher annual fee class in accordance with OAR 340-216-0060(2)(c)(E) and may be assigned to one or more General ACDP Attachments associated with source categories in an equal or lower annual fee class.

(d) If all activities at a source cannot be addressed by a General ACDP and General ACDP Attachments, the owner or operator of the source must apply for a Simple or Standard ACDP in accordance with this Division.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-216-0064

### Simple ACDP

(1) Applicability.

(a) Sources and activities listed in Table 1, Part B of OAR 340-216-0020 that do not qualify for a General ACDP and are not required to obtain a Standard ACDP must, at a minimum, obtain a Simple ACDP.

(b) Any source required to obtain a Simple ACDP may obtain a Standard ACDP.

(c) DEQ may determine that a source is ineligible for a Simple ACDP and must obtain a Standard ACDP based upon, but not limited to, the following considerations:

(A) The nature, extent, and toxicity of the source's emissions;

(B) The complexity of the source and the rules applicable to that source;

(C) The complexity of the emission controls and potential threat to human health and the environment if the emission controls fail;

(D) The location of the source; and

(E) The compliance history of the source.

(2) Application Requirements. Any person requesting a new, modified, or renewed Simple ACDP must submit an application in accordance with OAR 340-216-0040.

(3) Fees. Applicants for a new or modified Simple ACDP must pay the fees set forth in Table 2 of 340-216-0020. Annual fees for Simple ACDPs will be assessed based on the following:

(a) Low Fee — A Source may qualify for the Low Fee if:

(A) the source is, or will be, permitted under only one of the following categories from Table 1, Part B (category 27. Electric Power Generation, may be included with any category listed below) of OAR 340-216-0020:

(i) Category 7. Asphalt felt and coatings;

(ii) Category 13. Boilers and other fuel burning equipment;

(iii) Category 33. Galvanizing & Pipe coating;

(iv) Category 39. Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries 100 or more tons/yr. metal charged (not elsewhere identified);

(v) Category 40. Gypsum products;

(vi) Category 45. Liquid Storage Tanks subject to OAR division 232;

(vii) Category 56. Non-Ferrous Metal Foundries 100 or more tons/yr. of metal charged;

(viii) Category 57. Organic or Inorganic Industrial Chemical Manufacturing;

(ix) Category 62. Perchloroethylene Dry Cleaning;

(x) Category 73. Secondary Smelting and/or Refining of Ferrous and Non-Ferrous Metals; or

(xi) Category 85. All Other Sources not listed in Table 1 of OAR 340-216-0020 which would have actual emissions, if the source were to operate uncontrolled, of 5 or more tons a year of direct PM<sub>2.5</sub> or PM<sub>10</sub> if located in a PM<sub>2.5</sub> or PM<sub>10</sub> non-attainment or maintenance area, or 10 or more tons of any single criteria pollutant in any part of the state; and

(B) The actual emissions from the 12 months immediately preceding the invoice date, and future projected emissions are less than 5 tons/yr. PM<sub>10</sub> in a PM<sub>10</sub> nonattainment or maintenance area, and less than 10 tons/yr. for each criteria pollutant; and

(C) The source is not considered an air quality problem or nuisance source by DEQ.

# ADMINISTRATIVE RULES

(b) High Fee — Any source required to have a Simple ACDP (Table 1, Part B of OAR 340-216-0020) that does not qualify for the Low Fee will be assessed the High Fee.

(c) If DEQ determines that a source was invoiced for the Low Annual Fee but does not meet the Low Fee criteria outlined above, the source will be required to pay the difference between the Low and High Fees, plus applicable late fees in accordance with Table 2 of OAR 340-216-0020. Late fees start upon issuance of the initial invoice. In this case, DEQ will issue a new invoice specifying applicable fees.

(4) Permit Content.

(a) All relevant applicable requirements for source operation, including general ACDP conditions for incorporating generally applicable requirements, but excluding any federal requirements not adopted by the EQC;

(b) Generic PSELS for all pollutants emitted at more than the de minimis level in accordance with OAR 340 division 222;

(c) Testing, monitoring, recordkeeping, and reporting requirements sufficient to determine compliance with the PSEL and other emission limits and standards, as necessary; and

(d) A permit duration not to exceed 5 years.

(5) Permit issuance procedures:

(a) Issuance of a new or renewed Simple ACDP requires public notice in accordance with OAR 340 division 209 for Category II permit actions.

(b) Issuance of a modification to a Simple ACDP requires one of the following procedures, as applicable:

(A) Non-technical and non-NSR/PSD Basic and Simple technical modifications require public notice in accordance with OAR 340, division 209 for Category I permit actions; or

(B) Issuance of non-NSR/PSD Moderate and Complex technical modifications require public notice in accordance with OAR 340 division 209 for Category II permit actions.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-216-0066

### Standard ACDPs

(1) Application requirements. Any person requesting a new, modified, or renewed Standard ACDP must submit an application in accordance with OAR 340-216-0040 and include the following additional information as applicable:

(a) For new or modified Standard ACDPs that are not subject to NSR (OAR 340 division 224) but have emissions increases above the significant emissions rate, the application must include an analysis of the air quality and visibility (federal major sources only) impact of the source or modification, including meteorological and topographical data, specific details of models used, and other information necessary to estimate air quality impacts.

(b) For new or modified Standard ACDPs that are subject to NSR (OAR 340 division 224), the application must include the following additional information as applicable:

(A) A detailed description of the air pollution control equipment and emission reductions processes which are planned for the source or modification, and any other information necessary to determine that BACT or LAER technology, whichever is applicable, would be applied;

(B) An analysis of the air quality and visibility (federal major sources only) impact of the source or modification, including meteorological and topographical data, specific details of models used, and other information necessary to estimate air quality impacts; and

(C) An analysis of the air quality and visibility (federal major sources only) impacts, and the nature and extent of all commercial, residential, industrial, and other source emission growth, which has occurred since January 1, 1978, in the area the source or modification would affect.

(2) Fees. Applicants for a Standard ACDP must pay the fees set forth in Table 2 of 340-216-0020.

(3) Permit content. A Standard ACDP is a permit that contains:

(a) All applicable requirements, including general ACDP conditions for incorporating generally applicable requirements, but excluding any federal requirements not adopted by the EQC;

(b) Source specific PSELS or Generic PSELS, whichever are applicable, as specified in OAR 340, division 222;

(c) Testing, monitoring, recordkeeping, and reporting requirements sufficient to determine compliance with the PSEL and other emission limits and standards, as necessary; and

(d) A permit duration not to exceed 5 years.

(4) Permit issuance procedures.

(a) Issuance of a new or renewed Standard ACDP requires public notice as follows:

(A) For non-NSR permit actions, issuance of a new or renewed Standard ACDP requires public notice in accordance with OAR 340 division 209 for Category III permit actions for any increase in allowed emissions, or Category II permit actions if no emissions increase is allowed.

(B) For NSR permit actions, issuance of a new Standard ACDP requires public notice in accordance with OAR 340 division 209 for Category IV permit actions.

(b) Issuance of a modified Standard ACDP requires one of the following, as applicable:

(A) Non-technical modifications and non-NSR Basic and Simple technical modifications require public notice in accordance with OAR 340 division 209 for Category I permit actions.

(B) Non-NSR/PSD Moderate and Complex technical modifications require public notice in accordance with OAR 340 division 209 for Category II permit actions if no increase in allowed emissions, or Category III permit actions if an increase in emissions is allowed.

(C) NSR/PSD modifications require public notice in accordance with OAR 340 division 209 for Category IV permit actions.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-216-0068

### Simple and Standard ACDP Attachments

(1) Purpose. This rule allows DEQ to add new requirements to existing Simple or Standard ACDPs by assigning the source to an ACDP Attachment issued in accordance with section (2) of this rule. An ACDP Attachment would apply to an affected source until the new requirements are incorporated into the source's Simple or Standard ACDP at renewal.

(2) ACDP Attachment issuance procedures:

(a) An ACDP Attachment requires public notice and opportunity for comment in accordance with OAR 340 division 209 for Category II permit actions.

(b) DEQ may issue an ACDP Attachment when there are multiple sources that are subject to the new requirements.

(c) Attachment content. Each ACDP Attachment must include the following:

(A) Testing, monitoring, recordkeeping, and reporting requirements necessary to ensure compliance with the applicable emissions limits and standards; and

(B) An attachment expiration date not to exceed 5 years from the date of issuance.

(3) Assignment to ACDP Attachment:

(a) Adding an ACDP Attachment to a Simple or Standard ACDP is a Category I permit action and is subject to the Category I public notice requirements in accordance with OAR 340, division 209.

(b) A source is not a permittee under the ACDP Attachment until DEQ assigns the ACDP Attachment to the source.

(c) The ACDP Attachment is removed from the Simple or Standards ACDP when the requirements of the ACDP Attachment are incorporated into the source's Simple or Standard ACDP.

(d) If EPA or DEQ action caused a source to be subject to the requirements in an ACDP Attachment, assignment to the ACDP Attachment is a DEQ initiated modification to the Simple or Standard ACDP. The permittee is not required to submit an application or pay fees for the permit action. In such case, DEQ would notify the permittee of the proposed permitting action and the permittee may object to the permit action if the permittee demonstrates that the source is not subject to the requirements of the ACDP Attachment.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation

Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-228-0602

### Definitions

The terms used in OAR 340-228-0606 through 0639 are defined as follows, in 40 CFR 63.10042, and in Appendix A to 40 CFR part 63 subpart UUUUU:

# ADMINISTRATIVE RULES

(1) “Boiler” means an enclosed fossil-or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(2) “CFR” means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2012 edition.

(3) “Coal-derived fuel” means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

(4) “Coal-fired” means combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year.

(5) “Combustion turbine” means:

(a) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(b) If the enclosed device under paragraph (a) of this definition is combined cycle, any associated heat recovery steam generator and steam turbine.

(6) “Commence commercial operation” means, with regard to a unit serving a generator:

(a) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation.

(A) For a unit that is a coal-fired electric generating unit under OAR 340-228-0601 on the date the unit commences commercial operation as defined in paragraph (a) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit’s date of commencement of commercial operation.

(B) For a unit that is a coal-fired electric generating unit under OAR 340-228-0601 on the date the unit commences commercial operation as defined in paragraph (a) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (a) or (b) of this definition as appropriate.

(b) Notwithstanding paragraph (a) of this definition, for a unit that is not a coal-fired electric generating unit under OAR 340-228-0601 on the date the unit commences commercial operation as defined in paragraph (a) of this definition, the unit’s date for commencement of commercial operation shall be the date on which the unit becomes a coal-fired electric generating unit under OAR 340-228-0601.

(A) For a unit with a date for commencement of commercial operation as defined in paragraph (b) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date remains the unit’s date of commencement of commercial operation.

(B) For a unit with a date for commencement of commercial operation as defined in paragraph (b) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (a) or (b) of this definition as appropriate.

(7) “Commence operation” means:

(a) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit’s combustion chamber.

(A) For a unit that is a coal-fired electric generating unit under OAR 340-228-0601 on the date the unit commences operation as defined in paragraph (a) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit’s date of commencement of operation.

(B) For a unit that is a coal-fired electric generating unit under OAR 340-228-0601 on the date the unit commences operation as defined in paragraph (a) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (a) or (b) of this definition as appropriate.

(b) Notwithstanding paragraph (a) of this definition, for a unit that is not a coal-fired electric generating unit under OAR 340-228-0601 on the date the unit commences operation as defined in paragraph (a) of this definition, the unit’s date for commencement of operation shall be the date on which the unit becomes a coal-fired electric generating unit under OAR 340-228-0601.

(A) For a unit with a date for commencement of operation as defined in paragraph (b) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same

source), such date shall remain the unit’s date of commencement of operation.

(B) For a unit with a date for commencement of operation as defined in paragraph (b) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (a) or (b) of this definition as appropriate.

(8) “Emissions” means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to DEQ in accordance with OAR 340-228-0609 through 0637.

(9) “Heat input” means, with regard to a specified period of time, the product (in MMBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/MMBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to DEQ by the owner or operator and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(10) “Life-of-the-unit, firm power contractual arrangement” means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit’s total costs, pursuant to a contract:

(a) For the life of the unit;

(b) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(c) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(11) “Monitoring system” means any monitoring system that meets the requirements of OAR 340-228-0609 through 0637, including a continuous emission monitoring system or an approved alternative monitoring system.

(12) “Nameplate capacity” means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as specified by the person conducting the physical change.

(13) “Operator” means any person who operates, controls, or supervises a coal-fired electric utility steam generating unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(14) “Owner” means any of the following persons:

(a) Any holder of any portion of the legal or equitable title in a coal-fired electric utility steam generating unit;

(b) Any holder of a leasehold interest in a coal-fired electric utility steam generating unit; or

(c) Any purchaser of power from a coal-fired electric utility steam generating unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such coal-fired electric utility steam generating unit.

(15) “Repowered” means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(a) Atmospheric or pressurized fluidized bed combustion;

(b) Integrated gasification combined cycle;

(c) Magnetohydrodynamics;

(d) Direct and indirect coal-fired turbines;

(e) Integrated gasification fuel cells; or

(f) As determined by DEQ in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (a) through (e) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater



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waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

(16) "Submit or serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (a) In person;
- (b) By United States Postal Service; or
- (c) By other means of dispatch or transmission and delivery.

Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(17) "Unit" means a stationary coal-fired boiler or a stationary coal-fired combustion turbine.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-228-0606

### Hg Emission Standards

(1) Mercury emission standards. On and after July 1, 2012 or at commencement of commercial operation, whichever is later, except as allowed under section (2) of this rule, each coal-fired electric utility steam generating unit must achieve at least 90 percent mercury capture or limit mercury emissions to 0.60 pounds per trillion BTU of heat input.

(2) Compliance extension. Up to a 2-year extension may be granted by DEQ if the owner or operator of a coal-fired electric utility steam generating unit demonstrates that it is not practical to install mercury control equipment by July 1, 2012 due to supply limitations, ESP fly ash contamination, or other extenuating circumstances that are beyond the control of the owner or operator.

(3) Compliance demonstration. Commencing in July 2013 or 12 months after commercial startup or 12 months after expiration of the extension granted under section (2) of this rule, whichever is later, each coal-fired electric utility steam generating unit must thereafter demonstrate compliance with one of the standards in subsections (3)(a) or (3)(b) of this rule for each compliance period, except as allowed under sections (4) and (5) of this rule. A compliance period consists of twelve months. Each month commencing with June 2013 or the twelfth month after commencement of commercial operation or twelfth month after expiration of the extension granted under section (2) of this rule, whichever is later, is the end of a compliance period consisting of that month and the previous 11 months.

(a) A mercury emission standard of 0.60 pounds per trillion BTU of heat input calculated by dividing the Hg mass emissions determined using a mercury CEMS or sorbent trap monitoring system by heat input; or

(b) A minimum 90 percent capture of inlet mercury determined as follows:

(A) Inlet mercury must be determined as specified in subparagraph (3)(b)(A)(i) or (3)(b)(A)(ii) of this rule:

(i) Coal sampling and analysis. To demonstrate compliance by coal sampling and analysis, the owner or operator of a coal-fired electric utility steam generating unit must test its coal for mercury consistent with a coal sampling and analysis plan. The coal sampling and analysis plan must be consistent with the requirements of OAR 340-228-0639.

(ii) Hg mass emissions prior to any control device(s). To demonstrate compliance by measuring Hg mass emissions, the owner or operator of a coal-fired electric utility steam generating unit must measure mercury emissions prior to any control device(s) using a Hg CEMS or sorbent trap.

(B) The mercury capture efficiency must be calculated using the Hg emissions determined using a mercury CEMS or sorbent trap monitoring system and the inlet mercury determined using the coal mercury content data obtained in accordance with subparagraph (3)(b)(A)(i) of this rule or the measured inlet mercury data obtained in accordance with subparagraph (3)(b)(A)(ii) of this rule and a calculation methodology approved by DEQ.

(4) Temporary compliance alternative. If the owner or operator of a coal-fired electric utility steam generating unit properly implements the approved control strategy and the strategy fails to achieve at least 90 percent mercury capture or limit mercury emissions to 0.60 pounds per trillion BTU of heat input:

(a) The owner or operator must notify DEQ of the failure within 30 days of the end of the initial compliance period; and

(b) The owner or operator must file an application with EQ for a permit or permit modification in accordance with OAR 340 division 216 to establish a temporary alternative mercury emission limit. The application must be filed within 60 days of the end of the initial compliance period, and must include a continual program of mercury control progression able to

achieve at least 90 percent mercury capture or to limit mercury emissions to 0.60 pounds per trillion BTU of heat input and all monitoring and operating data for the coal-fired electric utility steam generating unit.

(c) DEQ may establish a temporary alternative mercury emission limit only if the owner or operator applies for a permit or permit modification, that includes a control strategy that DEQ determines constitutes a continual program of mercury control progression able to achieve at least 90 percent mercury capture or to limit mercury emissions to 0.60 pounds per trillion BTU of heat input.

(d) Establishment of a temporary alternative mercury emission limit requires public notice in accordance with OAR 340 division 209 for Category III permit actions

(e) If the owner or operator files an application under subsection (4)(b) of this rule, the coal-fired electric utility steam generating unit must operate according to the temporary alternative mercury emission limit proposed in the permit or permit modification application until DEQ either denies the application or issues the permit or permit modification. Compliance with the proposed temporary alternative mercury emission limit prior to final DEQ action on the application shall constitute compliance with the limits in section (1) of this rule.

(f) A temporary alternative mercury emission limit established in a permit expires July 1, 2016 or within 2 years of commencement of commercial operation, whichever is later.

(5) Permanent compliance alternative. If the owner or operator of a coal-fired electric utility steam generating unit is unable to achieve at least 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input by July 1, 2016 or within 2 years of commencement of commercial operation, whichever is later, despite properly implementing the continual program of mercury progression required in section (4) of this rule:

(a) The owner or operator of the coal-fired electric utility steam generating unit may file an application with DEQ for a permit modification in accordance with OAR 340 division 216 to establish a permanent alternative mercury emission limit that comes as near as technically possible to achieving 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input.

(b) DEQ may establish a permanent alternative mercury emission limit only if the owner or operator applies for a permit modification, that proposes an alternative mercury emission limit that DEQ determines comes as near as technically possible to achieving 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input.

(c) Establishment of a permanent alternative mercury emission limit requires public notice in accordance with OAR 340 division 209 for Category IV permit actions.

(d) If the owner or operator files an application under subsection (5)(a) of this rule, the coal-fired electric utility steam generating unit must operate according to the permanent alternative mercury emission limit proposed in the permit modification application until DEQ either denies the application or modifies the permit. Compliance with the proposed permanent alternative mercury emission limit prior to final DEQ action on the application shall constitute compliance with the limits in section (1) of this rule.

(6) Emission Caps. Beginning in calendar year 2018, the following coal-fired electric utility steam generating unit specific emission caps shall apply.

(A) Existing Boardman coal-fired electric utility steam generating unit cap. The existing coal-fired electric utility steam generating unit in Boardman shall emit no more than:

(A) 60 pounds of mercury in any calendar year in which there are no new coal-fired electric utility steam generating units operated in Oregon.

(B) 35 pounds of mercury in any calendar year in which there are new coal-fired electric utility steam generating units operated in Oregon.

(b) New coal-fired electric utility steam generating unit cap:

(A) New coal-fired electric utility steam generating units, in aggregate, shall emit no more than:

(i) 25 pounds of mercury in any calendar year in which the existing coal-fired electric utility steam generating unit in Boardman is operated.

(ii) 60 pounds of mercury in any calendar year in which the existing coal-fired electric utility steam generating unit in Boardman is not operated.

(B) The owner or operator of each new coal-fired electric utility steam generating unit must submit to DEQ a request, in a format specified by DEQ, to receive a portion of the new coal-fired electric utility steam generating unit cap. The request may not be submitted until the new coal-fired electric utility steam generating unit has received its Site Certification from

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the Facility Siting Council, or if the new coal-fired electric utility steam generating unit is not required to obtain a Site Certificate, all governmental approvals necessary to commence construction.

(C) DEQ will allocate the new coal-fired electric utility steam generating unit cap in order of receipt of requests and, once allocated, the new coal-fired electric utility steam generating unit shall be entitled to receive an equal allocation in future years unless the new coal-fired electric utility steam generating unit permanently ceases operations.

(D) Each individual new coal-fired electric utility steam generating unit shall emit no more than the lesser of:

(i) An amount of mercury determined by multiplying the design heat input in TBtu of such coal-fired electric utility steam generating unit by 0.60 pounds per TBtu rounded to the nearest pound as appropriate, or

(ii) The amount of the emission cap under (6)(b) less the amount of the emission cap under (6)(b) that has been allocated to other new coal-fired electric utility steam generating units.

(c) Compliance demonstration. Each coal-fired electric utility steam generating unit must demonstrate compliance with the applicable calendar year emission cap in subsection (6)(a) or (6)(b) of this rule using a mercury CEMS or sorbent trap monitoring system.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-228-0609

### General Requirements

The owners and operators of a coal-fired electric utility steam generating unit must comply with the monitoring requirements as provided in this rule, 40 CFR part 63 subpart UUUUU, and OAR 340-228-0639 (if applicable).

(1) Requirements for installation, certification, and data accounting. The owner or operator of each coal-fired electric utility steam generating unit must:

(a) Install all applicable monitoring systems required under this rule, 40 CFR part 63 subpart UUUUU, and OAR 340-228-0639 for monitoring Hg mass emissions, inlet Hg (if applicable), and individual unit heat input.

(b) Successfully complete all certification tests required under 40 CFR part 63 subpart UUUUU and meet all other requirements of this rule, 40 CFR part 63 subpart UUUUU, and OAR 340-228-0639 applicable to the monitoring systems under subsection (1)(a) of this rule.

(c) Record, report, and quality-assure the data from the monitoring systems under subsection (1)(a) of this rule.

(2) Compliance deadlines. The owner or operator must meet the monitoring system certification and other requirements of section (1) of this rule on or before the following dates. The owner or operator must record, report, and quality-assure the data from the monitoring systems under subsection (1)(a) of this rule on and after the following dates.

(a) Outlet Hg.

(A) For the owner or operator of a coal-fired electric utility steam generating unit that commences commercial operation before July 1, 2008, by January 1, 2009.

(B) For the owner or operator of a coal-fired electric utility steam generating unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:

(i) January 1, 2009; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(C) For the owner or operator of a coal-fired electric utility steam generating unit for which construction of a new stack or flue or installation of add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system is completed after the applicable deadline under paragraph (2)(a)(A) or (B) of this rule, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue, add-on Hg emissions controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system.

(b) Heat input. For monitoring systems used to monitor heat input in accordance with OAR 340-228-0606(4)(a), if applicable, by the later of the following dates:

(A) July 1, 2012 or the date established under OAR 340-228-0606(3); or

(B) The date on which the unit commences commercial operation.

(c) Inlet Hg. If required to perform coal sampling and analysis in accordance with OAR 340-228-0606(4)(b)(A)(i) or measure Hg emission

prior to any control device(s) in accordance with 340-228-0606(4)(b)(A)(ii), if applicable, by the later of the following dates:

(A) July 1, 2012 or the date established under OAR 340-228-0606(3);

or

(B) The date on which the unit commences commercial operation.

(3) Reporting data.

(a) Except as provided in subsection (3)(b) of this rule, the owner or operator of a coal-fired electric utility steam generating unit that does not meet the applicable compliance date set forth in section (2) of this rule for any monitoring system under subsection (1)(a) of this rule must, for each monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for Hg concentration, stack gas flow rate, stack gas moisture content, and any other parameters required to determine Hg mass emissions and heat input in accordance with OAR 340-228-0637(5).

(b) The owner or operator of a coal-fired electric utility steam generating unit that does not meet the applicable compliance date set forth in paragraph (2)(a)(C) of this rule for any monitoring system under subsection (1)(a) must, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in 40 CFR part 75 subpart D, in lieu of the maximum potential (or, as appropriate, minimum potential) values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under subsection (2)(a)(C) of this rule.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-228-0635

### Recordkeeping

The owner or operator of any coal-fired electric utility steam generating unit must maintain a file of all measurements, data, reports, and other information required in OAR 340-228-0606, 0609, 0637 and 0639 and 40 CFR part 63 subpart UUUUU at the source in a form suitable for inspection for at least 5 years from the date of each record.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-228-0637

### Reporting

(1) General reporting provisions. The owner or operator of an affected unit must comply with all reporting requirements in this rule and 40 CFR part 63 subpart UUUUU.

(2) Monitoring plans. The owner or operator of a coal-fired electric utility steam generating unit must prepare, and submit if requested, a monitoring plan in accordance with 40 CFR part 63 subpart UUUUU.

(3) Semiannual compliance reports. The owner or operator must submit semiannual compliance reports in accordance to 40 CFR 63.10031(a) through (e). The first semiannual report must be submitted beginning with the calendar half containing the compliance date in OAR 340-228-0609(2). The owner or operator must also report the pounds of Hg emitted and heat input (if applicable) during the calendar half and year-to-date.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-232-0085

### Gasoline Delivery Vessel(s)

(1) No person shall transfer or allow the transfer of gasoline to a delivery vessel from a bulk gasoline terminal; or a bulk gasoline plant, with a daily throughput of 4,000 or more gallons based on a 30-day rolling average, located in the Portland-Vancouver AQMA, unless:

(a) Each delivery vessel uses submerged fill when receiving gasoline; and

(b) The displaced vapors from filling each tank are prevented from being released to the atmosphere through use of a vapor tight vapor balance system, or equivalent system as approved in writing by DEQ. All equipment associated with the vapor balance system shall be maintained to be vapor tight and in good working order.

(2) Gasoline shall be handled in a manner to prevent spillage, discharge into sewers, storage in open containers, or handled in any other manner that would result in evaporation. If more than five gallons are spilled, the operator shall report the spillage in accordance with OAR 340-214-0300 to 340-214-0350.

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(3) Compliance with subsection (1)(a) of this rule shall be determined by visual inspection to ensure minimal spillage of gasoline and proper installation of bottom loading couplers.

(4) Compliance with subsection (1)(b) of this rule shall be determined by verification of use of equipment approved by DEQ and/or by testing and monitoring in accordance with applicable portions of OAR 340-232-0100 and/or Method 31 and/or 32 on file with DEQ.

(5) The owner or operator of a gasoline delivery vessel shall maintain the vessel to be vapor tight at all times, in accordance with OAR 340-232-0100(1), if such vessel is part of a vapor balance system required by subsection (1)(b) of this rule.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-022-0125; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-238-0040

### Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) "Administrator" means the Administrator of the EPA or authorized representative.

(2) "Affected facility" means, with reference to a stationary source, any apparatus to which a standard is applicable.

(3) "Capital expenditures" means an expenditure for a physical or operational change to an existing facility that exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in Internal Revenue Service (IRS) Publication 534 and the existing facility's basis, as defined by section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to an existing facility must not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(4) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2012 edition.

(5) "Closed municipal solid waste landfill" (closed landfill) means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under 40 CFR 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of 40 CFR 258.60.

(6) "Commenced", with respect to the definition of "new source" in section 111(a)(2) of the federal Clean Air Act, means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(7) "Existing municipal solid waste landfill" (existing landfill) means a municipal solid waste landfill that began construction, reconstruction or modification before 5/30/91 and has accepted waste at any time since 11/08/87 or has additional design capacity available for future waste deposition.

(8) "Existing facility", with reference to a stationary source, means any apparatus of the type for which a standard is promulgated in 40 CFR Part 60, and the construction or modification of which commenced before the date of proposal by EPA of that standard; or any apparatus that could be altered in such a way as to be of that type.

(9) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(10) "Large municipal solid waste landfill" (large landfill) means a municipal solid waste landfill with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters.

(11) "Modification:"

(a) except as provided in subsection (b) of this section, means any physical change in, or change in the method of operation of, an existing facility that increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted;

(b) As used in OAR 340-238-0100 means an action that results in an increase in the design capacity of a landfill.

(12) "Municipal solid waste landfill" (landfill) means an entire disposal facility in a contiguous geographical space where household waste is

placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads and may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion (modification).

(13) "New municipal solid waste landfill" (new landfill) means a municipal solid waste landfill that began construction, reconstruction or modification or began accepting waste on or after 5/30/91.

(14) "Reconstruction" means the replacement of components of an existing facility to such an extent that:

(a) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and

(b) It is technologically and economically feasible to meet the applicable standards set forth in 40 CFR Part 60.

(15) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 60.

(16) "Small municipal solid waste landfill" (small landfill) means a municipal solid waste landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters.

(17) "Standard" means a standard of performance proposed or promulgated under 40 CFR Part 60.

(18) "State Plan" means a plan developed for the control of a designated pollutant provided under 40 CFR Part 60.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0510; DEQ 22-2000, f. & cert. ef. 12-18-00; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-238-0060

### Federal Regulations Adopted by Reference

(1) Except as provided in section (2) of this rule, **40 CFR Part 60 Subparts A, D through XX, BBB through AAAA, CCCC, EEEE, LLLL, and KKKK** are by this reference adopted and incorporated herein, and 40 CFR Part 60 Subpart OOO is by this reference adopted and incorporated herein for major sources only.

(2) Where "Administrator" or "EPA" appears in 40 CFR Part 60, "DEQ" is substituted, except in any section of 40 CFR Part 60 for which a federal rule or delegation specifically indicates that authority must not be delegated to the state.

(3) 40 CFR Part 60 Subparts adopted by this rule are titled as follows:

(a) Subpart A — General Provisions;

(b) Subpart D — Fossil-fuel-fired steam generators for which construction is commenced after August 17, 1971;

(c) Subpart Da — Electric utility steam generating units for which construction is commenced after September 18, 1978;

(d) Subpart Db — Industrial-commercial-institutional steam generating units;

(e) Subpart Dc — Small industrial-commercial-institutional steam generating units;

(f) Subpart E — Incinerators;

(g) Subpart Ea — Municipal waste combustors for which construction is commenced after December 20, 1989 and on or before September 20, 1994;

(h) Subpart Eb — Municipal waste combustors for which construction is commenced after September 20, 1994;

(i) Subpart Ec — Hospital/Medical/Infectious waste incinerators that commenced construction after June 20, 1996, or for which modification is commenced after March 16, 1998;

(j) Subpart F — Portland cement plants;

(k) Subpart G — Nitric acid plants;

(l) Subpart H — Sulfuric acid plants;

(m) Subpart I — Hot mix asphalt facilities;

(n) Subpart J — Petroleum refineries;

(o) Subpart K — Storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and before May 19, 1978;

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(p) Subpart Ka — Storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978, and before July 23, 1984;

(q) Subpart Kb — Volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984;

(r) Subpart L — Secondary lead smelters;

(s) Subpart M — Secondary brass and bronze production plants;

(t) Subpart N — Primary emissions from basic oxygen process furnaces for which construction is commenced after June 11, 1973;

(u) Subpart Na — Secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983;

(v) Subpart O — Sewage treatment plants;

(w) Subpart P — Primary copper smelters;

(x) Subpart Q — Primary Zinc smelters;

(y) Subpart R — Primary lead smelters;

(z) Subpart S — Primary aluminum reduction plants;

(aa) Subpart T — Phosphate fertilizer industry: wet-process phosphoric acid plants;

(bb) Subpart U — Phosphate fertilizer industry: superphosphoric acid plants;

(cc) Subpart V — Phosphate fertilizer industry: diammonium phosphate plants;

(dd) Subpart W — Phosphate fertilizer industry: triple superphosphate plants;

(ee) Subpart X — Phosphate fertilizer industry: granular triple superphosphate storage facilities;

(ff) Subpart Y — Coal preparation plants;

(gg) Subpart Z — Ferroalloy production facilities;

(hh) Subpart AA — Steel plants: electric arc furnaces constructed after October 21, 1974 and on or before August 17, 1983;

(ii) Subpart AAa — Steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 7, 1983;

(jj) Subpart BB — Kraft pulp mills;

(kk) Subpart CC — Glass manufacturing plants;

(ll) Subpart DD — Grain elevators.

(mm) Subpart EE — Surface coating of metal furniture;

(nn) Subpart GG — Stationary gas turbines;

(oo) Subpart HH — Lime manufacturing plants;

(pp) Subpart KK — Lead-acid battery manufacturing plants;

(qq) Subpart LL — Metallic mineral processing plants;

(rr) Subpart MM — Automobile and light-duty truck surface coating operations;

(ss) Subpart NN — Phosphate rock plants;

(tt) Subpart PP — Ammonium sulfate manufacture;

(uu) Subpart QQ — Graphic arts industry: publication rotogravure printing;

(vv) Subpart RR — pressure sensitive tape and label surface coating operations;

(ww) Subpart SS — Industrial surface coating: large appliances;

(xx) Subpart TT — Metal coil surface coating;

(yy) Subpart UU — Asphalt processing and asphalt roofing manufacture;

(zz) Subpart VV — Equipment leaks of VOC in the synthetic organic chemicals manufacturing industry;

(aaa) Subpart VVa — Equipment leaks of VOC in the synthetic organic chemicals manufacturing industry;

(bbb) Subpart WW — Beverage can surface coating industry;

(ccc) Subpart XX — Bulk gasoline terminals;

(ddd) Subpart BBB — Rubber tire manufacturing industry;

(eee) Subpart DDD — Volatile organic compound (VOC) emissions from the polymer manufacture industry;

(fff) Subpart FFF — Flexible vinyl and urethane coating and printing;

(ggg) Subpart GGG — Equipment leaks of VOC in petroleum refineries;

(hhh) Subpart GGGa — Equipment leaks of VOC in petroleum refineries;

(iii) Subpart HHH — Synthetic fiber production facilities;

(jjj) Subpart III — Volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes;

(kkk) Subpart JJJ — Petroleum dry cleaners;

(lll) Subpart KKK — Equipment leaks of VOC from onshore natural gas processing plants;

(mmm) Subpart LLL — Onshore natural gas processing; SO<sub>2</sub> emissions;

(nnn) Subpart NNN — Volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) distillation operations;

(ooo) Subpart OOO — Nonmetallic mineral processing plants (adopted by reference for major sources only);

(ppp) Subpart PPP — Wool fiberglass insulation manufacturing plants;

(qqq) Subpart QQQ — VOC emissions from petroleum refinery wastewater systems;

(rrr) Subpart RRR — Volatile organic compound emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes;

(sss) Subpart SSS — Magnetic tape coating facilities;

(ttt) Subpart TTT — Industrial surface coating: surface coating of plastic parts for business machines;

(uuu) Subpart UUU — Calciners and dryers in mineral industries;

(vvv) Subpart VVV — Polymeric coating of supporting substrates facilities;

(www) Subpart WWW — Municipal solid waste landfills, as clarified by OAR 340-238-0100;

(xxx) Subpart AAAA — Small municipal waste combustion units;

(yyy) Subpart CCCC — Commercial and industrial solid waste incineration units;

(zzz) Subpart EEEE — Other solid waste incineration units;

(aaaa) Subpart LLLL — Sewage sludge incineration units;

(bbbb) Subpart KKKK — Stationary combustion turbines.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 16-1981, f. & ef. 5-6-81; sections (1) thru (12) of this rule renumbered to 340-025-0550 thru 340-025-0605; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0535; DEQ 22-2000, f. & cert. ef. 12-18-00; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-244-0030

### Definitions

The definitions in OAR 340-200-0020, 340-218-0030 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-218-0030, the definition in this rule applies to this division.

(1) "Affected source" is as defined in 40 CFR 63.2.

(2) "Annual throughput" means the amount of gasoline transferred into a gasoline dispensing facility during 12 consecutive months.

(3) "Aza Source" means any stationary source which has the potential to emit hazardous air pollutants but is not a major source of hazardous air pollutants.

(4) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2012 edition.

(5) "Construct a major source" means to fabricate, erect, or install at any greenfield site a stationary source or group of stationary sources which is located within a contiguous area and under common control and which emits or has the potential to emit 10 tons per year of any HAPs or 25 tons per year of any combination of HAP, or to fabricate, erect, or install at any developed site a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, unless the process or production unit satisfies criteria in paragraphs (a) through (f) of this definition:

(a) All HAP emitted by the process or production unit that would otherwise be controlled under the requirements of 40 CFR Part 63, Subpart B will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;

(b) DEQ has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented the best available control technology (BACT), lowest achievable emission rate (LAER) under 40 CFR part 51 or 52, toxics-best available control technology (T-BACT), or MACT based on State air toxic rules for the category of pollutants which includes those HAP to be emitted by the process or production unit; or DEQ determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by

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other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT, LAER, T-BACT, or State air toxic rule MACT determination).

(c) DEQ determines that the percent control efficiency for emission of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(d) DEQ has provided notice and an opportunity for public comment concerning its determination that criteria in paragraphs (a), (b), and (c) of this definition apply and concerning the continued adequacy of any prior LAER, BACT, T-BACT, or State air toxic rule MACT determination;

(e) If any commenter has asserted that a prior LAER, BACT, T-BACT, or State air toxic rule MACT determination is no longer adequate, DEQ has determined that the level of control required by that prior determination remains adequate; and

(f) Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by DEQ are predicated will be construed by DEQ as applicable requirements under section 504(a) and either have been incorporated into any existing Title V permit for the affected facility or will be incorporated into such permit upon issuance.

(6) "Dual-point vapor balance system" means a type of vapor balance system in which the storage tank is equipped with an entry port for a gasoline fill pipe and a separate exit port for a vapor connection.

(7) "Emissions Limitation" and "Emissions Standard" mean a requirement adopted by DEQ or Regional Agency, or proposed or promulgated by the Administrator of the EPA, which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(8) "Equipment leaks" means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems in hazardous air pollutant service.

(9) "Existing Source" means any source, the construction of which commenced prior to proposal of an applicable standard under sections 112 or 129 of the FCAA.

(10) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.

(11) "Gasoline" means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals (4.0 psi) or greater, which is used as a fuel for internal combustion engines.

(12) "Gasoline cargo tank" means a delivery tank truck or railcar which is loading or unloading gasoline, or which has loaded or unloaded gasoline on the immediately previous load.

(13) "Gasoline dispensing facility (GDF)" means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. These facilities include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline fueled engines and equipment. In Clackamas, Multnomah and Washington Counties, the Medford-Ashland Air Quality Maintenance Area, and the Salem-Keizer Area Transportation Study area, "gasoline dispensing facility" includes any stationary facility which dispenses gasoline into the fuel tank of an airplane.

(14) "Hazardous Air Pollutant" (HAP) means an air pollutant listed by the EPA pursuant to section 112(b) of the FCAA or determined by the Commission to cause, or reasonably be anticipated to cause, adverse effects to human health or the environment.

(15) "Major Source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The EPA may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

(16) "Maximum Achievable Control Technology (MACT)" means an emission standard applicable to major sources of hazardous air pollutants

that requires the maximum degree of reduction in emissions deemed achievable for either new or existing sources.

(17) "Monthly throughput" means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each GDF during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 364 days, and then dividing that sum by 12.

(18) "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(19) "Nonroad engine" means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 of this title or section 7521 of this title.

(20) "Nonroad vehicle" means a vehicle that is powered by a nonroad engine, and that is not a motor vehicle or a vehicle used solely for competition.

(21) "New Source" means a stationary source, the construction of which is commenced after proposal of a federal MACT or January 3, 1993 of this Division, whichever is earlier.

(22) "Potential to Emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA. This section does not alter or affect the use of this section for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder. Secondary emissions shall not be considered in determining the potential to emit of a source.

(23) "Reconstruct a Major Source" means the replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever: the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit; and; it is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under 40 CFR Part 63 Subpart B.

(24) "Regulated Air Pollutant" as used in this Division means:

(a) Any pollutant listed under OAR 340-244-0040; or

(b) Any pollutant that is subject to a standard promulgated pursuant to Section 129 of the Act.

(25) "Section 112(n)" means that subsection of the FCAA that includes requirements for the EPA to conduct studies on the hazards to public health prior to developing emissions standards for specified categories of hazardous air pollutant emission sources.

(26) "Section 112(r)" means that subsection of the FCAA that includes requirements for the EPA promulgate regulations for the prevention, detection and correction of accidental releases.

(27) "Solid Waste Incineration Unit" as used in this Division shall have the same meaning as given in Section 129(g) of the FCAA.

(28) "Stationary Source", as used in OAR 340 division 244, means any building, structure, facility, or installation which emits or may emit any regulated air pollutant;

(29) "Submerged filling" means the filling of a gasoline storage tank through a submerged fill pipe whose discharge is no more than the applicable distance specified in OAR 340-244-0240(3) from the bottom of the tank. Bottom filling of gasoline storage tanks is included in this definition.

(30) "Topping off" means, in the absence of equipment malfunction, continuing to fill a gasoline tank after the nozzle has clicked off.

(31) "Vapor balance system" means a combination of pipes and hoses that create a closed system between the vapor spaces of an unloading gasoline cargo tank and a receiving storage tank such that vapors displaced from the storage tank are transferred to the gasoline cargo tank being unloaded.

(32) "Vapor-tight" means equipment that allows no loss of vapors. Compliance with vapor-tight requirements can be determined by checking to ensure that the concentration at a potential leak source is not equal to or greater than 100 percent of the Lower Explosive Limit when measured with a combustible gas detector, calibrated with propane, at a distance of 1 inch from the source.

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(33) “Vapor-tight gasoline cargo tank” means a gasoline cargo tank which has demonstrated within the 12 preceding months that it meets the annual certification test requirements in 40 CFR 63.11092(f).

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 468.020 & 468A.025  
Stats. Implemented: ORS 468A.040  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 20-1997, f. & cert. ef. 9-25-97; DEQ 18-1998, f. & cert. ef. 10-5-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0120; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-244-0210

### Emissions Limitation for Existing Sources

(1) Federal MACT. Existing major and area sources must comply with the applicable emissions standards for existing sources promulgated by the EPA pursuant to section 112(d), section 112(n), or section 129 of the FCAA and adopted by rule within this Division.

(2) State MACT. If the EPA fails to meet its schedule for promulgating a MACT standard for a source category or subcategory, DEQ must approve HAP emissions limitations for existing major sources within that category or subcategory according to 40 CFR Part 63, Subpart B.

(a) The owner or operator of each existing major source within that category will file permit applications in accordance with OAR 340-218-0040 and 40 CFR Part 63, Subpart B.

(b) If, after a permit has been issued, the EPA promulgates a MACT standard applicable to a source that is more stringent than the one established pursuant to this section, DEQ must revise the permit upon the next renewal to reflect the standard promulgated by the EPA. The source will be given a reasonable time to comply, but no longer than 8 years after the standard is promulgated;

(c) DEQ will not establish a case-by-case State MACT:

(A) For existing solid waste incineration units where an emissions standard will be established for these units by the EPA pursuant to section 111 of the FCAA. These sources are subject to applicable emissions standards under OAR chapter 340, division 230; or

(B) For existing major HAP sources where an emissions standard or alternative control strategy will be established by the EPA pursuant to section 112(n) of the FCAA.

(3) Compliance schedule:

(a) The owner or operator of the source must comply with the emission limitation:

(A) Within the time frame established in the applicable Federal MACT standard, but in no case later than three years from the date of federal promulgation of the applicable MACT requirements; or

(B) Within the time frame established by DEQ where a state-determined MACT has been established or a case-by-case determination has been made.

(b) Notwithstanding the requirements of this section, no existing source that has installed Best Available Control Technology or has been required to meet Lowest Achievable Emission Rate before the promulgation of a federal MACT applicable to that emissions unit is required to comply with such MACT standard until 5 years after the date on which such installation or reduction has been achieved, as determined by DEQ.

Stat. Auth.: ORS 468 & 468A  
Stats. Implemented: ORS 468A.310  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 7-1998, f. & cert. ef. 5-5-98; DEQ 18-1998, f. & cert. ef. 10-5-98, Renumbered from 340-032-2500; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0505; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-244-0220

### Federal Regulations Adopted by Reference

(1) Except as provided in sections (2) and (3) of this rule, **40 CFR Part 61, Subparts A, C through F, J, L, N through P, V, and Y through FF and 40 CFR Part 63, Subparts A, F through J, L through O, Q through Y, AA through EE, GG through MM, OO through YY, CCC through EEE, GGG through JJJ, LLL through RRR, TTT through VVV, XXX, AAAA, CCCC through KKKK, MMMM through YYYYY, AAAAA through CCCCC, EEEEE through NNNNN, PPPPP through UUUUU, WWWWW, YYYYYY, ZZZZZ, BBBBBB, DDDDDD through HHHH-HH, LLLLLL through TTTTTT, VVVVVV through EEEEEEE, and HHHHHHHH** are adopted by reference and incorporated herein.

(2) Where “Administrator” or “EPA” appears in 40 CFR Part 61 or 63, “DEQ” is substituted, except in any section of 40 CFR Part 61 or 63, for which a federal rule or delegation specifically indicates that authority will not be delegated to the state.

(3) 40 CFR Part 63 Subpart M — Dry Cleaning Facilities using Perchloroethylene: The exemptions in 40 CFR 63.320(d) and (e) do not apply.

(4) 40 CFR Part 61 Subparts adopted by this rule are titled as follows:

(a) Subpart A — General Provisions;

(b) Subpart C — Beryllium;

(c) Subpart D — Beryllium Rocket Motor Firing;

(d) Subpart E — Mercury;

(e) Subpart F — Vinyl Chloride;

(f) Subpart J — Equipment Leaks (Fugitive Emission Sources) of Benzene;

(g) Subpart L — Benzene Emissions from Coke By-Product Recovery Plants;

(h) Subpart N — Inorganic Arsenic Emissions from Glass Manufacturing Plants;

(i) Subpart O — Inorganic Arsenic Emissions from Primary Copper Smelters;

(j) Subpart P — Inorganic Arsenic Emissions from Arsenic Trioxide and Metal Arsenic Facilities;

(k) Subpart V — Equipment Leaks (Fugitive Emission Sources);

(l) Subpart Y — Benzene Emissions from Benzene Storage Vessels;

(m) Subpart BB — Benzene Emissions from Benzene Transfer Operations; and

(n) Subpart FF — Benzene Waste Operations.

(5) 40 CFR Part 63 Subparts adopted by this rule are titled as follows:

(a) Subpart A — General Provisions;

(b) Subpart F — SOCFMI;

(c) Subpart G — SOCFMI — Process Vents, Storage Vessels, Transfer Operations, and Wastewater;

(d) Subpart H — SOCFMI — Equipment Leaks;

(e) Subpart I — Certain Processes Subject to the Negotiated Regulation for Equipment Leaks;

(f) Subpart J — Polyvinyl Chloride and Copolymers Production;

(g) Subpart L — Coke Oven Batteries;

(h) Subpart M — Perchloroethylene Air Emission Standards for Dry Cleaning Facilities;

(i) Subpart N — Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks;

(j) Subpart O — Ethylene Oxide Emissions Standards for Sterilization Facilities;

(k) Subpart Q — Industrial Process Cooling Towers;

(l) Subpart R — Gasoline Distribution (Bulk Gasoline Terminals and Pipeline Breakout Stations);

(m) Subpart S — Pulp and Paper Industry;

(n) Subpart T — Halogenated Solvent Cleaning;

(o) Subpart U — Group I Polymers and Resins;

(p) Subpart W — Epoxy Resins and Non-Nylon Polyamides Production;

(q) Subpart X — Secondary Lead Smelting;

(r) Subpart Y — Marine Tank Vessel Loading Operations;

(s) Subpart AA — Phosphoric Acid Manufacturing Plants;

(t) Subpart BB — Phosphate Fertilizer Production Plants;

(u) Subpart CC — Petroleum Refineries;

(v) Subpart DD — Off-Site Waste and Recovery Operations;

(w) Subpart EE — Magnetic Tape Manufacturing Operations;

(x) Subpart GG — Aerospace Manufacturing and Rework Facilities;

(y) Subpart HH — Oil and Natural Gas Production Facilities;

(z) Subpart II — Shipbuilding and Ship Repair (Surface Coating);

(aa) Subpart JJ — Wood Furniture Manufacturing Operations;

(bb) Subpart KK — Printing and Publishing Industry;

(cc) Subpart LL — Primary Aluminum Reduction Plants;

(dd) Subpart MM — Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semi-Chemical Pulp Mills;

(ee) Subpart OO — Tanks — Level 1;

(ff) Subpart PP — Containers;

(gg) Subpart QQ — Surface Impoundments;

(hh) Subpart RR — Individual Drain Systems;

(ii) Subpart SS — Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process;

(jj) Subpart TT — Equipment Leaks — Control Level 1;

(kk) Subpart UU — Equipment Leaks — Control Level 2;

(ll) Subpart VV — Oil-Water Separators and Organic-Water Separators;

(mm) Subpart WW — Storage Vessels (Tanks) — Control Level 2;

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(nn) Subpart XX — Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations;  
(oo) Subpart YY — Generic Maximum Achievable Control Technology Standards;  
(pp) Subpart CCC — Steel Pickling — HCl Process Facilities and Hydrochloric Acid Regeneration Plants;  
(qq) Subpart DDD — Mineral Wool Production;  
(rr) Subpart EEE — Hazardous Waste Combustors;  
(ss) Subpart GGG — Pharmaceuticals Production;  
(tt) Subpart HHH — Natural Gas Transmission and Storage Facilities;  
(uu) Subpart III — Flexible Polyurethane Foam Production;  
(vv) Subpart JJJ — Group IV Polymers and Resins;  
(ww) Subpart LLL — Portland Cement Manufacturing Industry;  
(xx) Subpart MMM — Pesticide Active Ingredient Production;  
(yy) Subpart NNN — Wool Fiberglass Manufacturing;  
(zz) Subpart OOO — Manufacture of Amino/Phenolic Resins;  
(aaa) Subpart PPP — Polyether Polyols Production;  
(bbb) Subpart QQQ — Primary Copper Smelting;  
(ccc) Subpart RRR — Secondary Aluminum Production;  
(ddd) Subpart TTT — Primary Lead Smelting;  
(eee) Subpart UUU — Petroleum Refineries — Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units;  
(fff) Subpart VVV — Publicly Owned Treatment Works;  
(ggg) Subpart XXX — Ferroalloys Production: Ferromanganese and Silicomanganese;  
(hhh) Subpart AAAA — Municipal Solid Waste Landfills;  
(iii) Subpart CCCC — Manufacturing of Nutritional Yeast;  
(jjj) Subpart DDDD — Plywood and Composite Wood Products;  
(kkk) Subpart EEEE — Organic Liquids Distribution (non-gasoline);  
(lll) Subpart FFFF — Miscellaneous Organic Chemical Manufacturing;  
(mmm) Subpart GGGG — Solvent Extraction for Vegetable Oil Production;  
(nnn) Subpart HHHH — Wet Formed Fiberglass Mat Production;  
(ooo) Subpart IIII — Surface Coating of Automobiles and Light-Duty Trucks;  
(ppp) Subpart JJJJ — Paper and Other Web Coating;  
(qqq) Subpart KKKK — Surface Coating of Metal Cans;  
(rrr) Subpart MMMM — Surface Coating of Miscellaneous Metal Parts and Products;  
(sss) Subpart NNNN — Surface Coating of Large Appliances;  
(ttt) Subpart OOOO — Printing, Coating, and Dyeing of Fabrics and Other Textiles;  
(uuu) Subpart PPPP — Surface Coating of Plastic Parts and Products;  
(vvv) Subpart QQQQ — Surface Coating of Wood Building Products;  
(www) Subpart RRRR — Surface Coating of Metal Furniture;  
(xxx) Subpart SSSS — Surface Coating of Metal Coil;  
(yyy) Subpart TTTT — Leather Finishing Operations;  
(zzz) Subpart UUUU — Cellulose Production Manufacturing;  
(aaa) Subpart VVVV — Boat Manufacturing;  
(bbb) Subpart WWWW — Reinforced Plastics Composites Production;  
(ccc) Subpart XXXX — Rubber Tire Manufacturing;  
(ddd) Subpart YYYY — Stationary Combustion Turbines;  
(eee) Subpart AAAAA — Lime Manufacturing;  
(fff) Subpart BBBB — Semiconductor Manufacturing;  
(ggg) Subpart CCCCC — Coke Ovens: Pushing, Quenching & Battery Stacks;  
(hhh) Subpart EEEEE — Iron and Steel Foundries;  
(iii) Subpart FFFF — Integrated Iron and Steel Manufacturing Facilities;  
(jjj) Subpart GGGGG — Site Remediation;  
(kkk) Subpart HHHHH — Misc. Coating Manufacturing;  
(lll) Subpart IIII — Mercury Cell Chlor-Alkali Plants;  
(mmm) Subpart JJJJ — Brick and Structural Clay Products Manufacturing;  
(nnn) Subpart KKKKK — Clay Ceramics Manufacturing;  
(ooo) Subpart LLLLL — Asphalt Processing & Asphalt Roofing Manufacturing;  
(ppp) Subpart MMMM — Flexible Polyurethane Foam Fabrication Operations;  
(qqq) Subpart NNNNN — Hydrochloric Acid Production;  
(rrr) Subpart PPPPP — Engine Tests Cells/Stands;  
(sss) Subpart QQQQQ — Friction Materials Manufacturing Facilities;

(ttt) Subpart RRRRR — Taconite Iron Ore Processing;  
(uuu) Subpart SSSSS — Refractory Products Manufacturing;  
(vvv) Subpart TTTTT — Primary Magnesium Refining;  
(www) Subpart UUUUU — Coal- and Oil-Fired Electric Utility Steam Generating Units;  
(xxxx) Subpart WWWW — Area Sources: Hospital Ethylene Oxide Sterilization;  
(yyyy) Subpart YYYYY — Area Sources: Electric Arc Furnace Steelmaking Facilities;  
(zzzz) Subpart ZZZZZ — Area Sources: Iron and Steel Foundries;  
(aaaa) Subpart BBBBBB — Area Sources: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities;  
(bbbb) Subpart DDDDDD — Area Sources: Polyvinyl Chloride and Copolymers Production;  
(ccccc) Subpart EEEEEEE — Area Sources: Primary Copper Smelting;  
(dddd) Subpart FFFFFFF — Area Sources: Secondary Copper Smelting;  
(eeeee) Subpart GGGGGG — Area Sources: Primary Nonferrous Metals — Zinc, Cadmium, and Beryllium;  
(ffff) Subpart HHHHHH — Area Sources: Paint Stripping and Miscellaneous Surface Coating Operations;  
(ggggg) Subpart LLLLLL — Area Sources: Acrylic and Modacrylic Fibers Production;  
(hhhhh) Subpart MMMMMM — Area Sources: Carbon Black Production;  
(iiii) Subpart NNNNNN — Area Sources: Chemical Manufacturing: Chromium Compounds;  
(jjjj) Subpart OOOOOO — Area Sources: Flexible Polyurethane Foam Production;  
(kkkkk) Subpart PPPPPP — Area Sources: Lead Acid Battery Manufacturing;  
(lllll) Subpart QQQQQQ — Area Sources: Wood Preserving;  
(mmmmm) Subpart RRRRRR — Area Sources: Clay Ceramics Manufacturing;  
(nnnnn) Subpart SSSSSS — Area Sources: Glass Manufacturing;  
(ooooo) Subpart TTTTTT — Area Sources: Secondary Nonferrous Metals Processing;  
(ppppp) Subpart VVVVVV — Area Sources: Chemical Manufacturing;  
(qqqqq) Subpart WWWW — Area Source: Plating and Polishing Operations;  
(rrrrr) Subpart XXXXXX — Area Source: Nine Metal Fabrication and Finishing Source Categories;  
(sssss) Subpart YYYYYY — Area Sources: Ferroalloys Production Facilities;  
(ttttt) Subpart ZZZZZZ — Area Sources: Aluminum, Copper, and Other Nonferrous Foundries;  
(uuuuu) Subpart AAAAAA — Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing;  
(vvvvv) Subpart BBBBBBB — Area Sources: Chemical Preparations Industry;  
(wwwww) Subpart CCCCCC — Area Sources: Paints and Allied Products Manufacturing;  
(xxxxx) Subpart DDDDDDD — Area Sources: Prepared Feeds Manufacturing;  
(yyyyy) Subpart EEEEEEE — Area Sources: Gold Mine Ore Processing and Production;  
(zzzzz) Subpart HHHHHHH — Polyvinyl Chloride and Copolymers Production.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: [DEQ 16-1995, f. & cert. ef. 6-21-95; DEQ 28-1996, f. & cert. ef. 12-19-96; DEQ 18-1998, f. & cert. ef. 10-5-98]; [DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 32-1994, f. & cert. ef. 12-22-94]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0510, 340-032-5520; DEQ 11-2000, f. & cert. ef. 7-27-00; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-244-0234

### Affected Sources

- (1) The affected source to which the emission standards apply is each GDF. The affected source includes each gasoline cargo tank during the delivery of product to a GDF and also includes each storage tank.
- (2) The emissions standards in OAR 340-244-0236 through 0252 do not apply to agricultural operations as defined in ORS 468A.020. Agricultural operations are however required to comply with the Gasoline Dispensing NESHAP, if applicable (40 CFR part 63 subpart CCCCC).

# ADMINISTRATIVE RULES

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 4-2013, f. & cert. ef. 3-27-13

(3) All GDFs must comply with the requirements of OAR 340-244-0240.

(4) The owner or operator of a GDF must comply with the requirements of OAR 340-244-0242 for the following gasoline storage tanks:

(a) All tanks with a capacity of 250 gallons or more located at GDFs:

(A) Whose annual throughput exceeds 480,000 gallons of gasoline or more;

(B) Whose average monthly throughput exceeds 100,000 gallons of gasoline or more; or

(C) In Clackamas, Multnomah, or Washington County whose annual throughput exceeds 120,000 gallons of gasoline or more.

(b) All tanks with a capacity of 1,500 gallons or more located at GDFs in the Portland AQMA, Medford AQMA, or Salem SKATS.

(5) The owner or operator of a GDF must comply with the requirements of OAR 340-244-0242(4) for any gasoline storage tank equipped with a vapor balance system.

(6) An affected source must, upon request by DEQ, demonstrate their annual or monthly throughput. For new or reconstructed affected sources, as specified in OAR 340-244-0236(2) and (3), recordkeeping to document monthly throughput must begin upon startup of the affected source. For existing sources, as specified in OAR 340-244-0236(4), recordkeeping to document monthly throughput must begin on January 10, 2008. For existing sources that are subject only because they load gasoline into fuel tanks other than those in motor vehicles, as defined in OAR 340-244-0030, recordkeeping to document monthly throughput must begin on January 24, 2011. Records required under this section must be kept for a period of 5 years.

(7) The owner or operator of an affected source, as defined in section (1) of this rule, is not required to obtain a Title V Operating Permit. However, the owner or operator of an affected source must still apply for and obtain a Title V Operating Permit if meeting one or more of the applicability criteria found in OAR 340-218-0020.

(8) The loading of aviation gasoline storage tanks at airports, and the subsequent transfer of aviation gasoline within the airport, is not subject to OAR 340-244-0236 through 0252, except in the Portland AQMA, Medford AQMA, Salem SKATS, and Clackamas, Multnomah, and Washington Counties. In these geographic areas, aviation gasoline is subject to OAR 340-244-0236 through 0252.

(9) Monthly throughput is the total volume of gasoline loaded into, or dispensed from, all the gasoline storage tanks located at a single affected GDF. If an area source has two or more GDFs at separate locations within the area source, each GDF is treated as a separate affected source.

(10) If the affected source's throughput ever exceeds an applicable throughput threshold, the affected source will remain subject to the requirements for sources above the threshold, even if the affected source throughput later falls below the applicable throughput threshold.

(11) The dispensing of gasoline from a fixed gasoline storage tank at a GDF into a portable gasoline tank for the on-site delivery and subsequent dispensing of the gasoline into the fuel tank of a motor vehicle or other gasoline-fueled engine or equipment used within the area source is only subject to OAR 340-244-0240(1).

(12) For any affected source subject to the provisions of OAR 340-244-0232 through 0252 and another federal rule, the owner or operator may elect to comply only with the more stringent provisions of the applicable rules. The owner or operator of an affected source must consider all provisions of the rules, including monitoring, recordkeeping, and reporting. The owner or operator of an affected source must identify the affected source and provisions with which the owner or operator of an affected source will comply in the Notification of Compliance Status required under OAR 340-244-0246. The owner or operator of an affected source also must demonstrate in the Notification of Compliance Status that each provision with which the owner or operator of an affected source will comply is at least as stringent as the otherwise applicable requirements in OAR 340-244-0232 through 0252. The owner or operator of an affected source is responsible for making accurate determinations concerning the more stringent provisions, and noncompliance with this rule is not excused if it is later determined that your determination was in error, and, as a result, the owner or operator of an affected source is violating OAR 340-244-0232 through 0252. Compliance with this rule is the owner's or operator's responsibility and the Notification of Compliance Status does not alter or affect that responsibility.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

## 340-244-0238

### Compliance Dates

(1) For a new or reconstructed affected source, the owner or operator must comply with the standards in OAR 340-244-0240 and 0242, as applicable, no later than January 10, 2008 or upon startup, whichever is later, except as follows:

(a) The owner or operator of a new or reconstructed GDF must comply with OAR 340-244-0240(1)(b) and (c) no later than July 1, 2009 or upon startup, whichever is later.

(b) For tanks located at a GDF with average monthly throughput less than 100,000 gallons of gasoline and not listed in OAR 340-244-0234(4)(a)(C) or (4)(b), must comply with OAR 340-244-0242, as applicable, no later than December 13, 2009 or upon startup, whichever is later.

(c) The owner or operator of a GDF subject to Table 2 of OAR 340-244-0242 must comply no later than September 23, 2008 or upon startup, whichever is later.

(2) For an existing affected source, the owner or operator must comply with the standards in OAR 340-244-0240 and 0242, as applicable, by no later than January 10, 2011, except as follows:

(a) For tanks with a capacity between 1,500 and 40,000 gallons and located in the Portland AQMA, Medford AQMA, or Salem SATS, the owner or operator must comply with the standards in OAR 340-244-0240(3) and 0242 no later than December 13, 2008.

(b) For tanks located at an affected source located in Clackamas, Multnomah, or Washington County, whose annual throughput exceeds 120,000 gallons, the owner or operator must comply with the standards in OAR 340-244-0240(3) and 0242 no later than December 13, 2008.

(c) The owner or operator of an existing GDF must comply with OAR 340-244-0240(1)(b) and (c) no later than July 1, 2009 or upon startup, whichever is later.

(3) For an existing affected source that becomes subject to the control requirements in OAR 340-244-0242 because of an increase in the monthly throughput, as specified in OAR 340-244-0234(4), the owner or operator must comply with the standards OAR 340-244-0242 no later than 3 years after the affected source becomes subject to the control requirements in OAR 340-244-0242.

(4) The initial compliance demonstration test required under OAR 340-244-0244(1)(a) and (b) must be conducted as specified in subsections (4)(a) and (b) of this rule.

(a) For a new or reconstructed affected source, the owner or operator must conduct the initial compliance test upon installation of the complete vapor balance system.

(b) For an existing affected source, the owner or operator must conduct the initial compliance test as specified in paragraph (4)(b)(A) or (B) of this rule.

(A) For vapor balance systems installed on or before December 15, 2009 at a GDF whose average monthly throughput is 100,000 gallons of gasoline or more, the owner or operator must test no later than 180 days after the applicable compliance date specified in section (2) or (3) of this rule.

(B) For vapor balance systems installed after December 15, 2009, the owner or operator must test upon installation of a complete vapor balance system or a new gasoline storage tank.

(C) For a GDF whose average monthly throughput is less than or equal to 100,000 gallons of gasoline, the owner or operator is only required to test upon installation of a complete vapor balance system or a new gasoline storage tank.

(5) If the GDF is subject to the control requirements in OAR 340-244-0232 through 0252 only because it loads gasoline into fuel tanks other than those in motor vehicles, as defined in OAR 340-244-0030, the owner or operator of the GDF must comply with the standards in OAR 340-244-0232 through 0252 as specified in subsections (5)(a) and (b) of this rule.

(a) If the GDF is an existing facility, the owner or operator of the GDF must comply by January 24, 2014.

(b) If the GDF is a new or reconstructed facility, the owner or operator of the GDF must comply by the dates specified in paragraphs (5)(b)(A) and (B) of this rule.

(A) If startup of the GDF is after December 15, 2009, but before January 24, 2011, the owner or operator of the GDF must comply no later than January 24, 2011.

(B) If startup of the GDF is after January 24, 2011, the owner or operator of the GDF must comply upon startup of the GDF.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation



# ADMINISTRATIVE RULES

Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.  
Stat. Auth.: ORS 468.020 & 468A.025  
Stats. Implemented: ORS 468A.025  
Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 4-2013, f. & cert. ef. 3-27-13

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.  
Stat. Auth.: ORS 468.020 & 468A.025  
Stats. Implemented: ORS 468A.025  
Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-244-0239

### General Duties to Minimize Emissions

Each owner or operator of an affected source must comply with the requirements of sections (1) and (2) of this rule.

(1) The owner or operator of an affected source must, at all times, operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to DEQ which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(2) The owner or operator of an affected source must keep applicable records and submit reports as specified in OAR 340-244-0248(3) and 340-244-0250(2).

Stat. Auth.: ORS 468.020 & 468A.025  
Stats. Implemented: ORS 468A.025  
Hist.: DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-244-0240

### Work Practice and Submerged Fill Requirements

(1) The owner or operator of a GDF must not allow gasoline to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time. Measures to be taken include, but are not limited to, the following:

(a) Minimize gasoline spills;

(b) Do not top off or overfill vehicle tanks. If a person can confirm that a vehicle tank is not full after the nozzle clicks off (such as by checking the vehicle's fuel tank gauge), the person may continue to dispense fuel using best judgment and caution to prevent a spill;

(c) Post a sign at the GDF instructing a person filling up a motor vehicle to not top off the vehicle tank;

(d) Clean up spills as expeditiously as practicable;

(e) Cover all open gasoline containers and all gasoline storage tank fill-pipes with a gasketed seal when not in use;

(f) Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.

(g) Ensure that cargo tanks unloading at the GDF comply with subsections (1)(a) through (e) of this rule.

(2) Any cargo tank unloading at a GDF equipped with a functional vapor balance system must connect to the vapor balance system whenever gasoline is being loaded.

(3) Except as specified in section (4) of this rule, the owner or operator of a GDF must only load gasoline into storage tanks at the facility by utilizing submerged filling, as defined in OAR 340-244-0030, and as specified in subsection (3)(a), (3)(b), or (3)(c) of this rule. The applicable distances in subsections (3)(a) and (3)(b) must be measured from the point in the opening of the submerged fill pipe that is the greatest distance from the bottom of the storage tank.

(a) Submerged fill pipes installed on or before November 9, 2006, must be no more than 12 inches from the bottom of the storage tank.

(b) Submerged fill pipes installed after November 9, 2006, must be no more than 6 inches from the bottom of the storage tank.

(c) Submerged fill pipes not meeting the specifications of subsection (3)(a) or (3)(b) of this rule are allowed if the owner or operator of a GDF can demonstrate that the liquid level in the tank is always above the entire opening of the fill pipe. Documentation providing such demonstration must be made available for inspection by DEQ during the course of a site visit.

(4) Gasoline storage tanks with a capacity of less than 250 gallons are not subject to the submerged fill requirements in section (3) of this rule.

(5) The owner or operator of a GDF must submit the applicable notifications as required under OAR 340-244-0246.

(6) The owner or operator of a GDF must have records available within 24 hours of a request by DEQ to document gasoline throughput.

(7) The owner or operator of a GDF must comply with the requirements of this rule by the applicable dates specified in OAR 340-244-0238.

(8) Portable gasoline containers that meet the requirements of 40 CFR part 59 subpart F are considered acceptable for compliance with subsection (1)(e) of this rule.

## 340-244-0242

### Vapor Balance Requirements

(1) Except as provided in section (2) of this rule, the owner or operator of a gasoline storage tank listed in OAR 340-244-0234(4), must meet the requirements in either subsection (1)(a) or (1)(b) of this rule.

(a) Each management practice in Table 2 that applies to the GDF.

(b) If, prior to January 10, 2008, the owner or operator of a GDF operates a vapor balance system at the GDF that meets the requirements of either paragraph (1)(b)(A) or (1)(b)(B) of this rule, the owner or operator of a GDF will be deemed in compliance with this section.

(A) Achieves emissions reduction of at least 90 percent.

(B) Operates using management practices at least as stringent as those in Table 2 of this rule.

(2) Gasoline storage tanks equipped with floating roofs or the equivalent are not subject to the control requirements in section (1) of this rule.

(3) The owner or operator of a cargo tank unloading at a GDF must comply with the requirements of OAR 340-244-0240(1) and management practices in Table 3.

(4) The owner or operator of a GDF subject to section (1) of this rule or having a gasoline storage tank equipped with a vapor balance system, must comply with the following requirements on and after the applicable compliance date in OAR 340-244-0238:

(a) When loading a gasoline storage tank equipped with a vapor balance system, connect and ensure the proper operation of the vapor balance system whenever gasoline is being loaded.

(b) Maintain all equipment associated with the vapor balance system to be vapor tight and in good working order.

(c) In order to ensure that the vapor balance equipment is maintained to be vapor tight and in good working order, have the vapor balance equipment inspected on an annual basis to discover potential or actual equipment failures.

(d) Replace, repair or modify any worn or ineffective component or design element within 24 hours to ensure the vapor-tight integrity and efficiency of the vapor balance system. If repair parts must be ordered, either a written or verbal order for those parts must be initiated within 2 working days of detecting such a leak. Such repair parts must be installed within 5 working days after receipt.

(5) The owner or operator of a GDF subject to section (1) of this rule must also comply with the following requirements:

(a) The applicable testing requirements contained in OAR 340-244-0244.

(b) The applicable notification requirements under OAR 340-244-0246.

(c) The applicable recordkeeping and reporting requirements as specified in OAR 340-244-0248 and 0250.

(d) The owner or operator of a GDF must have records available within 24 hours of a request by DEQ to document gasoline throughput.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-244-0244

### Testing and Monitoring Requirements

(1) Each owner or operator of a GDF, at time of installation, as specified in OAR 340-244-0238(4), of a vapor balance system required under OAR 340-244-0242(1)(a), and every 3 years thereafter at a GDF with monthly throughput of 100,000 gallons of gasoline or more, must comply with the requirements in subsections (1)(a) and (b) of this rule.

(a) The owner or operator of a GDF must demonstrate compliance with the leak rate and cracking pressure requirements, specified in item 1(g) of Table 2 of OAR 340-244-0242, for pressure-vacuum vent valves installed on gasoline storage tanks using the test methods identified in paragraph (1)(a)(A) or (B) of this rule.

(A) California Air Resources Board Vapor Recovery Test Procedure TP-201.1E,—Leak Rate and Cracking Pressure of Pressure/Vacuum Vent

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Valves, adopted October 8, 2003 (incorporated by reference, see 40 CFR 63.14).

(B) Use alternative test methods and procedures in accordance with the alternative test method requirements in 40 CFR 63.7(f).

(b) The owner or operator of a GDF must demonstrate compliance with the static pressure performance requirement, specified in item 1(h) of Table 2 of OAR 340-244-0242, for the vapor balance system by conducting a static pressure test on the gasoline storage tanks using the test methods identified in paragraph (1)(b)(A), (1)(b)(B), or (1)(b)(C) of this rule.

(A) California Air Resources Board Vapor Recovery Test Procedure TP-201.3,—Determination of 2-Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, adopted April 12, 1996, and amended March 17, 1999 (incorporated by reference, see 40 CFR 63.14).

(B) Use alternative test methods and procedures in accordance with the alternative test method requirements in 40 CFR 63.7(f).

(C) Bay Area Air Quality Management District Source Test Procedure ST-30—Static Pressure Integrity Test—Underground Storage Tanks, adopted November 30, 1983, and amended December 21, 1994 (incorporated by reference, see 40 CFR 63.14).

(2) Each owner or operator of a GDF, choosing, under the provisions of 40 CFR 63.6(g), to use a vapor balance system other than that described in Table 2 of OAR 340-244-0242, must demonstrate to DEQ the equivalency of their vapor balance system to that described in Table 2 of OAR 340-244-0242 using the procedures specified in subsections (2)(a) through (c) of this rule.

(a) The owner or operator of a GDF must demonstrate initial compliance by conducting an initial performance test on the vapor balance system to demonstrate that the vapor balance system achieves 95 percent reduction using the California Air Resources Board Vapor Recovery Test Procedure TP-201.1, -- Volumetric Efficiency for Phase I Vapor Recovery Systems, adopted April 12, 1996, and amended February 1, 2001, and October 8, 2003, (incorporated by reference, see 40 CFR 63.14).

(b) The owner or operator of a GDF must, during the initial performance test required under subsection (2)(a) of this rule, determine and document alternative acceptable values for the leak rate and cracking pressure requirements specified in item 1(g) of Table 2 of OAR 340-244-0242 and for the static pressure performance requirement in item 1(h) of Table 2 of OAR 340-244-0242.

(c) The owner or operator of a GDF must comply with the testing requirements specified in section (1) of this rule.

(3) Conduct of performance tests. Performance tests must be conducted under such conditions as DEQ specifies to the owner or operator of a GDF based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Upon request, the owner or operator of a GDF must make available to DEQ such records as may be necessary to determine the conditions of performance tests.

(4) Owners and operators of gasoline cargo tanks subject to the provisions of Table 3 of OAR 340-244-0242 must conduct annual certification testing according to the vapor tightness testing requirements found in 40 CFR 63.11092(f).

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-244-0246

### Notifications

(1) Each owner or operator of a GDF subject to the control requirements in OAR 340-244-0240(3) must comply with subsections (1)(a) through (c) of this rule.

(a) The owner or operator of a GDF must submit an Initial Notification that the owner or operator is subject to the Gasoline Dispensing Facilities NESHAP by May 9, 2008, or at the time the owner or operator becomes subject to the control requirements in OAR 340-244-0240(3), unless the owner or operator meets the requirements in subsection (1)(c) of this rule. If the owner or operator of a GDF is subject to the control requirements in OAR 340-244-0240(3) only because the owner or operator loads gasoline into fuel tanks other than those in motor vehicles, as defined on OAR 340-244-0030, the owner or operator must submit the initial notification by April 24, 2013. The Initial Notification must contain the information specified in paragraphs (1)(a)(A) through (C) of this rule. The notification must be submitted to EPA's Region 10 Office and DEQ as specified in 40 CFR 63.13.

(A) The name and address of the owner and the operator.

(B) The address (i.e., physical location) of the GDF.

(C) The volume of gasoline loaded into all storage tanks or on the volume of gasoline dispensed from all storage tanks during the previous twelve months.

(D) A statement that the notification is being submitted in response to the Gasoline Dispensing Facilities NESHAP and identifying the requirements in OAR 340-244-0240(1) through (3) that apply to the owner or operator of a GDF.

(b) The owner or operator of a GDF must submit a Notification of Compliance Status to EPA's Region 10 Office and DEQ, as specified in 40 CFR 63.13, within 60 days of the applicable compliance date specified in OAR 340-244-0238, unless the owner or operator meets the requirements in subsection (1)(c) of this rule. The Notification of Compliance Status must be signed by a responsible official who must certify its accuracy, must indicate whether the source has complied with the requirements of OAR 340-244-0232 through 0252, and must indicate whether the facility's monthly throughput is calculated based on the volume of gasoline loaded into all storage tanks or on the volume of gasoline dispensed from all storage tanks. If the facility is in compliance with the requirements of OAR 340-244-0232 through 0252 at the time the Initial Notification required under subsection (1)(a) of this rule is due, the Notification of Compliance Status may be submitted in lieu of the Initial Notification provided it contains the information required under subsection (1)(a) of this rule.

(c) If, prior to January 10, 2008, the owner or operator of a GDF is operating in compliance with an enforceable State rule or permit that requires submerged fill as specified in OAR 340-244-0240(3), the owner or operator is not required to submit an Initial Notification or a Notification of Compliance Status under subsection (1)(a) or (b) of this rule.

(2) Each owner or operator of a GDF subject to the control requirements in OAR 340-244-0242 must comply with subsections (2)(a) through (e) of this rule.

(a) The owner or operator of a GDF must submit an Initial Notification that the owner or operator is subject to the Gasoline Dispensing Facilities NESHAP by May 9, 2008, or at the time the owner or operator becomes subject to the control requirements in OAR 340-244-0242. If the owner or operator of a GDF is subject to the control requirements in OAR 340-244-0242 only because the owner or operator loads gasoline into fuel tanks other than those in motor vehicles, as defined on OAR 340-244-0030, the owner or operator must submit the initial notification by April 24, 2013. The Initial Notification must contain the information specified in paragraphs (2)(a)(A) through (C) of this rule. The notification must be submitted to EPA's Region 10 Office and DEQ as specified in 40 CFR 63.13.

(A) The name and address of the owner and the operator.

(B) The address (i.e., physical location) of the GDF.

(C) The volume of gasoline loaded into all storage tanks or on the volume of gasoline dispensed from all storage tanks during the previous twelve months.

(D) A statement that the notification is being submitted in response to the Gasoline Dispensing Facilities NESHAP and identifying the requirements in OAR 340-244-0242 that apply to the owner or operator of a GDF.

(b) The owner or operator of a GDF must submit a Notification of Compliance Status to EPA's Regional 10 Office and DEQ, as specified in 40 CFR 63.13, in accordance with the schedule specified in 40 CFR 63.9(h). The Notification of Compliance Status must be signed by a responsible official who must certify its accuracy, must indicate whether the source has complied with the requirements of OAR 340-244-0232 through 0252, and must indicate whether the facility's monthly throughput is calculated based on the volume of gasoline loaded into all storage tanks or on the volume of gasoline dispensed from all storage tanks. If the facility is in compliance with the requirements OAR 340-244-0232 through 0252 at the time the Initial Notification required under subsection (2)(a) of this rule is due, the Notification of Compliance Status may be submitted in lieu of the Initial Notification provided it contains the information required under subsection (2)(a) of this rule.

(c) If, prior to January 10, 2008, the owner or operator of a GDF satisfies the requirements in both paragraphs (2)(c)(A) and (B) of this rule, the owner or operator is not required to submit an Initial Notification or a Notification of Compliance Status under subsections (2)(a) or (b) of this rule.

(A) The owner or operator of a GDF operates a vapor balance system at the gasoline dispensing facility that meets the requirements of either subparagraphs (2)(c)(A)(i) or (ii) of this rule.

(i) Achieves emissions reduction of at least 90 percent.

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(ii) Operates using management practices at least as stringent as those in Table 2 of OAR 340-244-0242.

(B) The GDF is in compliance with an enforceable State rule or permit that contains requirements of subparagraphs (2)(c)(A)(i) and (ii) of this rule.

(d) The owner or operator of a GDF must submit a Notification of Performance Test, as specified in 40 CFR 63.9(e), prior to initiating testing required by OAR 340-244-0244(1) and (2).

(e) The owner or operator of a GDF must submit additional notifications specified in 40 CFR 63.9, as applicable.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-244-0248

### Recordkeeping Requirements

(1) Each owner or operator of a GDF must keep the following records:

(a) Records of all tests performed under OAR 340-244-0244(1) and (2);

(b) Records related to the operation and maintenance of vapor balance equipment required under OAR 340-244-0242. Any vapor balance component defect must be logged and tracked by station personnel using forms provided by DEQ or a reasonable facsimile.

(c) Records of total throughput volume of gasoline, in gallons, for each calendar month.

(d) Records of permanent changes made at the GDF and vapor balance equipment which may affect emissions.

(2) Records required under section (1) of this rule must be kept for a period of 5 years and must be made available for inspection by DEQ during the course of a site visit.

(3) Each owner or operator of a gasoline cargo tank subject to the management practices in Table 3 of OAR 340-244-0242 must keep records documenting vapor tightness testing for a period of 5 years. Documentation must include each of the items specified in 40 CFR 63.11094(b)(2)(i) through (viii). Records of vapor tightness testing must be retained as specified in either subsection (3)(a) or (b) of this rule.

(a) The owner or operator of a gasoline cargo tank must keep all vapor tightness testing records with the cargo tank.

(b) As an alternative to keeping all records with the cargo tank, the owner or operator of a gasoline cargo tank may comply with the requirements of paragraphs (3)(a)(A) and (B) of this rule.

(A) The owner or operator of a gasoline cargo tank may keep records of only the most recent vapor tightness test with the cargo tank and keep records for the previous 4 years at their office or another central location.

(B) Vapor tightness testing records that are kept at a location other than with the cargo tank must be instantly available (e.g., via e-mail or facsimile) to DEQ during the course of a site visit or within a mutually agreeable time frame. Such records must be an exact duplicate image of the original paper copy record with certifying signatures.

(4) Each owner or operator of a GDF must keep records as specified in subsections (4)(a) and (b) of this rule.

(a) Records of the occurrence and duration of each malfunction of operation (i.e., process equipment) or the air pollution control and monitoring equipment.

(b) Records of actions taken during periods of malfunction to minimize emissions in accordance with OAR 340-244-0239(1), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & ORS 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 4-2013, f. & cert. ef. 3-27-13

## 340-244-0250

### Reporting Requirements

(1) Each owner or operator of a GDF subject to the management practices in OAR 340-244-0242 must report to DEQ the results of all volumetric efficiency tests required under OAR 340-244-0244(1) and (2). Reports submitted under this rule must be submitted within 180 days of the completion of the performance testing.

(2) Annual report. Each owner or operator of a GDF must report, by February 15 of each year, the following information, as applicable.

(a) The total throughput volume of gasoline, in gallons, for each calendar month.

(b) A summary of changes made at the facility on vapor recovery equipment which may affect emissions.

(c) List of all major maintenance performed on pollution control equipment.

(d) The number, duration, and a brief description of each type of malfunction which occurred during the previous calendar year and which caused or may have caused any applicable emission limitation to be exceeded.

(e) A description of actions taken by the owner or operator of a GDF during a malfunction to minimize emissions in accordance with OAR 340-244-0239(1), including actions taken to correct a malfunction.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & ORS 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 4-2013, f. & cert. ef. 3-27-13

## Department of Fish and Wildlife Chapter 635

**Rule Caption:** White Sturgeon Annual Bag Limit in Recreational Fisheries Increased

**Adm. Order No.:** DFW 23-2013(Temp)

**Filed with Sec. of State:** 3-20-2013

**Certified to be Effective:** 4-1-13 thru 9-27-13

**Notice Publication Date:**

**Rules Amended:** 635-014-0090, 635-016-0090, 635-017-0095, 635-023-0095, 635-039-0090

**Rules Suspended:** 635-016-0090(T), 635-017-0095(T), 635-023-0095(T), 635-039-0090(T)

**Subject:** These amended rules increase the annual bag limit for white sturgeon in recreational fisheries from one to two fish effective April 1, 2013

**Rules Coordinator:** Therese Kucera—(503) 947-6033

### 635-014-0090

#### Inclusions and Modifications

(1) The **2013 Oregon Sport Fishing Regulations** provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2013 Oregon Sport Fishing Regulations** pamphlet.

(2) Notwithstanding all other requirements provided in the 2013 Oregon Sport Fishing Regulations pamphlet, the following additional rules apply to adult salmon angling in waters of the Northwest Zone:

(a) All waters of the Necanicum River Basin, Nehalem River Basin (including North Fork), Tillamook Bay Basin, (including the Miami, Kilchis, Wilson, Trask, and Tillamook rivers), and the Nestucca River Basin (including the Little Nestucca and Three Rivers) and Salmon River that are open for Chinook salmon are limited to no more than 2 adult non fin-clipped Chinook salmon per day, and 10 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with all other waters in the Northwest Zone with a 10 adult non fin-clipped Chinook salmon seasonal aggregate limit. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31 except in the Nehalem Basin where the seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between July 1 and December 31.

(b) Within the Nehalem Basin (including the North Fork) the following additional rules apply:

(A) Mainstem closed to all salmon angling upstream of Foss Road (CC) Bridge (RM 15.5) July 1 through December 31.

(B) Nehalem tidewater from the jetty tips upstream to Miami-Foley Bridge on South Fork and North Fork Road Bridge on the North Fork is open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 1,200 non adipose fin-clipped coho salmon.

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and

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Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Siletz River, Yaquina River, Alsea River, Siuslaw River, Umpqua River).

(c) Within the Tillamook Bay Basin the following additional rules apply:

(A) Tillamook Bay tidewater from the jetty tips upstream to Highway 101 Bridge on Miami, Kilchis, Wilson, and Trask rivers and Burton Bridge on Tillamook River is open on Fridays and Saturdays only for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 1,000 non adipose fin-clipped coho salmon.

(B) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 1 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 1 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Nestucca River).

(d) Within the Nestucca Basin (including the Little Nestucca River and Three Rivers) the following rules apply:

(A) Mainstem Nestucca upstream of First Bridge (RM 15.8) near Beaver closed to all Chinook angling August 1 through December 31.

(B) Nestucca Bay tidewater (excluding Little Nestucca tidewater) from the bay mouth upstream to the Cloverdale Bridge (RM 7.1) is open on Sundays and Mondays only for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 250 non adipose fin-clipped coho salmon.

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 1 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 1 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Tillamook Basin rivers).

(e) Within the Siletz River Basin the following additional rules apply:

(A) Mainstem and tributaries above an ODFW marker sign approximately 1,200 feet upstream of Ojalla Bridge (RM 31) closed to Chinook August 1-December 31; Drift Creek (Siletz River Basin) upstream of the confluence with Quarry Creek at RM 8 is closed for Chinook salmon from August 1 through December 31;

(B) Siletz River and Bay upstream an ODFW marker sign approximately 1,200 feet upstream of Ojalla Bridge (RM 31) is open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 1,200 non adipose fin-clipped coho salmon; and

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Nehalem River, Yaquina River, Alsea River, Siuslaw River, Umpqua River).

(f) Within the Yaquina River Basin the following additional rules apply:

(A) All waters of the Yaquina River upstream of the confluence of the Yaquina River and Big Elk Creek at RM 18.3 and all waters of Big Elk Creek (Yaquina River Basin) are closed for Chinook salmon from August 1 through December 31;

(B) The Yaquina River and Bay upstream to the confluence of the Yaquina River and Big Elk Creek are open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 800 non adipose fin-clipped coho salmon; and

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 5 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Nehalem River, Siletz River, Alsea River, Siuslaw River, Umpqua River).

(g) Within the Alsea River Basin the following additional rules apply:

(A) All waters of Drift Creek (Alsea River Basin) within the Drift Creek Wilderness Area and upstream are closed for Chinook salmon from August 1 through December 31;

(B) All waters of the Alsea River upstream of the confluence with Five Rivers at RM 21 are closed for Chinook salmon from August 1 through December 31;

(C) All waters of Five Rivers are closed for Chinook salmon from August 1 through December 31.

(D) The Alsea River and Bay upstream to the confluence of the Alsea River and Five Rivers are open for non adipose fin-clipped coho salmon from October 1 through the earlier of December 15 or attainment of an adult coho salmon quota of 950 non adipose fin-clipped coho salmon; and

(E) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Nehalem River, Siletz River, Yaquina River, Siuslaw River, Umpqua River).

(h) Within the Siuslaw River Basin the following additional rules apply:

(A) All waters of the Siuslaw River upstream of the confluence with Lake Creek at RM 30.0 are closed for Chinook salmon from August 1 through December 31;

(B) All waters of Lake Creek are closed for Chinook salmon August 1 through December 31 and all waters of Lake Creek downstream of Fish Creek are closed to all angling from September 1 through November 30;

(C) The Siuslaw River and Bay upstream to the confluence of the Siuslaw River and Lake Creek are open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 1,700 non adipose fin-clipped coho salmon; and

(D) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Nehalem River, Yaquina River, Alsea River, Siuslaw River, Umpqua River).

(3) Effective January 1, 2013, the use of barbless hooks is required when angling for salmon, steelhead, or trout in the following areas:

(a) Within the Youngs Bay Select Area (Clatsop County) from the Highway 101 Bridge upstream to markers at the confluence of the Youngs and Klaskanine rivers including the lower Lewis and Clark River upstream to the Alternate Highway 101 Bridge, and the lower Walluski River upstream to the Highway 202 Bridge.

(b) In Gnat Creek (Clatsop County) from the railroad bridge upstream to the Aldrich Point Road Bridge.

(4) Effective April 1, 2013, the annual bag and possession limit for white sturgeon is two (2) fish and catch-and-release angling for white sturgeon is allowed year-round. Effective January 1, 2014, all waters within the Northwest Zone are closed to the retention of white sturgeon and catch-and-release angling is allowed year-round.

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef. 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; DFW 127-2005(Temp),

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f. & cert. ef. 11-23-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 53-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 7-9-06; Administrative correction 7-20-06; DFW 64-2006(Temp), f. 7-17-06, cert. ef. 8-1-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 104-2006(Temp), f. 9-19-06, cert. ef. 10-1-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 63-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 43-2009(Temp), f. 5-5-09, cert. ef. 5-22-09 thru 10-31-09; DFW 67-2009(Temp), f. 6-9-09, cert. ef. 6-15-09 thru 10-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 99-2009(Temp), f. 8-26-09, cert. ef. 9-1-09 thru 12-31-09; DFW 115-2009(Temp), f. & cert. ef. 9-22-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 44-2010(Temp), f. 4-20-10, cert. ef. 4-21-10 thru 9-30-10; DFW 73-2010(Temp), f. 5-27-10, cert. ef. 6-1-10 thru 9-30-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 89-2010(Temp), f. 6-28-10, cert. ef. 7-1-10 thru 9-30-10; Administrative correction 10-26-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 57-2011(Temp), f. 5-27-11, cert. ef. 6-1-11 thru 6-30-11; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11; DFW 139-2011(Temp), f. 10-3-11, cert. ef. 10-6-11 thru 12-31-11; DFW 141-2011(Temp), f. 10-6-11, cert. ef. 10-10-11 thru 12-31-11; DFW 143-2011(Temp), f. 10-10-11, cert. ef. 10-11-11 thru 12-31-11; DFW 148-2011(Temp), f. 10-20-11, cert. ef. 10-21-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 53-2012(Temp), f. 5-29-12, cert. ef. 6-1-12 thru 10-31-12; DFW 62-2012, f. 6-12-12, cert. ef. 7-1-12; DFW 63-2012(Temp), f. & cert. ef. 6-12-12 thru 10-31-12; DFW 71-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 11-30-12; DFW 130-2012(Temp), f. 10-10-12, cert. ef. 10-13-12 thru 12-31-12; DFW 135-2012(Temp), f. 10-22-12, cert. ef. 10-24-12 thru 12-31-12; DFW 139-2012(Temp), f. 10-30-12, cert. ef. 10-31-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13

## 635-016-0090

### Inclusions and Modifications

(1) The **2013 Oregon Sport Fishing Regulations** provide requirements for the Southwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2013 Oregon Sport Fishing Regulations.

(2) Notwithstanding all other requirements provided in the **2013 Oregon Sport Fishing Regulations**, the following restrictions apply to angling in waters of the Southwest Zone:

(a) Within the Umpqua River Basin the following additional rules apply:

Open for non adipose fin-clipped coho salmon in the Mainstem Umpqua River and Bay from the mouth to Scottsburg Bridge at RM 27.5 from September 15 through the earlier of November 30 or attainment of an adult coho quota of 3,000 non adipose fin-clipped coho. The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Nehalem River, Siletz River, Yaquina River, Alsea River, Siuslaw River).

(b) Within the Coos River Basin the following additional rules apply:

(A) All waters of the South Fork Coos River upstream from the head of tidewater at Dellwood at RM 10.0 are closed for all salmon angling from August 1 through December 31 and closed for steelhead from August 1 through November 14; and

(B) Open for non adipose fin-clipped coho salmon upstream to the head of tide at Dellwood at RM 10.0 on the South Coos River and to the East Fork/West Fork Millicoma confluence from September 15 through the earlier of November 30 or attainment of an adult coho quota of 1,200 non adipose fin-clipped coho. The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon, and no more than 5 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone.

(c) Within the Coquille River Basin the following additional rules apply: Open for non adipose fin-clipped coho salmon in Coquille River and Bay upstream to the Highway 42S bridge (Sturdivant Park) at RM 24.0 from September 15 through the earlier of November 30 or attainment of an adult coho quota of 1,500 non adipose fin-clipped coho. The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon, and no more than 5 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone.

(d) Within the Tenmile Lakes Basin the following additional rules apply: North and South Tenmile Lakes (Coos County) upstream from Hilltop Bridge are open for non adipose fin-clipped coho salmon from October 1 through December 31. The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon, and no more than 5 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone. Only one rod per angler may be used while angling for coho. Streams that empty into North and South Tenmile

Lakes are not open to coho salmon angling, nor is the canal that connects North and South Tenmile Lakes.

(e) All waters of Floras Creek upstream of the County Road 124 bridge over Floras Creek at RM 5.0 are closed for Chinook salmon from August 1 through December 31.

(f) Within the Sixes River Basin the following additional rules apply:

(A) All waters of the Sixes River Basin that are open for Chinook salmon are limited to no more than 1 adult non fin-clipped Chinook salmon per day and 10 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with waters of the Elk River and Elk River Ocean Terminal Area. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31.

(B) Closed to Chinook salmon upstream of Edson Creek at RM 10.0 from August 1 through December 31.

(g) Within the Elk River Basin the following additional rules apply: All waters of the Elk River Basin that are open for Chinook salmon are limited to no more than 1 adult non fin-clipped Chinook salmon per day and 10 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with waters of the Sixes River and Elk River Ocean Terminal Area. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31.

(h) All waters of the Chetco River mainstem upstream of the power-line crossing at RM 2.2 are closed to angling from August 1 through November 2.

(i) All waters of the Winchuck River mainstem, including tidewater, are closed to angling from August 1 through November 2.

(3) Effective April 1, 2013, the annual bag and possession limit for white sturgeon is two (2) fish and catch-and-release angling for white sturgeon is allowed year-round. Effective January 1, 2014, all waters within the Southwest Zone are closed to the retention of white sturgeon and catch-and-release angling is allowed year-round.

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

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, cert. ef. 11-9-2002); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 127-2004, f. 12-22-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 24-2006(Temp), f. 4-25-06, cert. ef. 5-13-06 thru 10-31-06; DFW 37-2006(Temp), f. 6-2-06, cert. ef. 6-5-06 thru 12-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 47-2007(Temp), f. 6-18-07, cert. ef. 6-21-07 thru 10-31-07; DFW 56-2007(Temp), 7-6-07, cert. ef. 8-1-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 137-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 54-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 7-31-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 138-2008(Temp), f. 10-28-08, cert. ef. 11-1-08 thru 11-30-08; DFW 140-2008(Temp), f. 11-4-08, cert. ef. 11-5-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 57-2009(Temp), f. 5-27-09, cert. ef. 6-1-09 thru 7-31-09; DFW 77-2009(Temp), f. 6-29-09, cert. ef. 7-1-09 thru 7-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 113-2009(Temp), f. & cert. ef. 9-18-09 thru 12-31-09; DFW 141-2009(Temp), f. 11-4-09, cert. ef. 11-7-09 thru 12-21-09; DFW 143-2009(Temp), f. 11-17-09, cert. ef. 11-19-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 65-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 5-31-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 143-2010(Temp), f. 10-8-10, cert. ef. 10-10-10 thru 12-31-10; DFW 152-2010(Temp), f. 10-27-10, cert. ef. 10-30-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 31-2011(Temp), f. 4-18-11, cert. ef. 5-1-11 thru 10-27-11; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11; DFW 137-2011(Temp), 9-30-11, cert. ef. 10-1-11 thru 12-31-11; DFW 145-2011(Temp), f. 10-11-11, cert. ef. 10-12-11 thru 12-31-11; DFW 149-2011(Temp), f. 10-20-11, cert. ef. 10-22-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 62-2012, f. 6-12-12, cert. ef. 7-1-12; DFW 138-2012(Temp), f. 10-29-12, cert. ef. 10-31-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 155-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-29-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13

# ADMINISTRATIVE RULES

## 635-017-0095

### Sturgeon Season

(1) The **2013 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 2013 Oregon Sport Fishing Regulations.

(2) Effective April 1, 2013, the annual bag and possession limit for white sturgeon is two (2) fish. Only white sturgeon with a fork length of 38-54 inches may be retained. In 2013, the Willamette River downstream of Willamette Falls (including Multnomah Channel and the Gilbert River) is open to the retention of white sturgeon three days per week, Thursday, Friday, and Saturday during the periods from July 11-13 and July 18-20 or until the harvest guideline of 1,733 fish is met.

(3) Catch-and-release angling for white sturgeon is allowed year-round except as described below in sections (4) and (6).

(4) Bank angling is prohibited from the east shore of the Willamette River the entire year in the area beginning west of Highway 99E, at the northern-most extent of the parking area near the intersection of 8th Street and Highway 99E in Oregon City, approximately 290 feet downstream of the Oregon City/West Linn bridge (Hwy 43) and extending upstream approximately 1715 feet to the retaining wall extending into the Willamette River at the NW corner of the Blue Heron Paper Mill.

(5) Effective February 28, 2013 angling for sturgeon, including catch-and-release, is prohibited in the Sandy River. Retention of green sturgeon is prohibited all year in all areas.

(6) Angling for sturgeon, including catch-and-release, is prohibited seven days per week during May 1 through August 31 from Willamette Falls downstream to the I-205 Bridge.

(7) Effective January 1, 2014, all waters within the Willamette Zone are closed to the retention of white sturgeon.

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

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 74-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 7-2008, f. & cert. ef. 2-11-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 90-2010(Temp), f. 6-29-10, cert. ef. 7-5-10 thru 12-31-10; DFW 154-2010(Temp), f. & cert. ef. 11-8-10 thru 12-31-10; DFW 163-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 10-2011(Temp), f. 2-10-11, cert. ef. 2-17-11 thru 6-29-11; DFW 22-2011(Temp), f. 3-16-11, cert. ef. 3-17-11 thru 6-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 9-2012(Temp), f. 2-6-12, cert. ef. 2-17-12 thru 4-30-12; DFW 17-2012(Temp), f. 2-22-12, cert. ef. 2-23-12 thru 4-30-12; Administrative correction, 5-25-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 13-2013(Temp), f. 2-13-13, cert. ef. 2-14-13 thru 7-31-13; DFW 17-2013(Temp), f. 2-27-13, cert. ef. 2-28-13 thru 7-31-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13

## 635-023-0095

### Sturgeon Season

(1) The **2013 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2013 Oregon Sport Fishing Regulations**.

(2) In 2013, the mainstem Columbia River from the Wauna powerlines (River Mile 40) upstream to Bonneville Dam, excluding the lower Willamette River upstream to Willamette Falls, Multnomah Channel, and the Gilbert River, is open to the retention of white sturgeon with a fork length of 38-54 inches, three days per week, Thursdays through Saturdays, during the following periods:

(a) January 1 through June 15; and

(b) October 19 through December 31.

(3) In 2013, the mainstem Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

(a) January 1 through April 30;

(b) May 11 through June 30 (or until guideline is met).

(4) During the fishing period as identified in subsection (3)(a) of this rule, only white sturgeon with a fork length of 38-54 inches may be retained.

(5) During the fishing periods as identified in subsection (3)(b) of this rule, only white sturgeon with a fork length of 41-54 inches may be retained.

(6) Effective April 1, 2013, the annual bag and possession limit for white sturgeon is two (2) fish.

(7) Angling for sturgeon is prohibited from:

(a) Bonneville Dam downstream 9 miles to a line crossing the Columbia River from Navigation Marker 82 on the Oregon shore westerly to a boundary marker on the Washington shore upstream of Fir Point from May 1 through August 31;

(b) Highway 395 Bridge upstream to McNary Dam; and

(c) From the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(8) Angling is prohibited for all species from the upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) from January 1 through April 30.

(9) The mainstem Columbia River from McNary Dam upstream to the Oregon-Washington border at river mile 309.5 is open to retention of white sturgeon with a fork length of 43-54 inches, seven days per week from February 1 through July 31.

(10) Retention of green sturgeon is prohibited all year in all areas.

(11) Catch-and-release angling is allowed year-round except as described above in sections (7)(a) through (7)(c) and (8) above.

(12) Effective January 1, 2014, the mainstem Columbia River from the mouth at Buoy 10 upstream to Bonneville Dam, including Oregon tributaries upstream to the mainline railroad bridges, is closed to the retention of white sturgeon.

(13) Effective 12:01 a.m. Monday February 11, 2013, the retention of white sturgeon is prohibited in the mainstem Columbia River from Bonneville Dam upstream to The Dalles Dam (Bonneville Pool) including adjacent tributaries.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 33-2009(Temp), f. 4-2-09, cert. ef. 4-13-09 thru 10-9-09; DFW 63-2009(Temp), f. 6-3-09, cert. ef. 6-6-09 thru 10-9-09; DFW 83-2009(Temp), f. 7-8-09, cert. ef. 7-9-09 thru 12-31-09; DFW 86-2009(Temp), f. 7-22-09, cert. ef. 7-24-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 13-2010(Temp), f. 2-16-10, cert. ef. 2-21-10 thru 7-31-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 50-2010(Temp), f. 4-29-10, cert. ef. 5-6-10 thru 11-1-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; DFW 91-2010(Temp), f. 6-29-10, cert. ef. 8-1-10 thru 12-31-10; DFW 99-2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 12-31-10; DFW 165-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 11-2011(Temp), f. 2-10-11, cert. ef. 2-11-11 thru 7-31-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 26-2011(Temp), f. 4-5-11, cert. ef. 4-10-11 thru 9-30-11; DFW 74-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-31-11; DFW 87-2011(Temp), f. 7-8-11, cert. ef. 7-9-11 thru 7-31-11; DFW 96-2011(Temp), f. 7-20-11, cert. ef. 7-30-11 thru 12-31-11; DFW 129-2011(Temp), f. 9-15-11, cert. ef. 9-30-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 1-2012(Temp), f. & cert. ef. 1-5-12 thru 7-2-12; DFW 10-2012, f. & cert. ef. 2-7-12; DFW 16-2012(Temp), f. 2-14-12, cert. ef. 2-18-12 thru 7-31-12; DFW 44-2012(Temp), f. 5-1-12, cert. ef. 5-20-12 thru 7-31-12; DFW 73-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 8-31-12; DFW 97-2012(Temp), f. 7-30-12, cert. ef. 8-1-12 thru 12-31-12; DFW 129-2012(Temp), f. 10-3-12, cert. ef. 10-20-12 thru 12-31-12; DFW 140-2012(Temp), f. 10-31-12, cert. ef. 11-4-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 154-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 2-28-13; DFW 12-2013(Temp), f. 2-12-13, cert. ef. 2-28-13 thru 7-31-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13

## 635-039-0090

### Inclusions and Modifications

(1) The **2013 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 **2013 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

# ADMINISTRATIVE RULES

related mortality) by the Oregon sport fishery in a single calendar year. For 2012 the sport harvest caps are:

- (a) Black rockfish, 440.8 metric tons.
- (b) Cabezon, 16.8 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 2012 the sport landing caps are:

- (a) Black rockfish and blue rockfish combined, 481.8 metric tons.
- (b) Other nearshore rockfish, 13.6 metric tons.
- (c) Greenling, 5.2 metric tons.

(5) In addition to the regulations for Marine Fish in the 2013 Oregon Sport Fishing Regulations, the following apply for the sport fishery in the Marine Zone in 2012:

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit.

(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the 2013 Oregon Sport Fishing Regulations in the Marine Zone, located under the category of Species Name, Marine Fish: 7 fish daily bag limit in aggregate (total sum or number), of which no more than one be a cabezon from April 1 through September 30. Retention of the following species is prohibited:

- (A) Yelloweye rockfish;
- (B) Canary rockfish; and
- (C) Cabezon from January 1 through June 30 and from October 1 through December 31.

(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 Humbag Mountain. Persons must also consult all publications referenced in OAR 635-039-0080 to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (5)(a), (5)(b) and (5)(c) including the following:

- (A) Minimum length for lingcod, 22 inches.
- (B) Minimum length for cabezon, 16 inches.
- (C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (5)(a), (5)(b) and (5)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except as provided in subsections (5)(a) and (5)(d), and ocean waters are closed for these species during April 1 through September 30, outside of the 30-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 71. A 20-fathom, 25-fathom, or 30-fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 Section 71 may be implemented as the management line as in-season modifications necessitate. In addition, the following management lines may be used to set area specific regulations for inseason action only:

- (A) Cape Lookout (45°20'30" N latitude); and
- (B) Cape Blanco (42°50'20" N latitude).

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in Title 50 Code of Federal Regulations Part 660 Section 70 (October 1, 2012 ed.). Within the YRCA, it is unlawful to fish for, take, or retain species listed in subsections (5)(a), (5)(b) and (5)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (5)(a), (5)(b) and (5)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (5)(a), (5)(b) and (5)(c) and including leopard

shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

(h) Effective April 1, 2013, the annual bag and possession limit for white sturgeon is two (2) fish and catch-and-release angling for white sturgeon is allowed year-round. Effective January 1, 2014, all waters within the Marine Zone are closed to the retention of white sturgeon and catch-and-release angling is allowed year-round.

(6) Razor clams may be taken by hand, shovel, or cylindrical gun or tube. The opening of the gun/tube must be either circular or elliptical with the circular gun/tube opening having a minimum outside diameter of 4 inches and the elliptical gun/tube opening having minimum outside diameter dimensions of 4 inches long and 3 inches wide.

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119  
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129  
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; FWC 100-1998, f. 12-23-98, cert. ef. 1-1-99; FWC 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; FWC 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 10-2007, f. & cert. ef. 2-14-07; DFW 66-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 73-2008(Temp), f. 6-30-08, cert. ef. 7-7-08 thru 12-31-08; DFW 97-2008(Temp), f. 8-18-08, cert. ef. 8-21-08 thru 12-31-08; DFW 105-2008(Temp), f. 9-4-08, cert. ef. 9-7-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 7-2009(Temp), f. & cert. ef. 2-2-09 thru 7-31-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 110-2009(Temp), f. 9-10-09, cert. ef. 9-13-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 103-2010(Temp), f. 7-21-10, cert. ef. 7-23-10 thru 12-31-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 97-2011(Temp), f. & cert. ef. 7-20-11 thru 12-31-11; DFW 135-2011(Temp), f. 9-21-11, cert. ef. 10-1-11 thru 12-31-11; DFW 155-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 12-31-11; DFW 156-2011(Temp), f. 12-9-11, cert. ef. 12-15-11 thru 1-31-12; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 90-2012(Temp), f. 7-17-12, cert. ef. 9-20-12 thru 12-31-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 155-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-29-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13

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**Rule Caption:** Blind Slough and Deep River Select Area Commercial Fisheries Modified

**Adm. Order No.:** DFW 24-2013(Temp)

**Filed with Sec. of State:** 3-21-2013

**Certified to be Effective:** 3-21-13 thru 7-31-13

**Notice Publication Date:**

**Rules Amended:** 635-042-0160, 635-042-0180

**Rules Suspended:** 635-042-0160(T), 635-042-0180(T)

**Subject:** These amended rules add two new fishing periods to the ongoing Chinook salmon and white sturgeon fisheries in the Blind Slough and Deep River select areas of the Columbia River. Modifications are consistent with the action taken March 21, 2013 by the Columbia River Compact agencies of the states of Oregon and Washington.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

**635-042-0160**

**Blind Slough and Knappa Slough Select Area Salmon Season**

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes during open 2013 fishing periods described as the winter fishery and the spring fishery in subsections (1)(a)(A) and (1)(a)(B) respectfully, of this rule in those waters of Blind Slough and Knappa Slough. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough and Knappa Slough in subsection (1)(a)(A), the winter fishery in Blind Slough only in subsection (1)(a)(B),

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and the spring fishery in Blind Slough and Knappa Slough in subsection (1)(a)(C). The seasons are open nightly from 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough and Knappa Slough: Monday and Thursday nights beginning Monday, February 11 through Monday, March 11 (9 nights);

(B) Blind Slough Only: Monday and Thursday nights March 14 through April 1 (6 nights);

(C) Blind Slough and Knappa Slough during the following periods: Thursday, April 18; Tuesday, April 23; and Thursday and Monday nights from April 25 through June 13 (17 nights).

(b) The fishing areas for the winter and spring seasons are:

(A) Blind Slough are those waters from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge.

(B) Knappa Slough are all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

(C) During the period from May 2 through June 14, the Knappa Slough fishing area extends downstream to the boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore.

(c) Gear restrictions are as follows:

(A) During the winter and spring fisheries, outlined above in subsections (1)(a)(A), (1)(a)(B), and (1)(a)(C), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and/or anchors directly to the lead line is permitted.

(B) It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter fishery or greater than 9.75-inches during the spring fishery.

(C) Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(2) A maximum of four (4) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) during the winter season described in sections (1)(a)(A) and (1)(a)(B) above; and a maximum of two (2) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) during the spring season described in section (1)(a)(C) above. During the fishing periods identified in subsections (1)(a)(A), (1)(a)(B) and (1)(a)(C), the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

(3) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp) f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 16-2006(Temp), f. 3-23-06, cert. ef. 3-26-06 thru 7-27-06; DFW 18-2006(Temp), f. 3-29-06, cert. ef. 4-2-06 thru 7-27-06; DFW 20-2006(Temp), f. 4-7-06, cert. ef. 4-9-06 thru 7-27-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 75-2006(Temp), f. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 92-2006(Temp), f. 9-1-06, cert. ef. 9-5-06 thru 12-31-06; DFW 98-2006(Temp), f. & cert. ef. 9-12-06 thru 12-31-

06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 103(Temp), f. 8-26-08, cert. ef. 9-2-08 thru 10-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 15-2010(Temp), f. 2-19-10, cert. ef. 2-21-10 thru 6-11-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 44-2011(Temp), f. & cert. ef. 5-11-11 thru 6-10-11; Administrative correction 6-28-11; DFW 113-2011(Temp), f. 8-10-11, cert. ef. 8-15-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 12-2012(Temp), f. 2-8-12, cert. ef. 2-12-12 thru 7-31-12; DFW 104-2012(Temp), f. 8-6-12, cert. ef. 8-13-12 thru 10-31-12; Administrative correction 11-23-12; DFW 11-2013(Temp), f. 2-8-13, cert. ef. 2-11-13 thru 7-31-13; DFW 24-2013(Temp), f. & cert. ef. 3-21-13 thru 7-31-13

## 635-042-0180

### Deep River Select Area Salmon Season

(1) Salmon, shad, and white sturgeon may be taken for commercial purposes from the US Coast Guard navigation marker #16 upstream to the Highway 4 Bridge.

(2) The 2013 fishing seasons are open:

(a) Winter season: Monday and Thursday nights from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) beginning February 11 through April 1 (13 nights).

(b) Spring season: Thursday, April 18; Tuesday, April 23; and Thursday and Monday nights from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) beginning April 25 through June 13 (17 nights in all).

(3) Gear restrictions are as follows:

(a) Gill nets may not exceed 100 fathoms in length and there is no weight restriction on the lead line. The attachment of additional weight and/or anchors directly to the lead line is permitted. Nets may not be tied off to stationary structures and may not fully cross navigation channel.

(b) It is *unlawful* to operate in any river, stream or channel any gill net longer than three-fourths the width of the stream. It is *unlawful* in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area. Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(c) Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

(d) During the winter season, outlined above in subsection (2)(a), it is *unlawful* to use a gill net having a mesh size that is less than 7-inches.

(e) During the spring season, outlined above in subsection (2)(b) it is *unlawful* to use a gill net having a mesh size that is more than 9.75-inches.

(4) A maximum of four (4) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) during the winter season described in section (2)(a) above and a maximum of two (2) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) during the spring season described in section (2)(b) above. During the fishing periods identified in subsections (2)(a) and (2)(b) above, the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

(5) Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff. During the winter season, described in subsection (2)(a) above, fishers are required to call (360) 795-0319 for the location and time of sampling. During the spring season, described in subsection (2)(b) above, a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

Stat. Auth.: ORS 183.325, 506.109 & 506.119



# ADMINISTRATIVE RULES

Stats. Implemented: ORS 506.129 & 507.030  
Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. & cert. ef. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. & cert. ef. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. & cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. & cert. ef. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. & cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. & cert. ef. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. & cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. & cert. ef. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. & cert. ef. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 77-2006(Temp), f. & cert. ef. 8-8-06, cert. ef. 9-4-06 thru 12-31-06; DFW 103-2006(Temp), f. & cert. ef. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. & cert. ef. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 61-2007(Temp), f. & cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. & cert. ef. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 6-2008(Temp), f. & cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. & cert. ef. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. & cert. ef. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. & cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. & cert. ef. 2-15-09 thru 7-31-09; DFW 23-2009(Temp), f. & cert. ef. 3-5-09, cert. ef. 3-6-09 thru 4-30-09; DFW 35-2009(Temp), f. & cert. ef. 4-7-09, cert. ef. 4-8-09 thru 4-30-09; DFW 49-2009(Temp), f. & cert. ef. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. & cert. ef. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. & cert. ef. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; DFW 112-2009(Temp), f. & cert. ef. 9-11-09, cert. ef. 9-13-09 thru 10-30-09; DFW 121-2009(Temp), f. & cert. ef. 9-30-09 thru 10-31-09; Administrative correction 11-19-09; DFW 16-2010(Temp), f. & cert. ef. 2-19-10, cert. ef. 2-22-10 thru 6-10-10; DFW 40-2010(Temp), f. & cert. ef. 4-1-10 thru 7-31-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. & cert. ef. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. & cert. ef. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. & cert. ef. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 53-2011(Temp), f. & cert. ef. 5-18-11 thru 6-10-11; Administrative correction 6-28-11; DFW 113-2011(Temp), f. & cert. ef. 8-10-11, cert. ef. 8-15-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 12-2012(Temp), f. & cert. ef. 2-8-12, cert. ef. 2-12-12 thru 7-31-12; DFW 104-2012(Temp), f. & cert. ef. 8-13-12 thru 10-31-12; Administrative correction 11-23-12; DFW 11-2013(Temp), f. & cert. ef. 2-11-13 thru 7-31-13; DFW 24-2013(Temp), f. & cert. ef. 3-21-13 thru 7-31-13

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**Rule Caption:** Adopt Federal Regulations by Reference for 2013 Recreational Pacific Halibut Fisheries

**Adm. Order No.:** DFW 25-2013(Temp)

**Filed with Sec. of State:** 4-2-2013

**Certified to be Effective:** 5-1-13 thru 5-31-13

**Notice Publication Date:**

**Rules Amended:** 635-039-0080

**Subject:** These amended rules incorporate federal regulations by reference to establish concurrent seasons and regulations for 2013 recreational Pacific halibut fisheries, scheduled to open in early May.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

**635-039-0080**

**Purpose and Scope**

(1) The purpose of division 39 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 39 incorporates into Oregon Administrative Rules, by reference:

(a) The sport fishing regulations of the State, included in the document entitled 2013 Oregon Sport Fishing Regulations;

(b) Title 50 of the Code of Federal Regulations, Part 300, Subpart E (October 1, 2012 ed.), as amended;

(c) Title 50 of the Code of Federal Regulations, Part 660, Subpart G (October 1, 2012 ed.), as amended;

(d) Federal Register Vol. 78, No. 2, dated January 3, 2013 (78 FR 580); and

(e) Federal Register Vol. 78, No. 51, dated March 15, 2013 (78 FR 16423).

(3) Therefore, persons must consult all publications referenced in this rule in addition to division 11 and division 39 to determine all applicable

sport fishing requirements for marine fish, shellfish and marine invertebrates.

Stat. Auth.: ORS 496.138, 496.146, 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 136-2005, f. & cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 39-2012, f. & cert. ef. 4-24-12; DFW 1-2013, f. & cert. ef. 1-3-13; DFW 25-2013(Temp), f. 4-2-13, cert. ef. 5-1-13 thru 5-31-13

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**Rule Caption:** Columbia River Recreational Spring Chinook Season Extended

**Adm. Order No.:** DFW 26-2013(Temp)

**Filed with Sec. of State:** 4-4-2013

**Certified to be Effective:** 4-5-13 thru 7-1-13

**Notice Publication Date:**

**Rules Amended:** 635-023-0125

**Rules Suspended:** 635-023-0125(T)

**Subject:** This amended rule extends the 2013 Columbia River recreational spring Chinook season, previously set to close on April 6, through Friday April 12, except closed on Tuesday April 9, 2013. All other regulations previously set remain the same. Revisions are consistent with action taken April 3, 2013 by Columbia River Compact agencies of the states of Oregon and Washington.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

**635-023-0125**

**Spring Sport Fishery**

(1) The 2013 Oregon Sport Fishing Regulations provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the 2013 Oregon Sport Fishing Regulations.

(2) The Columbia River is open from January 1 through February 28 from the mouth at Buoy 10 upstream to the I 5 Bridge with the following restrictions:

(a) Adipose fin-clipped Chinook salmon and adipose fin-clipped steelhead may be retained.

(b) All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult adipose fin-clipped salmon or two adult adipose fin-clipped steelhead or one of each may be retained per day. Catch limits for jacks remain in effect as per the 2013 Oregon Sport Fishing Regulations.

(3) The area from Buoy 10 upstream to Beacon Rock (boat and bank) plus bank angling only from Beacon Rock upstream to the Bonneville Dam deadline is open from Friday, March 1 through Friday, April 12, 2013, except closed April 9 (Tuesday). Legal upstream boundary defined as: "A deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse 1) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock." Daily bag limit is two (2) adult salmonids but only one may be a Chinook. Only adipose fin-clipped fish may be kept. All other permanent regulations apply.

(4) The area from Tower Island power lines (approximately 6 miles below The Dalles Dam) upstream to the Oregon/Washington border, plus the Oregon and Washington banks between Bonneville Dam and the Tower Island power lines is open from Saturday, March 16 through Sunday, May 5 (51 retention days). Daily bag limit is two (2) adult Chinook or steelhead or one of each. Only adipose fin-clipped fish may be kept. All other permanent regulations apply.

(5) Select Area recreational fisheries.

(a) Effective Friday, March 1 through Saturday, June 15, 2013, on days when the mainstem Columbia River recreational fishery below

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Bonneville Dam is open to retention of Chinook, the salmonid bag limit in the Select Areas will be the same as mainstem Columbia River bag limits.

(b) Effective Friday, March 1 through Saturday, June 15, 2013, on days when the mainstem Columbia River recreational fishery below Bonneville Dam is closed to retention of Chinook, permanent salmonid bag regulations for the Select Areas apply.

(c) Effective January 1, 2013 use of barbless hooks is required when fishing for salmon, steelhead, and trout in the following areas:

(A) Youngs Bay/River from Highway 101 bridge upstream to markers at the confluence with Klaskanine River;

(B) Lewis and Clark River from confluence with Youngs Bay upstream to Alternate Highway 101 bridge;

(C) Walluski River from the confluence with Youngs Bay upstream to Highway 202 bridge;

(D) Gnat Creek from railroad bridge upstream to Aldrich Point Road;

(E) Knappa/Blind Slough select areas; and

(F) In the mainstem Columbia River from the mouth at Buoy 10 upstream to the Oregon/Washington border.

(6) Effective Friday, March 1 through Wednesday, May 15, 2013, the mainstem Columbia River is open for retention of adipose fin-clipped steelhead and shad only during days and in areas open for retention of adipose fin-clipped spring Chinook.

(7) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point-Tongue Point line to Oregon/Washington border from February 15 through June 15 it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 44-2005(Temp), f. 5-17-05, cert. ef. 5-22-05 thru 10-16-05; DFW 51-2005(Temp), f. 6-3-05, cert. ef. 6-4-05 thru 7-31-05; Administrative correction 11-18-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 21-2006(Temp), f. 4-13-06, cert. ef. 4-14-06 thru 5-15-06; DFW 27-2006(Temp), f. 5-12-06, cert. ef. 5-13-06 thru 6-15-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 33-2007(Temp), f. 5-15-07, cert. ef. 5-16-07 thru 7-30-07; DFW 37-2007(Temp), f. & cert. ef. 5-31-07 thru 7-30-07; DFW 39-2007(Temp), f. 6-5-07, cert. ef. 6-6-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 13-2008(Temp), f. 2-21-08, cert. ef. 2-25-08 thru 8-22-08; DFW 17-2008(Temp), f. & cert. ef. 2-27-08 thru 8-22-08; DFW 35-2008(Temp), f. 4-17-08, cert. ef. 4-21-08 thru 8-22-08; DFW 49-2008(Temp), f. & cert. ef. 5-13-08 thru 6-15-08; Administrative correction 7-22-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 10-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 6-15-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 48-2009(Temp), f. 5-14-09, cert. ef. 5-15-09 thru 6-16-09; DFW 68-2009(Temp), f. 6-11-09, cert. ef. 6-12-09 thru 6-16-09; Administrative correction 7-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 23-2010(Temp), f. & cert. ef. 3-2-10 thru 8-27-10; DFW 45-2010(Temp), f. 4-21-10, cert. ef. 4-24-10 thru 7-31-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 55-2010(Temp), f. 5-7-10, cert. ef. 5-8-10 thru 7-31-10; Suspended by DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 13-2011(Temp), f. & cert. ef. 2-14-11 thru 6-15-11; DFW 28-2011(Temp), f. 4-7-11, cert. ef. 4-8-11 thru 6-15-11; DFW 30-2011(Temp), f. 4-15-11, cert. ef. 4-16-11 thru 6-15-11; DFW 33-2011(Temp), f. & cert. ef. 4-21-11 thru 6-15-11; DFW 39-2011(Temp), f. 5-5-11, cert. ef. 5-7-11 thru 6-15-11; DFW 48-2011(Temp), f. 5-13-11, cert. ef. 5-15-11 thru 6-15-11; DFW 55-2011(Temp), f. 5-25-11, cert. ef. 5-27-11 thru 6-15-11; DFW 59-2011(Temp), f. & cert. ef. 6-2-11 thru 6-15-11; Administrative correction 6-28-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 8-2012(Temp), f. 2-6-12, cert. ef. 2-15-12 thru 6-15-12; DFW 31-2012(Temp), f. 4-5-12, cert. ef. 4-6-12 thru 6-15-12; DFW 33-2012(Temp), f. 4-12-12, cert. ef. 4-14-12 thru 6-15-12; DFW 45-2012(Temp), f. 5-1-12, cert. ef. 5-2-12 thru 7-31-12; DFW 47-2012(Temp), f. 5-15-12, cert. ef. 5-16-12 thru 7-31-12; DFW 49-2012(Temp), f. 5-18-12, cert. ef. 5-19-12 thru 7-31-12; DFW 51-2012(Temp), f. 5-23-12, cert. ef. 5-26-12 thru 7-31-12; Suspended by DFW 85-2012(Temp), f. 7-6-12, cert. ef. 7-9-12 thru 8-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 12-2013(Temp), f. 2-12-13, cert. ef. 2-28-13 thru 7-31-13; DFW 26-2013(Temp), f. 4-4-13, cert. ef. 4-5-13 thru 7-1-13

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**Rule Caption:** 2013 Commercial Spring Chinook Fishery in the Mainstem Columbia River

**Adm. Order No.:** DFW 27-2013(Temp)

**Filed with Sec. of State:** 4-8-2013

**Certified to be Effective:** 4-9-13 thru 4-30-13

**Notice Publication Date:**

**Rules Amended:** 635-042-0022

**Subject:** This amended rule allows a non-Indian commercial spring Chinook fishery in the mainstem Columbia River to commence on April 9, 2013 from the mouth of the Columbia River upstream to Beacon Rock (Zones 1 thru 5). The authorized tangle net fishing period is from 7:00 a.m. thru 4:00 p.m. (9 hours). Modifications are consistent with joint state action taken April 8, 2013 by the Columbia River Compact agencies of the States of Oregon and Washington.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-042-0022

### Spring Chinook Gillnet and Tangle Net Fisheries

(1) Adipose fin-clipped Chinook salmon, white sturgeon and shad may be taken by drift tangle net for commercial purposes from the mouth of the Columbia River upstream to Beacon Rock (Zones 1-5) during the period: Tuesday, April 9, 2013 from 7:00 a.m. to 4:00 p.m. (9 hours).

(a) Individual fishing periods will not exceed sixteen hours in length during small mesh fisheries and twenty-four hours in length during large mesh fisheries.

(b) White sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. Retention of green sturgeon is prohibited.

(c) A maximum of 9 adipose fin clipped adult Chinook may be possessed or sold by each participating vessel. The first 9 adult hatchery fish must be retained and no additional drifts may be conducted once the Chinook limit has been retained. Jack Chinook (Chinook less than 24-inches in total length) are not included in the landing limit.

(2) An adipose fin clip salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. The adipose fin is the small fatty fin on salmonids located between the dorsal fin and tail.

(3) During the spring Chinook gillnet fishery:

(a) It is *unlawful* to use a gillnet having a mesh size less than 8 inches or more than 9 3/4 inches.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(4).

(4) During the spring Chinook tangle net fishery:

(a) It is *unlawful* to use other than a single-wall multi-filament net. Monofilament tangle nets are not allowed. Maximum mesh size is 4 1/4 inches stretched taut. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Other permanent gear regulations remain in effect.

(b) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(5) Nets shall not exceed 900 feet (150 fathoms) in length. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25 fathom intervals must be in color contrast to the corks used in the remainder of the net.

(6) On tangle nets, an optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4 1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel (including any associated hangings) must be a minimum of 5 linear feet in depth and not exceed 10 linear feet in depth, as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber-type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4 1/4 inch maximum mesh size tangle net.

(a) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 1,050 feet (175 fathoms).

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(b) Tangle nets constructed with a steelhead excluder panel, weed-lines, or droppers, along with a red cork every 25 fathoms as required in section (5) above, must have two red corks at each end of the net.

(7) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

(8) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(9) Nets shall be fished for no longer than 45 minutes per set. The time of fishing is measured from when the first mesh of the net is deployed into the water until the last mesh of the net is fully retrieved from the water.

(10) It is *unlawful* for a net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(11) It is *unlawful* to fish more than one net from a licensed commercial fishing boat at any one time.

(12) Nets fished from sunset to sunrise shall have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required.

(13) Non-legal sturgeon, nonadipose fin-clipped Chinook salmon, and steelhead must be released immediately with care and the least possible injury to the fish to the river without violence or into an operating recovery box.

(a) One operating recovery box with two chambers or two operating recovery boxes with one chamber each to aid survival of released fish must be on board each fishing vessel participating in the fishery. Recovery boxes shall be operating during any time that a net is being retrieved or picked.

(b) Non-adipose fin-clipped salmon and all steelhead that are bleeding, in lethargic condition, or appearing dead must be placed in the recovery box for rehabilitation purposes prior to release to the river.

(c) Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39-1/2 to 48 inches, the inside width measurement must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

(d) Each chamber of the recovery box must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute not to exceed 20 gallons per minute of fresh river water into each chamber. The fisher must demonstrate to the Department and Washington Department of Fish and Wildlife employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

(e) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1 3/4 inches from the floor of the chamber.

(f) Each chamber of the recovery box must include a water outlet that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber, on either the same or opposite end as the inlet.

(g) All fish placed in recovery boxes must be released to the river prior to landing or docking.

(14) At least one fisher on each boat engaged in the fishery must have attended a one-day workshop hosted by the Department or Washington Department of Fish and Wildlife to educate fishers on regulations and best methods for conduct of the fishery.

(15) Nothing in this section sets any precedent for any future spring Chinook fishery. The fact that an individual has attended a live capture training workshop does not entitle the individual to participate in any other fishery. If the Department authorizes a Live Capture fishery in the spring or at any other time, the Department may establish qualifications and requirements that are different from those already established. In particular, the Department may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future Live Capture fisheries.

(16) As authorized by OAR-635-006-0140 owners or operators of commercial fishing vessels must cooperate with Department fishery observers, or observers collecting data for the Department, when asked by the Department to carry and accommodate an observer on fishing trips for observation and sampling during an open fishery.

(17) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokomin-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-B, Sandy and Washougal sanctuaries are in effect during the open fishing periods identified.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030  
Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp) f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. & cert. ef. 3-22-04, cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04; DFW 27-2004(Temp), f. & cert. ef. 3-29-04 thru 7-31-04; Administrative correction 8-19-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 9-2005(Temp), f. & cert. ef. 3-1-05 thru 7-31-05; DFW 11-2005(Temp), f. & cert. ef. 3-2-05, cert. ef. 3-3-05 & 7-31-05; DFW 13-2005(Temp), f. & cert. ef. 3-7-05 thru 7-31-05; DFW 14-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; DFW 20-2005(Temp), f. & cert. ef. 3-29-05 thru 3-30-05; DFW 21-2005(Temp), f. & cert. ef. 3-31-05 thru 4-1-05; Administrative correction, 4-20-05; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 7-2006(Temp), f. & cert. ef. 2-23-06 thru 7-31-06; DFW 9-2006(Temp), f. & cert. ef. 3-2-06 thru 7-31-06; DFW 10-2006(Temp), f. & cert. ef. 3-6-06, cert. ef. 3-7-06 thru 7-31-06; DFW 11-2006(Temp), f. & cert. ef. 3-9-06 thru 7-31-06; DFW 12-2006(Temp), f. & cert. ef. 3-13-06, cert. ef. 3-14-06 thru 7-31-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 30-2006(Temp), f. & cert. ef. 5-18-06 thru 7-31-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; Administrative correction 8-22-06; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 17-2007(Temp), f. & cert. ef. 3-20-07 thru 9-15-07; DFW 19-2007(Temp), f. & cert. ef. 3-22-07 thru 9-17-07; DFW 44-2007(Temp), f. & cert. ef. 6-14-07 thru 9-17-07; Administrative correction 9-18-07; DFW 31-2008(Temp), f. & cert. ef. 4-1-08 thru 9-27-08; DFW 33-2008(Temp), f. & cert. ef. 4-7-08, cert. ef. 4-8-08 thru 9-27-08; DFW 34-2008(Temp), f. & cert. ef. 4-14-08, cert. ef. 4-15-08 thru 9-27-08; Suspended by DFW 71-2008(Temp), f. & cert. ef. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; Administrative correction 10-21-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 30-2009(Temp), f. & cert. ef. 3-23-09, cert. ef. 3-27-09 thru 4-30-09; DFW 34-2009(Temp), f. & cert. ef. 4-6-09, cert. ef. 4-7-09 thru 4-30-09; DFW 36-2009(Temp), f. & cert. ef. 4-13-09, cert. ef. 4-14-09 thru 4-30-09; Administrative correction 5-20-09; DFW 38-2010(Temp), f. & cert. ef. 3-30-10 thru 4-30-10; DFW 41-2010(Temp), f. & cert. ef. 4-7-10 thru 4-30-10; Administrative correction 5-19-10; DFW 25-2011(Temp), f. & cert. ef. 3-29-11 thru 4-1-11; DFW 27-2011(Temp), f. & cert. ef. 4-5-11, cert. ef. 4-6-11 thru 4-10-11; Administrative correction, 4-25-11; DFW 45-2011(Temp), f. & cert. ef. 5-12-11 thru 6-30-11; DFW 51-2011(Temp), f. & cert. ef. 5-18-11 thru 6-30-11; Administrative correction 7-22-11; DFW 29-2012(Temp), f. & cert. ef. 4-2-12, cert. ef. 4-3-12 thru 4-30-12; DFW 32-2012(Temp), f. & cert. ef. 4-10-12 thru 4-30-12; Administrative correction, 5-25-12; DFW 27-2013(Temp), f. & cert. ef. 4-9-13 thru 4-30-13

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## Department of Geology and Mineral Industries Chapter 632

**Rule Caption:** Adopt revised rule language that addresses ORS 520 revisions

**Adm. Order No.:** DGMI 1-2013

**Filed with Sec. of State:** 3-21-2013

**Certified to be Effective:** 3-21-13

**Notice Publication Date:** 11-1-2012

**Rules Amended:** 632-010-0004, 632-010-0008, 632-010-0010, 632-010-0011, 632-010-0012, 632-010-0014, 632-010-0015, 632-010-0016, 632-010-0017, 632-010-0018, 632-010-0020, 632-010-0128, 632-010-0130, 632-010-0132, 632-010-0134, 632-010-0136, 632-010-0138, 632-010-0140, 632-010-0142, 632-010-0144, 632-010-0146, 632-010-0148, 632-010-0150, 632-010-0151, 632-010-0152, 632-010-0154, 632-010-0156, 632-010-0157, 632-010-0159, 632-010-0161, 632-010-0162, 632-010-0163, 632-010-0164, 632-010-0165, 632-010-0166, 632-010-0167, 632-010-0168, 632-010-0170, 632-010-0172, 632-010-0174, 632-010-0176, 632-010-0178, 632-010-0182, 632-010-0184, 632-010-0186, 632-010-0188, 632-010-0190, 632-010-0192, 632-010-0194, 632-010-0196, 632-010-0198, 632-010-0205, 632-010-0210, 632-010-0220, 632-010-0225, 632-010-0230, 632-010-0235

**Rules Repealed:** 632-010-0006, 632-010-0169

**Subject:** ORS chapter 520 authorizes the Department of Geology and Mineral Industries to control the exploration and development of oil and gas resources so that such wells will be constructed, operated, maintained, and decommissioned in the manner necessary to safeguard the life, health, property, and welfare of the people of this state and to encourage the maximum economic recovery of oil and gas resources therefrom. The Act also gives the department responsibility for regulating the construction of disposal wells for the reinjection of secondary produced formation waters into underground reservoirs within prescribed limits of ORS 520.095(13) in a manner which will not be detrimental to beneficial use of waters of the state.

**Rules Coordinator:** Gary Lynch—(541) 967-2053

### 632-010-0004

#### Supremacy of Special Rules

The board may issue special rules, including field rules. A special rule supersedes a general rule on the same subject to the extent that the general rule is in conflict with the special rule.

Stat. Auth.: ORS 520

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 520.095  
Hist.: GMI 1, f. 1-27-54; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90;  
DGM 1-2013, f. & cert. ef. 3-21-13

## 632-010-0008

### Definitions

The definitions in ORS 520.005 apply to this rule division. In addition, the following definitions apply:

(1) "Allowable Quantity" means the amount of natural gas or oil allowed by order of the board to be produced within a stated period.

(2) "Atmospheric Pressure" means the pressure of air at sea level, equivalent to about 14.73 pounds per square inch absolute.

(3) "Barrel" means 42 U.S. gallons of oil at a temperature of 15.55 degrees Centigrade (60 degrees Fahrenheit), with deductions for the full percent of basic sediment, water, and other impurities present, ascertained by centrifugal or other recognized and customary tests.

(4) "Blowout" means an uncontrolled escape of oil, natural gas, or water as a flow from a well.

(5) "Blowout Preventer" means a heavy casing-head control of special gates or rams that will seal the annular space between drill pipe or tubing and casing or completely close off the top of the inner casing string.

(6) "Board" means the Governing Board of the State Department of Geology and Mineral Industries.

(7) "Bottom Hole Pressure" means the pressure in pounds per square inch at or near the bottom of an oil or gas well determined at the face of the producing horizon by means of a pressure recording instrument, adopted and recognized by the oil and gas industry, and corrected to the sea level elevation.

(8) "Casing Pressure" means the pressure in the annular space between the tubing and casing measured at the wellhead.

(9) "Completion" means a well is in such condition that it is capable of producing oil or gas, or both.

(10) "Contaminate" means any chemical, ion radionuclide, synthetic organic compound, microorganism, waste or other substance that does not occur naturally in groundwater or that occurs naturally but at a lower concentration.

(11) "Contamination" means introduction of contaminate.

(12) "Decommission" means the condition of a well when it has been lawfully and permanently plugged and the well pad, access road and other related disturbance reclaimed to a secondary beneficial use that is compatible with the land use designation according to these rules with the approval of the department.

(13) "Department" means the State Department of Geology and Mineral Industries.

(14) "Development" means any work performed to bring about production of oil or gas, or both.

(15) "Developed Area or Developed Unit" means a unit as defined in ORS 520.005(12) having a well completed thereon capable of producing oil or gas in paying quantities. However, in the event the board finds that a part of any unit is nonproductive, then the developed area of the unit includes only the productive part.

(16) "Differential Pressure" means:

(a) In the case of wellhead measurement, the difference between the tubing pressure and the casing pressure; or

(b) In the case of an orifice meter, the pressure difference between the upstream and the downstream sides of the orifice, a pressure difference measured with a differential gauge or with a manometer (U tube).

(17) "Disposal Well" means any well used for the purpose of disposal of produced saltwater and produced oil field waste.

(18) "Drilling Unit" means the acreage dedicated to a well before field limits and spacing rules are established by the board.

(19) "Edge Water" means water that holds the oil or gas, or both, in a higher structural position usually encroaching on a pool as the oil or gas is recovered.

(20) "Fair Share" means that part of recoverable oil or gas, or both, in a developed area of a pool proportional by area to the recoverable oil or gas, or both, in the entire developed area of the pool, insofar as these amounts can be practically ascertained.

(21) "Gas Allowable" means the amount of natural gas authorized to be produced by order of the board.

(22) "Gas-Oil Ratio" means the relation of the gas in cubic feet to the production of oil in barrels as accepted by pipelines.

(23) "Gas Repressuring" means the introduction of gaseous substances into a pool by artificial means in order to replenish, replace, or increase the reservoir energy.

(24) "Gas Well" means:

(a) A well that produces natural gas only;

(b) That part of a well where the gas producing stratum has been successfully cased off from the oil so that the gas and oil are produced through separate casing or tubing;

(c) Any well capable of producing gas in commercial quantities; or

(d) A well producing from a reservoir containing no commercially significant liquid hydrocarbons.

(25) "Idle Well" means an inactive well that has not been completed, suspended, or decommissioned with approval of the department.

(26) "Illegal Gas" means gas that has been produced within the state from any well or wells in excess of the amount allowed by any rule, regulation, or order of the board.

(27) "Illegal Oil" means oil that has been produced within the state from any well in excess of the amount allowed by any rule, or order of the board.

(28) "Illegal Product" means any product of oil or gas, any part of which was processed or derived, in whole or in part from illegal oil or illegal gas, or from any product thereof.

(29) "Indices of Productive Value" means the factors to be considered in ascertaining the productivity of all property in a pool for the purpose of fixing the allowable production. These indices may include, at the discretion of the board, potential acreage, gas-oil ratios, static reservoir pressures, flowing pressures, fluid level drawdowns, the well or wells, or any other pertinent factors.

(30) "Lease" means the exclusive right to explore for, drill for, and produce petroleum, natural gas, and associated hydrocarbons.

(31) "Lessee" means a person who becomes a mineral rights owner by leasing mineral rights from a mineral rights owner.

(32) "Mineral Rights Owner" means the person who has the exclusive right to lease or grant rights for mineral exploration and includes owners of unleased mineral rights and lessees of mineral rights.

(33) "Mud-Laden Fluid" means any approved mixture of fluid and clay or other material that will effectively seal the formation to which it is applied.

(34) "Net Drainage" means the drainage or migration of oil or gas within the reservoir not equalized by counter-drainage.

(35) "Oil Allowable" means the amount of oil authorized to be produced by order of the board.

(36) "Oil Well" means any well that is not a gas well and is capable of producing oil or condensate in paying quantities.

(37) "Operator" means any person who is in charge of the development of a lease or the construction, development or operation of a well subject to the division.

(38) "Overage, Overproduction" means the oil or gas produced in excess of the allowable quantity fixed by the board.

(39) "Period Allowable" means the period as designated by the department, in which an allowable quantity may be produced.

(40) "Pool" means an underground reservoir containing a common accumulation of oil and natural gas. A zone of a structure that is completely separated from any other zone in the same structure is a pool.

(41) "Potential" means the computed daily ability of a well to produce oil and/or natural gas as determined by a test made in conformity with rules prescribed by the board.

(42) "Permittee" means any person who has the right to drill a well and has received a permit or is an operator.

(43) "Pressure Maintenance" means:

(a) The re-introduction, in the early stages of field development, of gas or fluid produced from an oil or gas well to maintain the pressure of the reservoir; or

(b) The introduction of gas or fluid for the same purpose, but obtained from an outside source.

(44) "Producer" means the owner of one or more wells capable of producing oil or gas or both.

(45) "Proved Oil or Gas Area" means the area that has been shown by development or geological information to be such that additional wells drilled thereon are reasonably certain to be commercially productive of oil or gas, or both.

(46) "Purchaser" means any person who directly or indirectly purchases, transports, takes, or otherwise removes production from a well, wells, or pool.

(47) "Run" means oil or gas piped from one place to another.

(48) "Separator" means an apparatus for separating fluid, as it is produced.

(49) "Service Well" means any well drilled to be used for the purpose of underground natural gas storage or to monitor such underground storage.

# ADMINISTRATIVE RULES

(50) "Shortage or Underage" means the amount of production less than the allowable.

(51) "Spacing Unit" means the acreage dedicated by the board to a well after field limits and rules are established.

(52) "Storage" means produced oil, gas, or both confined in tanks, reservoirs, or containers.

(53) "Suspension" means the status of a well that is not in a plugged or completed condition when it has been safely left unattended, with the written approval of the department, for a period of 30 days or more.

(54) "Unlawful Abandonment" means the condition of:

(a) An idle well from which drilling equipment has been removed;

(b) An idle well with drilling equipment present but no activity for 30 consecutive days; or

(c) Any suspended well whose period of approved suspension has expired and an additional 30 days has elapsed.

(55) "Wellhead" means equipment consisting of valves installed at the surface of the well.

(56) "Well Log" means the written record progressively describing the strata, water, and oil or gas encountered in drilling a well with such additional information as to give volumes, pressure, rate of fill-up, water depths, casing record, etc., as is recorded in the normal procedure of drilling. It also includes all electrical and mechanical surveys performed in the well bore.

(57) "Wildcat Well" means a drilling or producing well located in an area that is not a "Proved Oil or Gas Area".

**NOTE:** Additional definitions may be found in ORS 520.005 and 520.015.

Stat.Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 2, f. 6-20-55; GMI 1-1979, f. & ef. 1-25-79; GMI 1-1982, f. & ef. 6-25-82; GMI 1-1985(Temp) f. & ef. 6-7-85; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; GMI 3-1997, f. & cert. ef. 12-3-97; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0010

### Application and Permit to Drill, Redrill, Deepen, Alter Casing, or Rework

(1) No person may construct, drill, operate, or decommission a well until the person has received a permit, paid to the department a nonrefundable fee for each such well pursuant to ORS 520.017, and posted a bond or other financial security pursuant to OAR 632-010-0205. Construction includes construction of access roads, well pads and other site disturbances relating to the development of the site. Drilling includes redrilling, deepening, and drilling to set conductor pipe. Operation includes maintaining the well while in use or while production is suspended. Decommissioning includes plugging and restoration of the well site.

(2) The application for a permit must include:

(a) The location of the well;

(b) The name and address of the surface owner, operator, permittee and any other person responsible for the conduct of the drilling operations;

(c) The elevation of the well above sea level;

(d) Casing and cementing programs giving details of casing sizes, casing grade, hole diameters, and volume of cement to be used;

(e) Geologic objectives for wells proposed for known producing areas and proposed depth in all cases; and

(f) Documentation of the ownership of mineral rights or a mineral rights lease on the property to be drilled, or the right or obligation, under the terms of an existing contract, to drill a well.

(3) The permit will be suspended if the applicable rights in subsection (2)(f) of this rule cease to exist prior to the decommissioning of the well, access roads and any related disturbance.

(4) If a completed application has not been received by one year from the date of the receipt of the initial application, the application will be automatically returned to the applicant and will be deemed withdrawn.

(5) The applicant must be registered with the Secretary of State if registration is required by the laws of the State of Oregon.

(6) Upon receipt of an application the department will determine within 21 days if the application is complete. The department will notify the applicant of the determination in writing.

(7)(a) The department will circulate each application for a permit to drill for technical review to appropriate state agencies and the governing body of the county or city in which the well will be located. The agencies and governing body have 45 days from the date the department circulates the application in which to comment. The department can extend this period upon request by the reviewing agency for good cause. Within 60 days after receipt of a complete application for a permit, the department shall issue or deny the permit unless the department determines that a longer

period is necessary to respond to comments or new information, or for any other good cause.

(b) The department may approve immediately without circulating for technical review an application for a permit to redrill, deepen, or rework if the drilling operations are an uninterrupted continuance of previous drilling operations, provided conditions of OAR 632-010-0142(3) are met.

(8)(a) The application for permit must be denied if the applicant is currently in violation of ORS 520 or with the rules in this division with respect to another well. A permit may also be denied if:

(A) The permittee has unlawfully abandoned a well or failed to submit records or samples in a timely manner; or

(B) If the applicant controls or is controlled by a person that has been determined by the department to be in violation of ORS chapter 520 or the rules in this division or has unlawfully abandoned a well or failed to submit records or samples in a timely manner.

(b) If the department refuses to issue a permit, it will notify the applicant and concurrently provide the reason for denying the permit. A person adversely affected by refusal to issue a permit may seek review of the decision by filing an appeal with the board within 30 days of the date the notice of the refusal to issue the permit is received by the applicant.

(9) When issuing the permit, the department shall inform the applicant that:

(a) Issuance of the permit is not a finding of compliance with the Statewide Planning Goals (ORS 197.225) or compatibility with the acknowledged comprehensive plan and land use regulations; and

(b) The applicant must receive land use approval from the affected local government supported by written findings as provided in OAR 632-001-0015 before the use can commence.

(10) The department may temporarily suspend operations if they are not in compliance with applicable laws or rules of this chapter, or departmental orders.

(11) The department may revoke a permit for noncompliance with applicable statutes, rules, orders, and permit conditions.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 2, f. 6-20-55; GMI 1-1978(Temp), f. 5-26-78, ef. 7-1-78; GMI 1-1979, f. & ef. 1-25-79; GMI 3-1980, f. 2-29-80, ef. 3-1-80; GMI 1-1981, f. & ef. 2-26-81; GMI 1-1982, f. & ef. 6-25-82; GMI 1-1985(Temp), f. & ef. 6-7-85; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 1-1991, f. 9-5-91, cert. ef. 9-6-91; GMI 2-1995, f. & cert. ef. 3-10-95; GMI 3-1997, f. & cert. ef. 12-3-97; DGMI 2-1999, f. & cert. ef. 8-30-99; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0011

### Active Permits

On or before the anniversary of the issuance date of each active permit issued by the department, the permittee must pay to the department an annual nonrefundable fee in the amount specified in ORS 520.017.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1-1991, f. 9-5-91, cert. ef. 9-6-91; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0012

### Modifications to Drilling Permits

Proposed modifications to a drilling permit must be approved by the department prior to taking effect.

(1) Modification to a permit involving depth, casing, or location within the same drilling or spacing unit must be submitted on an application form provided by the department, along with the applicable fee. (2) A modification of location to a different drilling or spacing unit requires a new application and fee, and may constitute a significant modification for land use purposes.

(3) The Permittee may not transfer the permit without written approval from the department. The department may transfer a permit to a new owner or operator if the following items are provided to the department:

(a) A completed application signed by the original permittee and the new permittee;

(b) A bond or alternative form of security acceptable to the department in the name of the new permittee; and

(c) -A new organization report.

(4) Deepening: A permittee must obtain written approval from the department before a well may be drilled to a depth below the maximum depth specified in the permit. To obtain approval, the permittee must file a written application that describes the present condition of the well, including the complete casing record, and the proposed work, including the plan for sealing off any oil, gas, brine, or fresh-water strata to be found or expected to be found in the deepening, and the new proposed total depth. If

# ADMINISTRATIVE RULES

the method set forth is satisfactory and the permittee is not in violation of ORS chapter 520, the board's rules implementing that chapter or the orders of the board, the department, the department may approve a permit modification. The permittee may not begin the actual deepening of the well until the modified permit has been posted at the well location.

Stat. Auth.: ORS 520  
Stats. Implemented: ORS 520.095  
Hist.: GMI 2, f. 6-20-55; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; DGM 1-2013, f. & cert. ef. 3-21-13

## 632-010-0014 Drilling Practices

(1) Pits for drill cuttings: At every well site, the permittee must provide and use one or more pits, sumps, or above-ground containers of approved design and size for holding the drill cuttings and fluid removed from the well. All pits, sumps, or above-ground containers must be constructed in a way that allows for egress.

(2) Casing and sealing off formations general requirements:

(a) Surface casing:

(A) Surface casing used in all wells must be of suitable size, grade, condition, and wall thickness;

(B) In areas where pressure and formation are unknown, sufficient surface casing must be run to reach a depth below all known potable fresh water levels;

(C) In areas where subsurface conditions have been established by drilling experience, sufficient surface casing must reach a depth 100 feet below all fresh-water levels;

(D) The depths referred to in paragraphs (B) and (C) of this subsection must be at least 25 percent of the proposed next casing point or total depth, unless otherwise approved by the department;

(E) Surface casing and conductor pipe must be cemented. Surface casing must be cemented by the pump and plug or displacement method with sufficient cement to circulate to the surface. The conductor pipe must be cemented to the surface to prevent the migration of fluids to other zones or to the surface; and

(F) Cement must be allowed to set a minimum of 12 hours before drilling the plug.

(b) Other casing requirements: Each fluid-bearing zone above the producing horizon must be cased and sealed off to prevent the migration of formation fluids to other zones. Such casing and sealing off must be completed and tested in a manner and method approved by the department.

(c) A formation leakoff test or a casing shoe integrity test may be required by the department. If required, the results must be provided to the department for review and approval prior to the continuation of drilling operations.

(3) When drilling, a suitably weighted mud-laden fluid must be continuously maintained in the hole, from top to bottom, in accordance with recognized safe practices. The permittee may request permission from the department to use other fluids. The request must be approved in writing by the department prior to use.

(4) Wellhead equipment:

(a) When drilling in areas where high pressures are likely to exist, as determined by the department, all proper and necessary precautions must be taken for keeping the well under control, including, but not limited to, the use of blowout preventers and high-pressure fittings attached to casing strings properly anchored and cemented:

(A) The Blowout Prevention Equipment schematic diagram must indicate the minimum size and pressure rating of all components of the wellhead and blowout preventer assembly;

(B) The department, on a site-specific basis, may require the use of blowout preventers or other methods of controlling shallow coal bed methane wells;

(C) All blowout preventers, choke lines, and choke manifolds must be installed above ground level. Casing heads and optional spools may be installed below ground level provided they are visible and accessible;

(D) Blowout preventer equipment and related casing heads and spools must have a vertical bore no smaller than the inside diameter of the casing to which they are attached;

(E) All ram blowout preventers must be equipped with hydraulic locking devices and manual locking devices with hand wheels extending outside of the rig's substructure;

(F) Blowout prevention equipment installed on the well must have a rated expected formation pressure higher than the working pressure;

(G) In addition to the minimum blowout preventer requirements outlined in this section, wells drilled while using tapered drill strings must use either a variable bore pipe ram preventer or additional ram type blowout

preventers to provide a minimum of one set of pipe rams for each size of drill pipe in use, and one set of blind rams.

(b) Unless otherwise approved by the department, the blowout prevention equipment must include a minimum of at least one annular blowout preventer and one double-gate preventer with pipe and blind rams or two single-ram type preventers; one equipped with pipe rams and the other with blind rams. Ram preventers or a drilling spool must have side outlets with a minimum inside diameter of 2 inches on the kill side, and 3 inches on the choke side to accommodate choke and kill lines. Outlets on the casing head may not be used to attach choke or kill lines;

(A) Additional blowout preventer equipment includes, but is not limited to, one upper kelly cock, and one drill pipe safety valve with subs to fit all drill string connections in use;

(B) Choke manifold and related equipment consists of one kill line valve, one check valve, two choke line valves, choke line, two manual adjustable chokes (each with one valve located upstream of the choke), one bleed line valve, and one mud service pressure gauge with a valve upstream of the gauge;

(C) All choke manifold valves, choke and kill line valves, and the choke line must be full bore. Choke line valves, choke line, and bleed line valves must have an inside diameter equal to or greater than the minimum requirement for the blowout preventer or drilling spool outlet;

(D) The choke line must be as straight as possible, and any required turns must be made with flow targets at all bends and on block tees. All connections exposed to well bore pressure must be welded, flanged, or clamped. Choke hoses with flanged connections designed for that purpose will be accepted in lieu of a steel choke line. The choke line must be securely anchored;

(E) The accumulator must have sufficient capacity to operate the blowout preventer equipment as outlined in this section, and have two independently powered pump systems connected to start automatically after a 200 psi drop in accumulator pressure, or one independently powered pump system connected to start automatically after a 200 psi drop in accumulator pressure and an emergency nitrogen back-up system connected to the accumulator manifold. Blowout preventer controls may be located at the accumulator or on the rig floor;

(F) A hydraulically operated accumulator; and

(G) A pit horn.

(c) Minimum requirements for blowout preventer equipment testing:

(A) All blowout preventers and related equipment that may be exposed to well pressure must be tested first to a low pressure and then to a high pressure;

(i) A stable low of 200-300 psi must be maintained for at least 30 minutes prior to initiating the high-pressure test;

(ii) The high-pressure test must be to the rated working pressure of the ram type blowout preventer equipment and related equipment, or to the rated working pressure of the wellhead on which the stack is installed, whichever is lower. A stable high-pressure test must be maintained for 30 minutes;

(iii) Annular blowout preventer must be high-pressure tested to 50 percent of the rated working pressure and maintain a stable pressure for 30 minutes; and

(iv) Manual adjustable chokes not designed for complete shutoff must be pressure tested only to the extent of determining the integrity of the internal seating components to maintain back pressure. Hydraulic chokes designed for complete shutoff must be pressure tested to 50 percent of the rated working pressure.

(B) All casing below the conductor pipe must be pressure tested to 0.22 psi per foot or 1,500 psi, whichever is greater, but not to exceed 70 percent of the minimum internal yield strength of the casing. A stable pressure must be maintained for 30 minutes. Higher pressures, using a test plug in the casing head, may be required by the department on a case-by-case basis;

(C) During blowout preventer pressure testing the casing must be isolated with a test plug set in the wellhead, and the appropriate valve must be opened below the test plug to detect any leakage that may occur due to failure of the test plug;

(D) The choke and kill line valves, choke manifold valves, upper and lower kelly cocks, drill pipe safety valves, and inside blowout preventer must be tested with pressure applied from the wellbore side. All valves, including check valves, located downstream of the valve being pressure tested, will be in the open position;

(E) Manually operated valves and chokes on the blowout preventer stack, choke and kill lines, or choke manifold must be equipped with a handle provided by the manufacturer, or a functionally equivalent fabricated

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handle, and be lubricated and maintained to permit operation of the valves without the use of additional wrenches or levers;

(F) All operational components of the blowout preventer equipment must be function tested at least once a week to verify the components' intended operations;

(G) The blowout prevention equipment must be pressure tested when installed, prior to drilling out casing shoes, and following repairs or reassembly of the preventers that require disconnecting a pressure seal in the assembly;

(H) During drilling operations, blowout prevention equipment must be actuated to test proper functioning once each trip, or once each week, whichever is more frequent;

(I) All flange bolts must be inspected at least weekly and retightened as necessary during drilling operations;

(J) The auxiliary control systems must be maintained in working order and be inspected daily to check the mechanical condition and effectiveness and to ensure personnel at the site are familiar with their operation;

(K) A blowout prevention practice drill must be conducted weekly for each drilling crew, and be recorded on the driller's log;

(L) The results of all blowout preventer equipment pressure tests and function tests must be recorded on the tour sheet and include the type of test, testing sequence, low and high pressures, duration of each test, and results of each test;

(M) All blowout preventer equipment test results submitted to the department must have a signed certification stating that the testing procedures of the blowout preventer equipment and the passing results are accurate and comply with OAR 632-010-0014;

(N) The department may require any blowout preventer equipment test to be conducted or witnessed by an independent third party that will report all test results to the department for review and approval prior to commencement of drilling operations;

(O) All tool pushers, drilling superintendents, and permittees' representatives (when the permittee is in control of the drilling) are required to have completed an API, IADC, or similar governing body sanction well control certification program and furnish the certification of satisfactory completion to the department prior to the start of any drilling operations. The certification must be renewed every two years.

## (5) Inclination Surveys:

(a) Unless exempted by the department, for all wells where production will be from a depth greater than 1500 feet, inclination surveys to determine the angle of the hole from the vertical must be performed before completion.

(b) The department may, for good cause, require a permittee to perform a directional survey to determine the location of the borehole at various intervals.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 1-1979, f. & ef. 1-25-79; GMI 1-1982, f. & ef. 6-25-82; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0015

### Down Hole Loss and Decommissioning of a Radioactive Source

(1) A permittee must notify the department within 2 hours of the down hole loss of a radioactive source (source or radioactive source). The notice must include the date of loss and location (county, survey name, abstract number, lease name, well API number, distances from survey boundaries, and Lambert Coordinates).

(2) Procedures for recovery of the lost radioactive source must be furnished to the department, and the radioactive source may not be declared decommissioned until all reasonable effort has been expended to retrieve the radioactive source, as determined by the department.

### (3) Decommission procedures.

(a) Wells with decommissioned radioactive sources must be mechanically equipped to prevent either accidental or intentional mechanical disintegration of the radioactive source.

(A) Radioactive sources decommissioned in the bottom of a well must be covered with a cement plug, dyed a standard color red iron oxide at least 100 feet thick, on top of which a whipstock or other approved deflection device is set. The dye is to alert a reentry drilling engineer prior to encountering the source.

(B) Upon decommissioning a well where a radioactive source has been cemented in place behind a casing string above total depth, a standard color-dyed cement plug must be placed opposite the decommissioned source and a whipstock or other approved deflection device placed on top of the plug. The standard color-dyed cement plug must have a minimum

100-foot cement plug set opposite the source, extending at least 50 feet above and 50 feet below the source.

(C) In the event a permittee finds that after expending a reasonable effort it is not possible to decommission the source as prescribed in subparagraphs (A) and (B) of this section, the permittee may seek department approval for an alternate decommission procedure.

(D) If the hole is later sidetracked above the source, the sidetracked hole must be controlled to ensure that it is at least 15 feet away from the source.

(b) Upon permanent decommission of any well in which a radioactive source is left in the hole, and after removal of the wellhead, a permanent plaque must be attached to the top of the casing left in the hole in such a manner that reentry cannot be accomplished without disturbing the plaque. This plaque will serve as a visual warning that a radioactive source has been decommissioned in place in the well. The plaque must contain the trefoil radiation symbol with a radioactive warning and must be constructed of a long-lasting material such as monel or brass, in accordance with specifications established by the department. Additionally, the plaque must be labeled with the well name, API number, and "Oregon Department of Geology and Mineral Industries."

(c) A plugging report must be filed with the department and must identify the well as a decommissioned radioactive source well and include a signed affidavit stating that all plugging reports are accurate and comply with OAR 632-010-0015.

(d) The permittee must erect, under supervision of the department, a standardized permanent surface marker as a visual warning showing that the well contains a radioactive source. This marker must contain the following information: well name, API number, surface location, name of the permittee, name of the lease, the source or material decommissioned in the well, the total depth of the well, the depth at which the source is decommissioned, the plug-back depth, the date of the decommission of the source, the activity of the source, and a warning not to drill below the plug-back depth;

(4) The department will maintain a list of all decommissioned radioactive source wells.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0016

### Enclosure and Identification of Wells, Tanks, and Other Oil Measuring Devices

(1) The permittee must identify every well, tank, sump, or other oil-measuring device. Identification must include a sign posted in a conspicuous place near the well, tank, sump, or device with the following information:

(a) Name of permittee;

(b) Name of lessee;

(c) Section, township, and range;

(d) The department's phone number and web page address;

(e) A 24-hour emergency telephone number; and

(f) In addition, for wells, the API number must also be included.

(2) The department may require that a well or sump be fenced or walled to a minimum height of 8 feet. Such an enclosure is to be kept locked to protect life, wildlife, and property. Identification signs described in (1) of this rule must be prominently displayed.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0017

### Well Records (Logs)

(1) During the drilling, redrilling, deepening, or reworking of a well (except seismic, core, or other shallow wells drilled solely for geological data), the permittee must keep a detailed and accurate record of the well and have it available at the well site for review by the department. The well record is to progressively describe the strata, water, and oil or gas (or both) encountered. All additional information collected shall be made available to the department, including but not limited to the following: pressures, test results, casing record, perforating, chemical treatment, and other pertinent information usually recorded in the normal procedure of drilling, provided that information submitted to the department need not include findings, interpretations, or conclusions derived from such data. This shall also include, if available, formation water chemistry analysis and hydrocarbon analysis including BTU content. All well records must include

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the exact surface location of the well. A copy of the records must be furnished to the department within 30 days after the completion, suspension, or decommission of any well.

(2) All well logging must be recorded. One digital copy and one paper copy is to be submitted to the department within 30 days after completion, suspension, or decommission.

(3) A complete set of cuttings, washed and dried, and correctly labeled and identified as to depth, must be filed with the department within 30 days after completion, suspension, or decommission. Core samples, if taken, would be made available to the department 30 days after analysis is completed.

(4) Well logs, electric logs, cuttings, and cores will be kept confidential by the State for a period of 2 years from the date of completion, suspension, or decommission of the well.

(a) This period of time may be extended by the department for the protection of the economic interests of the permittee of the well upon written request by the permittee showing good cause in the opinion of the department. The written request must be received by the department at least 30 days before the expiration of confidentiality. The request must include a proposed length of extension and reasons for such extension.

(b) A permittee may authorize the department to release records before the end of the 2-year confidentiality period by providing a written release from an officer of the company or its attorney-in-fact.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 1-1991, f. 9-5-91, cert. ef. 9-6-91; DGMI 2-1999, f. & cert. ef. 8-30-99; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0018

### Organization Reports

Every person acting as principal, agent for another, or independently engaged in drilling for, producing, or storing oil or gas in Oregon, must immediately file with the department an organization report on a form provided by the department. A supplementary report shall be filed immediately after any change occurs as to the facts stated in the original report.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 2, f. 6-20-55; GMI 4-1985, f. & ef. 11-20-85; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0020

### Surface Equipment

Meter fittings of adequate size to measure the gas efficiency for the purpose of obtaining gas-oil ratios must be installed on the gas vent-line of every separator. Wellhead equipment must be installed and maintained in good operating condition so that static bottom hole pressure may be obtained at any time by the duly authorized agents of the board or the department. Valves must be installed so that pressures can be readily obtained on both casing and tubing.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0128

### Boiler or Light Plant

No open flame or source of sparks may be placed nearer than 150 feet from any producing well, hydrocarbon storage, or other flammable source.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0130

### Rubbish or Debris

Any rubbish or debris that might constitute a fire hazard must be removed to a distance of at least 150 feet from the vicinity of wells, tanks, and pump stations. All waste must be removed from the site upon completion, suspension, or decommission of the well and disposed of in such a manner as to avoid creating a fire hazard or contaminating streams and freshwater strata and in compliance with state and federal law, including any necessary permits.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 1-1982, f. & ef. 6-25-82; GMI 6-1990, f. & cert. ef. 12-5-90; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0132

### Tubing

All wells must be equipped with tubing. Production must be exclusively through tubing, unless otherwise approved by the department. The bottom of tubing on flowing wells may not be higher than 100 feet above the top of the producing horizon, or as otherwise approved by the department.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 1-1979, f. & ef. 1-25-79; GMI 1-1981, f. & ef. 2-26-81; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0134

### Chokes

All free-flowing wells must be equipped with chokes or beans adequate to control the flow thereof.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 6-1990, f. & cert. ef. 12-5-90; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0136

### Separators

All wells flowing oil and gas must be produced through an oil and gas separator.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0138

### Fire Walls

Every permanent oil or condensate tank, or battery of tanks, must be surrounded by a dike or firewall with a capacity of one and one-half times that of the tank or battery of tanks.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0140

### Reserve Pits, Sumps, and Above-Ground Tanks

(1) Materials or any fluid necessary to the drilling, production, or other operations by the permittee must be discharged to or placed in pits, sumps or above-ground tanks approved by the department and the Oregon Department of Environmental Quality. The permittee must provide pits, sumps, or tanks of adequate capacity and design to retain all materials. Under no circumstances are the contents of a pit or sump allowed to:

(a) Contaminate streams, artificial canals or waterways, groundwater, lakes, rivers, or other water bodies; or

(b) Adversely affect the environment, including but not limited to, persons, plants, fish, and wildlife and their populations.

(2) When no longer needed, and within one year of completion of drilling operations, fluid in pits, sumps, or tanks must be disposed of in a manner approved by the Oregon Department of Environmental Quality. In addition, sumps must be filled and covered and the premises reclaimed. Restoration is not required if arrangements are made with the surface owner to leave the site suitable for a secondary beneficial use that is compatible with the applicable local comprehensive plan and land use regulations. The permittee must notify the department to inspect the site reclamation.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 1-1979, f. & ef. 1-25-79; GMI 1-1982, f. & ef. 6-25-82; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0142

### Directional Drilling

(1) Any well intentionally deviated from the vertical must be surveyed at intervals of at least 250 feet to determine the location of the borehole at those intervals. Deviation from the vertical for short distances is permitted without special permission to straighten the hole, sidetrack junk, or correct other mechanical difficulties.

(2) Except for the purpose of straightening the hole, sidetracking junk, or correcting mechanical difficulties as provided in this rule, no well may be intentionally deviated from the vertical unless the permittee files an application and obtains a permit from the department.

(a) Prior to drilling, an application to deviate a well may be approved as part of the drilling permit.

(b) If drilling is in progress, the permittee must notify the department immediately of the deviation of the hole or of the intention to deviate the



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hole. When a permittee follows this procedure, an application must be submitted as soon as practicable to obtain a permit. The application for a permit to deviate the hole is to be submitted to the department along with the appropriate fee pursuant to ORS 520.017 and must include:

(A) Surface location in terms of distances from lease and section boundaries, and plan coordinates of top of producing interval and bottom of hole from surface location;

(B) Reason for deviation;

(C) If the proposed or final location of the producing interval of the directionally deviated well is not in compliance with the spacing or other rules applicable to the reservoir:

(i) List of affected mineral rights owners or evidence that the applicant is the only affected mineral rights owner. For the purposes of this rule, affected mineral rights owners are the mineral rights owners in adjoining or cornering drilling or spacing units toward which the well is to be deviated;

(ii) A plat of the lease and of all affected leases showing the names of all affected mineral rights owners and the surface and proposed producing interval locations of the well. The plat must be drawn to a scale that allows easy observation of all pertinent data; and

(D) Other information as the department may require.

(3)(a) The department will notify all affected mineral rights owners, located in drilling or spacing units toward which a well is being directionally drilled, of the proposed deviation before approving an application. Approval of the application to deviate will be granted or denied at the discretion of the department. Affected mineral rights owners may submit a written request for a hearing to consider the application. If any such mineral rights owner requests a hearing within 20 days of the date of the department's notice, the hearing will be held without undue delay by the board or its designated representative. If no request for a hearing is made within 20 days of the department's notice, the department may approve the application.

(b) If the applicant is the only affected mineral rights owner or has leased the right to drill from the only affected mineral rights owner or has obtained a waiver from the affected mineral rights owner and the department does not object to the application, the department may approve the application immediately.

(c) If a well is being directionally drilled as part of a continuous drilling operation, the department may permit deviation of the well without providing a 20-day notice to all affected mineral rights owners in spacing units toward which the well is being directionally drilled. If a well is completed in a setback location, affected mineral rights owners will be notified and a public hearing will be held, if requested.

(4) Upon completion, suspension, or decommission of a well, whichever comes first, the permittee must file a complete directional survey, obtained by approved well surveying methods, with the department, together with other regularly required reports.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 1-1979, f. & ef. 1-25-79; GMI 3-1980, f. 2-29-80, ef. 3-1-80; GMI 1-1982, f. & ef. 6-25-82; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; DGMI 2-1999, f. & cert. ef. 8-30-99; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0144

### Report of Perforating or Well Stimulation Treatment

Within 60 days after either the perforating or well stimulation treatment of a well, the permittee must file a report with the department describing the perforation or stimulation procedures used and the results obtained.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 1-1979, f. & ef. 1-25-79; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0146

### Vacuum Pumps Prohibited

The use of vacuum pumps or other devices for the purpose of putting a vacuum on any gas- or oil-bearing stratum is prohibited, unless approved by the department.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 1-1982, f. & ef. 6-25-82; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0148

### Production Practice

Naturally flowing wells must be produced at a continuous uniform rate as far as is practical, in keeping with the current allowable, unless the board specifically permits stop-cocking to reduce the gas-oil ratio.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0150

### Removal Of Casing

No person may remove a casing, or any portion of a casing, from a well without first giving advance written notice and obtaining written approval from the department.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 1-1979, f. & ef. 1-25-79; GMI 4-1985, f. & ef. 11-20-85; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0151

### Notification of Fire, Breaks, Leaks, or Blowouts

(1) All persons controlling or operating any well, receiving tank, storage tanks, or receiving and storage receptacle where crude oil is produced, received, or stored must immediately notify the local fire marshal and the department, giving full details concerning all fires that occur at such oil or gas wells or tanks or receptacles on their property, and immediately report any breaks in tanks or receptacles and pipelines where oil or gas is escaping or has escaped.

(2) In all reports of fires, breaks, leaks, or escapes, or other accidents of this nature, the following information must be provided:

(a) The location of the well, tank receptacle, or line break by section, township, range, tax lot, and latitude/longitude, as well as the name of the landowner, so that the exact location can be readily located on the ground;

(b) The steps that have been taken, or are in progress, to remedy the situation reported; and

(c) The quantity of oil or gas lost, destroyed, or permitted to escape.

(3) In case any tank or receptacle is overfilled, the escape must be reported as in the case of a leak.

(4) Notify the department of all blowouts.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 1-1982, f. & ef. 6-25-82 ; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0152

### Multiple Completion of Wells

Neither oil or gas may be produced from different strata through the same tubing without the prior approval of the department. The approval of the department will require evidence of adequate and complete separation as ascertained by pressure or circulated tests conducted at the time the packers are set. Subsequently, if packer leakage is suspected, the department may require the permittee to provide proof of adequate and complete separation of the pools involved in the completion, or perform a packer leakage test. The permittee must notify the department prior to performing a packer leakage test so that a representative may be on site to observe. The department may also require the permittee to demonstrate the operation of multiple completion of a well.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 1-1979, f. & ef. 1-25-79; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0154

### Determining and Naming Fields and Pools

(1) Field names and boundaries are determined by the board after establishment of evidence acceptable to the board that geologic, geographic, or other conditions warrant the assignment of a new field designation.

(2) Wells are classified by the pool from which they produce, and pools are named by the department.

(3) A permittee making new field or pool discoveries may recommend names to the department.

(4) Any person dissatisfied with a new field designation or a well or pool classification or determination may request in writing a reconsideration by the board.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 1-1982, f. & ef. 6-25-82; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0156

### Spacing Units, Notification

(1) Immediately upon the discovery of any pool, or at any time after the effective date of this rule, the board may prescribe spacing units for each pool and specify the size, shape, and location and establish field limits and special rules.

# ADMINISTRATIVE RULES

(2) Before establishing spacing units, field limits, and special rules, the board will schedule and hold a hearing. Notification will be provided to mineral owners in the area surrounding the discovery well according to the following:

(a) In areas of the state with surveyed sections, and where the top of the productive interval in the well is at a depth of less than 7,000 feet below the surface, the department will notify mineral owners in the 160-acre quarter section where the well is located. If the top of the productive interval is located within 250 feet from any 160-acre quarter section line, the department will notify mineral owners in the affected adjacent quarter sections;

(b) In areas of the state with surveyed sections, and where the top of the productive interval in the well is at a depth of 7,000 feet or greater below the surface, the department will notify mineral owners in the 160-acre quarter section where the well is located and in the eight surrounding quarter sections;

(c) In areas of the state that are without surveyed sections, the department will notify mineral owners located within the boundary of a superimposed 640-acre section, with the well being in the center of the section, and the superimposed section will be oriented north-south.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 4-1985, f. & ef. 11-20-85; GMI 2-1995, f. & cert. ef. 3-10-95;

DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0157

### Exceptions to Special Rules

(1) The board may grant exception to special rules after holding a hearing, when necessary, on the basis of geology, productivity, topography, or environmental protection.

(2) Before granting an exception for a well proposed within the setback distance set forth in a special rule, the department will notify mineral owners in the spacing unit where the well is proposed to be drilled and in the adjacent spacing unit(s) within the setback distance. A mineral owner may request a hearing by the board to consider the application. The owner must request hearing within 20 days of the date of the department notice or waive the right to one. If no written request for a hearing is made, the department may issue a permit for the proposed well. If the applicant is the only mineral owner in the adjacent spacing units, or has leased the right to drill from the mineral owner(s) in the adjacent spacing units, and has obtained a written waiver from these mineral owners to allow the drilling, the department may approve the application immediately.

(3) If a mineral rights owner submits a written request for a hearing, it will be held within 30 days of receipt of request, provided the request is made within the 20-day period specified in section (2) of this rule. A mineral owner must request hearing within 20 days or waive the right to one. Any order by the department or board granting an exception to special rules under this rule will include provisions to prevent the production from the proposed well in excess of its just and equitable share of oil and/or gas in the pool.

(4) If a permittee proposes to change the planned location of a well, such that it will not comply with the setback distances in a special rule, an exception necessary for the permit to remain valid may be granted according to the process above.

(5) Whenever a uniform spacing plan has been prescribed for any pool, exceptions may be permitted if the board finds, after notice and hearing, that conditions within the pool are such that the special rules would be impracticable.

Stat. Auth.: ORS 516.090, 520.095, 522.019, 522.305, 522.405, 522.434 & 522.545

Stats. Implemented: ORS 520.095

Hist.: GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0159

### Underground Reservoirs for Natural Gas Storage

Rules providing for well spacing and proration of gas do not apply to gas storage wells, injection wells, or monitor wells.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 3-1980, f. 2-29-80, ef. 3-1-80; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0161

### Compulsory Integration Orders

(1) Definitions. For purposes of this rule:

(a) "Costs" include:

(A) "Drilling costs," which means all reasonable costs and expenses of drilling, redrilling, reworking, deepening, plugging back, testing, and completing the well; and

(B) "Production costs," which means all reasonable on-site costs and expenses of production and production equipment for the well, including wellhead, but not pipeline costs and not overhead.

(b) "Participating owner" means each owner in the spacing unit who, prior to commencement of drilling operations, entered into a written agreement with the operator to share costs, production, and entitlements. However, where no such agreement has been reached, an owner, who prior to drilling tendered the operator a written agreement to pay not less than the owner's pro rata share of costs attributable to the owner's interest, as computed in section (2) of this rule, in the spacing unit in exchange for a share of production and entitlements, will be considered to be a participating owner and to have entered into a constructive agreement to that effect.

(2) Timing. In the absence of a voluntary integration agreement for the entire spacing unit, the board will enter an order integrating all mineral rights ownership interests in a spacing unit pursuant to ORS 520.220(2), at any time following the entry of an order establishing the spacing unit for a pool pursuant to ORS 520.210.

(3) Determination of Interests. A compulsory integration order determines the interest of each mineral rights owner in the spacing unit by dividing:

(a) The number of surface acres subject to an owner's mineral rights located in the spacing unit; by

(b) The total number of surface acres in the spacing unit.

(4) Content. The compulsory integration order will provide for the drilling, if necessary, and operation of the well on the spacing unit for the sharing of production and for the payment of costs.

(5) Effective Date. The compulsory integration order becomes effective on the date of initial production, unless the board establishes another date.

(6) Allocation of Costs and Earnings:

(a) The compulsory integration order will treat the operator and participating owners as a single entity. The operator-participating owners' entity is entitled to share production and pay costs, both in proportion to the total interest, as computed under section (2) of this rule, of the operator-participating owners' entity in the spacing unit. The express and constructive agreements between the operator and participating owner(s) control the allocations of production and costs attributable to the operator-participating owners' entity; and

(b) The compulsory integration order will allocate each non-participating owner a full share in production in proportion to the owner's interest in the spacing unit subject to royalty obligations, if any.

(c) The compulsory integration order will authorize the operator-participating owners' entity to withhold from each nonparticipating owner's share of production a pro rata share of drilling and production costs. The pro-rata share of costs may also be subject to a multiplier established by the Board to compensate the operator-participating owners assumption of risks associated with production.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 3-1982, f. & ef. 8-16-82; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0162

### Illegal Production

No purchaser, producer, operator, permittee, or any other person may produce any crude oil, natural gas, or waste oil from any spacing unit or pool in this state except in accordance with the rules, regulations, and orders of the board.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0163

### Limitation of Production

In the absence of unitization, whenever the board, after notice and hearing, finds that waste as defined in ORS 520.005 is occurring or is imminent in any oil or gas field or pool, and that the production of oil or gas from such field or pool should be limited to prevent waste, then the board must issue an order limiting production from the field or pool and specify rules for the allocation or distribution of allowable production as provided for in ORS 520.005(11) and 520.015.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 3-1980, f. 2-29-80, ef. 3-1-80; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

# ADMINISTRATIVE RULES

## 632-010-0164

### Commingling of Production Prohibited

The production from one pool must not be commingled with that from another pool in the same well before delivery to a purchaser, unless otherwise approved by the board.

Stat. Auth.: ORS 520  
Stats. Implemented: ORS 520.095  
Hist.: GMI 1, f. 1-27-54; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0165

### Allocation of Gas Pursuant to Special Pool Rules

Whenever the full production from any pool producing natural gas is in excess of the market demand for gas from that pool, any permittee or interest owner, pursuant to ORS 520.115, may petition the board for a hearing and an order establishing a method of determining the market demand from the pool and of distributing that demand among the producing wells.

Stat. Auth.: ORS 520  
Stats. Implemented: ORS 520.095  
Hist.: GMI 3-1980, f. 2-29-80, ef. 3-1-80; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0166

### Reports by Purchasers and Producers

(1) Purchasers: Each purchaser or taker of any oil or gas from any well, lease, or pool must, on or before the last day of each month succeeding the month in which the purchasing or taking occurs, file with the department, on a form furnished by the department, a signed report of all oil or gas purchased or taken from any such well, lease, or pool during the preceding month.

(2) Producers: The producer or permittee of a well or spacing unit must, on or before the last day of each month succeeding the month in which the production occurs, file with the department, on a form furnished by the department or other form acceptable to the department a signed report of all production made by each well.

(3) If the purchaser and the producer are the same, only one report need be submitted.

(4) Information submitted in accordance with sections (1), (2), and (3) of this rule shall not be confidential.

Stat. Auth.: ORS 520  
Stats. Implemented: ORS 520.095  
Hist.: GMI 1, f. 1-27-54; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 2-1999, f. & cert. ef. 8-30-99; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0167

### Maximum Efficient Rate Hearings

A hearing to determine the maximum efficiency rate at which any pool in the state can produce oil and gas without waste may be held by the board on its own motion or at the request of any interested party.

Stat. Auth.: ORS 520  
Stats. Implemented: ORS 520.095  
Hist.: GMI 3-1980, f. 2-29-80, ef. 3-1-80; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0168

### Use of Earthen Reservoirs

Oil may not be stored or retained in earthen reservoirs or in open receptacles.

Stat. Auth.: ORS 520  
Stats. Implemented: ORS 520.095  
Hist.: GMI 1, f. 1-27-54; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0170

### Reservoir Surveys

The board, by order, may require the permittee of a well producing oil or gas to conduct periodic surveys of the reservoirs in the state that contain oil or gas or both. These surveys must be thorough and complete and conducted under the supervision of the department. Each survey must address the condition of the reservoirs containing oil or gas, or both, and the practices and methods employed by the permittee. Such investigation must include, but need not be limited to: the volume and source of crude oil and natural gas; the pressure of the reservoir as an average; the areas of regional or differential pressure; stabilized gas-oil ratios; and the producing characteristics of the field as a whole and of the individual wells within the field.

Stat. Auth.: ORS 520  
Stats. Implemented: ORS 520.095  
Hist.: GMI 1, f. 1-27-54; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0172

### Operators to Assist in Reservoir Surveys

All permittees of oil or gas wells intercepting a reservoir are required to conduct a survey as required under OAR 632-010-0170 and to assist the representatives of the board and the department in making any and all tests, including bottom hole pressure and gas-oil ratio determinations, required by the board or department on any or all of such operators' wells.

Stat. Auth.: ORS 520  
Stats. Implemented: ORS 520.095  
Hist.: GMI 1, f. 1-27-54; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0174

### Measurement of Potential Open-Flow of Gas Wells

The permittee must determine the potential open-flow of a gas well by U.S. Department of Energy back-pressure method unless the department approves in writing the use of an alternative method.

Stat. Auth.: ORS 520  
Stats. Implemented: ORS 520.095  
Hist.: GMI 1, f. 1-27-54; GMI 6-1990, f. & cert. ef. 12-5-90; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0176

### Supervision of Open-Flow and Pressure Tests

All tests made in determining the potential flow and shut-in, well-head, or bottom hole pressure of a gas well must be conducted by the permittee and may be monitored by the department to ensure that:

- (1) Initial flow to the surface is accomplished during daylight hours;
- (2) Gas will be flared during tests when feasible; and
- (3) Proper safety precautions are taken to prevent fire or explosion during tests.

Stat. Auth.: ORS 520  
Stats. Implemented: ORS 520.095  
Hist.: GMI 1, f. 1-27-54; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0178

### Duration of Tests

The permittee must test for open-flow and pressure of completed gas wells at such intervals and continue for such time as is necessary to effect accurate determination. The permittee must file a report of all tests with the department within 60 days of the completed test.

Stat. Auth.: ORS 520  
Stats. Implemented: ORS 520.095  
Hist.: GMI 1, f. 1-27-54; GMI 1-1979, f. & ef. 1-25-79; GMI 6-1990, f. & cert. ef. 12-5-90; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0182

### Gas to Be Metered

(1) Meters: All gas sold must be metered with a meter of sufficient capacity, provided that gas may be metered from a lease or unitized property as a whole, if it is shown that a ratable taking can be maintained. Meters are not required for gas produced and used on the lease for development purposes and lease operations.

(2) Meter Charts and Records: Purchasers must keep meter charts and gas purchase records for a period of at least two years and make the charts and records available to the department.

(3) Bypasses: Bypasses are not to be connected around meters or points where custody of the fluid is transferred.

Stat. Auth.: ORS 520  
Stats. Implemented: ORS 520.095  
Hist.: GMI 1, f. 1-27-54; GMI 1-1982, f. & ef. 6-25-82; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0184

### Direct Well Pressure

Where gas release to the atmosphere is involved, the use of direct well pressure to operate any machinery is prohibited.

Stat. Auth.: ORS 520  
Stats. Implemented: ORS 520.095  
Hist.: GMI 1, f. 1-27-54; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0186

### Gas-Oil Ratio

No well is permitted to produce gas in excess of the maximum ratio determined for a pool unless all gas produced in excess is returned to the pool.

Stat. Auth.: ORS 520  
Stats. Implemented: ORS 520.095  
Hist.: GMI 1, f. 1-27-54; DGMI 1-2013, f. & cert. ef. 3-21-13

# ADMINISTRATIVE RULES

## 632-010-0188

### Gas-Oil Ratio Surveys and Reports

Gas-oil ratios and surveys must be taken in the manner prescribed by the board for individual fields where gas-oil ratio limits have been fixed and in accordance with the rules prescribed for each individual pool.

(1) Flowing Wells Intermittently (Stop-Cocked) Produced: In computing the operating gas-oil ratio, the total volume of gas and the total barrels of oil that are produced in order to obtain the daily oil allowable must be used regardless of the flowing time in the 24-hour period.

(2) Gas Lift or Jet Wells: The total volume of gas to be used in computing the operating gas-oil ratio is the total output volume minus the total input volume.

(3) Pumping Wells: Gas withdrawn from the casing in an attempt to maintain a fluid seal, or for any other reason, must be added to the gas produced through tubing in computing the gas-oil ratio.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 1-1982, f. & ef. 6-25-82; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0190

### Gas Utilization

(1) A permittee must not allow hydrocarbon gas to escape to the atmosphere except for short periods outside of normal drilling operations and testing or flowing wells during workovers or repairs when an escape has been preauthorized by the department.

(2) Unless otherwise directed by the board, produced gas must be flared.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 1-1979, f. & ef. 1-25-79; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0192

### Disposal of Brine or Salt Water

In addition to the requirements of ORS 520.095(1), and in addition to applicable rules of the Oregon Department of Environmental Quality and the Oregon Water Resources Department, the following requirements apply to the disposal of brine or saltwater liquids:

(1) Disposal in pits, sumps or above ground tanks:

(a) Brine or saltwater may be disposed of by evaporation when impounded in excavated earthen pits, but only when the pits are lined with impervious material and a Water Pollution Control Facilities permit has been obtained from the Oregon Department of Environmental Quality;

(b) Impounding brine or saltwater in porous earthen pits is prohibited. Earthen pits used for impounding brine or saltwater must be constructed and maintained to prevent the escape of fluid;

(c) The department has the authority to prohibit the use of any pit that does not properly impound water and to order the proper disposal of water impounded in the pit;

(d) The level of brine or saltwater in earthen pits may not rise above the lowest point of the ground surface level. All pits must have a continuous embankment surrounding them sufficient to prevent surface water from running into the pit. An embankment may not be used to impound brine or saltwater; and

(e) Brine or saltwater impounded in earthen pits may not escape onto adjacent land or into waters of the state.

(2) Disposal by Injection: Saltwater may also be disposed of by injection into the strata from which it was produced or into other proved saltwater-bearing strata pursuant to an Underground Injection Control permit issued by the Oregon Department of Environmental Quality.

(3) Ocean discharge of saltwater may be permitted pursuant to a National Pollutant Discharge Elimination System permit issued by the Oregon Department of Environmental Quality.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 1-1979, f. & ef. 1-25-79; GMI 1-1982, f. & ef. 6-25-82; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0194

### Water Injection and Water Flooding of Oil and Gas Properties

(1) Application and Approval: The permittee of a well may inject water under pressure into the formation containing oil or gas for the purpose of obtaining oil or gas from the reservoir, upon application to and approval by the Oregon Department of Environmental Quality. No water injection or water flooding program may be instituted until it has been authorized by the Oregon Department of Environmental Quality.

(2) Casing and Cement: Wells used for the injection of water into the producing formation or repressuring wells must be cased with sound casing so as not to permit leakage, and the casing must be cemented in a manner such that damage will not be caused to oil, gas, or freshwater resources.

(3) Application, Contents, Notice, Objection, Hearing, and Approval: (a) An application for use of water injection must be verified and filed with the department and include:

(A) The location of the injection well;

(B) The location of all oil and gas wells, including any wells and dry holes, and the names of mineral rights owners within one-half mile of the injection well;

(C) The formations from which wells are producing or have produced;

(D) The name, description, and depth of the formations to be injected;

(E) The elevations of the top of the oil- or gas-bearing formation in the injection well and the wells producing from the same formation within one-half mile radius of the injection well;

(F) The log of the injection well or similar available information;

(G) Description of the injection well casing;

(H) Description of the liquid, stating the kind, where obtained, and the estimated amounts to be injected daily;

(I) The names and addresses of the permittees; and

(J) Other information as the department may require to ascertain whether the injection or flooding may be safely and legally made.

(b) Applications may be made to include the use of more than one injection well on the same spacing unit, or on more than one spacing unit;

(c) Applications must be executed by all permittees who are to participate in the proposed water injection or water flooding plan.

(4) Notice of Commencement and Discontinuance of Water Injection or Water Flooding Operations:

(a) Immediately upon the commencement of water injection or water flooding operations, the applicant must notify the department;

(b) Within 10 days after the discontinuance of water injection or water flooding operations, the permittee must notify the department of the date of discontinuance and the reasons for the discontinuance; and

(c) Before any injection well is decommissioned, the permittee must submit an application to the department, per OAR 632-010-0198.

(5) Records. The permittee must keep the following records and make them available to the department:

(a) The amount of water injected into the injection wells;

(b) The total amount of water produced; and

(c) The total amount of oil or gas produced from the area flooded.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 1-1982, f. & ef. 6-25-82; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0196

### Gas Injection of Oil and Gas Properties

In addition to the requirements of ORS 520.095(1), OAR 632-010-0002 through 632-010-0240 and any other applicable statutes, orders, or rules, wells drilled for the purpose of storing natural gas in an underground reservoir must be drilled in a manner that protects the underground reservoir against contamination and against waste of natural gas.

(1) Application and Approval: After applying for and receiving approval, the permittee of any well or proposed well may inject gas under pressure into the formation containing water, oil or gas for the purpose of increasing production of oil or gas from the reservoir or for storing natural gas.

(2) Casing and Cement: Wells used for the injection of gas into the producing formation must be cased with sound casing so as not to permit leakage, and the casing must be cemented in a manner such that damage will not be caused to oil, gas, or freshwater resources. All injection of gas must be through tubing with a casing packer set at the lower end above the zone of injection, and the annular space between tubing and casing must be monitored to be sure the packer is holding. The requirement for a casing packer may be waived by the department for temporary test injection into a depleted or partially depleted gas pool when an existing well is utilized as the temporary injection well. Prior to temporary injection, the casing must be tested for mechanical integrity to verify that there are no leaks in the casing. The department must be notified of all mechanical integrity tests.

(3) Application, Contents, Notice, Objection, Hearing, and Approval:

(a) No gas may be injected into a well until approved by the department pursuant to application and notice as herein required;

# ADMINISTRATIVE RULES

(b) A written request for gas injection of oil and gas properties must be submitted to the department and include the following:

(A) The location of the injection well;

(B) The location and depth of all oil and gas wells and the names of mineral rights owners within a one-half mile radius of the injection well;

(C) The name, description, and depth of the formations from which wells are producing or have produced;

(D) The name, description, and depth of the formations to be injected;

(E) The depths of each formation into which gas is to be injected;

(F) The elevations of the top of the oil- or gas-bearing formation in the injection well and the wells producing from the same formation within one-half mile of the injection well;

(G) The log of the injection well, or similar available information;

(H) Description of the injection well casing;

(I) The estimated amounts to be injected daily and the proposed injection pressure;

(J) An engineering and geological study of the proposed injection site including:

(i) Characteristics of reservoir and caprock, including areal extent, thickness, and lithology;

(ii) Remaining gas or oil reserves of storage zones, including calculations, if applicable;

(iii) If an aquifer is to be injected, known water wells, aquifer extent, thickness, and water quality; and

(iv) Proposed use of monitor wells for the project;

(K) The names and addresses of the permittees; and

(L) Other information the department may require to ascertain whether the gas injection plan meets the requirements of law and does not pose a significant risk to human health or the environment.

(c) Applications may be made to include the use of more than one injection well on the same spacing unit or on more than one spacing unit; and

(d) Applications must be executed by all permittees who are to participate in the proposed gas injection plan.

(4) Notice of Commencement and Discontinuance of Gas Injection.

(a) The permittee must notify the department at least 10 days prior to the commencement of gas injection operations.

(b) Within 10 days after the discontinuance of gas injection operations, the permittee must notify the department of the date of discontinuance and the reasons for the discontinuance.

(c) Before any injection well is decommissioned, the permittee must submit an application to the department per OAR 632-010-0198.

(d) The above notification requirements do not apply to a gas storage facility except for the initial injection and filling of the reservoir and for the decommission of the storage reservoir.

(5) Records: The permittee must keep the following records and make them available to the department:

(a) The amount of gas injected into the injection wells;

(b) The amount of gas produced;

(c) The amount of oil produced from leases affected by the gas injection; and

(d) The well-head injection pressures.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 1-1979, f. & ef. 1-25-79; GMI 1-1982, f. & ef. 6-25-82; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; GMI 2-1996, f. & cert. ef. 7-10-96; DGM 1-2013, f. & cert. ef. 3-21-13

## 632-010-0198

### Abandonment, Unlawful Abandonment, Suspension, Well Plugging

(1) Proper completion and decommission require adequate protection of the environment and of aesthetic qualities of the surface in the area of operation. (2) A well is properly completed for the purposes of this chapter when the permittee demonstrates to the satisfaction of the department that the well is capable of effective production or reinjection and appropriate equipment exists for flow testing and monitoring temperature, pressure or other subsurface conditions.

(3) A well is considered properly plugged and decommissioned, for the purposes of this chapter, when the conditions of ORS 520.005 to 520.991 and these rules are fulfilled and the person has shown to the satisfaction of the department that all proper steps have been taken to protect groundwater and surface water from contamination resulting from the drilling or drilling related activities and to prevent the commingling of fluids between zones or to surface.

(4) All holes must be plugged and all related disturbance must be reclaimed in accordance with these rules as soon as practical. A hole may

not be left unplugged for longer than 30 days from the completion of drilling operations and prior to completion of the well without prior written approval from the department.

(5) Suspension: The department may authorize a permittee to suspend operations or remove equipment from a well for the period stated in the department's written authorization, upon receipt of a written request from the permittee showing good cause. The period of suspension may be extended by the department, upon written request made before expiration of the previously authorized suspension, accompanied by a statement by the permittee showing good cause.

(6) Decommission: Before any work is commenced to decommission a well drilled for oil or gas, the permittee must give notice to the department of the intention to decommission such well. If verbal notice is given but plugging is not planned within 10 days, written notice must also be given within 10 days. The notice must be given on forms supplied by the department and must contain the present condition of the well, proposed work, and such other information as reasonably may be required by the department.

(7) Unlawful Abandonment.

(a) After operations on or at a well have been suspended with the approval of the department pursuant to section (2) of this rule, if operations are not resumed within 30 days from the date specified in the suspension approval, the well is considered unlawfully abandoned unless the permittee has obtained a written extension from the department. Written application showing good cause is required for the extension to be considered.

(b) If a permittee has not paid the annual permit renewal fee, or any other fees owed, within 60 days after the anniversary date, the well is considered out of compliance, and the permittee is subject to enforcement for violation of these rules and the department may issue an order requiring the permittee to decommission the well.

(c) If a well is left idle for a period of 30 consecutive days without a written request for suspended status, the well is considered unlawfully abandoned.

(d) Upon any unlawful abandonment as defined in these rules, notice will be sent to the permittee and to the permittee's surety informing them the department has determined the well unlawfully abandoned.

(e) Any well unlawfully abandoned may be plugged, suspended, or otherwise repaired by the department using the bond or other financial security, and if the bond or other financial security is not sufficient, the department may bring an action or proceeding as authorized by ORS 520.175.

(8) Plugging Methods and Procedure: The methods and procedure for plugging a well are as follows:

(a) Producing strata and strata having fluid at greater than hydrostatic pressure must be plugged with cement from at least 50 feet below the top of each fluid-bearing zone to at least 50 feet above the top of each zone;

(b) A cement plug not less than 100 feet in length must be placed across the base of the freshwater-bearing strata in an uncased hole;

(c) When there is an open hole below the base of any casing, a cement plug not less than 100 feet in length must be placed to extend at least 50 feet above and at least 50 feet below the base of the casing; the department may require a pressure test on the casing shoe plug to document that an adequate seal was achieved.

(d) The top of all casing strings must be cut off at least 4 feet below ground surface, and casing and all annuli must be plugged with cement to a depth of at least 10 feet;

(e) The permittee will have the following options as to the method for placing cement in the hole:

(A) Dump bailer;

(B) Pump through tubing or drill pipe; or

(C) Other method approved by the department.

(f) The interval between plugs must be filled with an approved heavy mud-laden fluid.

(9) Reclamation of surface lands affected by these operations is intended to return the surface to pre-exploration condition and/or beneficial use that is compatible with the local land use designation for the parcel(s).

(10) Affidavit on completion: Within 60 days after a well is plugged, the permittee must file a written statement with the department certifying that the well was properly plugged and decommissioned.

(11) Wells Used for Fresh Water:

(a) When an oil or gas well is proposed to be decommissioned and may safely be used as a freshwater well and such use is desired by the landowner, the well need not be filled above the required sealing plug set below fresh water, provided authorization is obtained from the Oregon Water Resources Department;

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(b) Application for leaving a well partially unplugged as a freshwater well must be submitted to the department by the landowner, together with evidence of a permit and security from the Oregon Water Resources Department or its statement that neither a permit nor a bond is required; and

(c) The permittee must leave a freshwater well in a condition approved by the department.

(12) The surety furnished by permittee may not be released until all procedures required by these rules have been completed and the department has authorized such release.

(13) The affected surface lands must be restored to a pre-exploration and/or beneficial use acceptable to the department, after consultation with the surface owner. Reclamation activities may include, but are not limited to replanting or reseeded of affected land for return to secondary beneficial use that is compatible with the land-use designation.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1, f. 1-27-54; GMI 3, f. 4-3-56; GMI 1-1982, f. & ef. 6-25-82; GMI 1-1985(Temp), f. & ef. 6-7-85; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0205

### Drilling Surety Bond

(1)(a) Every person who engages in the drilling, redrilling, or reworking of any well or disposal well must file and maintain with the department, on a form provided by the department a bond or alternative form of financial security in the sum of \$25,000 for each well drilled, redrilled, deepened, or reworked to a depth less than 10,000 feet, or \$50,000 for each well to a depth greater than 10,000 feet. The security must be filed with the department prior to the approval of an application to drill, redrill, deepen, or rework as required in OAR 632-010-0010. A security may be submitted individually for each well, or a blanket security may be filed as described in (b) below.

(b) In multi-well operations, a blanket bond or alternative form of security in the minimum amount of \$150,000 may be filed in lieu of individual bonds or securities. The blanket amount must be computed as the sum of the applicable individual bond or security amounts required for each well. The department may exclude the following wells from the blanket bond or security computation:

(A) Any well that has a gross annual wellhead production in dollars during the past twelve months that is greater than the amount of the required individual well bond. It is the responsibility of the well permittee to file for exclusions annually prior to the permit anniversary date.

(c) The bond or security must be executed by the permittee, as principal, and by a company authorized to do business as a surety insurer in the State of Oregon, as surety, and be conditioned upon the faithful compliance by the principal with the statutes, rules, and orders of the department and the board.

(2) Any bond or security submitted as required by this section may, with the consent of the department, be terminated and cancelled and the surety relieved of all obligations thereunder. However, the department will not consent to termination and cancellation of any bond until the well or wells covered by such bond have been properly plugged and decommissioned including site reclamation, with the approval of the department, or another valid bond has been submitted and approved.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1-1979, f. & ef. 1-25-79; GMI 4-1985, f. & ef. 11-20-85; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; GMI 3-1997, f. & cert. ef. 12-3-97; DGMI 2-1999, f. & cert. ef. 8-30-99; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0210

### Disposal of Solid and Liquid Wastes

(1)(a) Permit stipulations by the Oregon Department of Environmental Quality regarding disposal of solid and liquid wastes generated by drilling, redrilling, deepening, or reworking operations are deemed to be a requirement of every permit issued under OAR 632-010-0010.

(b) All wells used for disposal of solid and liquid wastes must be equipped with tubing and packers and be tested for mechanical integrity at least once every five years to determine that there are no leaks in the casing, tubing, or packers, and that there is no fluid movement into an underground source of water, other than that from which the fluid was produced, unless otherwise approved by the department. Acceptable tests include pressuring the tubing and casing annuli to demonstrate the integrity of the casing, tubing, and packers. Tracer surveys, noise logs, temperature logs, spinner surveys, or other methods approved by the department may be used to detect water movement adjacent to the wellbore. The department must be notified of all mechanical integrity tests, and the results submitted as required by OAR 632-010-0017.

(2) Once field development is initiated, a separate permit is required from the Oregon Department of Environmental Quality for disposal of liquid and solid wastes.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1-1979, f. & ef. 1-25-79; GMI 4-1985, f. & ef. 11-20-85; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0220

### Measurement of Oil

The volume of production of oil must be computed in terms of barrels of clean oil on the basis of properly calibrated meter measurements or tank measurement of oil level differences made and recorded to the nearest quarter inch, using 100 percent tank capacity tables, subject to the following corrections:

(1) Correction for Impurities: The percentage of impurities (water, sand, and other foreign substances not constituting a natural component part of oil) must be determined to the satisfaction of the department, and the observed gross volume of oil must be corrected to exclude the entire volume of such impurities.

(2) Temperature Correction: The observed volume of oil corrected for impurities must be further corrected to the standard volume at 15.55 degrees Centigrade (60 degrees Fahrenheit), in accordance with industry standards or any revisions thereof approved by the department.

(3) Gravity Determination: The gravity of oil at 15.55 degrees Centigrade (60 degrees Fahrenheit) must be determined in accordance with A.S.T.M. standards or any revisions thereof and any supplements thereto or any close approximation thereof approved by the department.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 1-1979, f. & ef. 1-25-79; GMI 6-1990, f. & cert. ef. 12-5-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0225

### Spacing Plan

(1) For purposes of this section, the Mist Gas Field refers to the following area:

(a) Sections 1 through 18, 20 through 29, 32 through 36 of T. 5 N., R. 4 W.;

(b) Sections 1, 2, 11, 12, of T. 5 N., R. 5 W.;

(c) Sections 3 through 10, 14 through 23, 25 through 36 of T. 6 N., R. 4 W.;

(d) Sections 1 through 36 of T. 6 N., R. 5 W.;

(e) Section 31 of T. 7 N., R. 4 W.; and

(f) Sections 13 through 36 of T. 7 N., R. 5 W., W.M.

(2) The minimum spacing for gas wells in the Mist Field is 160 acres when the top of the producing zone is less than 7,000 feet in vertical depth.

(3) The minimum spacing for gas wells in the Mist Field is 640 acres when the top of the producing zone is 7,000 feet or more in vertical depth.

(4) The spacing units are based upon the federal land grid of sections and quarter sections, or projected extensions of the grid if the affected lands are not surveyed.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 2-1980, f. 2-29-80, ef. 3-1-80; GMI 2-1983, f. & ef. 12-8-83; GMI 4-1985, f. & ef. 11-20-85; DGMI 2-1999, f. & cert. ef. 8-30-99; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0230

### Location of Wells

The completion location of each permitted well to be drilled on any spacing unit is the location of the well at the top of the producing horizon. For gas wells, the completion location of the well may not be located nearer than 250 feet from the unit boundary and 500 feet from the nearest producing well from the same pool.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 2-1980, f. 2-29-80, ef. 3-1-80; GMI 4-1985, f. & ef. 11-20-85; DGMI 1-2013, f. & cert. ef. 3-21-13

## 632-010-0235

### Exceptions

The department may grant exceptions to OAR 632-010-0225 and 632-010-0230 after holding a hearing, based on the geology, productivity, topography, enhancement requirements, or environmental protection.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 2-1980, f. 2-29-80, ef. 3-1-80; GMI 4-1985, f. & ef. 11-20-85; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2013, f. & cert. ef. 3-21-13

# ADMINISTRATIVE RULES

**Rule Caption:** Adopt revised rule language that addresses ORS 520 revisions

**Adm. Order No.:** DGMI 2-2013

**Filed with Sec. of State:** 3-21-2013

**Certified to be Effective:** 3-21-13

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**Rules Amended:** 632-015-0005, 632-015-0010, 632-015-0015, 632-015-0020, 632-015-0025, 632-015-0030, 632-015-0035, 632-015-0040, 632-015-0045, 632-015-0050, 632-015-0055, 632-015-0060

**Subject:** ORS chapter 520 authorizes the Department of Geology and Mineral Industries to control the exploration and development of oil and gas resources so that such information and seismic test holes will be constructed, operated, maintained, and decommissioned in the manner necessary to safeguard the life, health, property, and welfare of the people of this state and to encourage the maximum economic recovery of oil and gas resources therefrom.

**Rules Coordinator:** Gary Lynch—(541) 967-2053

## 632-015-0005

### Information and Seismic Test Holes

These rules provide requirements for seismic and information hole operations, including financial security, groundwater protection, and surface reclamation.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 2-1990, f. 8-9-90, cert. ef. 8-31-90; DGMI 2-2013, f. & cert. ef 3-21-13

## 632-015-0010

### Definitions

The definitions in ORS 520.005 apply to this rule division. In addition, the following definitions apply:

(1) "Board" means the Governing Board of the State Department of Geology and Mineral Industries.

(2) "Department" means the Oregon Department of Geology and Mineral Industries.

(3) "Drilling Records" means an operational summary of any hole.

(4) "Groundwater" means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir or other body of surface water within Oregon, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.

(5) "Information Hole" means a hole drilled for information purposes in conjunction with oil or gas exploration operations and includes, but is not limited to, stratigraphic test holes, core holes, or other test holes.

(6) "Nonmetallic Plug" means a plugging device made of nonmetallic and noncorrosive material that can be placed in a hole to prevent excess settling at the surface. An example of a nonmetallic plug is a plastic plug which conforms to the diameter of the hole.

(7) "Operator" means any person who is in charge of the development of a lease or the construction, development or operation of a seismic program or information hole operation subject to the division.

(8) "Permittee" means any person who has the right to conduct a seismic program or information hole operation and has received a permit or is an operator.

(9) "Seismic Explorer" means a person who conducts seismic research work by the means of drilling seismic shot holes for the placing or detonating of explosives.

(10) "Seismic Shot Hole (Seismic Hole)" means a hole that will be used for seismic operation purposes only.

(11) "Stratigraphic Test Hole" means an information hole that is less than 500 feet deep drilled for stratigraphic or geologic data or information only and not for production under any foreseeable conditions as determined by the department.

(12) "Sump" means an earthen containment area or a tank or other container, lined with a low permeability liner, located at the drilling site for the storage of drilling fluids or other material as part of a drilling operation.

Stat. Auth.: ORS 520

Stats. Implemented: ORS 520.095

Hist.: GMI 2-1990, f. 8-9-90, cert. ef. 8-31-90; DGMI 2-2013, f. & cert. ef 3-21-13

## 632-015-0015

### Application and Permit to Conduct Seismic and Information Hole Operations

(1) A person may not conduct seismic program or information hole operations until that person has applied for and received a permit from the

department. A nonrefundable fee, pursuant to ORS 520.017, must accompany an application. The application must be submitted on a form provided by the department. The applicant must submit one paper copy and one electronic copy of the application and supporting documents.

(2) The application for a permit for seismic program or information hole operations must include:

(a) The approximate number, depth, and location of the seismic or information holes. In the case of seismic shot holes, the size of the explosive charges must be specified. The application must be accompanied by a map showing the location of the shot holes or information holes. This may be a seismic shot point map showing the location of the seismic lines with shot points where the holes will be located;

(b) The name, permanent address, and business phone number of the applicant;

(c) In the case of a seismic program, the name, permanent address, and business phone number of the seismic explorer, if different from the information in subsection (b) of this section;

(d) The name, permanent address, and business phone number of the hole plugging contractor, if different from the applicant and seismic explorer;

(e) A description of hole plugging procedures;

(f) The anticipated starting date of operations, including drilling;

(g) The anticipated completion date of operations, including plugging, and;

(h) Any other related data requested by the department.

(3) A single application for an information hole may include up to 5 information hole locations.

(4) Upon receipt of an application, the department will determine within 21 days if the application is complete. The department will notify the applicant of its determination in writing.

(5) The department will circulate each completed application to appropriate state agencies and the governing body of the county or city in which the seismic or information holes will be located. The agencies and governing body have 45 days from the date the department circulates the application in which to comment.

(6) The applicant is responsible for obtaining any required land use approval from the affected local government prior to beginning operations.

(7) Within 60 days after receipt of a complete application for a permit to conduct a seismic program or to drill an information hole, the department shall issue or deny the permit unless the department determines that a longer period is necessary to respond to comments or new information, or for any other good cause.

(8) The department shall deny a permit if:

(a) The method of drilling, plugging, or reclamation of the seismic program or information hole operation does not comply with Oregon statutes, Oregon Administrative Rules, or any applicable orders of the board; or

(b) The applicant is currently not in compliance with ORS chapter 520 or these rules with respect to a seismic program or information hole in Oregon; or

(c) The applicant currently has contracted, with respect to operations in Oregon, with a geophysical contractor, driller, or other explorer that currently has an unlawfully abandoned seismic program, or information hole pursuant to OAR 632-015-0040, or an oil or gas well pursuant to OAR 632-010-0198 in Oregon or has not submitted plugging records from a previous seismic or information hole operation in the state of Oregon.

(9) If the department denies a permit application, it will notify the applicant upon determination of denial. Any person adversely affected by a decision of the department may appeal pursuant to OAR 632-015-0060.

(10) The department may temporarily suspend any seismic program or information hole operation not in compliance with Oregon statutes, Oregon Administrative Rules, any applicable orders of the board, or permit conditions.

(11) The department may revoke a permit if it determines that any of the grounds for denying a permit now exist, as specified in section (8) of this rule, or if any aspect of the operation does not comply with Oregon statutes, Oregon Administrative Rules, any applicable order of the board, or permit conditions.

(12) If seismic programs or information hole operations do not commence within one year from the date of issuance of the permit, the permit becomes invalid unless the permit term has been extended pursuant to this section. The permit may be extended by the department for good cause for a maximum of one additional year upon receipt of written request from the permittee, before the expiration date, giving reasons acceptable to the department for an extension.

Stat. Auth.: ORS 520

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 520.095  
Hist.: GMI 2-1990, f. 8-9-90, cert. ef. 8-31-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGM 2-2013, f. & cert. ef. 3-21-13

## 632-015-0020

### Seismic Shot Hole Operations

Seismic shot hole programs may not be conducted within 1/8 mile of any existing building, water well, flowing spring, stock water pipeline, sewer line, utility tunnel, or water or gas line, unless a written exception is granted by the department based on the applicant's demonstration, to the department's satisfaction, that the operation presents no significant danger to human health or the environment.

Stat. Auth.: ORS 529  
Stats. Implemented: ORS 520.095  
Hist.: GMI 2-1990, f. 8-9-90, cert. ef. 8-31-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGM 2-2013, f. & cert. ef. 3-21-13

## 632-015-0025

### Financial Security Requirements

(1) Before a permit may be issued for seismic programs or information hole operations, the applicant must submit a surety bond or other form of financial security acceptable to the department. The department will establish the amount of financial security based on estimated costs, but the amount may not be less than \$50,000. A surety bond must be executed by the applicant, as principal, and by a surety company authorized to do business in the State of Oregon, as surety, and conditioned upon the faithful compliance by the principal with Oregon statutes, Oregon Administrative Rules, any applicable order of the board, and permit conditions.

(2) Any security submitted as required by this section may, with the consent of the department, be terminated and cancelled and the surety relieved of all obligations thereunder. However, the department shall not consent to termination and cancellation of any security until the hole or holes covered by such security have been properly reclaimed, or another valid security has been submitted.

(3) Following completion of operations, the permittee may request that the department release the bond or other form of security. A bond or security may not be released until the department has determined that the permittee has complied with Oregon statutes, Oregon Administrative Rules, any applicable order of the board, and permit conditions.

Stat. Auth.: ORS 516.090 & 520.095  
Stats. Implemented: ORS 520.027 & 520.095  
Hist.: GMI 2-1990, f. 8-9-90, cert. ef. 8-31-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGM 2-2013, f. & cert. ef. 3-21-13

## 632-015-0030

### Compliance with Law

The permittee for a seismic program or information hole operation is responsible for conducting all operations in compliance with Oregon statutes, Oregon Administrative Rules, any applicable order of the board or department, and permit conditions, and is subject to the penalties provided by Oregon statutes and these rules for failure to comply.

Stat. Auth.: ORS 516.090 & 520.095  
Stats. Implemented: ORS 520.027 & 520.095  
Hist.: GMI 2-1990, f. 8-9-90, cert. ef. 8-31-90; DGM 2-2013, f. & cert. ef. 3-21-13

## 632-015-0035

### Notices

The permittee must give the department a minimum of 24 hours advance notice of plugging operations. For seismic shot hole plugging operations that are not a continuation of the initial drilling of the shot hole or part of the plugging procedures immediately following seismic program operations, the permittee must give the department a minimum of 24 hours advance notice of the plugging operations.

Stat. Auth.: ORS 516.090 & 520.095  
Stats. Implemented: ORS 520.027 & 520.095  
Hist.: GMI 2-1990, f. 8-9-90, cert. ef. 8-31-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGM 2-2013, f. & cert. ef. 3-21-13

## 632-015-0040

### Plugging Requirements

(1) Proper completion and decommission require adequate protection of the environment and of aesthetic qualities of the surface in the area of operation.

(2) An information hole or seismic shot hole is properly completed for the purposes of this chapter when the permittee demonstrates to the satisfaction of the department that the information hole or shot hole has been constructed to the standard and requirement of the permit.

(3) An information hole or seismic shot hole is considered properly plugged and abandoned, for the purposes of this chapter, when the conditions of ORS 520.005 to 520.991 and these rules are fulfilled and the per-

mittee has shown to the satisfaction of the department that all proper steps have been taken to protect groundwater and surface water from contamination resulting from the drilling or drilling related activities and to prevent the commingling of fluids between zones or the conveyance of fluids to the surface.

(4) All holes must be plugged and all related disturbance must be reclaimed in accordance with these rules as soon as practical. A hole may not be left unplugged for longer than 30 days from the completion of operations without prior written approval from the department.

(5) An Information hole must be cemented from the bottom up to a depth 4 feet from the ground surface through tubing to prevent cross-flow, erosion, waste, or contamination of groundwater.

(a) The hole must be filled and pressure grouted from bottom to top with cement, consisting of a neat cement weighing in excess of 15.0 pounds per gallon with not less than a viscosity of 36 (API Full Funnel Method);

(b) In no case may sand or aggregate be added to cement grout seal mixtures;

(c) Other fluids may be used upon approval of the department;

(d) Cement grout used as a sealing material must be placed or forced upward from the bottom of the hole in one continuous operation without significant interruption. If temporary outer surface casing is used in the construction of the hole, it must be withdrawn as the grout is placed;

(e) The top of all casing strings must be cut off at least 4 feet below ground surface and buried to a depth of at least four feet in such a manner as not to interfere with soil cultivation.

(6) All seismic shot holes must be plugged and reclaimed in a manner that prevents vertical movement of water in the hole.

(a) Seismic shot holes encountering groundwater must be cased and sealed with unhydrated bentonite at least 3/8 inch in diameter to 10 feet above the groundwater before explosives are used. Unhydrated bentonite materials used in plugging of a hole must be specifically designed for sealing wells and be within industry tolerances for dry western sodium bentonite. The bentonite must be placed in the hole in a manner that prevents cross-flow, waste or contamination of groundwater.

(b) The following requirements apply to seismic shot holes not encountering groundwater:

(A) Such shot hole must be sealed with unhydrated bentonite at least 3/8 inch in diameter below the elevation that the explosives are used;

(B) Above the elevation that the explosives are used unhydrated bentonite at least 3/8 inch in diameter must be added from the top of the bentonite to the surface;

(C) A nonmetallic plug must be set at a depth of 3 feet below ground surface; cuttings added above the nonmetallic plug must be tamped;

(D) The operator must place a bentonite plug no less than 10 feet in length. If the shot hole is less than 10 feet in length, the entire hole must be plugged with unhydrated bentonite at least 3/8 inch in diameter.

(E) A small mound of cuttings must be left over the hole to allow for settling; and

(F) Any cuttings deposited on the surface around the seismic hole or information hole must be raked or otherwise spread so that the cuttings do not exceed 2 inches of the pre-existing land surface, except for a small mound left for settling.

(c) A seismic shot hole that encounters groundwater and caves in after detonation of an explosive charge must provide for the protection of groundwater by reopening the hole and plugging with cement and by placing a mound over the hole for settling as provided in subsections (3)(C) and (3)(D) of this rule.

(d) Alternative plugging procedures and materials may be utilized with the department's written approval when the operator has demonstrated to the department's satisfaction that the alternatives will protect water quality.

(7) All ground disturbance related to well site operation must be reclaimed to a secondary beneficial use that is compatible with the applicable local land comprehensive plan and land use regulations.

(8) Affidavit on completion: Within 60 days after an information hole or seismic shot hole is plugged, the operator must file a written statement with the department certifying that the well was properly plugged and affected areas reclaimed.

Stat. Auth.: ORS 516.090 & 520.095  
Stats. Implemented: ORS 520.027 & 520.095  
Hist.: GMI 2-1990, f. 8-9-90, cert. ef. 8-31-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGM 2-2013, f. & cert. ef. 3-21-13



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## 632-015-0045

### Conversion to Water Well

Permittee may convert the shot or information hole to a water well upon approval from the Oregon Department of Water Resources. The department may not release the permittee from complying with the requirements of ORS 520.005 to 520.991 until such conversion is accomplished.

Stat. Auth.: ORS 516.090 & 520.095

Stats. Implemented: ORS 520.027 & 520.095

Hist.: GMI 2-1990, f. 8-9-90, cert. ef. 8-31-90; DGMI 2-2013, f. & cert. ef. 3-21-13

## 632-015-0050

### Filing of Reports

(1) Report on Completion. Within 45 days after the completion of the plugging of an information hole or seismic shot hole, the owner or operator must file a report with the department setting forth in detail the method used in plugging the well or wells. The report must be in a form acceptable to the department.

(2) The drilling records:

(a) Must be in narrative form and include a map showing the location and depth of each shot hole or information hole so that it can be located; and

(b) Must indicate all work that has been performed in compliance with the permit issued for the seismic program or information hole operation.

(3) Within 60 days after plugging, the permittee must file an affidavit with the department, setting forth the location of the information hole or seismic program and the method used to protect such water-bearing formation, if any, that was penetrated during the program or operation.

Stat. Auth.: ORS 516.090 & 520.095

Stats. Implemented: 520.027, 520.095 & 520.097

Hist.: GMI 2-1990, f. 8-9-90, cert. ef. 8-31-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 2-2013, f. & cert. ef. 3-21-13

## 632-015-0055

### Reclamation

(1) Reclamation of surface lands affected by these operations is intended to return the surface to pre-exploration condition and/or beneficial use that is compatible with the local land use designation for the parcel(s).

(2) The operator must provide sumps of adequate capacity and design to retain all fluid material during drilling and other operations.

(3) The operator may not allow the contents of a sump to:

(a) Enter streams, artificial canals, waterways, groundwater, lakes, rivers, or other water bodies; or

(b) Adversely affect public health, safety, or welfare, or the environment, including plants, fish, and wildlife.

(4) When no longer needed, fluid in sumps must be disposed of in a manner approved by the Oregon Department of Environmental Quality and the sumps must be filled and covered.

(5) The affected surface lands must be restored to a pre-exploration status or another beneficial use that is authorized under the applicable comprehensive plan and land use regulations and acceptable to the department and surface owner. Reclamation activities may include, but are not limited to, grading, replanting, and reseeding of affected lands.

Stat. Auth.: ORS 516.090 & 520.095

Stats. Implemented: ORS 520.027 & 520.095

Hist.: GMI 2-1990, f. 8-9-90, cert. ef. 8-31-90; DGMI 2-2013, f. & cert. ef. 3-21-13

## 632-015-0060

### Appeals

The applicant or permittee may request a contested case hearing by the board. The request for a contested case hearing must be filed within 30 days. The contested case hearing will be conducted in accordance with OAR 632-001-0005 and ORS Chapter 183.

Stat. Auth.: ORS 516.090 & 520.095

Stats. Implemented: ORS 520.027 & 520.095

Hist.: GMI 2-1990, f. 8-9-90, cert. ef. 8-31-90; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 2-2013, f. & cert. ef. 3-21-13

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**Rule Caption:** Adopt revised rule language that addresses ORS 522 revisions

**Adm. Order No.:** DGMI 3-2013

**Filed with Sec. of State:** 3-21-2013

**Certified to be Effective:** 3-21-13

**Notice Publication Date:** 11-1-2012

**Rules Adopted:** 632-020-0028, 632-020-0032

**Rules Amended:** 632-020-0005, 632-020-0010, 632-020-0015, 632-020-0025, 632-020-0030, 632-020-0031, 632-020-0035, 632-020-0040, 632-020-0060, 632-020-0065, 632-020-0070, 632-020-0090,

632-020-0095, 632-020-0100, 632-020-0105, 632-020-0110, 632-020-0115, 632-020-0117, 632-020-0125, 632-020-0130, 632-020-0135, 632-020-0138, 632-020-0140, 632-020-0145, 632-020-0150, 632-020-0154, 632-020-0155, 632-020-0156, 632-020-0157, 632-020-0159, 632-020-0170, 632-020-0175, 632-020-0180

**Rules Repealed:** 632-020-0045, 632-020-0055, 632-020-0160

**Subject:** ORS chapter 522 authorizes the Department of Geology and Mineral Industries to control the drilling, redrilling, and deepening of wells for the discovery and production of geothermal resources so that such wells will be constructed, operated, maintained, and abandoned in the manner necessary to safeguard the life, health, property, and welfare of the people of this state and to encourage the maximum economic recovery of geothermal resources therefrom. The Act also gives the department responsibility for regulating re-injection of geothermal fluids into underground reservoirs within prescribed limits of ORS 522.019(2) in a manner which will not be detrimental to beneficial use of waters of the state.

**Rules Coordinator:** Gary Lynch—(541) 967-2053

## 632-020-0005

### Jurisdiction and Authority

(1) ORS Chapter 522 authorizes the Department of Geology and Mineral Industries to control the drilling, redrilling, and deepening of wells for the discovery and production of geothermal resources so that such wells will be constructed, operated, maintained, and abandoned in the manner necessary to safeguard the life, health, property, and welfare of the people of this state and to encourage the maximum economic recovery of geothermal resources therefrom.

(2) In addition to complying with ORS Chapter 522 and these rules, the permittee must comply with applicable laws and rules of the Water Resources Department and the Department of Environmental Quality.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.305

Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0010

### Definitions

The definitions in ORS 522.005 apply to this rule division. In addition, the following definitions apply:

(1) "Abandonment" means the failure to properly plug and decommission a prospect or geothermal well in accordance with the rules in this division.

(2) "Artesian" means the response of water or fluid under natural pressure, whereby it rises above the level where it was originally encountered.

(3) "Blowout" means an uncontrolled escape of a solid, liquid, or gas.

(4) "Contaminate" means any chemical, ion radionuclide, synthetic organic compound, microorganism, waste or other substance that does not occur naturally in groundwater or that occurs naturally but at a lower concentration.

(5) "Contamination" means introduction of a contaminant.

(6) "Fresh Water" means water that is used, or could be used without extraordinary treatment, for irrigation or domestic purposes as determined by the department.

(7) "Observation Status" means that the department has authorized a geothermal well or prospect well to remain unplugged for a specified and extended period to allow the well to be used to collect information about subsurface conditions.

(8) "Owner" means the person who has the right to drill geothermal wells or prospect wells, or to appropriate the production from a completed geothermal well.

(9) "Permittee" means owner or operator.

(10) "Person" means any individual, corporation, company, association of individuals, joint venture, partnership, receiver, trustee, guardian, executor, administrator, personal representative, applicant; or a state, federal, or local agency that is the subject of legal rights and duties under these regulations.

(11) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt, or odor of the waters, or such radioactive or other substance into any waters of the state that either by itself or in connection with any other substance present, will or can reasonably be expected to create a public nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare, or to

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domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life, or the habitat thereof.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0015

### Inspection and Supervision

The department will inspect and supervise geothermal operations for the purpose of enforcing compliance with the rules and orders promulgated by the board.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0025

### Supremacy of Special Rules

Special rules will be adopted when required and will prevail as against general rules if in conflict therewith.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0028

### Permit Required

No person may construct, drill, redrill, deepen, operate, maintain, plug, or decommission a geothermal or prospect well without first obtaining a permit from the department. No person may construct, drill, operate, or decommission a geothermal or prospect well until the person has received a permit, paid to the department the appropriate nonrefundable fee for each such well pursuant to ORS 522.055 or 522.115, and posted the appropriate bond or other financial security for each such well pursuant to 522.075 or 522.145. Construction includes construction of access roads, well pads and other site disturbances relating to the development of the site. Drilling includes redrilling, deepening, and drilling to set conductor pipe. Operation includes maintaining the well while in use or while production is suspended. Decommissioning includes plugging and restoration of the well site.

Stat. Auth.: ORS 522  
Stats. Implemented: 522.305  
Hist.: DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0030

### Application for Geothermal or Prospect Well

A geothermal or prospect well permit is required from the department.

(1) A permit required under OAR 632-020-0028 must be obtained before commencing the construction of access roads, well pads, cellar excavations, setting the conductor pipe, drilling, redrilling, deepening or altering the casing of any geothermal or prospect well.

(2) The application for a geothermal or prospect well permit must include all of the following:

(a) A nonrefundable application fee in accordance with ORS 522.055 or 522.155;

(b) The location(s) and ground elevation(s) of the proposed well(s). The location includes the township, range, section, and the Universal Transverse Mercator (UTM) coordinates system;

(c) Ownership rights or other rights as described in 632-020-0010(8); and

(d) The proposed geologic objectives and proposed well depth for each well.

(e) Other pertinent data as the department may require in a form acceptable to the department.

(3) The department will circulate an application to drill pursuant to ORS 522.125(1) for geothermal wells or 522.065 for prospect wells. The information on the permit application is not confidential.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 1-1984, f. & ef. 1-23-84; GMI 1-1991, f. 9-5-91, cert. ef. 9-6-91; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0031

### Annual Permit Fees

The permittee of any geothermal well or prospect well permit under which a well has been drilled and not decommissioned, must provide an annual nonrefundable fee in accordance with ORS 522.115 for geothermal

wells or 522.055 for prospect wells on or before the anniversary of the issuance date of each active permit issued by the department. As a courtesy, the department may notify the permittee with a notice prior to the anniversary date.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
His.: GMI 1-1991, f. 9-5-91, cert. ef. 9-6-91; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0032

### Permit Conditions

(1) After consideration of the information supplied by the applicant, the comments supplied by public agencies as provided in ORS 522.065 for prospect wells and 522.125 for geothermal wells, and other relevant information supplied to the department, the department will determine whether to issue the permit with the appropriate conditions to be placed in the permit to ensure compliance with the ORS chapter 522 and this rule division. The conditions placed on the permit may address impacts arising from the construction, operation, maintenance, and decommissioning of the well, including but not limited to the construction of access roads, well pads, and cellar excavations, setting the conductor pipe, drilling, redrilling, or deepening of the well, and altering of well casings.

(2) The department will make its decision on the permit application within the periods established in ORS 522.0065 for prospect wells and 522.135 for geothermal wells.

(3) As established in ORS 522.0065 and 522.135 the department will notify the applicant of its decision within the specified time limits after making the determination described in section (1) of this rule. If a permit is denied, the department will immediately notify the applicant in writing and provide reasons for its determination.

(4) The permit will notify an applicant that, before the applicant may undertake any activities authorized by the permit, the applicant must receive written land use approval, supported by findings, from the affected local government as required under ORS Chapter 197.180 and OAR 632-001-0015(5)(b).

Stat. Auth.: ORS 522  
Stats. Implemented: 522.305  
Hist.: DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0035

### Drilling Financial Security

(1) A permit for a prospect well will not be issued until the applicant has complied with the requirements of ORS 522.075 relating to financial security.

(2) A permit for a geothermal well will not be issued until the applicant has complied with the requirements of ORS 522.145 relating to financial security.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0040

### Assignment, Transfers of Ownership

A geothermal well or prospect well permit transfer application must include a nonrefundable fee in accordance with ORS 522.055(4) or 522.115(6) and replacement security in accordance with 522.075 and 522.145. Successor must provide all of the following:

(1) Documentation of ownership or rights of the person to whom such rights were sold, leased, assigned, transferred, conveyed, or exchanged;

(2) The date of such sale, lease, assignment, transfer, conveyance, or exchange; and

(3) The API number, company name and location of such well(s) to be transferred, in table or spreadsheet form, and a map of the well location(s).

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0060

### Filing of Well Records, Confidentiality

(1) The operator of a geothermal well must keep copies of well records and related information as provided in ORS 522.355 and 522.365. In addition, the operator must:

(a) Record the amount, size, and weight of casing used; and the size, type and depths of perforations; and

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(b) File with the department, within 60 days after completion, suspension, or decommissioning of a well, all logs, samples, history, surveys, and other required data.

(2) The operator of a prospect well must keep and provide the department with records including a log describing the type of rocks penetrated, depths of water-bearing formations, bottom hole temperature, and well location.

(3) Records filed with the department pursuant to ORS 522.365 and sections (1) and (2) above will not be disclosed to the public for four years from the date of completion, suspension, or abandonment of the well, whichever occurs first. After four years, the records will be available for public inspection under the provisions of 192.410 to 192.505. If an operator claims that any record continues to be exempt from disclosure as a trade secret under 192.501, the operator must notify the department and explain the basis for its claim at least 30 days before the end of the four-year period.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 1-1984, f. & ef. 1-23-84; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0065

### Applications to Modify

(1) The permittee of a geothermal prospect well must submit a written application for a permit modification to change plans previously approved by the department unless otherwise directed. The application must set forth in detail the proposed work to be completed and the department must approve the application before work begins.

(2) A detailed report of the work accomplished and the methods employed, including all dates and the results of such work, must be filed within 60 days after completion of the work.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0070

### Well Designations

Every person drilling any well for geothermal resources or operating, owning, or controlling or in possession of any well drilled for geothermal resources, must paint or stencil and post and keep posted in a conspicuous place near the well, the name of the person drilling, operating, owning, or controlling the well, the name of the lease, the number of the well, and the number of the permit for the well, together with the longitude and latitude, section, township, and range.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0090

### Noise Abatement

The method and degree of noise abatement must comply with the pertinent rules adopted by the Oregon Department of Environmental Quality.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0095

### Casing Requirements

(1) The permittee of any geothermal well or prospect well must properly case the well with adequate grade casing and cement the casing where necessary to provide adequate anchor for blowout preventers. Casing design must take into account stress imposed by the maximum expected temperature and the physical effects of produced fluids and gases on casing durability. Surface casing for any well with a proposed depth of more than 500 feet must be set at a depth of at least ten percent of the proposed total depth of the well, or at least 25 feet into consolidated, competent rock, whichever is deeper, unless otherwise approved by the department. In areas with no nearby drilling history, surface casing must be set to a minimum of 300 feet into consolidated, competent rock or confining clay layer, unless otherwise approved by the department.

(2) The permittee of a geothermal or prospect well must prevent commingling of fluids. The permittee of a geothermal or prospect well that penetrates a fresh water aquifer must set casing or tubing through this formation and cement such casing or tubing from bottom to top unless the department approves a different program.

(3) Casing and casing seals used for prospect wells, where the temperature of groundwater does not exceed 250°F, must comply with the general standards for the construction and maintenance of water wells set by the State Water Resources Department.

(4) Each fluid-bearing zone above the producing horizon in a geothermal resources well must be cased and sealed off to prevent the migration of formation fluids to other areas. Such casing and sealing off must be completed and tested using the methods and means prescribed by the department.

(5) Cements used in cementing casing and sealing formations must be of a grade and type best suited for expected reservoir temperature, formation water chemistry and bonding properties. Cements acceptable for use in high-temperature holes include Modified Type A or G, Alumina Silica Flour, Phosphate Bonded Glass, or other equivalent high-temperature design cement.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0100

### Removal of Casings

No person may remove a casing, or any part of a casing, from any geothermal well or prospect well without applying in advance and obtaining approval in writing from the department.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0105

### Directional Drilling

(1) The maximum point at which a well penetrates the producing formation must not vary from the vertical drawn from the center of the hole at the surface by more than 5 degrees. Deviation is permitted without special permission for short distances to straighten the hole, sidetrack junk, or to correct other mechanical difficulties.

(2) Except for the purposes of straightening the hole, sidetracking junk, or correcting mechanical difficulties as provided in this rule, an operator may not drill a well that deviates from vertical unless the operator first files an application and obtains a permit from the department. If drilling is in progress, the operator must notify the department immediately of the deviation of the hole and file a written request with the department for approval, as required. If the department does not approve, the permittee must set a cement plug at the point of deviation from vertical and complete the well as originally approved or plug the well.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0110

### Serving Orders

When the department gives any written direction concerning the drilling, testing, or other operations conducted with respect to any geothermal well or prospect well drilled, in the process of being drilled, redrilled, deepened, altered, or in the process of being decommissioned, and the operator, owner, or designated agent of either, serves written notice, either personally or by mail, addressed to the department, requesting that a definite order be made upon such subject, the department will, within a reasonable time after receipt of the notice, deliver a final written order on the subject matter. Any such final written order of the department may be appealed to the board and further redress may be sought in the manner provided in ORS Chapter 183 for appeals from final orders in contested cases.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0115

### Measurement of Geothermal Resources

The operator must measure or gauge all production from each well in accordance with methods approved by the department or may arrange with the department for other acceptable methods of measuring and recording production. The quantity and quality of all production must be determined in accordance with the standard practices, procedures, and specifications generally used in the industry. For wells on federal land, the department

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will establish acceptable methods in concert with the responsible federal agency.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0117

### Spacing Plan

The board may, on its own motion, or at the request of any interested party, hold a hearing to determine the maximum efficient rate at which any geothermal well in the state can produce a geothermal resource without waste. After the hearing, the board may set production rates by order.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: DGMI 2-1999, f. & cert. ef. 8-30-99; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0125

### Proper Completion, Plugging, and Decommissioning

(1) A well is properly completed when the well and casing has been installed in accordance with the well drilling permit and master valves and well control equipment have been installed, and well is secured.

(2) Proper completion and decommissioning requires adequate protection of the environment and of aesthetic qualities of the surface in the area of operation.

(3) A geothermal well or prospect well is considered properly plugged and decommissioned, for the purpose of this chapter, when the conditions of ORS 522.005 to 522.990 and these rules are fulfilled and the person has shown to the satisfaction of the department that all proper steps have been taken to protect groundwater and surface water from contamination resulting from the drilling or drilling related activities and to prevent the comingling of fluids between zones or to surface.

(4) A well or hole must be plugged and all related disturbance must be reclaimed in accordance with these rules as soon as practical. A hole may not be left unplugged for longer than 30 days from the completion of operations without prior written approval from the department.

(5) The drilling or operation of a well can be suspended only as provided in ORS 522.215.

(6) Plugging Methods and Procedure, Geothermal Wells or Prospect Wells.

(a) The well must be filled with mud-laden fluid from bottom to top consisting of mud weighing 15.0 pounds per gallon of not less than a viscosity of 36 (API Full Funnel Method), with the exception of intervals required to be plugged with cement. Other fluids may be used upon approval of the department.

(b) At the top of each producing formation, or fluid zone at greater than hydrostatic pressure, a cement plug must be placed which extends either from the bottom of the well or from a point at least 50 feet below the top of each such producing formation or fluid zone to a point at least 50 feet above each producing formation or fluid zone.

(c) If a well is uncased through a freshwater zone, a cement plug must extend from at least 50 feet below the bottom of the water-bearing zone to at least 50 feet above the water zone.

(d) If the surface string of casing is set below the deepest freshwater-bearing formation, and the well is uncased below this point, a cement plug must be placed in the well extending from a point at least 50 feet below the base of the surface casing and at least 50 feet into the bottom of the casing.

(e) In wells where artesian water is encountered, the well must be plugged with cement from bottom to top, unless otherwise approved by the department.

(f) The top of all casing strings must be cut off at least 4 feet below ground surface in such a manner as not to interfere with soil cultivation and casing and all annuli must be plugged with cement to a depth of at least ten feet.

(g) Cement grout used as a sealing material must be placed or forced upward from the bottom of the hole in one continuous operation without significant interruption. If temporary outer surface casing is used in the construction of the hole, it must be withdrawn as the grout is placed.

(7) The operator must provide sumps of adequate capacity and design to retain all fluid material during drilling and other operations.

(8) The affected surface lands must be restored to a pre-exploration and/or beneficial use acceptable to the department, after consultation with the surface owner. Reclamation activities may include, but are not limited to replanting or reseeding of affected land for return to secondary beneficial use that is compatible with the land-use designation.

(9) Affidavit on completion: Within 45 days after a Geothermal Well or Prospect well is plugged, the operator must file a written statement with the department certifying that the well was properly plugged and decommissioned.

(10) Wells Used for Fresh Water:

(a) When the well to be decommissioned may safely be used as a freshwater well and this use is desired by the land owner, the well need not be filled above the required sealing plug set below fresh water, provided authorization for use of any such well is first obtained from the Water Resources Department;

(b) Application for leaving the well partially unplugged as a freshwater well must be made to the department by the land owner, accompanied by his affidavit as to his need of water and the intended use of the well, together with a copy of the Water Resources Department's order or permit authorizing such use; and

(c) The operator must leave the fresh water well in a condition approved by the department.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.175, 522.305 & 522.245  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 2-1999, f. & cert. ef. 8-30-99; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0130

### Subsequent Decommissioning Report

The operation of a well can be suspended only as provided in ORS 522.225.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.175 & 522.305, & 522.245  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0135

### Well Spacing

The board will approve proposed well-spacing programs for geothermal wells in a field or prescribe such modifications to the programs as it determines necessary for proper development. The board may do this by rule or order. In determining well spacing, the board will consider such factors as:

- (1) Topographic characteristics of the area;
- (2) Hydrologic and geologic conditions in the reservoir;
- (3) Minimum number of wells required for adequate development;

and

- (4) Protection of the environment.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0138

### Unit Agreements

(1) When voluntary unitization occurs under ORS 522.405 to 522.545, the unit operator must pay a fee to the department for the administration of the unit. The amount of the fee will be determined by the board on a case-by-case basis. The unit operator must collect equitable shares of this fee from all persons, or state or local governing bodies, special districts, or agencies with a royalty interest in the unitized development.

(2) When the board requires the development of a unit agreement under ORS 522.405 to 522.545, the unit operator must pay a fee to the department for the creation and administration of the unit. The amount of the fee will be determined by the board on a case-by-case basis, for creation and administration of the unit. The unit operator must collect equitable shares of this fee from all persons, or state or local governing bodies, special districts, or agencies with a royalty interest in the unitized development.

(3) The department will review voluntary unit agreements governing production of geothermal resources to ensure compliance with the provisions of ORS 522.405 to 522.545.

(4) The operator or person proposing a board-initiated unit agreement must make application to the board.

(5) The department shall enforce, when necessary, board-approved or initiated unit agreements.

(6) The board may change or approve proposed changes in the boundaries of a unit area upon application by the unit operator or interested person. Such changes shall not jeopardize pre-existing contractual relationships between participating parties.

# ADMINISTRATIVE RULES

(7) The board may levy fees upon any operator, person, state or local governing body, special district, or agency that holds a royalty interest in a unit area to cover reasonable costs associated with the development and administration of a unit agreement. If such a fee is not paid when due, the board may require the fee to be paid from proceeds of the sale of the unit production.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305 & 522.405  
Hist.: GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0140 Commingling Production

(1) As part of a unit agreement, the department will require the operator to commingle the production from different wells or leases or both with the production of other operators subject to such conditions as may be prescribed.

(2) The operator must not commingle the production from different geothermal aquifers without prior approval from the department.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0145 Pits or Sumps

(1) Materials and fluids necessary for the drilling, production, or other operations may be discharged or placed in pits and sumps only with the approval of the department and the Department of Environmental Quality. The operator must not allow the contents of the pit to:

(a) Contaminate streams, artificial canals or waterways, groundwater, lakes, or rivers;

(b) Adversely affect the environment, persons, plants, fish, and wildlife and their populations; or

(c) Damage the aesthetic values of the property or adjacent properties.

(2) When no longer needed, pits and sumps are to be filled and covered and the premises restored to a near natural state.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0150 Disposal of Solid and Liquid Wastes

Injection of geothermal fluids must not pollute waters of the state, create a public nuisance, impair beneficial uses of waters, or degrade the biologic habitat of aquatic life and domestic and wild animals. Permits for prospect and geothermal wells will be issued in accordance with ORS 522.019, 522.025, and 522.135. The department will coordinate with the Department of Environmental Quality and the Department of Water Resources to ensure that permit conditions are consistent and protective of natural resources and the environment.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0154 Injection and Conservation

Injection is the required method for handling geothermal fluids derived from geothermal resources to conserve natural heat energy and to maintain reservoir temperature and pressure. This rule applies to fluids derived from geothermal wells as defined in ORS 522.005(12) that are subject to departmental regulation under ORS 522.025, unless otherwise approved by the department.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0155 Application to Inject

(1) The provisions of this rule apply to applications for geothermal wells intended for the injection of geothermal fluids, and are in addition to the requirements of ORS 522.019.

(2) An application for a permit to inject geothermal fluid into any underground reservoir must include, but is not limited to, the following:

(a) A plan of injection explaining the proposed system including facilities other than the injection well necessary to conduct the operations;

(b) A map of adequate scale (preferably 1:24,000, but not less than 1:62,500 or 1" = 1 mile) to show all existing and proposed wells, pipelines, and other surface facilities. All wells must be distinguished by type;

(c) The injection fluid characteristics such as quality, quantity, source, chemical analysis, chemical reactivity, toxicity, temperature, and any additives such as but not limited to pH control, anti-scaling, or biocides;

(d) The characteristics of the proposed injection zone including: volume capacity of the zone, geologic formation and structure, porosity, permeability, chemical analysis of zonal water, static formation pressures and temperatures, anticipated zonal fluid reactivity to the injected fluids, any previous history of injection operations into the same or similar formations, any injectivity tests which may have been conducted, and other pertinent data;

(e) Description of the hydrology of the surrounding area, including groundwater quality, quantities, and analyses, and the predicted effects of the injected fluids on the existing surface and groundwater;

(f) Subsurface maps and cross sections of the producing and injecting zone structure and lithology and any available logs or histories of a well or other wells penetrating the injection zone that have not been previously submitted.

(g) Description of the effects of injection on such factors as potable water, seismicity, and local tectonic conditions;

(h) Representative injection well drilling program;

(i) Proposed downhole and surface injection equipment and metering facilities with capacity, design capabilities, and design safety factors in sufficient detail to enable adequate environmental analysis. Construction and engineering design plans should be included; and

(j) Proposed injectivity surveys, seismic surveys, seismic monitoring, and other means to monitor injection.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.019 & 522.305  
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0156 Permit for Injection

(1) The department will issue a permit for injection of geothermal fluids after finding that the injection plan is consistent with the purposes set forth in ORS 468A.010, 468B.015, 468B.030, 537.525, 522 and these rules.

(2) Appropriate approval must be obtained from the Department of Environmental Quality before re-injection is commenced. Issuance of a geothermal well permit allowing for reinjection does not relieve any person from any obligation to register or to obtain a permit under ORS 468B.050 or 468B.195 to 468B.197 (Department of Environmental Quality).

(3) The department will not issue a permit for injection of geothermal fluids until the operator has financial security in compliance with OAR 632-020-0035.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 2-1999, f. & cert. ef. 8-30-99; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0157 Injection Well Construction, Protection and Mechanical Integrity

(1) Injection wells must be constructed in compliance with the standards set in OAR 632-020-0095 and 632-020-0125.

(2) Special standards may be required by the department to allow for corrosive effects of injected fluids, precipitation of dissolved minerals, more extensive cementing of casings, specifications for tubing packers and casing packers, or other construction practices generally accepted by the industry.

(3) All wells for injection must be tested for mechanical integrity at least once every five years to determine that there is no leak in the casing and that there is no fluid movement into an underground source of water other than that from which the fluid was produced, unless otherwise approved by the department.

(4) Acceptable tests include pressure build-up profiles, pressure testing, and casing thickness logs to demonstrate integrity of the casing.

(5) The department may, on a case-by-case basis, approve tracer surveys, noise logs, temperature logs, spinner surveys, or other methods to detect water movement adjacent to the wellbore and seismic monitoring.

(6) The department must be notified two weeks before any mechanical integrity test. The results must be submitted within 60 days.

Stat. Auth.: ORS 522  
Stats. Implemented: ORS 522.305  
Hist.: GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

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## 632-020-0159

### Monitoring Injection

(1) The department requires monitoring of injection operations to ensure that there is no escape of geothermal fluids from the casings or through the annular space between casings and open hole except in the zone for which injection is permitted.

(2) Monitoring required by the department may include gauging pressure between casings, periodic testing for casing leaks, surveys to detect movement of fluid in adjacent rock formations, cement bond logs, temperature measurements, analyses of water chemistry, special wellhead equipment or other methods employed by industry to monitor re-injection operations.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.305

Hist.: GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0170

### Environmental Protection

In conducting operations under this chapter, the permittee or operator must not pollute or otherwise damage land, water or air resources. The operator must comply with all federal and state air and water quality standards and requirements. Plans for the disposal of well effluents must be approved by the Oregon Department of Environmental Quality and department before any disposal actions are taken.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.305

Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0175

### Blowout Prevention for Geothermal Wells and Prospect Wells 2,000 Feet or More in Depth

(1) Cementing of Casing. All casing strings must be cemented with a quantity of cement sufficient to fill the annular space back to the surface.

(a) The intermediate casing string must be cemented to fill the annular space back to the surface unless otherwise approved by the department.

(b) Casing must be:

(A) Cemented with a high temperature resistant cement, unless waived by the department and must be cemented in a manner necessary to exclude, isolate, or segregate overlying formation fluids from the geothermal resources zone and to prevent the movement of fluids into possible fresh water zones; and

(B) Cemented back to the surface or to the top of the inner casing. A temperature or cement bond log may be required by the department after setting and cementing the production casing and after all primary cementing operations if an unsatisfactory cementing job is indicated.

(c) Proposed well cementing techniques differing from the requirements of this paragraph will be considered by the department on an individual well basis.

(2) Pressure Testing.

(a) All blowout preventers and related equipment that may be exposed to well pressure must be tested first to a low pressure and then to a high pressure:

(A) A pressure decline of 10 percent or less in 30 minutes is for the low pressure test considered satisfactory prior to initiating the high-pressure test;

(B) When performing the low-pressure test, it is not acceptable to apply a higher pressure and bleed down to the low test pressure;

(C) The high-pressure test must be to the rated working pressure of the ram type blowout prevention equipment and related equipment, or to the rated working pressure of the wellhead on which the stack is installed, whichever is lower. A pressure decline of 10 percent or less in 30 minutes is considered satisfactory;

(D) Annular blowout prevention equipment must be high-pressure tested to 50 percent of the rated working pressure;

(E) Manual adjustable chokes not designed for complete shut off (CSO) must be pressure tested only to the extent of determining the integrity of the internal seating components to maintain back pressure; and

(F) Hydraulic chokes designed for CSO must be pressure tested to 50 percent of the rated working pressure.

(b) All casing below the conductor pipe must be pressure tested to 0.22 psi per foot or 1,500 psi, whichever is greater, but not to exceed 70 percent of the minimum internal yield strength of the casing. Higher pressures, using a test plug in the casing head, may be required by the department on a case-by-case basis.

(c) During blowout prevention equipment pressure testing, the casing must be isolated with a test plug set in the wellhead and the appropriate valve opened below the test plug to detect any leakage that may occur due to failure of the test plug.

(d) The choke and kill line valves, choke manifold valves, upper and lower kelly cocks, drill pipe safety valves, and inside blowout prevention equipment must be tested with pressure applied from the wellbore side. All valves, including check valves, located downstream of the valve being pressure tested, will be in the open position.

(e) Manually operated valves and chokes on the blowout prevention equipment, choke and kill lines, or choke manifold must be equipped with a handle provided by the manufacturer, or a functionally equivalent fabricated handle, and be lubricated and maintained to permit operation of the valves without the use of additional wrenches or levers.

(f) All operational components of the blowout prevention equipment must be function tested at least once a week to verify the components' intended operations.

(g) The blowout prevention equipment must be pressure tested: when installed, prior to drilling out casing shoes, and following repairs or reassembly of the preventers that require disconnecting a pressure seal in the assembly.

(h) During drilling operations, blowout prevention equipment must be actuated to test proper functioning once each trip or once each week, whichever is more frequent.

(i) All flange bolts must be inspected at least weekly and retightened as necessary during drilling operations. The auxiliary control systems must be maintained in working order and inspected daily to check the mechanical condition and effectiveness and to insure personnel acquaintance with their operation. A blowout prevention practice drill must be conducted weekly for each drilling crew and be recorded on the driller's log.

(j) The results of all blowout prevention equipment pressure tests and function tests must be recorded on the tour sheet and include the type of test, testing sequence, low and high pressures, duration of each test, and results of each test.

(k) All tool pushers, drilling superintendents, and permittees' representatives (when the permittee is in control of the drilling) are required to have completed an API, IADC, or similar governing body sanction well control certification program and furnish the certification of satisfactory completion to the department prior to the start of any drilling operations. The certification must be renewed every two years.

(l) The department may require that any blowout prevention equipment test results submitted to the department have a signed affidavit stating that the testing procedures of the blowout prevention equipment and the passing results are accurate and complies with OAR 632-010-0014.

(m) The department may require that all blowout prevention equipment tests be conducted and witnessed by an independent third party that will report all test results to the department for review and approval prior to commencement of drilling operations.

(n) In the event of casing failure during the test, the casing must be repaired or recemented until a satisfactory test is obtained. A pressure decline of 10 percent or less in 30 minutes is considered satisfactory. The department may require an affidavit signed by the operator or contractor conducting the pressure test certifying that a satisfactory pressure test has been obtained.

(o) Casing test results must be recorded in the driller's log and reported to the department within 60 days after completion. The casing and lap test reports must give a detailed description of the test including mud and cement volumes, lapse of time between running and cementing casing and testing, method of testing, and test results.

(3) Blowout Prevention Equipment and Procedures. The operator must use all necessary precautions to keep all wells under control and use trained and competent personnel and properly maintained equipment and materials at all times. Blowout preventers and related well control equipment must be installed, tested immediately after installation using water, and maintained ready for use until drilling operations are completed. Certain components, such as packing elements and ram rubbers, must be of high-temperature resistant material as necessary. All kill lines, blowdown lines, manifolds, and fittings must be steel and have a temperature derated minimum working pressure rating equivalent to the maximum anticipated wellhead surface pressure. Subject to subsections (a) and (b) of this section, blowout prevention equipment must have hydraulic actuating systems and accumulators of sufficient capacity to close all of the hydraulically operated equipment and have a minimum pressure of 1,000 psi remaining on the accumulator. The department may approve manually operated blowout preventers. Dual control stations must be installed with a high-pressure back-

## ADMINISTRATIVE RULES

up system. One control panel must be located on the ground at least 50 feet away from the wellhead or rotary table. Air or other gaseous fluid drilling systems must have blowout prevention assemblies. Such assemblies may include, but are not limited to, a rotating head, a double ram blowout preventer or equivalent, a banjo-box or an approved substitute thereof and a blind ram blowout preventer or gate valve, below the banjo-box. Exceptions to the requirements of this paragraph will be considered by the department on a case-by-case basis. Approved exceptions may include certain geologic and well conditions, such as stable surface areas with known low subsurface formation pressures and temperatures.

(a) Conductor Casing. In certain instances, a remotely controlled hydraulically operated expansion type preventer or an acceptable alternative, approved by the department, including a drilling spool with side outlets or equivalent may be required by the department in areas where shallow thermal zones are indicated.

(b) Surface, Intermediate, and Production Casing. Before drilling below any of these strings, the blowout prevention equipment must include a minimum of the following, unless otherwise approved by the department:

(A) The blowout prevention equipment schematic diagram must indicate the minimum size and pressure rating of all components of the wellhead and blowout preventer assembly;

(B) Install all blowout preventers, choke lines, and choke manifolds above ground level. Casing heads and optional spools may be installed below ground level, provided they are visible and accessible;

(C) Blowout preventer equipment and related casing heads and spools must have a vertical bore no smaller than the inside diameter of the casing to which they are attached;

(D) All ram blowout prevention equipment must be equipped with hydraulic locking devices and manual locking devices with hand wheels extending outside of the rig's substructure;

(E) Blowout prevention equipment installed on the well must have a rated working pressure equal to or higher than, the working pressure;

(F) Wells drilled while using tapered drill strings must be equipped with either a variable bore pipe ram preventer or additional ram type blowout preventers to provide a minimum of one set of pipe rams for each size of drill pipe in use, and one set of blind rams;

(G) Blowout prevention equipment must consist of at least one expansion-type preventer and a rotating head. Additional blowout prevention equipment may be required by the department based on site-specific well safety needs. Ram blowout prevention equipment or a drilling spool must have side outlets with a minimum inside diameter of two inches on the kill side, and three inches on the choke side to accommodate choke and kill lines. Outlets on the casing head may not be used to attach the choke or kill lines;

(H) Additional blowout prevention equipment must include, but is not limited to, one upper kelly cock, and one drill pipe safety valve with subs to fit all drill string connections in use;

(I) Choke manifold and related equipment must consist of one kill line valve, one check valve, two choke line valves, choke line, two manual adjustable chokes each with one valve located upstream of the choke, one bleed line valve and one mud service pressure gauge with a valve upstream of the gauge;

(J) All choke manifold valves, choke and kill line valves and the choke line must be full bore. Choke line valves, choke line and bleed line valves must have an inside diameter equal to or greater than the minimum requirement for the blowout prevention equipment or drilling spool outlet;

(K) The choke line should be as straight as possible, and any required turns must be made with flow targets at all bends and on block tees. All connections exposed to well bore pressure must be welded, flanged or clamped. Choke hoses with flanged connections designed for that purpose will be accepted in lieu of a steel choke line. The choke line must be securely anchored;

(L) The accumulator must have sufficient capacity to operate the blowout prevention equipment, as outlined in this section, and have two independently powered pump systems connected to start automatically after a 200 psi drop in accumulator pressure, or one independently powered pump system connected to start automatically after a 200 psi drop in accumulator pressure and an emergency nitrogen back-up system connected to the accumulator manifold. Blowout prevention equipment controls may be located at the accumulator or on the rig floor; and

(M) The drilling fluids containment system must have a functional mud pit horn.

(c) Testing and Maintenance.

(A) Ram type blowout preventers and auxiliary equipment must be tested to a minimum of 1,000 psi, 1.5 psi per foot of casing, or to the work-

ing pressure of the casing or assembly, whichever is the lesser. Expansion type blowout preventers must be tested to 70 percent of the above pressure testing requirements. The blowout prevention equipment must be pressure tested:

(i) When installed;

(ii) Prior to drilling out plugs or casing shoes or both; and

(iii) Following repairs that require disconnecting a pressure seal in the assembly.

(B) During drilling operations, blowout prevention equipment must be actuated to test proper functioning as follows: once each trip for blind and pipe rams but not less than once each day for pipe rams; and at least once each week on the drill pipe for expansion type preventers.

(C) All flange bolts must be inspected at least weekly and retightened as necessary during drilling operations. The auxiliary control systems must be inspected daily to check the mechanical condition and effectiveness and to ensure personnel's acquaintance with the method of operation. Blowout prevention and auxiliary control equipment must be cleaned, inspected, and repaired, if necessary, prior to installation to ensure proper functioning. Blowout prevention controls must be plainly labeled, and all crewmembers must be instructed on the function and operation of the equipment. A blowout prevention drill must be conducted weekly for each drilling crew. All blowout prevention tests and crew drills must be recorded on the driller's log.

(4) Related Well Control Equipment. A full opening drill string safety valve in the open position must be maintained on the rig floor at all times while drilling operations are being conducted. A kelly cock must be installed between the kelly and the swivel.

(5) Drilling Fluid. The properties, use, and testing of drilling fluids and the conduct of related drilling procedures must be sufficient to prevent the blowout of any well. Sufficient drilling fluid materials to ensure well control must be maintained on site and readily accessible for use at all times.

(6) Drilling Fluid Control. Before pulling drill pipe, the drilling fluid must be properly conditioned or displaced. The hole must be kept reasonably full at all times; however, in no event will the annular mud level be deeper than 100 feet from the rotary table when coming out of the hole with drill pipe. Mud cooling techniques must be utilized when necessary to maintain mud characteristics for proper well control and hole conditioning. The department may require the use of mud cooling equipment.

(7) Drilling Fluid Testing:

(a) Mud testing and treatment consistent with good operating practice must be performed daily or more frequently as conditions warrant. Mud testing equipment must be maintained on the drilling rig at all times; and

(b) The following mud drilling fluid system monitoring or recording devices must be installed and operated continuously during drilling operations occurring below the shoe of the conductor casing. No exceptions to these requirements will be allowed without the specific prior approval of the department:

(A) High-low level mud pit indicator including a visual and audio-warning device;

(B) Degassers, desilters, and desanders;

(C) A mechanical, electrical, or manual surface drilling fluid temperature monitoring device. The temperature of the drilling fluid going into and coming out of the hole must be monitored, read, and recorded on the driller's or mud log for a minimum of every 30 feet of hole drilled below the conductor casing; and

(D) A hydrogen sulfide indicator and alarm must be installed in areas suspected or known to contain hydrogen sulfide gas that may reach levels considered dangerous to the health and safety of personnel in the area.

(8) Well-head Equipment and Testing:

(a) Completions. All wellhead connections must be fluid pressure tested to the API or ASA working pressure rating. Cold water is required as the testing fluid, unless otherwise approved by the department at the time of permitting. Welding of wellhead connections must be performed by a certified welder using materials in conformance with ASTM specifications; and

(b) Well-head Equipment. All completed wells must be equipped with a minimum of one casinghead with side outlets, one master valve, and one production valve, unless otherwise approved by the department. All casingheads, Christmas trees, fittings, and connections must have a temperature derated working pressure equal to or greater than the surface shut-in pressure of the well at reservoir temperature. Packing, sealing mediums and lubricants must consist of materials or substances that function effectively at, and are resistant to, high temperatures. Wellhead equipment, valves, flanges, and fittings must meet minimum ASA standards or minimum API

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Standard 6A specifications. Casinghead connections must be made such that fluid can be pumped between casing strings.

(9) Supervision. From the time drilling operations are initiated and until the well is completed or decommissioned, a member of the drilling crew or the toolpusher must monitor the rig floor at all times for surveillance purposes, unless the well is secured with blowout preventers or cement plugs.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.155 & 522.305

Hist.: GMI 8, f. & ef. 11-17-76; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 2-1999, f. & cert. ef. 8-30-99; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

## 632-020-0180

### Blowout Prevention Rules for Prospect Wells Less than 2,000 Feet in Depth

All prospect wells must have adequate casing and wellhead controls installed, unless otherwise approved by the department. The casing must extend from the surface to at least ten percent of the proposed total depth of the well and be cemented back to the surface. Wellhead controls must consist of an annular preventer or double ram preventer or pipe rams and gate valve. Controls may be manual or hydraulic.

(1) If hot water or flowing steam at 65° C. (150° F.) or greater is encountered, further drilling must stop immediately, the operator must notify the department, and the hole will be either:

(a) Completed as an observation hole using steel tubing cemented from total depth to surface; or

(b) Permanently decommissioned by plugging with cement from total depth to surface; or

(c) Deepened only after a review of the adequacy of wellhead control equipment and approval from the department. If the prospect well is deepened as described in this section, it must be completed as described in subsections (a) and (b) of this section.

(2) If cold flowing artesian water is encountered, the hole will be completed as in subsection (1)(a) or (b) of this rule, except that plastic tubing may be used, only with prior department approval.

(3) Locations proposed in natural thermal areas within a 1,000 foot radius of hot springs, fumaroles, or other surface geothermal indicators, or in areas of known artesian water flow, will require a detailed drilling program for each hole approved by the department. The department may require special drilling and completion techniques, such as cemented surface casing and simple expansion type blowout preventers, to safely control formations containing geothermal or other resources that may be penetrated.

(4) A supply of mud and lost circulation material must be kept on hand while drilling to control abnormal pressure if rotary equipment is used.

(5) Prospect wells must not result in the co-mingling of fluids.

(6) No prospect well may be constructed, maintained, or abandoned in such a manner as to constitute a health threat, health hazard, or nuisance to public safety.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.155 & 522.305

Hist.: GMI 8, f. & ef. 11-17-76; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10; DGMI 3-2013, f. & cert. ef. 3-21-13

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## Department of Human Services, Aging and People with Disabilities and Developmental Disabilities Chapter 411

**Rule Caption:** Support Services for Adults with Developmental Disabilities - Rate Ranges

**Adm. Order No.:** SPD 3-2013(Temp)

**Filed with Sec. of State:** 3-20-2013

**Certified to be Effective:** 4-1-13 thru 9-28-13

**Notice Publication Date:**

**Rules Amended:** 411-340-0020

**Subject:** The Department of Human Services (Department) is temporarily amending OAR 411-340-0020 to update the support services rate ranges effective April 1, 2013 to reflect the 1.25% wage increase for personal support workers required by the 2011–2013 Collective Bargaining Agreement between the Home Care Com-

mission and the Service Employee's International Union (SEIU), Local 503, Oregon Public Employees' Union (OPEU).

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-340-0020

### Definitions

As used in OAR chapter 411, division 340:

(1) "Abuse" means abuse of an adult as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(3) "Activities of Daily Living (ADL)" mean the self-care activities accomplished by an individual for continued well-being.

(4) "Adaptive Behavior" means the degree to which an individual meets the standards of personal independence and social responsibility expected for age and culture group.

(5) "Administration of Medication" means the act of placing a medication in, or on, an individual's body by a person responsible for the individual's care and employed by or under contract to the individual, the individual's legal representative, or a provider organization.

(6) "Administrative Review" means the formal process that is used when the individual or the individual's legal representative is not satisfied with the decision made by the brokerage about a complaint involving the provision of services or a provider.

(7) "Administrator" means the Administrator of the Department, or that person's designee. The term "Administrator" is synonymous with "Assistant Director".

(8) "Adult" means an individual 18 years or older with developmental disabilities.

(9) "Alternative Resources" mean possible resources, not including support services, for the provision of supports to meet an individual's needs. Alternative resources includes but is not limited to private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.

(10) "Basic Benefit" means the type and amount of support services available to each eligible individual, specifically:

(a) Access to the brokerage services listed in OAR 411-340-0120(1); and if required

(b) Access to an amount of support services funds used to assist with the purchase of supports listed in OAR 411-340-0130(6).

(11) "Basic Supplement" means an amount of support services funds in excess of the basic benefit to which an individual may have access in order to purchase necessary supports based on demonstration of extraordinary long-term need on the Basic Supplement Criteria Inventory, Form DHS 0203.

(12) "Basic Supplement Criteria Inventory (Form DHS 0203)" means the written inventory of an individual's circumstances that is completed and scored by the brokerage to determine whether the individual is eligible for a basic supplement.

(13) "Benefit Level" means the total annual amount of support service funds for which an individual is eligible. The benefit level includes the basic benefit and any exceptions to the basic benefit financial limits.

(14) "Certificate" means a document issued by the Department to a brokerage, or to a provider organization requiring certification under OAR 411-340-0170(2), that certifies the brokerage or provider organization is eligible to receive state funds for support services.

(15) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication methods.

(16) "Chore Services" mean services needed to maintain a clean, sanitary, and safe environment in an individual's home. Chore services include heavy household chores such as washing floors, windows, and walls, tacking down loose rugs and tiles, and moving heavy items of furniture for safe access and egress.

(17) "Client Process Monitoring System (CPMS)" means the Department's computerized system for enrolling and terminating services for individuals with developmental disabilities.

(18) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities according to OAR chapter 411, division 320. A CDDP operates in a specific geographic service area of the



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state under a contract with the Department, Local Mental Health Authority, or other entity as contracted by the Department.

(19) "Community Living and Inclusion Supports" mean services that facilitate independence and promote community integration by supporting the individual to gain or maintain skills to live as independently as possible in the type of home the individual chooses. Community living and inclusion supports provide support for the individual to participate in activities in integrated settings that promote community inclusion and contribution.

(a) Community living and inclusion supports include supports designed to develop or maintain skills for self-care, ability to direct supports, care of the immediate environment, and may include instruction in skills an individual wishes to acquire, retain, or improve that enhance independence, productivity, integration, or maintain the individual's physical and mental skills. Community living and inclusion supports include supports in the following areas:

(A) Personal skills, which includes eating, bathing, dressing, personal hygiene, and mobility;

(B) Socialization, which includes development or maintenance of self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(C) Community participation, recreation, or leisure, which includes the development or maintenance of skills to use available community services, facilities, or businesses;

(D) Communication, which includes development or maintenance of expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills; and

(E) Personal environmental skills, which includes development or maintenance of skills such as planning and preparing meals, budgeting, laundry, and housecleaning.

(b) Community living and inclusion supports may or may not be work related.

(20) "Complaint" means a verbal or written expression of dissatisfaction with services or providers.

(21) "Comprehensive Services" mean a package of developmental disability services and supports that include one of the following living arrangements regulated by the Department alone or in combination with any associated employment or community inclusion program regulated by the Department:

(a) Twenty-four hour residential services including but not limited to services provided in a group home, foster home, or through a supported living program; or

(b) In-home supports provided to an individual in the individual or family home costing more than the individual cost limit.

(c) Comprehensive services do not include support services for adults enrolled in brokerages or for children enrolled in long-term supports or children's intensive in-home services.

(22) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet an individual's support needs. Less costly alternatives include other programs available from the Department, the utilization of assistive devices, natural supports, architectural modifications, and alternative resources. Less costly alternatives may include resources not paid for by the Department.

(23) "Crisis" means:

(a) A situation that may result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160 are present for which no appropriate alternative resources are available.

(24) "Crisis Diversion Services" mean the services authorized and provided according to OAR 411-320-0160 that are intended to maintain an individual at home or in the family home while an individual is in emergent status. Crisis diversion services may include short-term residential placement services indicated on an individual's Support Services Brokerage Plan of Care Crisis Addendum, as well as additional support as described in an Individual Support Plan.

(25) "Department" means the Department of Human Services (DHS). The term "Department" is synonymous with "Division (SPD)".

(26) "Developmental Disability" means a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(27) "Emergent Status" means an individual has been determined to be eligible for crisis diversion services according to OAR 411-320-0160..

(28) "Employer-Related Supports" mean activities that assist individuals and, when applicable, their family members with fulfilling roles and obligations as employers as described in the Individual Support Plan. Supports to the employer include but are not limited to:

- (a) Education about employer responsibilities;
- (b) Orientation to basic wage and hour issues;
- (c) Use of common employer-related tools such as job descriptions;

and

- (d) Fiscal intermediary services.

(29) "Entry" means admission to a Department-funded developmental disability service provider.

(30) "Environmental Accessibility Adaptations" mean physical adaptations that are necessary to ensure the health, welfare, and safety of the individual in the home, or that enable the individual to function with greater independence in the home.

(a) Environmental accessibility adaptations include but are not limited to:

(A) Environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke detectors, light fixtures, and appliances;

(G) Sound and visual monitoring systems;

(H) Fencing;

(I) Installation of ramps, grab-bars, and electric door openers;

(J) Adaptation of kitchen cabinets and sinks;

(K) Widening of doorways;

(L) Handrails;

(M) Modification of bathroom facilities;

(N) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk;

(O) Installation of non-skid surfaces;

(P) Overhead track systems to assist with lifting or transferring;

(Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; or

(R) Modifications to a vehicle to meet the unique needs of the individual (lift, interior alterations such as seats, head and leg rests and belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle).

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, and central air conditioning; and

(B) Adaptations that add to the total square footage of the home.

(31) "Environmental Modification Consultant" means either an independent provider, provider organization, or general business paid with support services funds, to provide advice to an individual, the individual's legal representative, or the individual's personal agent about the environmental accessibility adaptation required to meet the individual's needs.

(32) "Exit" means either termination from a Department-funded developmental disability service provider or transfer from one Department-funded service provider to another.

(33) "Family" for determining individual eligibility for brokerage services as a resident in the family home and for determining who may receive family training, means a unit of two or more persons that include at least one individual with developmental disabilities where the primary caregiver is:

(a) Related to the individual with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a member of the household with developmental disabilities and the individual with developmental disabilities is related to one of the partners by blood, marriage, or legal adoption.

(34) "Family Training" means training and counseling services for the family of an individual that increase the family's capacity to care for, support, and maintain the individual in the home. Family training includes:

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(a) Instruction about treatment regimens and use of equipment specified in the Individual Support Plan;

(b) Information, education, and training about the individual's developmental disability, medical, and behavioral conditions; and

(c) Counseling for the family to relieve the stress associated with caring for an individual with developmental disabilities.

(35) "Fiscal Intermediary" means a person or entity that receives and distributes support services funds on behalf of an individual who employs persons to provide services, supervision, or training in the home or community according to the Individual Support Plan.

(36) "Founded Reports" means the Department's or Law Enforcement Authority's (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(37) "General Business Provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with support services funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public;

(b) Provides services for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(38) "Habilitation Services" mean services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. Habilitation services include supported employment and community living and inclusion supports.

(39) "Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a service. This is a formal process required by federal law (42 CFR 431.200-250). A hearing is also known as a Medicaid Fair Hearing and contested case hearing.

(40) "Home" means an individual's primary residence that is not under contract with the Department to provide services to an individual as a licensed or certified foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(41) "Homemaker Services" mean the general household activities such as meal preparation and routine household services required to maintain a clean, sanitary, and safe environment in an individual's home.

(42) "Incident Report" means a written report of any unusual incident involving an individual.

(43) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(44) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with support services funds that personally provide services to the individual.

(45) "Individual" means an adult with developmental disabilities for whom services are planned and provided.

(46) "Individual Cost Limit" means the maximum annual benefit level available under the Support Services Waiver.

(47) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The type of service supports needed, how supports are delivered, and the frequency of provided supports are included in the ISP. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's plan of care for Medicaid purposes.

(48) "Integration" as defined in ORS 427.005 means:

(a) The use by individuals with developmental disabilities of the same community resources used by and available to other persons;

(b) Participation by individuals with developmental disabilities in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with persons in their community.

(49) "Legal Representative" means an attorney at law who has been retained by or for an individual, or a person or agency authorized by the court to make decisions about services for the individual.

(50) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who, while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with developmental disabilities has suffered abuse, or comes in contact with any

person whom the official has reasonable cause to believe abused an adult with developmental disabilities. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section of this rule, except that a psychiatrist, psychologist, clergy, or attorney is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(51) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(52) "Natural Supports" or "Natural Support System" means the resources available to an individual from their relatives, friends, significant others, neighbors, roommates, and the community. Services provided by natural supports are resources that are not paid for by the Department.

(53) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(54) "Nursing Care Plan" means a plan developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught, assigned, or delegated to the qualified provider or family.

(55) "Occupational Therapy" means the services provided by a professional licensed under ORS 675.240 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(56) "OSIP-M" means Oregon Supplemental Income Program Medical.

(57) "Personal Agent" means a person who works directly with individuals and families to provide or arrange for support services as described in the Support Services Waiver and these rules, is a case manager for the provision of targeted case management services, meets the qualifications set forth in OAR 411-340-0150(5), and is:

(a) A trained employee of a brokerage; or

(b) A person who has been engaged under contract to the brokerage to allow the brokerage to meet responsibilities in geographic areas where personal agent resources are severely limited.

(58) "Personal Emergency Response Systems" mean electronic devices required by certain individuals to secure help in an emergency for safety in the community.

(59) "Person-Centered Planning" means:

(a) A process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about personal goals, activities, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(60) "Physical Therapy" means the services provided by a professional licensed under ORS 688.020 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(61) "Plan Year" means 12 consecutive months used to calculate an individual's annual benefit level. Unless otherwise set according to the conditions of OAR 411-340-0120, the initial plan year begins on the start date specified on the individual's first authorized Individual Support Plan (ISP) after entry to a brokerage. Subsequent plan years begin on the anniversary of the start date of the initial ISP.

(62) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(63) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(64) "Primary Caregiver" means the person identified in an Individual Support Plan as providing the majority of service and support for an individual in the individual's home.

(65) "Productivity" as defined in ORS 427.005 means:

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(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

(66) “Protection” and “Protective Services” mean necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, and to safeguard an individual’s person, property, and funds.

(67) “Provider Organization” means an entity selected by an individual or the individual’s legal representative, and paid with support services funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(68) “Provider Organization Director” means the employee of a provider organization, or the employee’s designee, responsible for administration and provision of services according to these rules.

(69) “Psychotropic Medication” means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including but not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(70) “Quality Assurance” means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(71) “Rate Ranges” mean the rates and limits paid for some support services. The Department’s support services rate ranges as of April 1, 2013 are maintained on the Department’s website (<http://www.dhs.state.or.us/spd/tools/dd/bpa/rate-guidelines-040113.pdf>). Printed copies may be obtained by contacting the Department of Human Services, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, E-10, Salem, Oregon 97301.

(72) “Regional Crisis Diversion Program” means the regional coordination of the management of crisis diversion services for a group of designated counties that is responsible for the management of the following developmental disability services:

(a) Crisis intervention services;

(b) Evaluation of requests for new or enhanced services for certain groups of individuals eligible for developmental disability services; and

(c) Other developmental disability services that the counties comprising the region agree are more effectively or automatically delivered on a regional basis.

(73) “Respite” means intermittent services provided on a periodic basis for the relief of, or due to the temporary absence of, persons normally providing the supports to individuals unable to care for themselves.

(74) “Restraint” means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(75) “Self-Administration of Medication” means the individual manages and takes his or her own medication, identifies his or her medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon written order of a physician, and safely maintains the medication without supervision.

(76) “Self-Determination” means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom. The ability for an individual with a developmental disability, together with freely-chosen family and friends, to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority. The ability for an individual with a developmental disability, with the help of a social support network if needed, to control a certain sum of resources in order to purchase support services;

(c) Autonomy. The arranging of resources and personnel, both formal and informal, that shall assist an individual with a developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility. The acceptance of a valued role in an individual’s community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for individuals with developmental disabilities.

(77) “Social Benefit” means a service or financial assistance solely intended to assist an individual with a developmental disability to function in society on a level comparable to that of a person who does not have such a developmental disability.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to persons regardless of developmental disability;

(B) Provide financial assistance with food, clothing, shelter, and laundry needs common to persons with or without developmental disabilities; or

(C) Replace other governmental or community services available to an individual.

(b) Financial assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported in the individual’s home and must be either:

(A) Reimbursement for an expense previously authorized in an Individual Support Plan (ISP); or

(B) An advance payment in anticipation of an expense authorized in a previously authorized ISP.

(78) “Special Diet” means specially prepared food or particular types of food, ordered by a physician and periodically monitored by a dietician, specific to an individual’s medical condition or diagnosis that are needed to sustain an individual in the individual’s home. Special diets are supplements and are not intended to meet an individual’s complete daily nutritional requirements. Special diets may include:

(a) High caloric supplements;

(b) Gluten-free supplements; and

(c) Diabetic, ketogenic, or other metabolic supplements.

(79) “Specialized Medical Equipment and Supplies” mean devices, aids, controls, supplies, or appliances that enable individuals to increase their abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which they live. Specialized medical equipment and supplies include items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the State Medicaid Plan. Specialized medical equipment and supplies may not include items not of direct medical or remedial benefit to the individual. Specialized medical equipment and supplies must meet applicable standards of manufacture, design, and installation.

(80) “Specialized Supports” mean treatment, training, consultation, or other unique services necessary to achieve outcomes in the Individual Support Plan that are not available through State Medicaid Plan services or other support services listed in OAR 411-340-0130(6). Typical supports include the services of a behavior consultant, a licensed nurse, or a social or sexual consultant to:

(a) Assess the needs of the individual and family, including environmental factors;

(b) Develop a plan of support;

(c) Train caregivers to implement the plan of support;

(d) Monitor implementation of the plan of support; and

(e) Revise the plan of support as needed.

(81) “Speech and Language Therapy” means the services provided by a professional licensed under ORS 681.250 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(82) “Substantiated” means an abuse investigation has been completed by the Department or the Department’s designee and the preponderance of the evidence establishes the abuse occurred.

(83) “Support” means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is flexible and subject to change with time and circumstances.

(84) “Supported Employment Services” means provision of job training and supervision available to assist an individual who needs intensive ongoing support to choose, get, and keep a job in a community business setting. Supported employment is a service planned in partnership with public vocational assistance agencies and school districts and through Social Security Work Incentives when available.

(85) “Support Services” mean the services of a brokerage listed in OAR 411-340-0120(1) as well as the uniquely determined activities and purchases arranged through the brokerage support services that:

(a) Complement the existing formal and informal supports that exist for an individual living in the individual’s own home or family home;

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(b) Are designed, selected, and managed by the individual or the individual's legal representative;

(c) Are provided in accordance with an Individual Support Plan; and

(d) May include purchase of supports as a social benefit required for an individual to live in the individual's home or the family home.

(86) "Support Services Brokerage" or "Brokerage" means an entity, or distinct operating unit within an existing entity, that uses the principles of self-determination to perform the functions listed in OAR 411-340-0120(1) associated with planning and implementation of support services for individuals with developmental disabilities.

(87) "Support Services Brokerage Director" or "Brokerage Director" means the employee of a publicly or privately-operated brokerage, or that person's designee, who is responsible for administration and provision of services according to these rules.

(88) "Support Services Brokerage Plan of Care Crisis Addendum" means the short-term plan that is required by the Department to be added to an Individual Support Plan to describe crisis diversion services an individual is to receive while the individual is in emergent status in a short-term residential placement.

(89) "Support Services Brokerage Policy Oversight Group" or "Policy Oversight Group" means the group that meets the requirements of OAR 411-340-0150(1) that is formed to provide consumer-based leadership and advice to each brokerage regarding issues such as development of policy, evaluation of services, and use of resources.

(90) "Support Services Expenditure Guideline" means a publication of the Department that describes allowable uses for support services funds.

(91) "Support Services Funds" mean public funds designated by the brokerage for assistance with the purchase of supports according to each Individual Support Plan.

(92) "These Rules" mean the rules in OAR chapter 411, division 340.

(93) "Transportation" means services that allow individuals to gain access to community services, activities, and resources that are not medical in nature.

(94) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(95) "Volunteer" means any person assisting a service provider without pay to support the services provided to an individual.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1760, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 3-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-28-13

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**Rule Caption:** Homecare Workers Enrolled in the Consumer-Employed Provider Program

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**Rules Amended:** 411-030-0080, 411-031-0020, 411-031-0030, 411-031-0040, 411-031-0050

**Rules Repealed:** 411-030-0080(T), 411-031-0020(T), 411-031-0040(T)

**Subject:** The Department of Human Services (Department) is permanently updating OAR 411-030-0080 (Spousal Pay Program) and the rules in OAR chapter 411, division 031 for homecare workers enrolled in the Consumer-Employed Provider Program.

The permanent rules:

- Implement the 2011-2013 Collective Bargaining Agreement between the Home Care Commission and the Service Employee's International Union (SEIU), Local 503, Oregon Public Employees' Union (OPEU);

- Maintain consistency for spousal pay providers with the rules for homecare workers in OAR chapter 411, division 031;

- Expand homecare worker enrollment standards and the criteria to deny a homecare worker's enrollment application based on a

homecare worker's inability to present a valid social security or tax identification number;

- Clarify the definition of "Adult Protective Services" to include reference to the rules that govern adult protective services for individuals with developmental disabilities and mental or emotional disorders;

- Expand the criteria to inactivate a homecare worker's provider enrollment when payments have been suspended, as required by federal law under 42 CFR section 455.23;

- Change references from the "Client-Employed Provider Program" to the "Consumer-Employed Provider Program" and references from "client" to "consumer; and

- Include general housekeeping changes to reflect current practices, improve readability, and establish consistency with other Department rules.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-030-0080

### Spousal Pay Program

(1) The Spousal Pay Program is one of the live-in service options under in-home services for those who qualify.

(2) For the purposes of the Spousal Pay Program, a spouse is defined as a person who is legally married per OAR 461-001-0000 to an individual eligible for the In-Home Support Services Program.

(3) ELIGIBILITY. An individual may be eligible for the Spousal Pay Program when all of the following conditions are met:

(a) The individual has met all program requirements of the In-Home Support Services Program;

(b) The individual requires full assistance in at least four of the six ADLs described in OAR 411-015-0006 as determined by the assessment described in OAR chapter 411, division 015;

(c) The individual would otherwise require nursing facility services without home and community-based waived in-home services;

(d) The individual has a medically-diagnosed, progressive, debilitating condition that limits additional ADL, or has experienced a spinal cord injury or similar disability with permanent impairment of the ability to perform ADLs;

(e) At the time of requesting enrollment in the Spousal Pay Program, the individual is determined, through a pre-admission screening (PAS) assessment (as defined in OAR 411-070-0005) to meet the requirements described in sections (3)(b), (3)(c) and (3)(d) of this rule. The PAS assessment is a second, independent assessment, conducted by a Department/AAA representative using the CA/PS;

(f) The individual's service needs exceed in both extent and duration the usual and customary services rendered by one spouse to another;

(g) The spouse demonstrates the capability and health to provide the services and actually provides the principal services, including the majority of service plan hours, for which payment has been authorized;

(h) The spouse meets all requirements for enrollment as a homecare worker in the Consumer-Employed Provider Program as described in OAR 411-031-0040; and

(i) The Department has reviewed the request and approved program eligibility at enrollment and annually upon re-assessment.

#### (4) PAYMENTS.

(a) All payments must be prior authorized by the Department or the Department's designee.

(b) The hours authorized in the service plan must consist of one-half of the assessed hours for twenty-four hour availability, one-half of the assessed hours for IADLs, plus all of the hours for specific ADLs based on the service needs of the individual.

(c) Except as described otherwise in subsection (4)(d) of this section, spousal pay providers are paid at live-in homecare worker rates for ADLs, IADLs, and twenty-four hour availability as bargained in the Collective Bargaining Agreement between the Home Care Commission and Service Employees International Union, Local 503, OPEU.

(d) Homecare workers who marry their consumer-employer retain the same standard of compensation, if their employer meets the spousal pay eligibility criteria as described in section (3) of this rule. Additional IADL hours may be authorized in the service plan when necessary to prevent a loss of compensation to the homecare worker following marriage to the consumer-employer.

(e) Spousal pay providers may not claim payment from the Department for hours that the spousal pay provider did not work unless paid leave is utilized.

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(5) Spousal pay providers are subject to the provisions in OAR chapter 411, division 031 governing homecare workers enrolled in the Consumer-Employed Provider Program.

(6) Individuals receiving Spousal Pay Program services who have excess income must contribute to the cost of services pursuant to OAR 461-160-0610 and 461-160-0620.

Stat. Auth.: ORS 409.050, 410.070, & 410.090  
Stats. Implemented: ORS 410.010, 410.020, 410.070, 411.802, & 411.803  
Hist.: SSD 4-1984, f. 4-27-84, ef. 5-1-84; SSD 3-1985, f. & ef. 4-1-85; SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93, Renumbered from 411-030-0027; SDSD 2-2000, f. 3-27-00, cert. ef. 4-1-00; SPD 2-2003(Temp), f. 1-31-03, cert. ef. 2-1-03 thru 7-30-03; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 3-2007(Temp), f. 4-11-07, cert. ef. 5-1-07 thru 10-28-07; SPD 17-2007, f. 10-26-07, cert. ef. 10-28-07; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09; SPD 13-2012(Temp), f. & cert. ef. 9-26-12 thru 3-25-13; SPD 4-2013, f. 3-25-13, cert. ef. 3-26-13

## 411-031-0020

### Definitions

(1) "AAA" means "Area Agency on Aging" as defined in this rule.

(2) "Activities of Daily Living (ADL)" mean those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities include eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior as defined in OAR 411-015-0006.

(3) "ADL" means "activities of daily living" as defined in this rule.

(4) "Adult Protective Services" mean the services described in OAR chapter 411, division 020, OAR chapter 407, division 045, and OAR chapter 943, division 045 provided in response to the need for protection from harm or neglect to an older adult, disabled, or blind person 18 years of age or older regardless of income.

(5) "Area Agency on Aging (AAA)" means the Department designated Area Agency on Aging (AAA) charged with the responsibility to provide a comprehensive and coordinated system of services to older adults or individuals with disabilities in a planning and service area. For purposes of these rules, the term AAA and Area Agency on Aging are inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210 to 410.300.

(6) "Bargaining Agreement" means the 2011-2013 Collective Bargaining Agreement between the Home Care Commission and the Service Employee's International Union, Local 503, Oregon Public Employees' Union.

(7) "Burden of Proof" means that the existence or nonexistence of a fact must be established by a preponderance of the evidence.

(8) "Career Homecare Worker" means a homecare worker with an unrestricted provider enrollment. A career homecare worker has a provider enrollment that allows the homecare worker to provide services to any eligible in-home services consumer. At any given time, a career homecare worker may choose not to be referred for work.

(9) "Case Manager" means an employee of the Department or Area Agency on Aging who assesses the service needs of an applicant, determines eligibility, and offers service choices to the eligible individual. The case manager authorizes and implements the service plan, and monitors the services delivered.

(10) "CEP" means "Consumer-Employed Provider Program" as defined in this rule.

(11) "Companionship Services" mean those services designated by the Department of Labor as meeting the personal needs of a consumer. Companionship services are exempt from federal and state minimum wage laws.

(12) "Consumer" or "Consumer-Employer" means the individual eligible for in-home services. "Client" is synonymous with consumer.

(13) "Consumer-Employed Provider Program (CEP)" refers to the program wherein the provider is directly employed by the consumer to provide either hourly or live-in services. In some aspects of the employer and employee relationship, the Department acts as an agent for the consumer-employer. These functions are clearly described in OAR 411-031-0040.

(14) "Department" means the Department of Human Services (DHS).

(15) "Division" means "Department" as defined in this rule.

(16) "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

(17) "Fiscal Improprieties" means the homecare worker committed financial misconduct involving the consumer's money, property, or benefits. Fiscal improprieties include but are not limited to financial exploitation, borrowing money from the consumer, taking the consumer's property or money, having the consumer purchase items for the homecare worker,

forging the consumer's signature, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(18) "HCW" means "Homecare Worker" as defined in this rule.

(19) "Homecare Worker" means a provider, as described in OAR 411-031-0040, that is directly employed by a consumer to provide either hourly or live-in services to an eligible consumer.

(a) The term homecare worker includes consumer-employed providers in the Spousal Pay and Oregon Project Independence Programs. The term homecare worker also includes consumer-employed providers that provide state plan personal care services to older adults and people with physical disabilities.

(b) Homecare worker does not include Independent Choices Program providers or personal care attendants enrolled through Developmental Disability Services or the Addictions and Mental Health Division.

(20) "Hourly Services" mean the in-home services, including activities of daily living and instrumental activities of daily living, that are provided at regularly scheduled times.

(21) "IADL" means "instrumental activities of daily living" as defined in this rule.

(22) "Imminent Danger" means there is reasonable cause to believe an individual's life or physical, emotional, or financial well-being is in danger if no intervention is immediately initiated.

(23) "In-Home Services" mean those activities of daily living and instrumental activities of daily living that assist an individual to stay in his or her own home.

(24) "Instrumental Activities of Daily Living (IADL)" mean those activities, other than activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in IADL are identified in OAR 411-015-0007.

(25) "Lack of Ability or Willingness to Maintain Consumer-Employer Confidentiality" means the homecare worker is unable or unwilling to keep personal information about their consumer-employer private.

(26) "Lack of Skills, Knowledge, and Ability to Adequately or Safely Perform the Required Work" means the homecare worker does not possess the skills to perform services needed by consumers of the Department. The homecare worker may not be physically, mentally, or emotionally capable of providing services to older adults and individuals with disabilities. Their lack of skills may put consumers at risk because they fail to perform, or learn to perform, their duties adequately to meet the needs of the consumer.

(27) "Live-In Services" mean those Consumer-Employed Provider Program services provided when a consumer requires activities of daily living, instrumental activities of daily living, and twenty-four hour availability. Time spent by any live-in homecare worker doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements.

(28) "Office of Administrative Hearings" means the panel described in ORS 183.605 to 183.690 established within the Employment Department to conduct contested case proceedings and other such duties on behalf of designated state agencies.

(29) "OPI" means "Oregon Project Independence".

(30) "Oregon Project Independence (OPI)" means the program of in-home services described in OAR chapter 411, division 032.

(31) "Preponderance of the Evidence" means that one party's evidence is more convincing than the other party's.

(32) "Provider" means the individual who actually renders the service.

(33) "Provider Enrollment" means a homecare worker's authorization to work as a provider employed by the consumer for the purpose of receiving payment for authorized services provided to consumers of the Department. Provider enrollment includes the issuance of a provider number.

(34) "Provider Number" means an identifying number issued to each homecare worker who is enrolled as a provider through the Department.

(35) "Restricted Homecare Worker" means the Department or Area Agency on Aging has placed restrictions on an individual homecare workers' provider enrollment as described in OAR 411-031-0040.

(36) "Self-Management Tasks" means "instrumental activities of daily living" as defined in this rule.

(37) "Services are Not Provided as Required" means the homecare worker does not provide the services to the consumer as described in the service plan authorized by the Department.

(38) "These Rules" mean the rules in OAR chapter 411, division 031.

(39) "Twenty-Four Hour Availability" means the availability and responsibility of a homecare worker to meet activities of daily living and

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self-management needs of a consumer as required by that consumer over a twenty-four hour period. Twenty-four hour services are provided by a live-in homemaker worker and are exempt from federal and state minimum wage and overtime requirements.

(40) "Unacceptable Background Check" means a check that produces information related to an individual's background that precludes the individual from being a homemaker worker for the following reasons:

(a) The individual applying to be a homemaker worker has been disqualified under OAR 407-007-0275;

(b) A homemaker worker enrolled in the Consumer-Employed Provider Program for the first time, or after any break in enrollment, after July 28, 2009 has been disqualified under OAR 407-007-0275; or

(c) A background check and fitness determination has been conducted resulting in a "denied" status, as defined in OAR 407-007-0210.

(41) "Unacceptable Conduct at Work" means the homemaker worker has repeatedly engaged in one or more of the following behaviors:

(a) Delay in their arrival to work or absences from work not prior-scheduled with the consumer, that are either unsatisfactory to the consumer or that neglect the consumer's service needs; or

(b) Inviting unwelcome guests or pets into the consumer's home, resulting in the consumer's dissatisfaction or inattention to the consumer's required service needs.

(42) "Violation of a Drug-Free Workplace" means there was a substantiated complaint against the homemaker worker for:

(a) Being intoxicated by alcohol, inhalants, prescription drugs, or other drugs, including over-the-counter medications, while responsible for the care of the consumer, while in the consumer's home, or while transporting the consumer; or

(b) Manufacturing, possessing, selling, offering to sell, trading, or using illegal drugs while providing authorized services to the consumer or while in the consumer's home.

(43) "Violation of Protective Service and Abuse Rules" means the homemaker worker was found to have violated protective service and abuse rules based on a substantiated allegation of abuse, as described in OAR chapter 411, division 020, OAR chapter 407, division 045, and OAR chapter 943, division 045.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 10-2005, f. & cert. ef. 7-1-05; SPD 15-2005(Temp), f. & cert. ef. 11-16-05 thru 5-15-06; SPD 15-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 28-2006(Temp), f. 10-18-06, cert. ef. 10-23-06 thru 4-20-07; SPD 4-2007, f. 4-12-07, cert. ef. 4-17-07; SPD 3-2010, f. 5-26-10, cert. ef. 5-30-10; SPD 4-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; SPD 26-2010, f. 11-29-10, cert. ef. 12-1-10; SPD 13-2012(Temp), f. & cert. ef. 9-26-12 thru 3-25-13; SPD 4-2013, f. 3-25-13, cert. ef. 3-26-13

## 411-031-0030

### Purpose

The rules in OAR chapter 411, division 031 establish the standards and procedures governing homemaker workers and the fiscal services provided on behalf of Department/AAA consumers to homemaker workers enrolled in the Consumer-Employed Provider Program. Homemaker workers provide home and community-based waiver, state plan, and Oregon Project Independence in-home services to the Department/AAA consumers. In-home services supplement the ability of the Department/AAA consumers to continue to live in their own homes.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 3-2010, f. 5-26-10, cert. ef. 5-30-10; SPD 4-2013, f. 3-25-13, cert. ef. 3-26-13

## 411-031-0040

### Consumer-Employed Provider Program

The Consumer-Employed Provider Program contains systems and payment structures to employ both hourly and live-in providers. The live-in structure assumes a provider is required for activities of daily living and instrumental activities of daily living and twenty-four hour availability. To ensure continuity of service for the consumer, live-in service plans must include at least one homemaker worker providing twenty-four hour availability for a minimum of five days in a calendar week. The hourly structure assumes the provider is required for activities of daily living and instrumental activities of daily living during specific substantial periods. Except as indicated, all of the following criteria apply to both hourly and live-in providers.

(1) EMPLOYMENT RELATIONSHIP. The relationship between the provider and the consumer is that of employee and employer.

(2) CONSUMER-EMPLOYER JOB DESCRIPTIONS. Each consumer-employer is responsible for creating and maintaining a job descrip-

tion for the potential employee in coordination with the services authorized by the consumer's case manager.

(3) HOMECARE WORKER LIABILITIES. The only benefits available to homemaker workers are those negotiated in the Bargaining Agreement and as provided in Oregon Revised Statute. This agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Homemaker workers are not state employees.

(4) CONSUMER-EMPLOYER ABSENCES. When a consumer-employer is absent from the home due to an illness or medical treatment and is expected to return to the home within a 30 day period, the live-in provider may be retained to ensure the live-in provider's presence upon the consumer-employer's return or to maintain the consumer's home for up to 30 days at the rate of pay immediately preceding the consumer's absence.

(5) SELECTION OF HOMECARE WORKER. The consumer-employer carries primary responsibility for locating, interviewing, screening, and hiring his or her own employees. The consumer-employer has the right to employ any person who successfully meets the provider enrollment standards described in section (8) of this rule. The Department/AAA office shall determine whether the employee meets minimum qualifications to provide the authorized services paid by the Department.

(6) EMPLOYMENT AGREEMENT. The consumer-employer retains the full right to establish the employer-employee relationship at any time after Bureau of Citizenship and Immigration Services papers have been completed and identification photocopied. The Department may not guarantee payment for those services until all acceptable enrollment standards have been verified and both the employer and homemaker worker have been formally notified in writing that payment by the Department is authorized.

(7) TERMS OF EMPLOYMENT. The terms of the employment relationship are the responsibility of the consumer-employer to establish at the time of hire. These terms of employment may include dismissal or resignation notice, work scheduling and absence reporting, as well as any sleeping arrangements or meals provided for live-in or hourly employees.

(8) PROVIDER ENROLLMENT.

(a) ENROLLMENT STANDARDS. A homemaker worker must meet all of the following standards to be enrolled with the Department's Consumer-Employed Provider Program:

(A) The homemaker worker must maintain a drug-free work place.

(B) The homemaker worker must complete the background check process described in OAR 407-007-0200 to 407-007-0370 with an outcome of approved or approved with restrictions. The Department/AAA may allow a homemaker worker to work on a preliminary basis in accordance with 407-007-0315 if the homemaker worker meets the other provider enrollment standards described in this section of the rule.

(C) The homemaker worker must have the skills, knowledge, and ability to perform, or to learn to perform, the required work.

(D) The homemaker worker's U.S. employment authorization must be verified.

(E) The homemaker worker must be 18 years of age or older. The Department may approve a restricted enrollment, as described in section (8)(d) of this rule, for a homemaker worker who is at least 16 years of age.

(F) The homemaker worker must complete an orientation as described in section (8)(e) of this rule.

(G) The homemaker worker must have a tax identification number or social security number that matches the homemaker worker's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(b) The Department/AAA may deny an application for provider enrollment in the Consumer-Employed Provider Program when:

(A) The applicant has a history of violating protective service and abuse rules;

(B) The applicant has committed fiscal improprieties;

(C) The applicant does not have the skills, knowledge, or ability to adequately or safely provide services;

(D) The applicant has an unacceptable background check;

(E) The applicant is not 18 years of age;

(F) The applicant has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, and all other Federal Health Care Programs;

(G) The Department/AAA has information that enrolling the applicant as a homemaker worker may put vulnerable consumers at risk; or

(H) The applicant's tax identification number or social security number does not match the applicant's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(c) BACKGROUND RECHECKS. Background rechecks shall be conducted at least every other year from the date the homemaker worker is

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enrolled. The Department/AAA may conduct a recheck more frequently based on additional information discovered about the homecare worker, such as possible criminal activity or other allegations.

(A) When a homecare worker is approved without restrictions following a background check fitness determination, the approval must meet the homecare worker provider enrollment requirement statewide whether the qualified entity is a state-operated Department office or an AAA operated by a county, council of governments, or a non-profit organization.

(B) Background check approval is effective for two years unless:

(i) Based on possible criminal activity or other allegations against the homecare worker, a new fitness determination is conducted resulting in a change in approval status; or

(ii) The approval has ended because the Department has inactivated or terminated the homecare worker's provider enrollment for one or more reasons described in this rule or OAR 411-031-0050.

(C) Prior background check approval for another Department provider type is inadequate to meet background check requirements for homecare worker enrollment.

(d) RESTRICTED PROVIDER ENROLLMENT.

(A) The Department/AAA may enroll an applicant as a restricted homecare worker. A restricted homecare worker may only provide services to specific consumers.

(i) Unless disqualified under OAR 407-007-0275, the Department/AAA may approve a homecare worker with prior criminal records under a restricted enrollment to provide services only to specific consumers who are family members, neighbors, or friends after conducting a weighing test as described in 407-007-0200 to 407-007-0370.

(ii) Based on the applicant's lack of skills, knowledge, or abilities, the Department/AAA may approve an applicant as a restricted homecare worker to provide services only to specific consumers who are family members, neighbors, or friends.

(iii) Based on an exception to the age requirements for provider enrollment approved by the Department as described in subsection (a)(E) of this section, a homecare worker who is at least 16 years of age may be approved as a restricted homecare worker.

(B) To remove restricted homecare worker status and be designated as a career homecare worker, the applicant must complete a new application and background check and be approved by the Department/AAA.

(e) HOMECARE WORKER ORIENTATION. Homecare workers must participate in an orientation arranged through a Department/AAA office. The orientation must occur within the first 30 days after becoming enrolled in the Consumer-Employed Provider Program and prior to beginning work for any specific Department/AAA consumers. When completion of an orientation is not possible within those timelines, orientation must be completed within 90 days of being enrolled. If a homecare worker fails to complete an orientation within 90 days of provider enrollment, their provider number shall be inactivated and any authorization for payment of services shall be discontinued.

(f) A homecare worker's provider enrollment may be inactivated when:

(A) The homecare worker has not provided any paid services to any consumer in the last 12 months;

(B) The homecare worker's background check results in a closed case pursuant to OAR 407-007-0325;

(C) The homecare worker informs the Department/AAA they will no longer be providing homecare worker services in Oregon;

(D) The provider fails to participate in a homecare worker orientation arranged through a Department/AAA office within 90 days of provider enrollment;

(E) The homecare worker, who at the time is not providing any paid services to consumers, is being investigated by Adult Protective Services for suspected abuse that poses imminent danger to current or future consumers; or

(F) The homecare worker's provider payments, all or in part, have been suspended based on a credible allegation of fraud pursuant to federal law under 42 CFR 455.23.

(9) PAID LEAVE.

(a) LIVE-IN HOMECARE WORKERS. Irrespective of the number of consumers served, the Department shall authorize one twenty-four hour period of leave each month when a live-in homecare worker or spousal pay provider is the only live-in provider during the course of a month. For any part of a month worked, the live-in homecare worker shall receive a proportional share of that twenty-four hour period of leave authorization. A prorated share of the twenty-four hours shall be allocated proportionately to each live-in when there is more than one live-in provider per consumer.

(A) ACCUMULATION AND USAGE FOR LIVE-IN PROVIDERS.

A live-in homecare worker may not accumulate more than 144 hours of accrued leave. The employer, homecare worker, and case manager must coordinate the timely use of these hours. Live-in homecare workers must take vacation leave in twenty-four hour increments or in hourly increments of at least one but not more than twelve hours. A live-in homecare worker must take accrued leave while employed as a live-in.

(B) THE RIGHT TO RETAIN LIVE-IN PAID LEAVE. The live-in homecare worker retains the right to access earned paid leave when terminating employment with one employer, so long as the homecare worker is employed with another employer as a live-in within one year of separation.

(C) TRANSFERABILITY OF LIVE-IN PAID LEAVE. Live-in homecare workers who convert to hourly or separate from live-in service and return as an hourly homecare worker within one year from the last day of live-in services shall be credited with their unused hours of leave up to a maximum of 32 hours.

(D) CASH OUT OF PAID LEAVE.

(i) The Department shall pay live-in homecare workers 50 percent of all unused paid leave accrued as of January 31 of each year. The balance of paid leave is reduced 50 percent with the cash out.

(ii) Vouchers requesting payment of paid leave received after January 31 may only be paid up to the amount of remaining unused paid leave.

(iii) A live-in homecare worker providing live-in services seven days per week for one consumer-employer may submit a request for payment of 100 percent of unused paid leave if:

(I) The live-in homecare worker's consumer-employer is no longer eligible for in-home services described in OAR chapter 411, division 030; and

(II) The live-in homecare worker does not have alternative residential housing.

(iv) If a request for payment of 100 percent of unused paid leave based on subparagraph (D)(iii)(I) and (II) of this subsection is granted, the homecare's paid leave balance is reduced to zero.

(b) HOURLY HOMECARE WORKERS. On July 1st of each year, active homecare workers who worked 80 authorized and paid hours in any one of the three months that immediately precede July (April, May, June) shall be credited with one 16 hour block of paid leave to use during the current fiscal biennium (July 1 through June 30) in which it was accrued. On February 1st of each year, active employees who worked 80 authorized and paid hours in any one of the three months that immediately precede February (November, December, January) shall be credited with 16 hours of paid time off. One 16 hour block of paid leave shall be credited to each eligible homecare worker, irrespective of the number of consumers they serve. Such leave may not be cumulative from biennium to biennium.

(A) UTILIZATION OF HOURLY PAID LEAVE.

(i) Time off must be utilized in one eight hour block subject to authorization. If the homecare worker's normal workday is less than eight hours, such time off may be utilized in blocks equivalent to the normal workday. Any remaining hours that are less than the normally scheduled workday may be taken as a single block.

(ii) Hourly homecare workers may take unused paid leave when their employer is temporarily unavailable for the homecare worker to provide services. In all other situations, a homecare worker who is not working during a month is not eligible to use paid time off in that month.

(B) LIMITATIONS OF HOURLY PAID LEAVE. Homecare workers may not be compensated for paid leave unless the time off work is actually taken except as noted in subsection (b)(D) of this section.

(C) TRANSFERABILITY OF HOURLY PAID LEAVE. An hourly homecare worker who transfers to work as a live-in homecare worker (within the biennium that their hourly leave is earned) shall maintain their balance of hourly paid leave and begin accruing live-in paid leave.

(D) CASH OUT OF PAID LEAVE.

(i) The Department shall pay hourly providers for all unused paid leave accrued as of January 31 of each year. The balance of paid leave is reduced to zero with the cash out.

(ii) Vouchers requesting payment of paid leave received after January 31 may not be paid if paid leave has already been cashed out.

(10) DEPARTMENT FISCAL AND ACCOUNTABILITY RESPONSIBILITY.

(a) DIRECT SERVICE PAYMENTS. The Department shall make payment to the provider on behalf of the consumer for all in-home services. This payment shall be considered full payment for the services rendered under Title XIX. Under no circumstances is the homecare worker to demand or receive additional payment for these Title XIX-covered services from the consumer or any other source. Additional payment to homecare

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workers for the same services covered by Oregon's Title XIX Home and Community Based Services Waiver is prohibited.

(b) **TIMELY SUBMISSION OF CLAIMS.** In accordance with OAR 410-120-1300, all claims for services must be submitted within 12 months of the date of service.

(c) **ANCILLARY CONTRIBUTIONS.**

(A) **FEDERAL INSURANCE CONTRIBUTIONS ACT (FICA).** Acting on behalf of the consumer-employer, the Department shall apply any applicable FICA regulations and shall:

(i) Withhold the homecare worker-employee contribution from payments; and

(ii) Submit the consumer-employer contribution and the amounts withheld from the homecare worker-employee to the Social Security Administration.

(B) **BENEFIT FUND ASSESSMENT.** The Workers' Benefit Fund pays for programs that provide direct benefits to injured workers and their beneficiaries and that assist employers in helping injured workers return to work. The Department of Consumer and Business Services sets the Workers' Benefit Fund assessment rate for each calendar year. The Department calculates the hours rounded up to the nearest whole hour and deducts an amount rounded up to the nearest cent. Acting on behalf of the consumer-employer, the Department shall:

(i) Deduct the homecare worker-employees' share of the Benefit Fund assessment rate for each hour or partial hour worked by each paid homecare worker;

(ii) Collect the consumer-employer's share of the Benefit Fund assessment for each hour or partial hour of paid services received; and

(iii) Submit the consumer and homecare worker's contributions to the Workers' Benefit Fund.

(C) The Department shall pay the employer's share of the unemployment tax.

(d) **ANCILLARY WITHHOLDINGS.** For the purposes of this subsection of the rule, "labor organization" means any organization that has, as one of its purposes, representing employees in their employment relations.

(A) The Department shall deduct from the homecare worker's monthly salary or wages the specified amount for payment to a labor organization.

(B) In order to receive this payment, the labor organization must enter into a written agreement with the Department to pay the actual administrative costs of the deductions.

(C) The Department shall pay the deducted amount monthly to the designated labor organization.

(e) **STATE AND FEDERAL INCOME TAX WITHHOLDING.**

(A) The Department shall withhold state and federal income taxes on all payments to homecare workers, as indicated in the bargaining agreement.

(B) Homecare workers must complete and return a current Internal Revenue Service W-4 form to the local office. The Department shall apply standard income tax withholding practices in accordance with 26 CFR 31.

(11) **HOMECARE WORKER EXPENSES SECONDARY TO PERFORMANCE OF DUTIES.**

(a) Providers may be reimbursed at \$0.485 cents per mile when they use their own car for service plan related transportation, if prior authorized by the case manager. If unscheduled transportation needs arise during non-office hours, an explanation as to the need for the transportation must be provided and approved prior to reimbursement.

(b) Medical transportation through the Division of Medical Assistance Programs (DMAP), volunteer transportation, and other transportation services included in the service plan shall be considered a prior resource.

(c) The Department is not responsible for vehicle damage or personal injury sustained while using a personal motor vehicle for DMAP or service plan-related transportation, except as may be covered by workers' compensation.

(12) **BENEFITS.** Workers' compensation as defined in Oregon Revised Statute and health insurance are available to eligible homecare workers as defined in the bargaining agreement. In order to receive homecare worker services, the consumer-employer must provide written authorization and consent to the Department for the provision of workers' compensation insurance for their employee.

(13) **OVERPAYMENTS.** An overpayment is any payment made to a homecare worker by the Department that is more than the person is authorized to receive.

(a) Overpayments are categorized as follows:

(A) **ADMINISTRATIVE ERROR OVERPAYMENT.** The Department failed to authorize, compute, or process the correct amount of in-home service hours or wage rate.

(B) **PROVIDER ERROR OVERPAYMENT.** The Department overpays the homecare worker due to a misunderstanding or unintentional error.

(C) **FRAUD OVERPAYMENT.** "Fraud" means taking actions that may result in receiving a benefit in excess of the correct amount, whether by intentional deception, misrepresentation, or failure to account for payments or money received. "Fraud" also means spending payments or money the provider was not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2). The Department shall determine, based on a preponderance of the evidence, when fraud has resulted in an overpayment. The Department of Justice, Medicaid Fraud Unit shall determine when a Medicaid fraud allegation shall be pursued for prosecution.

(b) Overpayments are recovered as follows:

(A) Overpayments shall be collected prior to garnishments, such as child support, Internal Revenue Service back taxes, and educational loans.

(B) Administrative or provider error overpayments shall be collected at no more than 5 percent of the homecare worker's gross wages.

(C) The Department shall determine when a fraud overpayment has occurred and the manner and amount to be recovered.

(D) Providers no longer employed as homecare workers shall have any remaining overpayment deducted from their final check. The provider is responsible for repaying the amount in full when the final check is insufficient to cover the remaining overpayment.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020, 410.070, 410.612 & 410.614

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 10-2005, f. & cert. ef. 7-1-05; SPD 15-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 28-2006(Temp), f. 10-18-06, cert. ef. 10-23-06 thru 4-20-07; SPD 4-2007, f. 4-12-07, cert. ef. 4-17-07; SPD 18-2007(Temp), f. 10-30-07, cert. ef. 11-1-07 thru 4-29-08; SPD 6-2008, f. 4-28-08, cert. ef. 4-29-08; SPD 16-2009(Temp), f. & cert. ef. 12-1-09 thru 5-30-10; SPD 3-2010, f. 5-26-10, cert. ef. 5-30-10; SPD 4-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; SPD 26-2010, f. 11-29-10, cert. ef. 12-1-10; SPD 13-2012(Temp), f. & cert. ef. 9-26-12 thru 3-25-13; SPD 4-2013, f. 3-25-13, cert. ef. 3-26-13

## 411-031-0050

### Termination, Administrative Review, and Hearing Rights

(1) **EXCLUSIONS TO APPEAL AND HEARING RIGHTS.** The following are excluded from this administrative review and hearing rights process:

(a) Terminations based on a background check. The homecare worker has the right to a hearing in accordance with OAR 407-007-0200 to 407-007-0370.

(b) Homecare workers that have not worked in the last 12 months. The provider enrollment may become inactivated but may not be terminated. To activate the provider enrollment number, the homecare worker must complete an application and background check.

(c) Homecare workers that fail to complete a background recheck.

(d) Homecare workers that are denied a provider enrollment number at the time of initial application.

(e) Homecare workers not currently providing services to any consumers whose provider enrollment is inactivated while an Adult Protective Services investigation is being completed.

(f) Homecare workers who have been excluded by Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, and all other federal programs.

(2) **VIOLATIONS RESULTING IN TERMINATION OF PROVIDER ENROLLMENT.** The Department may terminate the homecare worker's provider enrollment when a homecare worker:

(a) Violates the requirement to maintain a drug-free work place;

(b) Has an unacceptable background check;

(c) Lacks the skills, knowledge, and ability to adequately or safely perform the required work;

(d) Violates the protective service and abuse rules in OAR chapter 411, division 020, OAR chapter 407, division 045, and OAR chapter 943, division 045;

(e) Commits fiscal improprieties;

(f) Fails to provide services as required;

(g) Lacks the ability or willingness to maintain consumer-employer confidentiality. Unless given specific permission by the consumer-employer or the consumer-employer's legal representative, the homecare worker may not share any personal information about the consumer including medical, social service, financial, public assistance, legal, or interpersonal details;

(h) Engages in unacceptable conduct at work;



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(i) Has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare and all other federal health care programs; or

(j) Fails to provide a tax identification number or social security number that matches the homecare worker's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(3) IMMEDIATE TERMINATION. The Department/AAA may immediately terminate a provider enrollment on the date the violation is discovered, prior to the outcome of the administrative review, when an alleged violation presents imminent danger to current or future consumers. The homecare worker may file an appeal of this decision directly to the Department — Central Office. The homecare worker must file any appeal within 10 business days from the date of the notice.

(4) TERMINATION PENDING APPEAL. When a violation does not present imminent danger to current or future consumers, the provider enrollment may not be terminated during the first 10 business days of the administrative review appeal period. The homecare worker must file any appeal within 10 business days from the date of the notice. If the homecare worker appeals in writing prior to the deadline for appeal, the enrollment may not be terminated until the conclusion of the administrative review.

(5) TERMINATION IF NO APPEAL FILED. The decision of the reviewer shall become final if the homecare worker does not appeal within 10 business days from the date of the notice of the decision. Once the time period for appeal has expired, the reviewer or designee shall terminate the provider enrollment.

(6) BURDEN OF PROOF. The Department has the burden of proving the allegations of the complaint by a preponderance of the evidence. Evidence submitted for the administrative hearing is governed by OAR 137-003-0050.

(7) ADMINISTRATIVE REVIEW PROCESS. The administrative review process allows an opportunity for the Department/AAA program manager or the Department — Central Office to review and reconsider the decision to terminate the homecare worker's provider enrollment. The appeal may include the provision of new information or other actions that may result in the Department/AAA changing its decision.

(a) When the Department/AAA decides to terminate the homecare worker's provider enrollment, the Department/AAA shall issue a written notice that shall include:

(A) An explanation of the reason for termination of the provider enrollment;

(B) The alleged violation as listed in section (2) of this rule; and

(C) The homecare worker's appeal rights, including the right to union representation, and where to file the appeal.

(D) For terminations based on substantiated protective services allegations, the notice may only contain the limited information allowed by law. In accordance with ORS 124.075, 124.085, 124.090, and OAR 411-020-0030, complainants, witnesses, the name of the alleged victim, and protected health information may not be disclosed.

(b) INFORMAL CONFERENCE. At the first level of appeal, an informal conference (described in OAR 461-025-0325) if requested by the homecare worker, shall be scheduled with the homecare worker and any union representative. The Department/AAA program manager, or designee, shall meet with the homecare worker, review the facts, and explain why the agency decision was made. The informal conference may be held by telephone.

(c) The homecare worker must specify in the request for review the issues or decisions being appealed and the reason for the appeal. The appropriate party, as stated in the notice, must receive the request for review within 10 business days of the date of the decision affecting the homecare worker. If the homecare worker decides to file an appeal, they must file their appeal in the following order:

(A) ADMINISTRATIVE REVIEW.

(i) Program manager (or designee) at the local Department/AAA office. This is the first level of review for terminations pending appeal described in section (4) of this rule.

(ii) Department Central Office. This is the second level of appeal for terminations pending appeal described in section (4) of this rule. This is the only level of review for immediate terminations described in section (3) of this rule.

(B) OFFICE OF ADMINISTRATIVE HEARINGS.

(i) A homecare worker may file a request for a hearing with the local office if all levels of administrative review have been exhausted and the homecare worker continues to dispute the Department's decision. The local office shall file the request with the Office of Administrative Hearings as described in OAR chapter 137, division 003. The request for the hearing

must be filed with the local office within 30 calendar days of the date of the written notice from the Department — Central Office.

(ii) An Administrative Law Judge (ALJ) with the Office of Administrative Hearings shall determine whether the Department's decision to terminate the provider enrollment number is affirmed or reversed. The ALJ shall issue a Final Order with the decision to all appropriate parties.

(iii) No additional hearing rights have been granted to homecare workers by this rule other than the right to a hearing on the Department's decision to terminate the homecare worker's provider enrollment.

(d) A written response of the outcome of the administrative review shall be sent to the homecare worker within 10 business days of the review date.

(e) If the administrative review determines that the decision to immediately terminate the provider enrollment was unjustified, the reviewer or designee shall have the provider enrollment restored to active status and any earned benefits such as paid leave reinstated. The written response shall notify the homecare worker that the provider enrollment shall be restored.

(8) REQUEST FOR EXTENSION TO DEADLINE. The Department/AAA or the homecare worker may request an extension of the 10-day deadline described in subsection (7)(e) above for circumstances beyond their control, if further information needs to be gathered to make a decision, or there is difficulty in scheduling a meeting between the parties.

Stat. Auth.: ORS 409.050, 410.070 & 410.090  
Stats. Implemented: ORS 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; Administrative correction 7-20-05; SPD 15-2005(Temp), f. & cert. ef. 11-16-05 thru 5-15-06; SPD 15-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 3-2010, f. 5-26-10, cert. ef. 5-30-10; SPD 4-2013, f. 3-25-13, cert. ef. 3-26-13

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**Rule Caption:** Adult Foster Homes for Individuals with Developmental Disabilities — Annual Licensing Renewal

**Adm. Order No.:** SPD 5-2013(Temp)

**Filed with Sec. of State:** 4-1-2013

**Certified to be Effective:** 4-1-13 thru 9-27-13

**Notice Publication Date:**

**Rules Amended:** 411-360-0090

**Subject:** The Department of Human Services (Department) is temporarily amending OAR 411-360-0090 to align the criminal records check requirements for adult foster homes for individuals with developmental disabilities (DD-AFH) with the annual criminal records check requirements for foster homes for children with developmental disabilities (CFH) and adult foster homes for older adults and people with disabilities (APD-AFH). Annual criminal records checks protect the health, welfare, and safety of individuals with developmental disabilities by preventing individuals with current criminal histories from continuing to reside or work in a foster home.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-360-0090

### Renewal of a License

(1) The provider must submit a renewal application and fee prior to the expiration date that shall keep the license in effect until a new license is issued or a final order of non-renewal is issued by the Department. If the renewal application and fee are not submitted prior to the expiration date, the AFH-DD shall be treated as an unlicensed home subject to administrative sanctions.

(2) The renewal application must include the same information and fee as required for a new application. A physician's statement, financial information sheet, house rules, and floor plan are not required if the Department or the Department's designee reasonably determines that this information has not changed.

(3) The Department or the Department's designee may investigate any information in the renewal application and shall conduct an inspection of the AFH-DD.

(4) The provider shall be given a copy of the inspection form citing any deficiencies and a time frame for correction, but no longer than 60 days from the date of inspection.

(5) The Department may require the AFH-DD to correct deficiencies prior to issuing a license renewal. If cited deficiencies are not corrected within the time frame specified by the Department or the Department's designee, the renewal application may be denied.

(6) The Department shall not renew a license unless:

(a) The provider and the AFH-DD are in compliance with ORS 443.705 to 443.825 and these rules;

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(b) The Department or the Department's designee has completed an inspection of the AFH-DD; and

(c) The Department has completed an annual criminal records check as required by ORS 181.534 and 443.735 on the provider, resident manager (if applicable), and any subject individual, other than a service recipient, 16 years of age or older who resides on the property, in the AFH-DD, or is employed by the AFH-DD provider.

(7) In seeking a renewal of a license when an AFH-DD has been licensed for less than 24 months, the burden of proof shall be upon the provider of the AFH-DD to establish compliance with ORS 443.705 to 443.825 and these rules.

(8) In proceedings for renewal of a license when an AFH-DD has been licensed for at least 24 continuous months, the burden of proof shall be upon the Department to establish noncompliance with ORS 443.705 to 443.825 and these rules.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef. 2-1-05; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 5-2013(Temp), f. & cert. ef. 4-1-13 thru 9-27-13

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**Rule Caption:** Contested Case Hearings

**Adm. Order No.:** SPD 6-2013

**Filed with Sec. of State:** 4-2-2013

**Certified to be Effective:** 4-2-13

**Notice Publication Date:** 3-1-2013

**Rules Adopted:** 411-001-0500, 411-001-0510, 411-001-0520

**Rules Amended:** 411-320-0175

**Rules Repealed:** 411-001-0500(T)

**Subject:** The Department of Human Services (Department) is permanently:

Adopting OAR 411-001-0500 about contested case hearings to clarify which rules apply to contested case hearings concerning the Department's Aging and People with Disabilities' and Developmental Disabilities' programs. OAR 411-001-0500 also makes permanent certain changes adopted by temporary rule effective October 5, 2012 that indicated when the Department may not disclose contact information for witnesses in contested cases and the extent to which contested case hearings are open to the public;

Adopting OAR 411-001-0510 about lay representation in contested case hearings to make permanent certain changes adopted by temporary rule effective October 5, 2012 that were made to implement ORS 183.452 authorizing the Department's use of an officer or employee of the Department as a lay representative that may appear on behalf of the Department during contested case hearings. OAR 411-001-0510 also sets out requirements for lay representatives and the restrictions that apply to interrogatories and requests for admission when the Department has a lay representative;

Adopting OAR 411-001-0520 about late hearing requests in contested cases to implement ORS 411.103 and set out how the Department treats late hearing requests (when not covered by other conflicting rules), the time period under which a late hearing request will be considered, and the criteria that apply to determine if a late hearing request will be considered timely; and

Amending OAR 411-320-0175 about hearings for developmental disability services eligibility determination to remove the criteria for consideration of late hearing requests. The criteria for consideration of late hearing requests in OAR 411-001-0520 will apply to these hearing requests. The Department is making this amendment to treat late hearing requests for Developmental Disabilities similarly to late hearing requests for Aging and People with Disabilities.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-001-0500

### Contested Case Hearings

(1) OAR 411-001-0500, 411-001-0510, and 411-001-0520 apply to all contested case hearing requests authorized under OAR chapter 411, except to the extent that:

(a) There is another conflicting rule in OAR chapter 411 that applies to the hearing request; or

(b) There is a rule in OAR chapter 411 that applies a conflicting rule in OAR chapter 461, division 025 to the hearing request.

(2) The Department of Human Services (Department) conducts contested case hearings in accordance with the Attorney General's model rules in OAR chapter 137, division 003, except to the extent that Department rules are permitted to and provide for different procedures.

(3) The Department may not provide the telephone number and addresses of a witness if the Department has a reasonable concern that the release of information may affect the safety of the witness.

(4) The Department's contested case hearings based on hearing requests authorized in OAR chapter 411 are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the consent of the parties and the Department, as well as applicable confidentiality laws.

(5) The Department has adopted the exceptions to the Attorney General's model rules set out in section (3) of this rule and OAR 411-001-0510(6) due to caseload volume and because these model rule discovery procedures would unduly complicate or interfere with the hearing process.

Stat. Auth: ORS 409.050

Stats Implemented: ORS 409.010

Hist.: SPD 14-2012(Temp), f. & cert. ef. 10-5-12 thru 4-3-13; SPD 6-2013, f. & cert. ef. 4-2-13

## 411-001-0510

### Lay Representation in Contested Case Hearings

(1) Subject to the approval of the Attorney General, an officer or employee of the Department of Human Services (Department) is authorized to appear on behalf of the Department in the following types of hearings conducted by the Office of Administrative Hearings:

(a) Eligibility for services available through a waiver or state plan administered by the Department's Aging and People with Disabilities (APD) or Developmental Disabilities (DD), including but not limited to the level or amount of benefits, and effective date;

(b) Eligibility for medical benefits, the level and amount of benefits, and effective date;

(c) Overpayments related to waived service benefits or medical benefits;

(d) Suspension, reduction, or denial of medical assistance services, prior authorizations, or medical management decisions; and

(e) Consumer-employed provider matters, including but not limited to provider enrollment or denial of enrollment, overpayment determinations, audits, and sanctions.

(2) A Department officer or employee acting as the Department's representative may not make legal argument on behalf of the Department.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the Department to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the Department; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses, or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the Department in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(3) When an officer or employee appears on behalf of the Department, the administrative law judge shall advise the Department's representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection.

(4) If the administrative law judge determines that statements or objections made by the Department representative appearing under section (1) of this rule involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the Department representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(5) The Department is subject to the Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by the Oregon Department of Justice and available on its website at <http://www.doj.state.or.us>. A Department representative appearing under

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section (1) of this rule must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings.

(6) When a Department officer or employee represents the Department in a contested case hearing, requests for admission and written interrogatories are not permitted.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 183.452 & 409.010

Hist.: SPD 6-2013, f. & cert. ef. 4-2-13

## 411-001-0520

### Late Contested Case Hearing Requests

(1) When the Department of Human Services (Department) receives a completed hearing request that is not filed within the timeframe required by the applicable rule in OAR chapter 411 but is filed no later than the deadlines set out in section (2) of this rule:

(a) The Department shall refer the hearing request to the Office of Administrative Hearings for a contested case hearing on the merits of the Department's action described in the notice when:

(A) The Department finds that the claimant and claimant's representative did not receive the notice and did not have actual knowledge of the notice; or

(B) The Department finds good cause that the claimant did not meet the timeframe required due to excusable mistake, surprise, excusable neglect (which may include neglect due to significant cognitive or health issues), circumstances beyond the claimant's control, reasonable reliance on the statement of a Department employee or an adverse provider relating to procedural requirements, or due to fraud, misrepresentation, or other misconduct of the Department or a party adverse to the claimant.

(b) The Department refers the request for a hearing to the Office of Administrative Hearings for a contested case proceeding to determine whether the claimant is entitled to a hearing on the merits if there is a dispute between the claimant and the Department about either of the following paragraphs.

(A) The claimant or claimant's representative received the notice or had actual knowledge of the notice. At the hearing, the Department must show that the claimant or claimant's representative had actual knowledge of the notice or that the Department mailed or electronically mailed the notice to the correct address of the claimant or claimant's representative, as provided to the Department.

(B) The claimant has established for a contested case hearing on the merits under paragraph (a)(B) of this section.

(c) The Department may only dismiss such a request for hearing as untimely without a referral to the Office of Administrative Hearings if the following requirements are met:

(A) The undisputed facts show that the claimant does not qualify for a hearing under this section; and

(B) The notice was served personally or by registered or certified mail.

(2) The Department shall consider whether a late hearing request meets the late request criteria set out in section (1) of this rule:

(a) When the hearing request is received up to 120 days after a notice became a final order by default if no provider is a party to the contested case.

(b) When the hearing request is received up to 60 days after a notice became a final order by default if at least one provider is a party to the contested case.

(3) Unless required otherwise by the Servicemembers Civil Relief Act, the Department may dismiss a request for hearing as untimely if the Department receives a completed hearing request after the applicable deadline in section (2) of this rule.

Stat. Auth.: ORS 409.050 & 411.103

Stats. Implemented: ORS 409.010 & 411.103

Hist.: SPD 6-2013, f. & cert. ef. 4-2-13

## 411-320-0175

### Hearings for Developmental Disability Services Eligibility Determination

(1) DEFINITIONS. As used in this rule:

(a) "Claimant" means a person who has requested a hearing or who is scheduled for a hearing.

(b) "Department Hearing Representative" means a person authorized to represent the Department in the hearing.

(c) "Good Cause" means a circumstance beyond the control of the claimant and claimant's representative.

(d) "Representative" means any adult chosen by the claimant to represent them at the hearing.

(e) A "Request for Hearing" is a written request by the claimant or the claimant's representative that the claimant wishes to appeal an eligibility determination.

(2) HEARING REQUESTS. A claimant or a claimant's representative may request a hearing, as provided in ORS Chapter 183, if the claimant disagrees with the Notice of Eligibility Determination (SDS 5104) issued by the CDDP as described in OAR 411-320-0080.

(a) The request for a hearing must be in writing on the DD Administrative Hearing Request (SDS 0443DD) and signed by the claimant or the claimant's representative. Upon request by the claimant or the claimant's representative, the CDDP shall assist in completing the DD Administrative Hearing Request (SDS 0443DD).

(b) The Department must receive the signed DD Administrative Hearing Request (SDS 0443DD) within 45 calendar days from the date on the CDDP's Notice of Eligibility Determination (SDS 5104).

(c) The Department processes late hearing requests as described in OAR 411-001-0520.

(3) CONTINUING SERVICES PENDING A HEARING OUTCOME.

(a) Following a redetermination of eligibility as described in OAR 411-320-0080, the claimant or the claimant's representative may request continuing services during the hearing process.

(b) The claimant or the claimant's representative may request continuing services by:

(A) Checking the appropriate box on the DD Administrative Hearing Request (SDS 0443DD); or

(B) Communicating directly with the local CDDP, support services brokerage, or the Department that services remain the same during the hearing process.

(c) To qualify for continuing services, the Department must receive the DD Administrative Hearing Request (SDS 0443DD), which includes the request for continuing services by the effective date identified on the Notice of Eligibility Determination (SDS 5104) or by 10 calendar days following the date of the Notice, whichever is later.

(d) The Department may grant a late request for continuing services when the Department has determined the claimant or the claimant's representative has good cause.

(e) The claimant may be required to pay back any benefits received during the hearing process unless the determination is in the claimant's favor.

(4) INFORMAL CONFERENCE.

(a) The Department representative and the claimant or the claimant's representative may have an informal conference, without the presence of the administrative law judge, to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the claimant or the claimant's representative to settle the matter;

(B) Ensure the claimant or the claimant's representative understands the reason for the action that is the subject of the hearing request;

(C) Give the claimant or the claimant's representative an opportunity to review the information that is the basis for the action;

(D) Inform the claimant or the claimant's representative of the rules that serve as the basis for the contested action;

(E) Give the claimant or the claimant's representative and the Department the chance to correct any misunderstanding of the facts;

(F) Give the claimant or the claimant's representative an opportunity to provide additional information to the Department; and

(G) Give the Department an opportunity to review its action.

(b) A claimant or a claimant's representative may, at any time prior to the hearing date, request an additional informal conference with a Department representative. At the Department representative's discretion, the Department representative may grant an additional informal conference to facilitate the hearing process.

(c) The Department may provide a claimant the relief sought at any time before a final order is issued.

(5) REPRESENTATION.

(a) A representative may be chosen by the claimant to represent their interests during an informal conference and hearing.

(b) Department employees are authorized to appear as a witness on behalf of the Department for hearings.

(c) Hearings are not open to the public. Non-participants may attend the hearing subject to the claimant's or the claimant's representative's consent.

(6) WITHDRAWAL OF HEARING. A claimant or the claimant's representative may withdraw a hearing request at any time prior to the issuance

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of a final order. The withdrawal shall be effective on the date the request for withdrawal is received by the Department or the Office of Administrative Hearings (OAH). The Department shall issue the order of withdrawal to the last known address of the claimant. The claimant or the claimant's representative may cancel the withdrawal up to 10 working days following the date the order of withdrawal is issued.

(7) **DISMISSAL FOR FAILURE TO APPEAR.** A hearing request shall be dismissed by order when neither the claimant nor the claimant's representative appears at the time and place specified for the hearing. The dismissal order shall be effective on the date scheduled for the hearing. The Department may cancel the dismissal order on request of the claimant or the claimant's representative upon a showing that the claimant or the claimant's representative was unable to attend the hearing or unable to request a postponement for good cause.

(8) **ORDERS.**

(a) When the Department refers a hearing under these rules to OAH, the Department shall indicate on the referral:

(A) Whether the Department is authorizing OAH to issue a final order, a proposed order, a proposed and final order; and

(B) If the Department is establishing an earlier deadline for written exceptions and argument because the hearing is being referred for an expedited hearing.

(b) **FINAL ORDER.** The Department shall issue the final order unless the Department authorizes OAH to issue the final order under OAR 137-003-0655. Ordinarily, the final order shall be issued within 90 calendar days of the request for hearing or within 30 calendar days following the receipt of the proposed order or proposed and final order from OAH.

(c) **PROPOSED ORDERS.** After OAH issues a proposed order, the Department shall issue the final order, unless the Department authorizes OAH to issue the final order under OAR 137-003-0655.

(d) **PROPOSED AND FINAL ORDERS.** After OAH issues a proposed and final order, the proposed and final order shall become a final order on the 21st calendar day unless:

(A) The claimant or the claimant's representative has filed written exception and written argument as described in subsection (e) of this section;

(B) The Department has issued a revised order; or

(C) The Department has notified the claimant or the claimant's representative and OAH that the Department shall issue the final order.

(e) **EXCEPTIONS.**

(A) The claimant or the claimant's representative may file written exceptions and written argument to be considered by the Department once OAH has issued either a proposed order or a proposed and final order. The written exceptions and written argument must be received at the location indicated in the OAH order not later than the 20th calendar day after service of the proposed order or proposed and final order, unless subsection (a)(B) of this section applies.

(B) When the Department receives timely written exception and written argument as described above, the Department shall issue the final order, unless the Department authorizes OAH to issue the final order in compliance with OAR 137-003-0655.

(f) **PETITION OF FINAL ORDER.** Within 60 calendar days after a final order is served, a claimant or the claimant's representative may file a petition for reconsideration or rehearing. The petition must be filed with the entity who signed the final order, unless stated otherwise on the final order.

Stat. Auth.: ORS 409.050 & 430.662

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

Hist.: SPD 9-2009, f. & cert. ef. 7-13-09; SPD 6-2010(Temp), f. 6-29-10, cert. ef. 7-4-10 thru 12-31-10; SPD 28-2010, f. 12-29-10, cert. ef. 1-1-11; SPD 30-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-29-12; SPD 8-2012, f. 6-27-12, cert. ef. 6-30-12; SPD 6-2013, f. & cert. ef. 4-2-13

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**Rule Caption:** Nursing Assistant Training and Competency Evaluation and Training Program (NATCEP) Request for Reimbursement

**Adm. Order No.:** SPD 7-2013

**Filed with Sec. of State:** 4-10-2013

**Certified to be Effective:** 5-1-13

**Notice Publication Date:** 3-1-2013

**Rules Amended:** 411-070-0470

**Rules Repealed:** 411-070-0470(T)

**Subject:** The Department of Human Services is permanently amending OAR 411-070-0470 to make permanent the changes adopted by temporary rule effective January 1, 2013 that implemented the online reimbursement requests system for the Nursing Assistant Training

and Competency Evaluation and Training Program (NATCEP). The current paper process used by Medicaid nursing facilities to request reimbursement for NATCEP was eliminated effective January 1, 2013 and replaced by the more sufficient online NATCEP reimbursement request system.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

**411-070-0470**

**Nursing Assistant Training and Competency Evaluation Programs Request for Reimbursement**

(1) **REQUEST FOR REIMBURSEMENT.** Medicaid certified nursing facilities must file a Nursing Assistant Training and Competency Evaluation Program (NATCEP) request for reimbursement with the Department of Human Services (the Department) that meets the following standards:

(a) As of January 1, 2013, all requests for reimbursement must be submitted electronically. A facility must submit a request for reimbursement within 12 months after completing a NATCEP training program or reimbursing a nursing assistant as described in section (3) of this rule. The request for reimbursement must identify all costs incurred and related revenues (not including NATCEP payments from the Department) received during the reporting period.

(b) A request for reimbursement must:

(A) Be submitted electronically on a system provided by the Department.

(B) Include actual costs incurred and paid by the facility. The Department may not reimburse a facility prospectively.

(C) Include all revenue (not including NATCEP payments from the Department) received by the facility for conducting the approved nursing assistant training. All revenue must be used to offset the costs incurred and paid in the reporting period.

(D) The facility must maintain and have available for review the appropriate documentation, as described in section (4) of this rule, to support each specific area identified for payment by the Department. Failure to provide required documentation, when requested, shall result in an overpayment to the facility. The facility must repay any overpayment to the Department within 60 days of receipt of notification.

(E) Include all appropriate NATCEP costs and revenues only. NATCEP costs, including costs disallowed, must not be reimbursed as part of the facility's bundled rate. However, NATCEP costs, revenues, and reimbursement must be included on the facility's annual Nursing Facility Financial Statement (NFFS).

(F) Include only true and accurate information. If a facility knowingly or with reason to know files a request for reimbursement containing false information, such action must constitute cause for termination of the facility's provider agreement with the Department. Providers filing false requests for reimbursements may be referred for prosecution under applicable statutes.

(2) **CHARGING OF FEES PROHIBITED.** The nursing facility must not charge a trainee any fee for participation in NATCEP or for any textbooks or other materials required for NATCEP if the trainee is employed by or has an offer of employment from a nursing facility on the date on which the NATCEP begins.

(3) **FEES PAID BY EMPLOYER.**

(a) All charges and materials required for NATCEP and fees for nursing assistant certification must be paid by the nursing facility if it offered employment at the facility on the date training began.

(b) If a nursing assistant who is not employed by a Medicaid certified facility or does not have an offer of employment by a Medicaid nursing facility on the date on which the NATCEP began becomes employed by, or receives an offer for employment from, a nursing facility within 12 months after completing a NATCEP, the employing facility must reimburse the nursing assistant on at least a monthly basis for any NATCEP fees paid (including any fees for textbooks or other required course materials) by the nursing assistant. Evidence the nursing assistant paid for training must include the graduation certificate from the school and receipt of payment.

(c) Such reimbursement must be calculated on a pro rata basis. The reimbursement must be determined by dividing the cost paid by the nursing assistant by 12 and multiplying by the number of months during this 12-month period in which the nursing assistant worked for the facility. The facility must claim the appropriate pro rata amount on each request for reimbursement it submits not to exceed the lesser of 12 months or the total number of months the nursing assistant was employed at that facility. The facility must maintain evidence provided by the nursing assistant of the training costs incurred at an approved training facility.

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(d) A facility shall reimburse a nursing assistant prior to submitting a request for reimbursement from the Department.

(4) **REIMBURSEMENT BY THE DEPARTMENT.** The Department shall reimburse the facility for the Medicaid portion of the costs described in this section unless limited by the application of section (5) of this rule. This portion is calculated by multiplying the eligible costs paid by the facility by the percentage of resident days that are attributable to Medicaid residents during the reporting period. The Department's payment to the facility for the NATCEP cost is in addition to payments based upon the facility's bundled rate.

(a) **EMPLOYEE COMPENSATION.** Reimbursement for trainer hours must not exceed 1 and 1/3 times the number of hours required for certification. A facility may claim reimbursement for the portion of an employee's compensation attributable to nursing assistant training if:

(A) The employee meets the qualifications of 42 CFR 483.152 and OAR chapter 851, division 061;

(B) The employee directly conducts training or testing in an approved program;

(C) The employee's compensation, including benefits, is commensurate with other licensed nurse compensation paid by the facility;

(D) The employee's total compensated hours do not exceed 40 in any week during which NATCEP reimbursement is claimed;

(E) No portion of the claimed reimbursement is for providing direct care services while assisting in the training of nursing assistants if providing direct care services is within the normal duties of the employee; and

(F) The facility provides the Department with satisfactory documentation to support the methodology for allocating costs between facility operation and NATCEP.

(b) **TRAINING SPACE AND UTILITIES.** Costs associated with space and utilities are eligible only if the space and utilities are devoted 100 percent to the NATCEP. The facility must provide documentation satisfactory to the Department to support the need for, and use of, the space and utilities.

(c) **TEXTBOOKS AND COURSE MATERIALS.** A portion of the cost of textbooks and materials is eligible if textbooks and materials are used primarily for NATCEP. The portion reimbursable is equal to the percentage of use attributable to NATCEP. "Primarily" means more than 50 percent. The facility must provide satisfactory documentation supporting the NATCEP need for and percentage of use of textbooks and materials.

(d) **EQUIPMENT.** A portion of the cost of equipment is eligible if used primarily for NATCEP. However, equipment purchased for \$500 or more per item must be prior approved by the Department to qualify for reimbursement. The portion reimbursable is equal to the percentage of use attributable to NATCEP. "Primarily" means more than 50 percent. The facility must maintain satisfactory documentation supporting the NATCEP need for and percentage of use of the equipment. Disposition of equipment and software purchased in whole or in part under the Title XIX Medicaid Program must meet the requirements of the facility's provider agreement.

(e) **CERTIFICATION FEES.** Nursing assistant certification and recertification fees paid to the Oregon State Board of Nursing for facility employees are eligible.

(f) **REIMBURSEMENT FOR NURSING ASSISTANTS.** Reimbursement provided to nursing assistants pursuant to section (3) of this rule is eligible. The training must have occurred at an approved training center, including nursing facilities in Oregon or other states. A facility must notify the nursing assistants upon hire, that the nursing assistant may receive reimbursement up to 12 months after completing a NATCEP training program. If a facility chooses to reimburse the nursing assistant's full amount in one request, the facility may not recoup payment from a nursing assistant if the nursing assistant's employment ends, regardless of cause.

(g) **CONTRACT TRAINERS.** Payment for nursing assistant training classes provided under contract by persons who meet the qualifications of 42 CFR 483.152 is eligible for reimbursement. For this purpose, either the facility or the contractor must be approved for NATCEP. Allowable contract trainer payments shall be limited to the lesser of actual cost or the salary calculation described in section (4)(a) of this rule.

(h) **INELIGIBLE COSTS — TRAINEE WAGES.** Wages paid to nursing assistants in training are not eligible for NATCEP reimbursement, but may be claimed as part of the daily reimbursement costs.

(i) **REIMBURSEMENT FOR COMBINED CLASSES.** If two or more Medicaid certified facilities cooperate to conduct nursing assistant training, the Department shall not reimburse any participating facility for the combined training class until all participating facilities have filed a request for reimbursement. For a combined class, the Department shall apportion reimbursement to participating facilities pro rata based on the

number of students enrolled at the completion of the first 30 hours of classroom training or in any other equitable manner agreed to by the participating facilities. However, when cooperating facilities file separate NATCEP requests for reimbursements, nothing in this section authorizes the Department to deny or limit reimbursement to a facility based on a failure to file or a delay in filing by a cooperating facility.

(5) Notwithstanding section (4) of this rule, the Department shall calculate the 80th percentile of the Medicaid portion of reported NATCEP costs per trainee completing the training. If a facility's Medicaid portion exceeds the 80th percentile of costs, the Department shall evaluate the facility's NATCEP costs to determine whether its costs are necessary due to compelling circumstances including but not limited to:

(a) Rural or isolated location of the training facility;

(b) Critical individual care need;

(c) Shortage of nursing assistants available in the local labor market;

or

(d) Absence or inadequacy of other training facilities or alternative training programs, e.g., community college training programs.

(6) If, under the analysis in section (5) of this rule, the Department finds that a facility's NATCEP costs are justified, the Department shall reimburse the reported costs pursuant to section (4) of this rule. However, if, under the analysis in section (5) of this rule, the Department finds that a facility's NATCEP costs are not justified, the Department shall reimburse the reported costs pursuant to section (4) of this rule but limited by the cost plateau.

(7) **RECORDKEEPING, AUDIT, AND APPEAL.**

(a) The facility must maintain supportive documentation for a period of not less than three years following the date of submission of the NATCEP request for reimbursement. This documentation must include records in sufficient detail to substantiate the request for reimbursement. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved. The records must be maintained in a condition that can be audited.

(b) All requests for reimbursements are subject to audit at the discretion of the Department. The facility shall be notified in writing of the amount to be reimbursed and of any adjustments to the request for reimbursement. Payment of any amounts due to the Department must be made within 60 days of the date of notification to the facility.

(c) A facility is entitled to an informal conference and contested case hearing pursuant to ORS 183.413 through 183.470, as described in OAR 411-070-0435, to protest the reimbursement amount or the adjustment. If no written request for an informal conference or contested case hearing is made within 30 days, the decision becomes final.

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

Stat. Auth.: ORS 414.070

Stats. Implemented: ORS 410.070

Hist.: SSD 8-1992, f. 7-29-92, cert. ef. 8-1-92; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09; SPD 16-2012(Temp), f. 12-31-12, cert. ef. 1-1-13 thru 6-30-13; SPD 7-2013, f. 4-10-13, cert. ef. 5-1-13

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**Rule Caption:** Long Term Care Community Nursing Services

**Adm. Order No.:** SPD 8-2013

**Filed with Sec. of State:** 4-15-2013

**Certified to be Effective:** 4-15-13

**Notice Publication Date:** 1-1-2013

**Rules Adopted:** 411-048-0150, 411-048-0160, 411-048-0170, 411-048-0180, 411-048-0190, 411-048-0200, 411-048-0210, 411-048-0220, 411-048-0230, 411-048-0240, 411-048-0250

**Rules Repealed:** 411-048-0000, 411-048-0010, 411-048-0020, 411-048-0030, 411-048-0040, 411-048-0050, 411-048-0060, 411-048-0070, 411-048-0080, 411-048-0100, 411-048-0120, 411-048-0130

**Subject:** The Department of Human Services is permanently replacing the contract registered nursing service rules in OAR chapter 411, division 048 with rules for long term care community nursing services.

The proposed rules establish standards and procedures for Medicaid enrolled providers who provide long term care community nursing services. Long term care community nursing services provide ongoing registered nurse services to eligible individuals who are receiving Medicaid funded home and community based waived services in a home based or foster home setting.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

# ADMINISTRATIVE RULES

## 411-048-0150

### Purpose

(1) The rules in OAR chapter 411, division 048 establish standards and procedures for Medicaid enrolled providers who provide long term care community nursing services. Long term care community nursing services provide ongoing registered nurse (RN) services to eligible individuals who are receiving Medicaid funded home and community based waived services in a home based or foster home setting.

(2) Long term care community nursing services provide:

(a) Evaluation and identification of supports that help an individual maintain maximum functioning and minimize health risks, while promoting the individual's autonomy and self management of healthcare;

(b) Teaching an individual's caregiver or family that is necessary to assure the individual's health and safety in a home based or foster home setting;

(c) Delegation of nursing tasks to an individual's caregiver; and

(d) Case managers and health professionals with the information needed to maintain the individual's health, safety, and community living situation while honoring the individual's autonomy and choices.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 8-2013, f. & cert. ef. 4-15-13

## 411-048-0160

### Definitions

(1) "AAA" means the Area Agency on Aging designated by the Department that is responsible for providing a comprehensive and coordinated system of services to older adults or adults with disabilities in a designated planning and service area.

(2) "Abuse" means:

(a) Abuse of a child:

(A) As defined in ORS 419B.005; and

(B) As defined in OAR 407-045-0260, when a child resides in a foster home licensed by the Department to provide residential services to a child with developmental disabilities.

(b) Abuse of an adult or older adult:

(A) As defined in ORS 124.050-095 and 430.735-765; and

(B) As defined in OAR 407-045-0260 for individuals 18 years or older with developmental disabilities that reside in a Department licensed adult foster home; or

(C) As defined in OAR 411-020-0002 for older adults and adults with a physical disability who are 18 years of age or older that reside in a Department licensed adult foster home.

(3) "Acute Care Nursing" means, for the purpose of these rules, nursing services provided on an intermittent or time limited basis such as those provided by a hospice agency as defined in ORS 443.850, or a home health agency as defined in ORS 443.005. Acute care nursing may include direct service and is designed to address a specific task of nursing or a short term health condition.

(4) "Business Day" means the day that the "Local Office" is open for business.

(5) "Care Coordination" means the email, faxes, phone calls, meetings and other types of information exchange, consultation, and advocacy provided by a registered nurse on behalf of an individual that is necessary for the registered nurse to conduct assessments, complete medication reviews, provide for individual safety needs, and implement an individual's Nursing Service Plan.

(6) "Caregiver" means any person responsible for providing services to an eligible individual in a home based or foster home setting. For the purpose of these rules, a caregiver may include an unlicensed person defined as a designated caregiver in OAR chapter 851, division 48 (Standards for Provision of Nursing Care by a Designated Caregiver).

(7) "Case Manager" means a person employed by the Department, Community Developmental Disability Program, or Area Agency on Aging who assesses the service needs of an applicant, determines eligibility, and offers service choices to the eligible individual. The case manager authorizes and implements an individual's plan for services and monitors the services delivered.

(8) "CDDP" means the Community Developmental Disability Program responsible for the planning and delivery of services for individuals with developmental disabilities according to OAR chapter 411, division 320. A CDDP operates in a specific geographic service area of the state under a contract with the Department, local mental health authority, or other entity as contracted by the Department.

(9) "Delegation" means, for the purpose of these rules, the standards and processes described in OAR chapter 851, division 047 (Standards for Community Based Care Registered Nurse Delegation).

(10) "Department" means the Department of Human Services or the Department's designee.

(11) "Department Approved Form" means forms used by registered nurses and case managers to support these rules. The Department maintains these documents on the Department's website (<http://www.oregon.gov/dhs/spd/pages/provtools/nursing/forms.aspx>). Printed copies may be obtained by contacting the Department of Human Services, ATTN: Rule Coordinator, 500 Summer Street NE, E10, Salem, OR 97301.

(12) "Direct Hands-on Nursing" means a registered nurse provides treatment or therapies directly to an individual instead of teaching or delegating the tasks of nursing to the individual's caregiver. Payment for direct hands-on nursing services is not reimbursed unless an exception has been granted by the Department as described in OAR 411-048-0170.

(13) "Documentation" means a written record of all services provided to, and for, an individual and an individual's caregiver that is maintained by the registered nurse as described in OAR 411-048-0200.

(14) "Enrolled Medicaid Provider" means an entity or individual that meets and completes all the requirements in these rules, OAR 407-120-0300 to 0400 (Medicaid Provider Enrollment and Claiming), and OAR chapter 410, division 120 (Medicaid General Rules) as applicable.

(15) "Foster Home" means any Department licensed or certified family home in which residential services are provided as described in:

(a) OAR chapter 411, division 050 for adult foster homes for older adults and adults with physical disabilities;

(b) OAR chapter 411, division 346 for foster homes for children with developmental disabilities; and

(c) OAR chapter 411, division 360 for adult foster homes for individuals with developmental disabilities.

(16) "Healthcare Provider" means a licensed provider providing services such as but not limited to home health, hospice, mental health, primary care, specialty care, durable medical equipment, pharmacy, or hospitalization to an eligible individual.

(17) "Home" means a non-licensed setting where an individual is receiving home and community based waived services.

(18) "Home and Community Based Waivered Services" mean the services approved and funded by the Centers for Medicare and Medicaid Services for eligible individuals who are aged and physically disabled and for eligible individuals with intellectual disabilities and developmental disabilities in accordance with section 1915(c) under Title XIX of the Social Security Act.

(19) "Home Health Agency" has the meaning given that term in ORS 443.005.

(20) "Individual" means a person eligible for community nursing services under these rules.

(21) "In-Home Care Agency" has the meaning given that term in ORS 443.305.

(22) "Local Office" means the Department office, Area Agency on Aging, or Community Developmental Disability Program responsible for Medicaid services including case management, referral, authorization, and oversight of long term care community nursing services in the region where the individual lives and where the community nursing services are delivered.

(23) "Long Term Care Community Nursing Services (Community Nursing Service)" mean, for the purpose of these rules, the nursing services provided under these rules to individuals living in a home based or foster home setting where the monthly home and community based waived services rate does not include nursing services. Long term care community nursing services are a distinct set of services that focus on an individual's chronic and ongoing health and activity of daily living needs. Long term care community nursing services include an assessment, monitoring, delegation, teaching, and coordination of services that addresses an individual's health and safety needs in a Nursing Service Plan that supports individual choice and autonomy. The requirements in these rules are provided in addition to any nursing related requirements stipulated in the licensing rules governing the individual's place of residence.

(24) "Medication Review" means a review focused on an individual's medication regime that includes examination of the prescriber's orders and related administration records, consultation with a pharmacist or the prescriber, clarification of PRN (as needed) parameters, and the development of a teaching plan based upon the needs of the individual or the individual's caregiver. In an unlicensed setting, the medication review may include

# ADMINISTRATIVE RULES

observation and teaching related to administration methods and storage systems.

(25) "Nursing Assessment" means one of the following assessments selected by the registered nurse based on an individual's need and situation:

(a) A "nursing assessment" as defined in OAR 851-047-0010 (Standards for Community Based Care Registered Nurse Delegation); or

(b) A "comprehensive assessment" or "focused assessment" as defined in OAR 851-045-0030 (Standards and Scope of Practice for the Licensed Practical Nurse and Registered Nurse).

(26) "Nursing Service Plan" means the plan that is developed by the registered nurse based on an individual's initial nursing assessment, reassessment, or updates made to a nursing assessment as a result of monitoring visits.

(a) The Nursing Service Plan is specific to the individual and identifies the individual's diagnoses and health needs, the caregiver's teaching needs, and any care coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the case manager's service plan, the foster home provider's service plan, and any service plans developed by other health professionals.

(c) Nursing service plans must meet the standards in OAR chapter 851, division 045 (Standards and Scope of Practice for the Licensed Practical Nurse and Registered Nurse).

(27) "OSBN" means the Oregon State Board of Nursing. OSBN is the agency responsible for regulating nursing practice and education for the purpose of protecting the public's health, safety, and well-being.

(28) "Rate Schedule" means the communication tool issued by the Department to transmit rate changes to partners, subcontractors, and stakeholders. The Department maintains this document on the Department's website (<http://www.oregon.gov/dhs/spd/provtools/rateschedule.pdf>). Printed copies may be obtained by contacting the Department of Human Services, ATTN: Rule Coordinator, 500 Summer Street NE, E10, Salem, OR 97301.

(29) "RN" means a registered nurse licensed by the Oregon State Board of Nursing. An RN providing long term care community nursing services under these rules is either an independent contractor who is an enrolled Medicaid provider or an employee of an organization that is an enrolled Medicaid provider.

(30) "These Rules" mean the rules in OAR chapter 411, division 048.  
Stat. Auth.: ORS 410.070  
Stats. Implemented: ORS 410.070  
Hist.: SPD 8-2013, f. & cert. ef. 4-15-13

## 411-048-0170

### Eligibility and Limitations

(1) ELIGIBILITY. Community nursing services may be provided by an RN to an individual if the individual meets the following requirements:

(a) The individual must be determined eligible for home and community based waived services provided through the Department;

(b) The individual must be receiving services through one of the following:

(A) Long term supports for children with developmental disabilities as described in OAR chapter 411, division 308;

(B) Adult foster homes for individuals with developmental disabilities as described in OAR chapter 411, division 360;

(C) Foster homes for children with developmental disabilities as described in OAR chapter 411, division 346;

(D) Comprehensive in home support for adults with developmental disabilities as described in OAR chapter 411, division 330;

(E) Adult foster homes for older adults and adults with physical disabilities as described in OAR chapter 411, division 050;

(F) Independent Choices Program participants as described in OAR chapter 411, division 030;

(G) 1915C Nursing Facility Waiver; or

(H) State Plan K Community First Choice;

(c) The individual must live in a home or a foster home as defined in OAR 411-048-0160;

(d) The individual must be referred by their case manager for long term care community nursing services. Individuals may request long term community nursing services through their case manager.

(2) LIMITATIONS.

(a) Long term care community nursing services may not be provided to:

(A) A resident of a nursing facility, assisted living facility, residential care facility, 24 hour developmental disability group home, or intermediate care facility for individuals with developmental disabilities;

(B) An individual enrolled in a brokerage, Independent Choices, or other support services not funded by home and community based waived services; or

(C) An individual enrolled in a program or residing in a setting where nursing services are provided under a monthly service rate.

(b) Case managers may not prior authorize long term care community nursing services that duplicate nursing services provided by Medicare or other Medicaid programs.

(c) Long term care community nursing services do not include nursing activities used for administrative functions such as protective service investigations, pre-admission screenings, eligibility determinations, licensing inspections, case manager assessments, or corrective action activities. This limitation does not include authorized care coordination as defined in OAR 411-048-0160.

(d) Long term care community nursing services do not include reimbursement for direct hands-on nursing as defined in OAR 411-048-0160.

(3) EXCEPTIONS. An exception to sections (2)(c) and (2)(d) of this rule may be requested as described in OAR 411-048-0250.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 8-2013, f. & cert. ef. 4-15-13

## 411-048-0180

### Long Term Care Community Nursing Services

When authorized by an individual's case manager, the following long term care community nursing services must be provided by an RN in accordance with these rules and the scope of practice as stated in the Oregon State Board of Nursing rules in OAR chapter 851.

(1) REVIEW OF REFERRAL. An RN must screen a referral and notify the individual's case manager of their decision to accept or refuse the referral within two business days of receiving the referral on the Department approved form. The RN may refuse any referral.

(2) INITIAL ASSESSMENT. The RN must perform a face-to-face comprehensive nursing assessment as defined in OAR 851-045-0030 within 10 business days following the acceptance of the individual's referral.

(a) The RN must conduct and document the comprehensive nursing assessment as specified in OAR chapter 851, division 045.

(b) The RN must send copies of the comprehensive nursing assessment to the individual's case manager. If the RN recommends ongoing long term care community nursing services, the RN must send a Nursing Service Plan as described in section (4) of this rule with the individual's comprehensive nursing assessment.

(3) REASSESSMENT. The RN must perform a face-to-face reassessment and update the individual's Nursing Service Plan at least annually and more frequently at the RN's discretion if the individual experiences a change of condition or change of environment. Based on individual need, the RN must determine if this reassessment is a focused or comprehensive assessment as defined in OAR 851-045-0030.

(a) The RN must conduct and document the comprehensive or focused assessment as specified in OAR chapter 851, division 045.

(b) The RN must complete the reassessment within 10 business days of the date the reassessment started.

(c) The RN must send copies of the reassessment to the individual's case manager and include an updated Nursing Service Plan as described in section (4) of this rule.

(4) NURSING SERVICE PLAN. Based on the initial assessment or reassessment, the RN must develop or update the individual's Nursing Service Plan.

(a) The Nursing Service Plan must describe the needs of the individual and the individual's caregiver and the specific interventions the RN intends to provide to meet those needs including scope, duration, and frequency.

(b) An RN must complete and document Nursing Service Plans on the Department approved form and provide the Nursing Service Plan to an individual's case manager within 10 business days of the date that an initial assessment or a reassessment is initiated.

(c) An RN must attend a minimum of two Nursing Service Plan review meetings each year with a case manager. The RN and the case manager may agree to conduct the Nursing Service Plan review meeting by phone.

(5) DELEGATION. An RN must follow the standards and documentation requirements for delegation of nursing tasks as required by OAR chapter 851, division 047 (Standards for Community Based Care Registered RN Delegation).

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(a) The RN alone, based on professional judgment and regulation, makes the determination to delegate or not delegate a nursing task, or to rescind a delegation.

(b) The RN must provide the case manager with an estimate of the number of hours of delegation the individual needs on the Nursing Service Plan and keep the case manager informed of ongoing delegation activities on the Service Summary form.

(c) The RN must keep the adult foster home provider informed of the delegation decisions and activities provided to caregivers in their home.

(6) TEACHING. An RN must follow the standards and documentation requirements for teaching health promotion as described in OAR 851-045-0060.

(a) In an overall teaching plan, the RN must describe and document the reason the teaching is needed and the specific goals for the individual or the individual's caregiver.

(b) An RN must follow the standards for community based care RN delegation in OAR chapter 851, division 047 and the standards for provision of nursing care by a designated caregiver in OAR chapter 851, division 048 when teaching an individual and the individual's caregiver the nursing tasks needed to meet the individual's health care needs.

(c) Teaching related to non-injectable medications or anticipated emergencies must be provided by an RN in accordance with OAR chapter 851, division 047 (Standards for Community Based Care RN Delegation).

(7) MONITORING. An RN must provide home based monitoring visits as needed to oversee and implement an individual's Nursing Service Plan.

(a) The RN must document the projected frequency of monitoring visits in an individual's Nursing Service Plan and may adjust the frequency based on the complexity of the Nursing Service Plan and the individual's needs.

(b) Calls with adult foster home providers, caregivers, or an individual to review health status, follow up on instructions, or exchange information related to care coordination are considered a monitoring visit.

(8) MEDICATION REVIEW. An RN must provide a medication review during each monitoring visit and as part of an initial assessment or reassessment. The scope of a medication review shall be based on the RN's judgment and the needs of the individual or the individual's caregiver. Information gathered as part of a medication review may result in changes to an RN's Teaching Plan or care coordination activity.

(9) CARE COORDINATION. An RN provides care coordination in order to advocate for health care services that an individual needs and to gather the information that is needed in the assessment or reassessment process, medication review, or Nursing Service Plan implementation. An RN uses care coordination to provide updated information to people involved in an individual's health care via phone calls, faxes, electronic mediums, or meetings. Care coordination is provided but not limited to case managers, RNs who provide acute care community nursing services, health care providers, and non-caregiving family members or legal representatives.

(10) Time spent completing the services described in sections (3) to (9) of this rule may be included in the claim for the respective service but must meet documentation standards specified in OAR 410-120-1360(1)(a)(b).

(11) PRIOR AUTHORIZATION. All long term care community nursing services in sections (2) to (9) of this rule must be prior authorized by an individual's case manager.

(a) An RN must use an individual's Nursing Service Plan to estimate the number of hours needed for community nursing services within a six month time period. The RN must document the estimated number of community nursing service hours on the Department approved form for authorization and send the Department approved form for authorization to the individual's case manager.

(b) The case manager must authorize the proposed hours after reviewing the individual's completed Nursing Service Plan. The case manager must complete the prior authorization within 5 business days of receiving the Department approved form for authorization and the individual's completed Nursing Service Plan.

(12) Prior authorization for the initial assessment and delegation of services described in sections (2) and (5) of this rule is granted once the Department approved form for referral is signed by the RN and the individual's case manager. The payment received by an RN for initial assessment shall include compensation for all community nursing services excluding delegation, provided by the RN to the individual and the individual's caregiver. Payment is not provided until prior authorization as

described in section (11) of this rule has been provided to the RN by the individual's case manager.

(13) An RN must use the Department approved Service Summary form as the communication tool for case managers and caregivers to document the monitoring, care coordination, teaching, delegation, or other services as noted in these rules provided to each individual.

(14) A local office manager may grant an exception to the timeframes required in this rule on a case specific basis.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 8-2013, f. & cert. ef. 4-15-13

## 411-048-0190

### Communication and Notification Practices

(1) MANDATORY REPORTING. An RN must report suspected or known neglect or abuse of all older adults, adults, and children as required by OSBN and ORS 124.050 to 124.095, 430.735 to 430.765, and 419B.005 to 419B.045.

(2) CONFIDENTIALITY.

(a) An RN must adhere to the OSBN confidentiality standards as described in OAR chapter 851 as well as the federal regulations adopted to implement the Health Insurance Portability and Accountability Act.

(b) An RN must provide all written, verbal, digital, video, and electronic information regarding an individual in accordance with the Department's confidentiality parameters as described in OAR chapter 407, division 014 and the federal regulations adopted to implement the Health Insurance Portability and Accountability Act.

(3) NOTIFICATION.

(a) An RN must immediately communicate possible life-threatening health and safety concerns to:

(A) The local office protective service worker, worker of the day, or case manager; and

(B) 911, police, or physician if needed to address emergent or urgent safety concerns.

(b) If while performing long term care community nursing services under these rules an RN determines that an individual's health condition is unstable or a significant change of condition is noted, the RN must either notify the individual's physician or primary care provider directly or ensure that the individual's caregiver has reported this information to them.

(c) An RN must notify the individual's case manager or local office management within one business day of non life threatening but high risk concerns including changes in condition as described in subsection (b) of this section, concerns about placement, or concerns about a caregiver's performance.

(d) An RN must notify the individual's case manager if the RN becomes aware that an individual has recently received a significant health-care intervention such as an emergency room visit, hospitalization, a change in physician, referral to a specialist, home health, or hospice.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 8-2013, f. & cert. ef. 4-15-13

## 411-048-0200

### Additional Documentation Requirements

(1) An RN must meet the documentation, record keeping, and communication standards as required by the Department in addition to the documentation, record keeping, and communication standards as required by the OSBN in OAR chapter 851. Compliance with these standards ensures communication between an RN and an individual's case manager and caregiver.

(2) The documentation standards in this rule and on Department approved forms provided by the Department do not replace or substitute for the documentation requirements in the:

(a) Rules for professional nursing standards as prescribed by the OSBN in OAR chapter 851, divisions 045, 047, and 48;

(b) Medicaid provider rules governing provider requirements as described in OAR chapter 407, division 120; and

(c) As applicable, the Medicaid General Rules described in OAR chapter 410, division 120.

(3) An RN is expected to complete the Department approved forms specified by the Department to support the long term care community nursing services in these rules. The Department may approve the use of alternative but equivalent forms.

(4) An RN must send copies of the completed Department approved forms to the case manager prior to or at the time of invoice submission. Documentation must support the long term care community nursing services billed and adhere to the timeframes noted in these rules.



# ADMINISTRATIVE RULES

(a) An individual's case manager must receive the required Department approved forms and documentation to pay a claim.

(b) Failure to comply with the documentation standards in this rule may result in the determination of overpayment for which restitution may be sought.

(5) All documentation must be provided in HIPAA secured format.

(6) The self-employed RN that is enrolled as a Medicaid provider or an agency enrolled as a Medicaid provider as described in OAR 411-048-0210 must maintain a record of all long term care community nursing services provided to each assigned individual and the individual's caregiver.

(a) The record must include copies of all documentation provided to the local office as well as any additional documentation the RN or agency maintained to meet OSBN or Medicaid provider rules.

(b) The RN must retain the record until the RN no longer provides long term care community nursing services to the individual, at which time the RN or agency must provide the individual's case manager a copy of any part of the record not previously provided.

(c) The RN or agency must retain original records for each individual following HIPAA practices for a period of seven years.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 8-2013, f. & cert. ef. 4-15-13

## 411-048-0210

### Qualifications for Enrolled Medicaid Providers

(1) The Department may determine the number and type of enrolled Medicaid providers in a geographic area to assure that there is an appropriate number of qualified enrolled Medicaid providers to meet the needs of individuals eligible for long term care community nursing services.

(2) The Department shall select qualified enrolled Medicaid providers for long term care community nursing services according to the standards in these rules, OAR 407-120-0320, and OAR chapter 410, division 120 as applicable.

(3) The long term care community nursing services provided under these rules may be delivered by the following enrolled Medicaid providers:

(a) An RN who is a self-employed provider;

(b) Home health agencies meeting the requirements in OAR chapter 333, division 027; or

(c) In-home care agencies meeting the requirements in OAR chapter 333, division 536.

(4) A self-employed RN who contracts with the Department to provide long term care community nursing services under these rules must:

(a) Pass a background check as defined in OAR 407-007-0210; and

(b) Provide and have available verification of the following:

(A) A current and unencumbered Oregon Registered RN license;

(B) Certification of professional liability insurance with coverage that meets Department requirements;

(C) Documentation supporting qualifications and expertise:

(i) A minimum of three years experience practicing as an RN in an in-home, home health, skilled nursing, hospital, or Department licensed community setting. At least one of these three years must have occurred within three years of the date the RN contracted with the Department to provide long term care community nursing services.

(ii) Experience providing nursing delegation or a pass score on the Department's nursing delegation self study test.

(D) Contact information for people or entities that verify the qualifications and expertise documented pursuant to this section.

(c) The RN must attend a contract briefing session with the local office management to review contract expectations.

(5) Agencies listed in section (3)(b) and (c) of this rule who contract with the Department to provide long term care community nursing services under these rules must:

(a) Maintain compliance with existing in home or home health agency licensing rules;

(b) Maintain a separate contract with the Department to provide Medicaid funded in home care agency services;

(c) Provide and have available verification of the following:

(A) A current and unencumbered Oregon Registered RN license;

(B) Certification of professional liability insurance with coverage that meets Department requirements;

(C) Documentation verifying the qualification and expertise of the RNs hired by the agency to provide long term care community nursing services including:

(i) Experience providing nursing delegation or a pass score on the Department's nursing delegation self study test;

(ii) Contact information for people or entities that verify the qualifications and experience documented pursuant to this section; and

(iii) A background check as defined in OAR 407-007-0210.

(D) Evidence of policies and procedures ensuring that the agency and its employees follow the specific standards in OAR chapter 411, division 048 that may exceed OAR chapter 333, division 536.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 8-2013, f. & cert. ef. 4-15-13

## 411-048-0220

### Medicaid Provider Disenrollment /Termination

(1) Enrolled Medicaid providers of long term care community nursing services, or RN employees of an agency enrolled as a Medicaid provider providing these long term care community nursing services may be denied enrollment, terminated, or prohibited from providing long term care community nursing services for any of the following:

(a) Violation of any part of these rules;

(b) Violation of the protective service and abuse rules in OAR chapter 411, division 020 and OAR chapter 407, division 045;

(c) Any sanction or action as a result of an OSBN investigation;

(d) Failure to keep required licensure or certifications current;

(e) Failure to provide copies of the records described in these rules to designated Department or Oregon Health Authority entities;

(f) Repeated failure to participate in Nursing Service Plan review or care coordination meetings when requested by an individual's case manager;

(g) Failure to obtain a pass score on the Department's delegation self study test if requested by the Department;

(h) Failure to provide services;

(i) Fraud or misrepresentation in the provision of long term care community nursing services;

(j) Evidence of conduct derogatory to the standards of nursing as described in OAR 851-045-0070 that results in referral to OSBN; or

(k) A demonstrated pattern of repeated unsubstantiated complaints of neglect or abuse per OAR chapter 411, division 020 and OAR chapter 407, division 045.

(2) Enrolled Medicaid providers may appeal a termination of their Medicaid provider number based on OAR 407-120-0360(8)(g) and OAR chapter 410, division 120 as applicable.

(3) Enrolled Medicaid providers of long term care community nursing services must provide advance written notice to the Department at least 30 days prior to no longer providing long term care community nursing services.

(4) An RN ending long term care community nursing services must comply with the OSBN's standards regarding transition of care and transfer or rescinding of delegations per OAR chapter 851, division 47.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 8-2013, f. & cert. ef. 4-15-13

## 411-048-0230

### Compensation and Billing

(1) All long term care community nursing services must be authorized by an individual's case manager using Department approved forms provided by the Department prior to the delivery of long term care community nursing services.

(2) All billing and claims must comply with:

(a) OAR 407-120-0330 and 407-120-0340;

(b) OAR chapter 410, division 120 as applicable; and

(c) The Long Term Care Nursing Procedure Codes and Payment Authorization Guidelines posted at <http://www.oregon.gov/dhs/spd/pages/provtools/nursing/forms.aspx>.

(3) Compensation for long term care community nursing services in OAR 411-048-0180 shall be defined in the Department's rate schedule or through a contract with the Department. The Department may adjust rates in underserved areas to assure that individuals have access to long term care community nursing services.

(4) Payment for non-Medicaid covered services must be prior authorized by the Department and billed on Department approved invoices.

(a) Rates for non-Medicaid services shall be determined by the Department but may not exceed the rate noted on the Department's rate schedule.

(b) The Department makes payment for non-Medicaid covered services within 45 days of receipt of the completed invoice.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 8-2013, f. & cert. ef. 4-15-13

# ADMINISTRATIVE RULES

## 411-048-0240

### Orientation Requirements

(1) Self-employed RN providers as described in OAR 411-048-0210 must attend a total of 12 hours of office or field based orientation. Field based orientation must be provided by an experienced RN prior approved by the local office.

(2) Local office management may authorize additional orientation or field mentorship hours if mutually agreed upon by the newly contracted RN and the local office manager

(3) Each RN providing long term care community nursing services as an employee of an agency as described in OAR 411-048-0210 must attend a total of 12 hours of office or field based orientation approved by the local office.

(4) Local office managers may exempt an RN employed by an agency or a self-employed RN provider from all or part of orientation activities based on written request from the agency or self-employed RN provider describing an alternative orientation plan. The agreed upon alternative orientation plan must be signed by either the agency or self-employed provider and local office management. The local office must provide a copy of the signed alternative orientation plan to the Department.

Stat. Auth.: ORS 410.070  
Stats. Implemented: ORS 410.070  
Hist.: SPD 8-2013, f. & cert. ef. 4-15-13

## 411-048-0250

### Exceptions

(1) The Department may grant an exception to these rules. Implementation of an exception may not occur without the Department's written approval.

(2) A request for an exception to these rules must include but not be limited to the following standards:

(a) A written exception request must be provided to central office Department management for prior approval. The exception request must include;

(A) Local office management support for the exception request;

(B) A description of the benefit to the individual served by the Department that may occur as result of the exception; and

(C) Details regarding the specific rule for which the exception may be granted, the rationale for why the exception is needed, the proposed duration of the exception, identification of alternatives (including rule compliance), and costs of the exception if any.

(b) The exception may not impact compliance with any rules other than these rules for long term care community nursing services in OAR chapter 411, division 048.

(c) The exception may not result in non compliance with the Department's contract standards.

Stat. Auth.: ORS 410.070  
Stats. Implemented: ORS 410.070  
Hist.: SPD 8-2013, f. & cert. ef. 4-15-13

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**Department of Human Services,  
Self-Sufficiency Programs  
Chapter 461**

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

**Adm. Order No.:** SSP 7-2013(Temp)

**Filed with Sec. of State:** 3-25-2013

**Certified to be Effective:** 3-25-13 thru 9-21-13

**Notice Publication Date:**

**Rules Amended:** 461-195-0501, 461-195-0541, 461-195-0601, 461-195-0621

**Subject:** OAR 461-195-0501 about definitions and categories of overpayments is being amended to remove its definition of trafficking (trading) for the SNAP program in conjunction with other rule changes that expand this definition based on federal law changes, and relocate the definition (to OAR 461-195-0601) to make it easier to locate.

OAR 461-195-0541 about liability for overpayments is being amended to make the policy for SNAP overpayment liability due to SNAP benefit trafficking clear and consistent with federal law. This amendment also supports implementation of additional federal SNAP trafficking definitions. Under this amendment, there is overpayment liability for the buying, selling, stealing or other exchange

of SNAP benefits for cash or consideration other than eligible food; the exchange of firearms, ammunition, explosives or controlled substances for SNAP benefits; purchasing a product with SNAP benefits that has a container return deposit with the intent of obtaining cash by intentionally discarding the product and returning the container for the deposit return; purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by intentionally reselling the product purchased with SNAP benefits; and intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

OAR 461-195-0601 about Intentional Program Violation definitions is being amended to incorporate the expanded federal SNAP trafficking definitions that go into effect March 25, 2013. The current SNAP trafficking definition is moved from OAR 461-195-0501 to OAR 461-195-0601 to support intent of federal regulations by making the definition easier to locate. The amended SNAP trafficking definition now includes: the buying, selling, stealing or other exchange of SNAP benefits for cash or consideration other than eligible food either directly or indirectly, in complicity or collusion with others or acting alone; the exchange of firearms, ammunition, explosives, or controlled substances for SNAP benefits; the intentional disposing of product from containers with the intent to exchange the container solely for the cash refund; intentionally reselling or exchanging food purchased with SNAP benefits for cash or other non-SNAP eligible items; and intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

OAR 461-195-0621 about Intentional Program Violation penalties and liability for overpayments is being amended to implement changes in federal law for the Supplemental Nutrition Assistance Program (SNAP) under which disqualifications from the Food Distribution Program on Indian Reservations (FDPIR) continue in effect in Oregon. This rule is also being amended to clarify when an Intentional Program Violation is established against a person in the SNAP or TANF programs. This amendment also implements the expanded federal definition of SNAP trafficking in the context of what triggers a permanent disqualification.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-195-0501

### Definitions and Categories of Overpayments

This rule applies to benefits and services delivered under chapters 410, 411, and 461 of the Oregon Administrative Rules.

(1) "Overpayment" means:

(a) A benefit or service received by or on behalf of a client, or a payment made by the Department on behalf of a client, that exceeds the amount for which the client is eligible.

(b) A payment made by the Department and designated for a specific purpose which is spent by a person on an expense not approved by the Department.

(c) A payment for child care made by the Department to, or on behalf of, a client that:

(A) Is paid to an ineligible provider;

(B) Exceeds the amount for which a provider is eligible;

(C) Is paid when the client was not engaged in an activity that made the client eligible for child care, such as an activity of the JOBS program (see OAR 461-001-0025 and OAR 461-190-0151 to OAR 461-190-0401);

(D) Is paid when the client was not eligible for child care benefits; or

(E) Has given an electronic benefit transfer (EBT) card, card number, or personal identification number (PIN) to a provider for the purpose of checking a child in or out from the provider's child care.

(d) A misappropriated payment when a person cashes and retains the proceeds of a check from the Department on which that person is not the payee and the check has not been lawfully endorsed or assigned to the person.

(e) A benefit or service provided for a need when that person is compensated by another source for the same need and the person fails to reimburse the Department when required to do so by law.

# ADMINISTRATIVE RULES

(f) A cash benefit received by an individual in the GA or SFPSS programs for each month for which the client receives a retroactive SSI lump sum payment.

(g) In the TA-DVS program, only when an IPV in the TA-DVS program is established.

(2) The Department may establish an overpayment for the initial month (see OAR 461-001-0000) of eligibility under circumstances including but not limited to:

(a) The filing group, ineligible student, or authorized representative (see OAR 461-115-0090) withheld information;

(b) The filing group, ineligible student, or authorized representative provided inaccurate information;

(c) The Department fails to use income reported as received or anticipated in determining the benefits of the filing group; or

(d) The error was due to an error in computation or processing by the Department.

(3) Overpayments are categorized as follows:

(a) An administrative error overpayment is an overpayment caused by any of the following circumstances:

(A) The Department fails to reduce, suspend, or end benefits after timely reporting by the filing group, ineligible student, or authorized representative of a change covered under OAR 461-170-0011 and that reported change requires the Department to reduce, suspend, or end benefits;

(B) The Department fails to use the correct benefit standard;

(C) The Department fails to compute or process a payment correctly based on accurate information timely provided by the filing group, ineligible student, or authorized representative;

(D) In the GA and SFPSS programs, the Department fails to require a client to complete an interim assistance agreement; or

(E) The Department commits a procedural error that was no fault of the filing group, ineligible student, or authorized representative.

(b) A client error overpayment is any of the following:

(A) An overpayment caused by the failure of a filing group, ineligible student, or authorized representative to declare or report information or a change in circumstances as required under OAR 461-170-0011, including information available to the Department, that affects the client's eligibility to receive benefits or the amount of benefits.

(B) A client's unreduced liability or receipt of unreduced benefits pending a contested case hearing decision or other final order favorable to the Department.

(C) A client's failure to return a benefit known by the client to exceed the correct amount.

(D) A client's use of a JOBS or SFPSS program support payment (see OAR 461-190-0211) for other than the intended purpose.

(E) A payment for child care when the client was not engaged in an activity that made the client eligible for child care, such as an activity of the JOBS program (see OAR 461-001-0025 and OAR 461-190-0151 to OAR 461-190-0401).

(F) A payment for child care when the client was not eligible for child care benefits.

(G) The failure of a client to pay his or her entire share of the cost of services or the participant fee (see OAR 461-160-0610 and 461-160-0800) in the month in which it is due.

(H) An overpayment caused by a client giving an electronic benefit transfer (EBT) card, card number, or personal identification number (PIN) to a provider for the purpose of checking a child in or out from the provider's child care.

(c) A fraud overpayment is an overpayment determined to be an intentional program violation (see OAR 461-195-0601 and 461-195-0611) or substantiated through a criminal prosecution.

(d) In the SNAP program, a provider error overpayment is an overpayment made to a drug or alcohol treatment center or residential care facility that acted as a client's authorized representative.

(e) In the child care program, a provider error overpayment is a payment made by the Department on behalf of a client to a child care provider when:

(A) Paid to an ineligible provider;

(B) The payment exceeds the amount for which a provider is eligible.

(4) When an overpayment is caused by both an administrative and client error in the same month, the Department determines the primary cause of the overpayment and assigns as either an administrative or client error overpayment.

(5) In the TANF program, when an overpayment puts the client at greater risk of domestic violence (see OAR 461-001-0000), the overpayment is waived (see OAR 461-135-1200).

Stat. Auth.: ORS 411.060, 411.070, 411.081, 411.404, 411.816, 412.001, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.081, 411.117, 411.404, 411.620, 411.640, 411.690, 411.816, 411.892, 412.001, 412.049, 414.025 & 416.350

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2001(Temp), f. & cert. ef. 4-4-01 thru 6-30-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 7-2013(Temp), f. & cert. ef. 3-25-13 thru 9-21-13

## 461-195-0541

### Liability for Overpayments

(1) In all programs except the BCCM, CEC, CEM, EXT, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, REFM, SAC and SNAP programs or a child care program, the following persons are liable for repayment of an overpayment (see OAR 461-195-0501):

(a) Each individual in the filing group or required to be in the filing group and the payee when the overpayment was incurred, except an individual who did not reside with and did not know he or she was included in the filing group.

(b) A caretaker relative (see OAR 461-001-0000) and his or her spouse (see OAR 461-001-0000) who were not part of, but resided with, the filing group when the overpayment was incurred.

(c) A parent (see OAR 461-001-0000) or caretaker relative of a child (see OAR 461-001-0000) in the benefit group (see OAR 461-110-0750) and the spouse of the parent or caretaker relative if the parent, caretaker relative, or spouse was a member of or resided with the filing group when the overpayment was incurred.

(d) An individual determined liable for an overpayment remains liable when the individual becomes a member of a new filing group.

(e) An authorized representative (see OAR 461-115-0090) when the authorized representative gave incorrect or incomplete information or withheld information resulting in the overpayment.

(2) In the BCCM, CEC, CEM, EXT, MAA, MAF, OHP, REFM, and SAC programs, the following persons are liable for repayment of an overpayment:

(a) Each individual in the filing group or required to be in the filing group and the payee when the overpayment was incurred, except an individual who:

(A) Was a child or dependent child (see OAR 461-001-0000) at the time of the overpayment; or

(B) Did not reside with and did not know he or she was included in the filing group.

(b) A caretaker relative and his or her spouse who were not part of, but resided with, the filing group when the overpayment was incurred.

(c) A parent or caretaker relative of a child in the filing group and the spouse of the parent or caretaker relative if the parent, caretaker relative, or spouse was a member of or resided with the filing group when the overpayment was incurred.

(d) An authorized representative when the authorized representative gave incorrect or incomplete information or withheld information that resulted in the overpayment.

(3) In a child care program:

(a) An overpayment caused by administrative error is collectible as follows:

(A) The provider is liable for a provider overpayment made on behalf of a client eligible for child care payments.

(B) Each adult in the filing group or required to be in the filing group is liable for an overpayment if the client was not eligible for the payment.

(b) Each adult in the filing group or required to be in the filing group is liable for a client overpayment, and a provider is liable for an overpayment caused by the provider. The client and provider are jointly and severally liable for an overpayment caused by both. In the case of an alleged provider overpayment, a provider's failure to provide contemporaneous records of care provided creates a rebuttable presumption that the care was not provided.

(c) An adult who cosigned an application with a minor provider applicant is liable for an overpayment incurred by the minor provider.

(4) In the GA, GAM, OSIP, OSIPM, and QMB programs, the following persons are liable for repayment of an overpayment:

(a) Each individual in the filing group or required to be in the filing group and the payee when the overpayment was incurred, except an individual who:

(A) Was a child or dependent child at the time of the overpayment; or

(B) Did not reside with and did not know he or she was included in the filing group.

(b) A caretaker relative and his or her spouse who were not part of, but resided with, the filing group when the overpayment was incurred.

# ADMINISTRATIVE RULES

(c) A parent or caretaker relative of a child in the filing group and the spouse of the parent or caretaker relative if the parent, caretaker relative, or spouse was a member of or resided with the filing group when the overpayment was incurred.

(d) An authorized representative when the authorized representative knowingly gave incorrect or incomplete information or intentionally withheld information that resulted in the overpayment.

(5) In the SNAP program, the following persons are liable for repayment of an overpayment or a claim that results from trafficking (see OAR 461-195-0601(2)) of SNAP benefits:

(a) The primary person (see OAR 461-001-0015) of any age, an ineligible student in the household, and all adults who were members of or required to be in the filing group (see OAR 461-110-0370) when excess benefits were issued.

(b) A sponsor of a non-citizen household member if the sponsor is at fault, for payments prior to November 21, 2000.

(c) A drug or alcohol treatment center or residential care facility that acted as the authorized representative of the client.

(6) Except as provided otherwise in section (7) of this rule, in all programs, both a non-citizen and the sponsor of the non-citizen are liable for an overpayment incurred if the overpayment results from the failure of the sponsor to provide correct information (see OAR 461-145-0820 to 461-145-0840). If the sponsor had good cause (see OAR 461-195-0521(5)) for withholding the information, the sponsor is not liable for the overpayment.

(7) In the SNAP program, the sponsor of a non-citizen is not liable under section (6) of this rule for payments on or after November 21, 2000.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049  
Stats. Implemented: ORS 411.060, 411.087, 411.404, 411.630, 411.635, 411.640, 411.690, 411.816, 412.014, 412.049 & 416.350  
Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 7-2013(Temp), f. & cert. ef. 3-25-13 thru 9-21-13

## 461-195-0601

### Intentional Program Violations; Defined

(1) In the child care programs, a provider commits an intentional program violation (IPV) by intentionally making a false or misleading statement or misrepresenting, concealing or withholding information related to his or her request to be eligible for a child care payment under OAR 461-165-0180 or a claim for a child care payment.

(2) In the SNAP program:

(a) An individual commits an intentional program violation by:

(A) Making a false or misleading statement or misrepresenting, concealing or withholding a fact relating to the use, presentation, transfer, acquisition, receipt, possession, or trafficking of SNAP benefits; or

(B) Committing any act that constitutes a violation of the Food Stamp Act, the SNAP program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, possession, or trafficking of SNAP benefits.

(b) "Trafficking" means any of the following:

(A) The buying, selling, stealing, or other exchange of SNAP benefits for cash or consideration other than eligible food, either directly or indirectly, in complicity or collusion with others or acting alone.

(B) The exchange of firearms, ammunition, explosives, or controlled substances (as defined in section 802 of title 21, United States Code), for SNAP benefits.

(C) Purchasing a product with SNAP benefits that has a container return deposit with the intent of obtaining cash by intentionally discarding the product and returning the container for the deposit amount.

(D) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by intentionally reselling the product purchased with SNAP benefits.

(E) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

(3) In the SFPSS program, an individual commits an intentional program violation by intentionally:

(a) Making a false or misleading statement or misrepresenting, concealing, or withholding a fact for the purpose of establishing or maintaining eligibility for SFPSS or increasing, or preventing a reduction in, the amount of the SFPSS grant; or

(b) Committing any act intended to mislead or to conceal or withhold information for the purpose of establishing or maintaining eligibility for SFPSS or increasing, or preventing a reduction in, the amount of the SFPSS grant.

(4) In the TA-DVS program, an individual commits an IPV by intentionally and without intimidation or coercion by an abuser:

(a) Making a false or misleading statement or misrepresenting, concealing, or withholding a fact for the purpose of establishing eligibility for or receiving a benefit from the TA-DVS program; or

(b) Committing any act intended to mislead or to conceal or withhold information for the purpose of establishing eligibility for or receiving a benefit from the TA-DVS program.

(5) In the TANF program, an individual commits an intentional program violation by intentionally:

(a) Making a false or misleading statement or misrepresenting, concealing, or withholding a fact for the purpose of establishing or maintaining eligibility for TANF or increasing, or preventing a reduction in, the amount of the TANF grant; or

(b) Committing any act intended to mislead or to conceal or withhold information for the purpose of establishing or maintaining eligibility for TANF or increasing, or preventing a reduction in, the amount of the TANF grant.

Stat. Authority: ORS 411.060, 411.660, 411.816, 412.049, 2007 OL 861  
Stats. Implemented: ORS 411.060, 411.630, 411.635, 411.660, 411.816, 412.049, 2007 OL 861  
Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 7-2013(Temp), f. & cert. ef. 3-25-13 thru 9-21-13

## 461-195-0621

### Intentional Program Violations; Penalties and Liability for Overpayments

(1) Disqualification penalties resulting from intentional program violations and other violations of law are listed in this rule. A person may be subject to disqualification for an IPV only if the person was advised of the disqualification penalties prior to committing the IPV. A disqualification established in another state or established in the Food Distribution Program on Indian Reservations continues in effect in Oregon.

(2) In the ERDC program, if an IPV is established against a person through a contested case hearing, a waiver of the right to hearing, or by a state or federal court, that person is liable for repayment to the Department of the full amount of overpayment the Department has established. The amount of restitution to the Department ordered by a court as part of a criminal proceeding does not lower the amount owed to the Department. Payments of restitution to the Department are credited against the amount owed. A client is not subject to an IPV disqualification but is still required to repay overpayment amounts.

(3) A child care provider found to have committed an intentional program violation (IPV) is ineligible for payment for child care as follows:

(a) A child care provider with an IPV established between April 1, 2001 and September 30, 2005 is permanently disqualified to receive payment.

(b) A child care provider who has incurred an overpayment established as an IPV claim after September 30, 2005 is ineligible for payment:

(A) For six months and until the full amount of the overpayment is paid; or

(B) Permanently, if the Child Care Program Manager finds that such ineligibility is in the public interest. The following is a non-exclusive list of reasons that support a determination of permanent ineligibility: safety concerns; or, the likelihood of future violations; or, the degree of egregiousness of any of the established IPV's; or, the degree of primary involvement in the violation by the provider.

(4) In the SNAP and TANF programs, when an IPV is established against a person through a contested case hearing, a waiver of the right to hearing, or by a state or federal court:

(a) That person is liable for repayment to the Department of the full amount of overpayment the Department has established, regardless of any restitution ordered by a court.

(b) Except as otherwise set forth in this section, the client is disqualified from receiving benefits in the program in which the IPV was committed for a period of 12 calendar months for the first IPV, 24 calendar months for the second IPV, and permanently for the third IPV.

(c) A person found by a federal, state, or local court to have traded a controlled substance for SNAP benefits is disqualified from participation in the SNAP program as follows:

(A) For a period of two years upon the first occasion.

(B) Permanently upon the second occasion.

(d) A person found by a federal, state, or local court to have traded firearms, ammunition, or explosives for SNAP benefits is permanently disqualified from participation in the SNAP program.

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(e) A person convicted of trafficking (see OAR 461-195-0601) benefits for a value of \$500 or more is permanently disqualified from participation in the SNAP program.

(f) A person is disqualified for a 10-year period, except if permanently disqualified under subsection (b) of this section, from receiving benefits in the program in which the person committed fraud if the person:

(A) In TANF program:

(i) Is convicted in state or federal court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from two or more states under programs that are funded under Title IV or XIX of the Social Security Act; or

(ii) Is found in an IPV hearing or admits, in a written waiver of the right to an IPV hearing, to having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive benefits simultaneously from two or more states.

(B) In the SNAP program, is found to have or admits to having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple SNAP benefits simultaneously.

(5) If the TANF grant is affected by the IPV penalty imposed under this rule, eligibility for and the level of SNAP benefits are determined in accordance with OAR 461-145-0105.

(6) In the TA-DVS program, when an IPV is established against a person through a contested case hearing, a waiver of the right to hearing, or by a state or federal court:

(a) That person is liable for repayment to the Department of the full amount of overpayment the Department has established, regardless of any restitution ordered by a court. The Department will seek repayment from the client only if seeking repayment would not place the client at greater risk of domestic violence.

(b) Subsequent applications for TA-DVS that meet the eligibility criteria set forth in OAR 461-135-1215 and 461-135-1225 must be staffed with the Department's central office.

(7) The Department issues notice of disqualification in accordance with OAR 461-175-0220. The disqualification provided for in this rule begins the first of the month following the month in which the notice period ends.

(8) Once a disqualification period begins, it continues uninterrupted until completed, regardless of the eligibility of the filing group of the disqualified person.

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.049

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 7-2013(Temp), f. & cert. ef. 3-25-13 thru 9-21-13

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

**Adm. Order No.:** SSP 8-2013

**Filed with Sec. of State:** 4-1-2013

**Certified to be Effective:** 4-1-13

**Notice Publication Date:** 2-1-2013

**Rules Adopted:** 461-025-0301

**Rules Amended:** 461-001-0015, 461-025-0300, 461-120-0340, 461-125-0050, 461-125-0830, 461-130-0310, 461-135-0780, 461-135-1102, 461-145-0220, 461-145-0260, 461-155-0250, 461-155-0270, 461-155-0300, 461-155-0575, 461-160-0015, 461-160-0030, 461-160-0055, 461-160-0193, 461-160-0410, 461-160-0415, 461-160-0420, 461-160-0430, 461-165-0160, 461-165-0180, 461-180-0070, 461-190-0211

**Rules Repealed:** 461-025-0300(T), 461-025-0301(T), 461-125-0830(T), 461-130-0310(T), 461-135-0780(T), 461-135-1102(T), 461-145-0220(T), 461-145-0260(T), 461-155-0250(T), 461-155-0270(T), 461-155-0300(T), 461-155-0575(T), 461-160-0015(T), 461-165-0190, 461-190-0211(T)

**Subject:** OAR 461-001-0015 is being amended to define for the Supplemental Nutrition Assistance Program (SNAP) the age of an adult and the term "head of household" to clarify SNAP policies.

OAR 461-025-0300 about contested case hearings is being amended and OAR 461-025-0301 about lay representatives is being adopt-

ed to implement ORS 183.452 and satisfy requirements of the Oregon Department of Justice concerning use of lay representatives by the Department of Human Services and the restrictions that apply to them. OAR 461-025-0300 is also being amended to address the application of confidentiality laws to attendance at contested case hearings. These amendments also make permanent rule changes made on October 5, 2012.

OAR 461-120-0340 about the requirement for TANF applicants and recipients to cooperate with establishment of paternity and pursuit of child support is being amended to state that a caretaker relative who is a participant in JOBS Plus is excused from the requirement to cooperate.

OAR 461-125-0050 about determining deprivation in the MAA, MAF, and TANF programs for a child or unborn for whom paternity has not yet been legally established is being amended to remove requirement for both parents cooperate with the establishment of paternity if eligibility is based on incapacity or unemployment.

OAR 461-125-0830 about medical documentation is being amended to allow clients to turn in medical documentation from a broader range of medical professionals. This rule is also being amended to make permanent the temporary rule changes that were effective January 1, 2013.

OAR 461-130-0310 about how the Department assigns clients to one or more participation classifications is being amended to remove the exemption in the Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee (REF) and Temporary Assistance for Needy Families (TANF) programs for one-parent households with a dependent child under two years of age (other than teen parents who would retain the exemption). This rule is also being amended to comply with federal regulations that require medical documentation to exempt from participation requirements a parent providing care for a family member with a disability. This rule is also being amended to make permanent the changes adopted by temporary rule effective January 1, 2013.

OAR 461-135-0780, 461-145-0220, 461-155-0250, 461-155-0270, 461-155-0300, and 461-160-0015 are being amended to implement Social Security Administration cost of living adjustments for 2013. OAR 461-135-0780 is being updated to reflect new Pickle Amendment calculation multipliers for 2013. OAR 461-145-0220 is being updated with a new home equity value exclusion amount, raising the exclusion limit from \$525,000 to \$536,000. OAR 461-155-0250 is being amended to reflect new OSIPM financial eligibility standards, and eliminate the OSIPM-AB income standard. OAR 461-155-0270 and 461-155-0300 are being amended to reflect new income standards as a result of SSA cost of living adjustments. OAR 461-160-0015 is being amended to reflect the new resource limits for Medicare Savings Programs. These six rule are also being amended to make permanent changes adopted by temporary rule effective January 1, 2013.

OAR 461-135-1102 about effective dates for the Oregon Health Plan OPU program is being amended to allow recipients from the Family Health Insurance Assistance Program (FHIAP) to transition into OHP Standard if they are notified by FHIAP that their FHIAP subsidy will end on or after November 30, 2012, determined by FHIAP to be eligible for OHP Standard, and agree to move to OHP Standard. Without this rule amendment, approximately 800 individuals would lose their FHIAP subsidy due to budget constraints, requiring them to choose between loss of their current health coverage or paying the full premium to continue their health coverage. This rule is also being amended to make permanent a temporary rule amendment effective December 1, 2012.

OAR 461-145-0260 about Indian (Native American) benefits is being amended to state how payments from the Tribal Trust Accounting and Management Lawsuits are treated in eligibility process for Department programs covered under the Chapter 461 rules. This rule

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is also being amended to make permanent the changes adopted by temporary rule effective January 1, 2013.

OAR 461-155-0575 about in-home supplementation in the Oregon Supplemental Income Program Medical (OSIPM) is being amended to reflect the increased authorized payment amount for eligible clients. Effective November 1, 2012, this amount will be \$30 per month, and the amount will be stated in rule. The permanent rule had not stated the payment amount authorized (\$10 per month prior to November 1, 2012). This rule is also being amended to make permanent the temporary rule changes effective November 1, 2012.

OAR 461-160-0030 about deductibility of costs from income, OAR 461-160-0055 about medical costs that are deductible, OAR 461-160-0410 about use of income and income deductions in the SNAP program when there are ineligible or disqualified group members, OAR 461-160-0415 about medical deductions in the SNAP program, OAR 461-160-0420 about shelter cost in the SNAP program, and OAR 461-160-0430 about income deductions in the SNAP program are being amended to correct and clarify SNAP policy by replacing a range of terminology including client, household, financial group, need group and benefit group with the accurate use of the term “filing group” when explaining whose costs are allowed toward income deductions. The term “filing group” has a specific meaning in the SNAP program as set out in OAR 461-110-0370.

OAR 461-160-0193 about direct provider payments for TANF child care is being amended to align with the repeal of OAR 461-165-0190. Under these changes, child care payments paid directly to a client are no longer allowed.

OAR 461-165-0160 about payments to child care providers is being amended to specify that the Department will only pay for child care services for care provided on or after the date the provider has met the requirements to be listed and paid through the Department. This applies to individuals receiving child care benefits through the Employment Related Day Care (ERDC) program or Temporary Assistance to Needy Families Jobs Opportunities and Basic Skills (TANF-JOBS) program.

OAR 461-165-0180 about eligibility of child care providers is being amended to add requirements for providers that care for individuals receiving child care benefits through the Employment Related Day Care (ERDC) program or Temporary Assistance to Needy Families Jobs Opportunities and Basic Skills (TANF-JOBS) program. These additional requirements increase health and safety standards and align with the goals of the Governor’s Early Learning Council for quality child care. The amendments specify that providers are not eligible to receive payment or authorization for payment until the provider completes the Department’s listing process and be approved by the Department. Providers must provide information for FBI records checks. Reports of certain occurrence must be made in five days instead of 10 days. Gates and enclosures should have the Juvenile Products Manufacturers Association (JPMA) certification seal to ensure safety. No person may smoke or use smokeless tobacco in the home or facility during the hours the child care business is conducted. No person may smoke or use smokeless tobacco in motor vehicles while child care children are passengers. No one may consume alcohol or use non-prescription controlled substances in the presence of children. No one under the influence of alcohol or non-prescription controlled substances may be in the home when child care children are present. The location of child care may not be a hotel, motel, shelter, or other temporary housing such as a tent, trailer, motor home, or structure designed to be transportable and not attached to the ground, another structure, or to any utilities system on the same premises. Providers must comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety and crib standards and place infants to sleep on their backs.

OAR 461-165-0190 about payments paid directly to a client is being repealed to align with changes to OAR 461-165-0160. Under these changes, the Department will only pay for child care services

for care provided on or after the date the provider has met the requirements to be listed and paid through the Department. This applies to individuals receiving child care benefits through the Employment Related Day Care (ERDC) program or Temporary Assistance to Needy Families Jobs Opportunities and Basic Skills (TANF-JOBS) program.

OAR 461-180-0070 about effective dates for initial month benefits is being amended to align with the repeal of OAR 461-165-0190. Under this policy change, child care payments are no longer paid directly to a client.

OAR 461-190-0211 about case plan activities and standards for support service payments for the Department’s Temporary Assistance for Needy Families (TANF) and Job Opportunity for Basic Skills (JOBS) program is being amended to modify program restrictions implemented July 1, 2011 as a result of budget reductions from the 2011 legislative session. The changes allow ongoing TANF recipients to get credit for vocational training and on-the-job training (OJT) as countable work activities to meet federal work participation requirements. This amendment makes support services available for vocational training but not on-the-job training (the latter is provided by other workforce programs and partners). This rule is also being amended to add flexibility to approve more support service payments to assist more clients in becoming self sufficient. Near job ready individuals will be eligible for a broader array of support services. This rule is also being amended to allow JOBS Plus to continue as an activity in limited situations beyond six months. This rule is also being amended to make the rule consistent with changes to OAR 461-130-0310 in which an individual who is not a teen parent and who is otherwise exempt from JOBS requirements as a one-parent household with a dependent child under two years of age is no longer exempt from participation requirements in the JOBS program, and no longer treated as a volunteer. This rule is also being amended to set out situations in which support services are not allowed.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

### 461-001-0015

#### Definitions; SNAP

The following definitions apply to the rules of the SNAP program in chapter 461:

- (1) *Adult* means an individual 18 years of age or older.
- (2) A *disabled* individual or an individual with a *disability* means an individual who meets any of the following requirements:
  - (a) Receives SSI benefits under title XVI of the Social Security Act.
  - (b) Receives blindness or disability benefits under titles I, II, X, XIV, or XVI of the Social Security Act.
  - (c) Receives OSIP or other state or federal supplement under section 1616(a) of the Social Security Act based on disability or blindness criteria under title XVI of the Social Security Act.
  - (d) Receives state general assistance benefits based upon disability or blindness criteria under title XVI of the Social Security Act.
  - (e) Receives interim assistance pending receipt of SSI or receives disability-related medical assistance under title XIX of the Social Security Act.
  - (f) Receives a state or federally administered supplemental benefit under section 212(a) of Public Law 93-66.
  - (g) Receives an annuity payment under Section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible for Medicare by the Railroad Retirement Board.
  - (h) Receives an annuity payment under Section 2(a)(1)(v) of the Railroad Retirement Act of 1974 and meets the disability criteria used under title XVI of the Social Security Act.
  - (i) Receives VA benefits for non-service or service connected disability rated or paid as total under title 38 of the United States Code.
  - (j) Receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act.
  - (k) Has a disability considered permanent under 221(i) of the Social Security Act section and is the surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service connected death under title 38 of the United States Code.

# ADMINISTRATIVE RULES

Hist.: SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 8-2013, f. & cert. ef. 4-1-13

(l) Is a veteran or surviving spouse of a veteran considered by the VA to be in need of Aid and Attendance benefits or permanently housebound under title 38 of the United States Code.

(m) Is a surviving child of a veteran and considered permanently incapable of self support under title 38 of the United States Code.

(3) *Elderly* means an individual 60 years of age or older.

(4) *Employee* means an individual who works for another in return for financial or other compensation such as rent, but does not include an independent contractor.

(5) *Employer* means a person that employs one or more individuals for wages, salary, or other compensation such as rent.

(6) *Externship* means a required period of supervised practice completed off campus or away from an individual's school of higher education (see OAR 461-135-0570) in order to complete the requirements for the individual's degree.

(7) *Graduate assistantship* means an appointment as a graduate student *employee* offering a financial payment to the graduate student for part-time work in teaching, administration, or research while the graduate student completes the academic requirements for an advanced degree at a school of higher education (see OAR 461-135-0570). A *graduate assistantship* includes such positions as graduate assistant, graduate research assistant, graduate teaching assistant, and graduate teaching associate.

(8) *Graduate fellowship* means a school of higher education (see OAR 461-135-0570) awarded program, targeted to a specific student group or field of study, that may be awarded based on academic need, academic record, or merit.

(9) *Group living* means a public or private nonprofit residential setting that serves no more than 16 residents and is certified by State of Oregon under regulations issued under section 1616(e) of the Social Security Act (42 U.S.C. 1382e(e)). To be eligible for SNAP benefits, a resident of such a *group living* arrangement must be blind or have a *disability*.

(10) *Head of household* means a *primary person*.

(11) An individual is *homeless* if the individual does not have a fixed or regular nighttime residence or has a primary residence that is one of the following:

(a) A supervised shelter that provides temporary accommodations.

(b) A halfway house or residence for individuals who may become institutionalized.

(c) A temporary accommodation in another individual's or family's residence for 90 days or less.

(d) A place not designed to be or ordinarily used as a place for individuals to sleep, such as a hallway, bus station, or similar place.

(12) *Internship* means an official or formal program through a school of higher education (see OAR 461-135-0570) to provide practical experience for an individual beginning an occupation or profession.

(13) A *migrant farmworker* is an individual who regularly travels away from their permanent residence overnight, usually with a group of laborers, to seek employment in an agriculturally related activity. If any member of a SNAP household fits the definition of migrant farmworker at any time during the redetermination period, the household is budgeted according to the policy on migrant farmworkers.

(14) A *primary person* means:

(a) An adult in the *filing group* (see OAR 461-110-0370) who is designated by the group to serve as the primary person. Where there is no adult, the group can designate another responsible person in the *filing group*.

(b) Once the primary person has been designated, the filing group cannot choose a different individual to be the primary person during the same certification period (see OAR 461-001-0000) or during an OFSET or job quit disqualification period, unless there is a change in the composition of the *household group* (see OAR 461-110-0210).

(15) *Seasonal farmworkers* are individuals employed in agricultural employment of a seasonal or temporary nature. If any member of a SNAP household fits the definition of seasonal farmworker at any time during the redetermination period, the household is budgeted according to policy on seasonal farmworkers. Seasonal farmworkers are not required to be absent overnight from their permanent residence when:

(a) Employed on a farm or ranch performing field work related to planting, cultivation, or harvesting operations; or

(b) Employed in a canning, packing, ginning, seed conditioning, or related research or processing operation, and transported to or from the place of employment by means of a day-haul operation.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816 & 411.825

## 461-025-0300

### Contested Case Hearings

(1) The rules in division 25 of this chapter of rules apply to contested case hearings of the Department authorized by OAR 461-025-0310(1). The hearings are conducted in accordance with the Attorney General's model rules at 137-003-0501 and following, except to the extent that Department rules are permitted to and provide for different procedures.

(a) The method described in OAR 137-003-0520(11) is used in computing any period of time prescribed in this division of rules.

(b) In any contested case to which this division of rules applies:

(A) When a party or claimant is not represented by an attorney:

(i) Upon request of the party or claimant, the Department provides work contact information — telephone number and address — for any Department employees expected to testify at the hearing as witnesses, except rebuttal witnesses.

(ii) Except as provided in subparagraph (i) of this paragraph, the Department and any party or claimant in the contested case are not required to provide the telephone numbers and addresses of witnesses prior to the hearing.

(B) The Department does not provide the telephone number and addresses of a witness if the Department has concerns that the release of the information may affect the safety of the witness.

(2) When a Department employee represents the Department in a contested case to which this division of rules applies, requests for admission and written interrogatories are not permitted.

(3) The Department's contested case hearings governed by this division of rules are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the parties' consent and applicable confidentiality laws.

(4) The Department has adopted the exceptions to the Attorney General's model rules set out in subsection (1)(b) and section (2) of this rule due to its caseload volume and because these discovery procedures would unduly complicate or interfere with the hearing process.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.816, 412.014 & 412.049

Stats. Implemented: ORS 183.452, 409.010, 411.060, 411.404, 411.816, 412.014 & 412.049  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2012(Temp), f. & cert. ef. 1-31-12 thru 7-29-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 32-2012(Temp), f. & cert. ef. 10-5-12 thru 4-3-13; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-025-0301

### Lay Representation in Contested Case Hearings

(1) Subject to the approval of the Attorney General, an officer or employee of the Department of Human Services (Department) is authorized to appear on behalf of the Department in the following types of hearings conducted by the Office of Administrative Hearings:

(a) Public assistance, including but not limited to eligibility for benefits, the level and amount of benefits, and effective date and the suspension, reduction, or denial of benefits, medical assistance services, prior authorizations, or medical management decisions;

(b) Employment-Related Day Care;

(c) Eligibility for Supplemental Nutrition Assistance Program (SNAP), the level and amount of benefits, and effective date; and

(d) Client overpayments.

(2) The Department's representative may not make legal argument on behalf of the Department.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the Department to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the Department; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses, or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the Department in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

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(E) The correctness of procedures being followed in the contested case hearing.

(3) When an officer or employee appears on behalf of the Department, the administrative law judge shall advise the Department's representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection.

(4) If the administrative law judge determines that statements or objections made by the Department representative appearing under section (1) of this rule involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the Department representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(5) The Department is subject to the Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by the Oregon Department of Justice and available on its website at <http://www.doj.state.or.us>. A Department representative appearing under section (1) of this rule must read and be familiar with it.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.816, 412.014 & 412.049  
Stats. Implemented: ORS 183.452, 409.010, 411.060, 411.404, 411.816, 412.014 & 412.049  
Hist.: SSP 32-2012(Temp), f. & cert. ef. 10-5-12 thru 4-3-13; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-120-0340

### Client Required To Help Department Obtain Support From Noncustodial Parent; TANF

In the TANF program:

(1) To be eligible for program benefits, except as permitted in section (2) of this rule, a *caretaker relative* (see OAR 461-001-0000) must make a *good faith effort* to help the Department:

(a) Establish paternity of each needy child; and  
(b) Locate and obtain support payments from the noncustodial parent of each needy child.

(2) A *caretaker relative* is excused from the requirements of section (1) of this rule:

(a) For *good cause* under OAR 461-120-0350;  
(b) If the *caretaker relative* is a participant in the JOBS Plus, Post-TANF, or SFPSS programs; or  
(c) If the *filing group* (see OAR 461-110-0330) is a two-parent family.

(3) A *good faith effort* includes taking such actions as:

(a) Supplying *sufficient information* for the Division of Child Support (DCS) to proceed with appropriate actions to establish paternity of a dependent child, to locate noncustodial parents, or to establish a support order with respect to the child. *Sufficient information* includes, but is not limited to, the time and place of each child's conception (if paternity is not established) and the following information, if known to the *caretaker relative*, regarding any noncustodial parent of a needy child:

(A) Full legal name and nicknames.  
(B) Social Security Number.  
(C) Current or last known address.  
(D) Current or last known employer, including name and address.  
(E) If a student, current or last known school.  
(F) Criminal record, including where and when incarcerated.  
(G) Date of birth, or age.  
(H) Race.  
(I) Any known group or organizational affiliations.  
(J) Names and addresses of close friends or relatives.  
(K) Any other information the Department or DCS requests to help locate or identify an absent parent of any children in the benefit group.

(b) Supplying documentation or an explanation of the client's efforts to obtain information requested by the Department or DCS (if unable to provide any necessary information listed in subsection (a) of this section).

(c) Keeping appointments with the Department and DCS related to establishing paternity.

(d) Returning telephone calls and responding to correspondence when requested to do so by the Department or DCS.

(4) If a client who has not been excused under section (2) of this rule has the opportunity to make a *good faith effort* to help the Department establish paternity of a needy child or locate or obtain support payments from the noncustodial parent of a needy child (and is unable to show he or she has *good cause* under OAR 461-120-0350), the Department applies penalties for failure to comply with requirements of section (1) of this rule in the following manner until the client meets the requirements of this rule:

(a) For a *benefit group* (see OAR 461-110-0750) not currently receiving TANF, if the failure to comply occurs while an application for TANF is pending the *filing group* (see OAR 461-110-0330) is ineligible.

(b) For a *benefit group* receiving TANF benefits, if a failure to comply occurs, the net monthly TANF benefit, after reductions for the client's failure to comply with requirements of the JOBS program are made, is reduced by:

(A) 25 percent for the first month following the month in which failure to comply is determined.

(B) 50 percent for the second month following the month in which failure to comply is determined.

(C) 75 percent for the third month following the month in which failure to comply is determined.

(D) 100 percent (total ineligibility for the *benefit group*) for the fourth and subsequent months following the month in which failure to comply is determined.

(c) Once a penalized client complies with the requirements and benefits are no longer reduced under this rule, a subsequent penalty is imposed without regard to any prior penalty.

(d) If the TANF payment is affected by the penalty imposed under this rule, eligibility for and the level of SNAP benefits are determined as if the client were receiving cash benefits without reduction due to the penalty.

(5) The penalty provided by this rule ends when the client meets the requirements of section (1) of this rule.

Stat. Auth.: ORS 411.060, 411.070, 412.024 & 412.049  
Stats. Implemented: ORS 411.060, 411.070, 412.024 & 412.049  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 12-2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 29-2011(Temp), f. & cert. ef. 10-5-11 thru 4-2-12; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 24-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-28-12; SSP 36-2012, f. 12-28-12, cert. ef. 12-29-12; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-125-0050

### Determining Deprivation for Child/Unborn without Legal Paternity

In the MAA, MAF, and TANF programs, deprivation is based only on incapacity, underemployment, or unemployment if:

(1) The mother and alleged father of the dependent child (see OAR 461-001-0000) or unborn are living together; and

(2) Either the mother or the alleged father claim the alleged father is, in fact, the father, and no other man has been identified as the father.

Stat. Auth.: ORS 411.060, 411.070, 411.081, 411.085, 411.300, 411.404, 411.632, 412.006 & 412.024  
Stats. Implemented: ORS 411.060, 411.070, 411.081, 411.085, 411.300, 411.404, 411.632, 412.006, 412.024 & 412.049  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-125-0830

### Medical Documentation, Disability and Other Determinations

(1) Medical documentation must be written and must contain all the following:

(a) A diagnosis in medical terminology, including an explanation of whether the impairment limits the individual's ability to perform normal functions and, if so, how.

(b) A prognosis, including an expected recovery time frame.

(c) Clinical findings from physical examination, psychiatric evaluation, X rays, or a laboratory procedure, including specific data supporting diagnosis of a condition that causes disability, either on a medical or psychiatric basis.

(2) Except as provided otherwise in section (3) of this rule:

(a) To determine eligibility, the Department will accept evaluations from the following medical sources: medical evaluations only from licensed physicians, including psychiatrists, osteopaths, and ophthalmologists; mental evaluations only from psychiatrists and licensed or certified psychologists; and measurement of visual acuity and visual fields only from ophthalmologists and licensed optometrists.

(b) The Department will accept supplemental medical and vocational information to augment evaluations from acceptable medical sources, from a licensed social worker, licensed physical or occupational therapist, or licensed nurse practitioner.

(3) Except for eligibility determinations in the OSIP, OSIPM, QMB, and SFPSS programs, the Department will also accept medical evaluations



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from licensed nurse practitioners and physician assistants; and mental evaluations from psychiatric mental health nurse practitioners.

(4) The client must provide or cooperate in obtaining sufficient medical documentation for the Department to determine eligibility.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.710, 412.006, 412.009, 412.014 & 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.710, 412.006, 412.009, 412.014 & 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-130-0310

### Participation Classifications: Exempt, Mandatory, and Volunteer

(1) In the Post-TANF, Pre-TANF, REF, SNAP, and TANF programs:

(a) The Department assigns a client to one or more employment program participation classifications — *exempt*, *mandatory*, and *volunteer* (see OAR 461-130-0305 for definitions of all three terms).

(b) In the Post-TANF program, a client is classified as a *volunteer*.

(2) In the Pre-TANF, REF, and TANF programs:

(a) A client is *exempt* from employment program participation and disqualification if the client meets the requirements of at least one of the following paragraphs. The client is:

(A) Pregnant and in the month before the month in which the due date of the pregnancy falls.

(B) A *parent* (see OAR 461-001-0000) during the first six months after the birth of the parent's *dependent child* (see OAR 461-001-0000) except that the Department may require the *parent* to participate in parenting classes or a *family stability activity* (see 461-001-0000). An exemption allowed under this paragraph may apply only to one *mandatory* participant in each filing group.

(C) Under 20 years of age during the first 16 weeks after giving birth except that the client may be required to participate in suitable activities with a preference for educational activities, parenting classes, and *family stability activity*.

(D) A *parent* providing care for a family member who is an individual with a *disability* (see OAR 461-001-0000) and is in the *household group* (see OAR 461-110-0210) with the *parent*. Medical documentation to support the need for the care is required.

(E) An REF client 65 years of age or older.

(F) A TANF client 60 years of age or older.

(G) A noncitizen who is not authorized to work in the United States.

(H) An individual who is eligible for and receives supplemental security income (SSI) from the Social Security Administration.

(I) A *caretaker relative* (see OAR 461-001-0000) who is non-needy.

(J) A client whose participation is likely to cause undue hardship or is contrary to the best interests of the *dependent child* or *needy caretaker relative*.

(K) A pregnant client who participates more than 10 hours per week during the two months before the month in which the pregnancy due date falls.

(L) A VISTA volunteer.

(b) A *parent* of a *dependent child* who receives REF or TANF program benefits is mandatory if the *parent* is in the same filing group (see OAR 461-110-0330) with the *dependent child* (even if the parent is not in the REF or TANF program benefit group under 461-110-0750), unless the *parent* is otherwise *exempt* from participation under subsection (a) of this section.

(3) In the SNAP program:

(a) A client is *exempt* from employment program participation and disqualification if the client meets the requirements of one of the following paragraphs. The client is:

(A) Working a minimum of 30 hours a week or earning money equal to at least the federal minimum wage multiplied by 30 hours per week multiplied by 4.3 weeks. A self-employed client with allowable costs must meet the earnings threshold after allowing the 50 percent deduction. This includes migrant and seasonal farm workers (see OAR 461-001-0015) who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days.

(B) An individual with a physical or mental condition that prevents performance of any work.

(C) Responsible for the care of a child in the household under 6 years of age or an individual in the household with a disability (see OAR 461-001-0015) that substantially reduces or eliminates the individual's ability to care for himself or herself.

(D) Providing care for at least 30 hours a week for an individual in another household with a *disability* (see OAR 461-001-0015) that substan-

tially reduces or eliminates the individual's ability to care for himself or herself.

(E) Enrolled at least half-time, as defined by the school, in any high school or equivalent program recognized by a school district or enrolled at least half-time in any school, training program, or institution of higher education. Clients remain exempt during normal periods of class attendance, vacation and recess but no longer qualify for the student exemption when a break in enrollment occurs due to graduation, suspension or expulsion or when the student drops out of school or does not enroll in classes for the next regular school term (excluding summer term).

(F) Receiving REF or TANF program benefits, while a *mandatory* participant in the JOBS or NAES programs.

(G) In receipt of unemployment insurance benefits or has completed an application for unemployment insurance benefits and is waiting for an initial decision on the claim.

(H) Participating in a drug or alcohol treatment and rehabilitation program.

(I) Pregnant.

(J) Lacking adequate dependent care.

(K) Without adequate transportation available.

(L) Experiencing a barrier to employment, such as being homeless or having a short-term physical or mental limitation or a serious family problem.

(b) A *mandatory* client is an individual in the *need group* (see OAR 461-110-0630); who is 16 or 17 years of age and a *primary person* (see 461-001-0015), or 18 years of age and older and 59 years of age and younger; and who is not *exempt* under subsection (a) of this section.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.660, 411.710, 411.816, 412.006, 412.009, 412.014 & 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.710, 411.816, 412.006, 412.009, 412.014, 412.049 & 2011 OL 604

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-135-0780

### Eligibility for Pickle Amendment Clients; OSIPM

(1) An individual is eligible for OSIPM under this rule and the so-called Pickle amendment (Pub. L. No. 94 566, § 503, title V, 90 Stat. 2685 (1976)), if he or she meets all other eligibility requirements, and:

(a) Is receiving Social Security Benefits (SSB);

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the individual was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB benefits.

(2) The SSB amount received by the individual when he or she became ineligible for SSI or OSIPM is used as the individual's countable Social Security income, for the purposes of the Pickle Amendment. If the amount cannot be determined, it is calculated in accordance with sections (3) and (4) of this rule.

(3) Determine the month in which the individual was entitled to Social Security and received SSI in the same month. Use the table in section (4) of this rule to find the percentage that applies to that month. Multiply the present amount of the individual's Social Security benefits by the applicable percentage. This amount, rounded down to the next lower whole dollar, is the individual's countable Social Security for purposes of this rule and the Pickle Amendment. Add that figure to any other countable unearned income plus adjusted earned income of the individual, and if the total is less than the full SSI income standard for a single individual plus the \$20 unearned income deduction (OAR 461-160-0550), the individual is eligible for OSIPM for purposes of this rule and the Pickle amendment. For spouses in the same *financial group* (see OAR 461-110-0530), perform the above calculation for each spouse, combine the results and add the subtotal to all other countable unearned and adjusted earned income. If the total is less than the full SSI standard for a couple plus the \$20 unearned income deduction (OAR 461-160-0550), the couple is eligible for OSIPM for purposes of this rule and the Pickle amendment. All other financial and non-financial eligibility criteria must be met.

(4) The following guide contains the calculations used to determine the SSB for prior years: [Calculations not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.070, 411.404

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Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2003(Temp), f. & cert. ef. 6-18-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-135-1102

### OHP-OPU; Effective Dates for the Program

(1) Effective July 1, 2004, the OHP-OPU program is closed to new applicants other than an *OHP Reservation List Applicant* permitted under OAR 461-135-1125. Except as provided in sections (2) to (3) of this rule, a new applicant is an individual with a *date of request* (see OAR 461-115-0030) after June 30, 2004. A new applicant cannot be found eligible for the OHP-OPU program.

(2) An individual is not a new applicant if the Department determines that the individual is continuously eligible for medical assistance as follows:

(a) The individual is eligible for and receiving benefits under the OHP-OPU program on June 30, 2004, or after that date pursuant to subsections (b) to (e) of this section, and the Department determines that the individual continues after that date to meet the eligibility requirements for the OHP-OPU program.

(b) The individual is eligible for and receiving benefits under the CAWEM program on June 30, 2004, and is eligible for the CAWEM program based on the OHP-OPU program, and the Department determines that the individual continues to meet the eligibility requirements for the OHP-OPU program except for citizenship or alien status requirements.

(c) The eligibility of the individual ends under the BCCM, CEC, CEM, EXT, GAM, HKC, MAA, MAF, OHP-CHP, OHP-OPC, OHP-OPP, OSIPM, REFM, or SAC program, or the related CAWEM program; or because the individual has left the custody of the Oregon Youth Authority (OYA); and at that time the Department determines that the individual meets the eligibility requirements for the OHP-OPU program.

(d) The individual is a child in the custody of the Department whose eligibility for Medicaid ends because of the child's age and at that time the Department determines that the individual meets the eligibility requirements for the OHP-OPU program.

(e) The Department determines that the individual was continuously eligible for the OHP-OPU program on or after June 30, 2004 under subsections (a) to (d) of this section.

(3) An individual who is not continuously eligible under section (2) of this rule is not a new applicant if the individual:

(a) Has eligibility end under the BCCM, CEC, CEM, EXT, GAM, HKC, MAA, MAF, OHP-CHP, OHP-OPP, OHP-OPU, OSIPM, REFM, or SAC program, or the related CAWEM program; because the individual has left the custody of the OYA; or is a child in the custody of the Department whose eligibility for Medicaid ends due to the child's age;

(b) Established a *date of request* prior to the eligibility ending date in subsection (a) of this section; and

(c) Meets the eligibility requirements for the OHP-OPU program or the related CAWEM program within 45 days of the *date of request*.

(4) An individual who is not continuously eligible under section (2) of this rule is not a new applicant if the individual is a Family Health Insurance Assistance Program (FHIAP) recipient who:

(a) Is notified by FHIAP that the recipient's subsidy will end on or after November 30, 2012 due to budget shortfalls;

(b) Is determined by FHIAP to be eligible for OHP-OPU; and

(c) Indicates to FHIAP that the recipient agrees to move to OHP-OPU.

(5) Except as provided in section (2) of this rule, an individual who loses eligibility for a medical assistance program and applies or reapplies for medical assistance is treated as a new applicant for purposes of the OHP-OPU program.

(6) The Department intends that effective July 1, 2004, all other rules related to application, certification, recertification, or eligibility for the OHP-OPU program be applied and construed to achieve the purpose of this rule and that in the event of any ambiguity this rule controls.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 414.712 & 414.826

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 414.712, 414.826, 414.831, 414.839, 420.014 & 420.054

Hist.: SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 2-2008(Temp), f. & cert. ef. 1-28-08 thru 6-30-08; SSP 13-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 10-2010(Temp), f. & cert. ef. 4-21-10 thru 10-18-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 35-2012(Temp), f. 11-30-12, cert. ef. 12-1-12 thru 5-30-13; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-145-0220

### Home

(1) Home defined: A home is the place where the filing group lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:

(a) Land on which the home is built and contiguous property.

(A) In all programs except the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs property must meet all the following criteria to be considered contiguous property:

(i) It must not be separated from the land on which the home is built by land owned by people outside the *financial group* (see OAR 461-110-0530).

(ii) It must not be separated by a public right-of-way, such as a road.

(iii) It must be property that cannot be sold separately from the home.

(B) In the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, contiguous property is property not separated from the land on which the home is built by land owned by people outside the *financial group*.

(b) Other dwellings on the land surrounding the home that cannot be sold separately from the home.

(2) Exclusion of home and other property:

(a) For a client who has an *initial month* (see OAR 461-001-0000) of long-term care on or after January 1, 2006:

(A) For purposes of this subsection:

(i) The definition of "child" in OAR 461-001-0000 does not apply.

(ii) "Child" means a biological or adoptive child who is:

(I) Under age 21; or

(II) Any age and meets the Social Security Administration criteria for blindness or disability.

(B) The equity value of a home is excluded if the requirements of at least one of the following subparagraphs are met:

(i) The child of the client occupies the home.

(ii) The spouse of the client occupies the home.

(iii) The equity in the home is \$536,000 or less, and the requirements of at least one of the following sub-subparagraphs are met:

(I) The client occupies the home.

(II) The home equity is excluded under OAR 461-145-0250.

(III) The home is listed for sale per OAR 461-145-0420.

(iv) Notwithstanding OAR 461-120-0330, the equity in the home is more than \$536,000 and the client is unable legally to convert the equity value in the home to cash.

(b) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.

(c) In the SNAP program, the value of land is excluded while the group is building or planning to build their home on it, except that if the group owns (or is buying) the home they live in and has separate land they intend to build on, only the home in which they live is excluded, and the land they intend to build on is treated as real property in accordance with OAR 461 145 0420.

(3) Exclusion during temporary absence: If the value of a home is excluded under section (2) of this rule, the value of this home remains excluded in each of the following situations:

(a) In all programs except the GA, GAM, OSIP, OSIPM, and QMB programs, during the temporary absence of all members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.

(b) In the SNAP program, when the *financial group* is absent because of employment or training for future employment.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, when the client is absent to receive care in a medical institution, if one of the following is true:

(A) The absent client has provided evidence that he or she will return to the home. The evidence must reflect the subjective intent of the client, regardless of the client's medical condition. A written statement from a competent client is sufficient to prove the intent.

(B) The home remains occupied by the client's spouse, child, or a relative dependent on the client for support. The child must be less than 21 years of age or, if over the age of 21, blind or an individual with a disability as defined by SSA criteria.

(d) In the MAA, MAF, REF, REFM, SAC, and TANF programs,

when all members of the filing group are absent because:

# ADMINISTRATIVE RULES

(A) The members are employed in seasonal employment and intend to return to the home when the employment ends; or

(B) The members are searching for employment, and the search requires the members to relocate away from their home. If all members of the filing group are absent for this reason, the home may be excluded for up to six months from the date the last member of the filing group leaves the home to search for employment. After the six months, if a member of the filing group does not return, the home is no longer excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816 & 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-145-0260

### Indian (Native American) Benefits

(1) The following Indian (Native American) benefits are excluded:

(a) Indian lands held jointly with the tribe, or land that cannot be sold without the approval of the Bureau of Indian Affairs (BIA).

(b) Payments to Puyallup Tribe members from the trust funds established under Public Law 101-41.

(c) Payments from the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (Public Law 103-436).

(2) Payments from the BIA are treated as follows:

(a) In the SNAP program, payments from the General Assistance program are counted as unearned income.

(b) In all programs except the SNAP program, payments from the General Assistance program are excluded.

(c) The treatment of educational income is covered by OAR 461-145-0150.

(3) In the GA and GAM programs, Indian benefits described in sections (4) to (12) of this rule are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120), unless the client verifies that such benefits are excluded by the public law for state-funded programs.

(4) In all programs except the GA and GAM programs, payments under Public Law 92-203 (Alaska Native Claim Settlement Act) are treated as follows:

(a) In the SNAP program, the entire payment is excluded.

(b) In all programs except the GA, GAM, and SNAP programs:

(A) Only the tax-exempt portion of the payment is excluded.

(B) The remainder of the payment is counted as unearned income.

(5) In all programs except the GA and GAM programs, the following types of distributions provided under Public Law 100-241 (Alaska Native Claim Settlement Act) are excluded:

(a) Stock.

(b) A partnership interest.

(c) Land or interest in land.

(d) An interest in a settlement trust.

(e) The first \$2,000 of each per-capita payment per year for each member of the *financial group* (see OAR 461-110-0530) who receives the payment. The amount over \$2,000 paid to each member of the *financial group* who receives the per-capita payment is counted as lump-sum income (see 461-140-0120).

(6) In all programs except the GA and GAM programs, the Department excludes Indian benefit payments when federal law requires an exclusion. These include payments under each of the following federal laws:

(a) The Aroostook Band of Micmacs under Public Law 102-171.

(b) Blackfeet, Cherokee, Cheyenne, Chippewa, and Sioux tribes under Public Law 94-114, when the payment is from submarginal land held in trust by the United States.

(c) Blackfeet Indians under Public Law 92-254.

(d) Grand River Ottawa Indians under Public Law 94-540.

(e) Hopi or Navajo Indians under Public Law 93-531.

(f) Passamaquoddy Tribe and Penobscott Nation, including the Holton Band of Maliseet Indians, under the Indian Claims Settlement Act (Public Law 96-420).

(g) Umpqua Tribe Cow Creek Band under Public Law 100-139.

(h) Yakima Nation Confederated Tribes and Bands of the Mescalero Reservation Apache Tribe under Public Law 95-433.

(7) In all programs except the GA, GAM, and SNAP programs, payments received from trust or restricted lands under Public Law 93-134, Public Law 97-458, and Public Law 103-66 are excluded. In the SNAP program, payments received from trust or restricted lands under 25 USC 1408

(Public Law 93-134, Public Law 97-458, and Public Law 103-66) are treated as follows:

(a) Excluded as a resource.

(b) The first \$2,000 of each per-capita payment per year for each member of the *financial group* (see OAR 461-110-0530) who receives the payment is excluded as income.

(c) The amount over \$2,000 per year paid to any member of the *financial group* is counted as *periodic income* (see OAR 461-140-0110).

(8) In all programs except the GA and GAM programs, payments to Seminole Tribe members under Public Law 101-277 are treated as follows:

(a) The first \$2,000 of each per-capita payment per year is excluded for each member of the *financial group* who receives the payment.

(b) The amount over \$2,000 paid to each member of the *financial group* who receives the per-capita payment is counted as lump-sum income (see OAR 461-140-0120).

(9) In all programs except the GA and GAM programs, payments from the distribution of judgment funds to members of the Confederated Tribes of the Umatilla under Public Law 91-259 are treated as follows:

(a) The first \$2,000 of each per-capita payment per year is excluded for each member of the *financial group* who receives the payment.

(b) The amount over \$2,000 paid to each member of the *financial group* who receives the per-capita payment is counted as lump-sum income (see OAR 461-140-0120).

(10) In all programs except the GA and GAM programs, payments for assets held in trust to the Sac and Fox Tribe of Oklahoma and Sac and Fox Tribe of the Mississippi in Iowa by the Indian Claims Commission under Public Law 94-189, Section 6 (The Sac and Fox Indian Claims Agreement) are treated as follows:

(a) The first \$2,000 of each per-capita payment per year is excluded for each member of the *financial group* who receives the payment.

(b) The amount over \$2,000 paid to each member of the *financial group* who receives the per-capita payment is counted as lump-sum income (see OAR 461-140-0120).

(11) In all programs except the GA and GAM programs, payments from judgment funds held in trust by the U.S. Secretary of the Interior under Public Law 98-64 are excluded.

(12) In all programs except the GA and GAM programs, Indian Child Welfare payments under Public Law 95-608 are excluded.

(13) Tribal payments for child care are treated as follows:

(a) Provider-direct payments are counted as the provider's earned income.

(b) All client-direct payments are excluded.

(14) In each program, any Indian benefit payments distributed by the tribe and not excluded for that program by public law are counted as unearned income.

(15) Payments in the tribal-TANF program are counted in the same manner as TANF program payments under OAR 461-145-0410.

(16) In the GA, GAM, OSIP, OSIPM, and QMB programs, Individual Indian Money (IIM) accounts are treated as follows:

(a) For a restricted account:

(A) A deposit required by the BIA is excluded as income and as a resource.

(B) A deposit not required by the BIA is counted or excluded as income in accordance with this chapter of rules based on the source of the deposit. The deposit is excluded as a resource.

(C) A withdrawal is treated in accordance with this chapter of rules based on the source of the funds withdrawn. When funds in the account include both excluded and non-excluded funds, the Department presumes that the non-excluded funds are withdrawn first.

(b) For an unrestricted account: Deposits and withdrawals are treated in accordance with this chapter of rules based on the source of the deposit or withdrawal. When funds in the account include both excluded and non-excluded funds, the Department presumes that the non-excluded funds are withdrawn first.

(17) Payments from the Tribal Trust Accounting and Management Lawsuits under Public Law 111-291 (section 101) are treated as follows:

(a) The payments are excluded as income in the month of receipt.

(b) The payments are excluded as a resource for the 12 calendar months following the receipt of the payment as long as they are not commingled with other funds.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.014 & 412.049

Stats. Implemented: ORS 411.060, 411.083, 411.404, 411.816, 412.014 & 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 28-2012(Temp),

# ADMINISTRATIVE RULES

f. & cert. ef. 8-7-12 thru 2-3-13; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-155-0250

### Income and Payment Standard; OSIPM

(1) A client who is assumed eligible per OAR 461-135-0010(6) is presumed to meet the income limits for the OSIPM program.

(2) A client in a *nonstandard living arrangement* (see OAR 461-001-0000) meeting the requirements of OAR 461-135-0750, who is not assumed eligible and does not meet the income standards set out in section (4) of this rule, must have countable income that is equal to or less than 300 percent of the full SSI standard for a single individual (except OSIPM-EPD) or have established a qualifying trust as specified in 461-145-0540(9)(c).

(3) The OSIPM (except OSIPM-EPD) adjusted income standard takes into consideration the need for shelter (housing and utilities), food, and other items. The standard is itemized as follows: [Table not included. See ED. NOTE.]

(4) A client, other than one identified in section (1), (2), or (6) of this rule, must have adjusted income below the standard in this section. The Department determines the adjusted number in the household under OAR 461-155-0020. [Table not included. See ED. NOTE.]

(5) In the OSIPM program, individuals in a nursing facility or an ICF-MR are allowed the following amounts for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.

(b) For all other clients, \$30 is allowed.

(6) In the OSIPM-EPD program, the adjusted earned income limit is 250 percent of the federal poverty level for a family of one.

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

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704 & 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704 & 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp), f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; Suspended by SSP 3-2007(Temp), f. & cert. ef. 3-9-07 thru 6-30-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; Suspended by SSP 5-2007(Temp), f. 3-30-07, cert. ef. 4-1-07 thru 6-30-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 2-2009(Temp), f. 2-27-09, cert. ef. 3-1-09 thru 8-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 5-2012(Temp), f. & cert. ef. 2-1-12 thru 7-30-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-155-0270

### Room and Board Standard; OSIPM

For an OSIPM program client in a waived *community based care* (see OAR 461-001-0000) facility, the room and board standard is \$552.70. A client residing in a *community based care* facility must pay room and board.

Stat. Auth.: ORS 411.060, 411.070, 411.704 & 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.704 & 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 1-2013(Temp), f. & cert. ef. 1-8-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-155-0300

### Shelter-in-Kind Standard

In the OSIP, OSIPM, and QMB programs, the Shelter-in-Kind Standard is:

(1) For a single person:

- (a) Living alone, \$436 for total shelter or \$262 for housing costs only.
- (b) Living with others, \$202 for total shelter or \$121 for housing costs only.

(2) For a couple:

- (a) Living alone, \$539 for total shelter or \$323 for housing costs only.
- (b) Living with others, \$200 for total shelter or \$120 for housing costs only.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 25-1991, f. & cert. ef. 1-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 17-1993(Temp), f. & cert. ef. 9-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13

## 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);

(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) An eligible client (under section (1) of this rule) receives a \$30 monthly payment. The payment is considered reimbursement for uncovered assistance needs.

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; Administrative correction, 2-6-12; SSP 33-2012(Temp), f. 10-31-12, cert. ef. 11-1-12 thru 4-30-13; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-160-0015

### Resource Limits

(1) In the EA program, all *countable* (see OAR 461-001-0000) resources must be used to meet the emergent need.

(2) In the ERDC, EXT, HKC, and REFM programs, and for an individual whose eligibility is determined under the OHP-CHP, OHP-OPC, OHP-OPP, or OHP-OP6 programs, there is no resource limit.

(3) In the GA, GAM, OSIP, and OSIPM programs, the resource limit is as follows:

(a) \$2,000 for a one-person *need group* (see OAR 461-110-0630) and \$3,000 for a two-person *need group*.

(b) \$1,000 for an OSIP *need group* eligible under OAR 461 135 0771.

The total cash resources may not exceed \$500 for a one-person *need group* or \$1,000 for a two-person *need group*.

(c) \$5,000 is the limit for the OSIP-EPD and OSIPM-EPD programs (see OAR 461-001-0035 and 461-145-0025 for funds that may be excluded as approved accounts).

(4) In the MAA, MAF, REF, SAC, and TANF programs, the resource limit is:

(a) \$2,500 for any of the following:

(A) A new MAA, MAF, REF, SAC or TANF applicant for benefits.

(B) MAA, MAF, REF, SAC, and TANF *need groups* which do not have at least one *caretaker relative* or *parent* who is receiving TANF.

(C) MAA, MAF, REF, SAC, and TANF *need groups* which have at least one JOBS participant who is:

- (i) Receiving TANF and not progressing in an *activity* (see OAR 461-001-0025) of an open JOBS case plan (see 461-001-0025); or
- (ii) Serving a current JOBS disqualification.

(b) \$10,000 for a *need group* not covered under subsection (a) of this section.

# ADMINISTRATIVE RULES

(5) In the OHP program, the resource limit for an individual whose eligibility is determined under the OHP-OPU program is \$2,000.

(6) In the QMB program, the resource limit is amended in January of each year based on the low income subsidy for Medicare Part D as published by the Health Resources and Services Administration of the U.S. Department of Health and Human Services. Effective January 1, 2013 the resource limit is \$7,080 for a one-person *need group* and \$10,620 for a *need group* containing two or more individuals.

(7) In the SNAP program, the resource limit is:

(a) \$3,250 for a *financial group* (see OAR 461-110-0530) with at least one member who is *elderly* (see 461-001-0015) or an individual with a *disability* (see 461-001-0015).

(b) \$2,000 for all other financial groups.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049 & 414.231  
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.831 & 414.839  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-1; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-160-0030

### Overview of Costs

(1) Costs incurred by the filing group that the filing group has a legal responsibility to pay are deductible from income in accordance with the rules in this division of rules.

(2) The following costs are not deductible:

(a) A cost paid by someone outside the filing group through a reimbursement, vendor payment, or in kind benefit.

(b) A cost that is paid by a person or company outside the filing group or that is written off by a medical facility. These are referred to as third party payments.

(c) The cost for a service provided by someone in the filing group, such as child care provided by the father while the mother works.

(d) A cost used as an income deduction in one budget month or averaged over several months cannot be used again.

(e) In the OSIPM program, a cost that the client incurred while the client was serving a disqualification from Medicaid under OAR 461-140-0210 to 461-140-0300 for a transfer of assets for less than fair market value.

(3) In the OSIP and OSIPM programs, to determine the medical deduction allowed under OAR 461-160-0620, the Department uses one of the following methods:

(a) Consider the expenses as actually incurred each month; or

(b) Consider projected medical expenses during a prospective period not to exceed six months. Base the projection on actual expenses experienced in a preceding period (not to exceed six months) and on any expenses expected to be incurred by the individual during the prospective period. Expected expenses cannot be averaged.

Stat. Auth.: ORS 409.050, 411.060, 411.400, 411.816, 412.014 & 412.049  
Stats. Implemented: ORS 409.010, 411.060, 411.400, 411.816, 412.014 & 412.049  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1990, f. & cert. ef. 2-16-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-160-0055

### Medical Costs That are Deductible; GA, GAM, OSIP, OSIPM, SNAP

(1) This rule applies only to SNAP *filing group* (see OAR 461-110-0370) members who are *elderly* (see 461-001-0015) or who have a *disability* (see 461-001-0015), and to clients in the GA, GAM, OSIP, and OSIPM programs.

(2) Medical costs are deductible to the extent a deduction is authorized in OAR 461-160-0415 and 461-160-0430 and in this rule.

(3) Health and hospitalization insurance premiums and coinsurance are deductible. In the OSIPM and SNAP programs, health insurance pre-

miums paid less frequently than monthly may be prorated over the period covered by the premium.

(4) In the OSIPM and SNAP programs:

(a) Long-term care insurance premiums are deductible if the insurance pays for services while an individual is:

(A) Receiving waived services;

(B) Receiving nursing facility services; or

(C) In an intermediate care facility for the mentally retarded (ICF/MR).

(b) A policy that is set up to pay a lump sum, similar to life insurance, is not deductible.

(5) The cost of a medical service is deductible if it is:

(a) Provided by, prescribed by, or used under the direction of a licensed medical practitioner; or

(b) Except in the SNAP program, a medical necessity approved by the Department.

(6) Medical deductions are also allowed for, among other things, the cost of:

(a) Medical and dental care, including psychotherapy, rehabilitation services, hospitalization, and outpatient treatment.

(b) Prescription drugs and over-the-counter medications prescribed by a licensed practitioner, the annual fee for a drug prescription card, medical supplies and equipment, dentures, hearing aids, prostheses, and prescribed eyeglasses.

(c) In the SNAP program, such items as the following:

(A) Nursing care, nursing home care, and hospitalization, including payments for an individual who was a member of the *filing group* immediately prior to entering a hospital or a nursing home certified by the state. Deduction of these payments is also allowed for an individual who was a member of the *filing group* immediately prior to death if the remaining *filing group* members are legally responsible for payment of the expenses.

(B) Services of an attendant, home health aid, housekeeper, or provider of dependent care necessary due to the client's age or illness, including an amount equal to a one-person SNAP *benefit group* (see OAR 461-110-0750) if the client furnishes the majority of an attendant's meals.

(C) Prescribed assistance animals (such as a Seeing Eye Dog, Hearing Dog, or Housekeeper Monkey) that have received special training to provide a service to the client. This deduction includes the cost of acquiring these animals, their training, food, and veterinarian bills.

(D) Reasonable costs for transportation and lodging needed to obtain medical treatment or services.

(E) Installment plan arrangements made before a bill becomes past due. The expense is not deducted if the client defaults and makes a second agreement.

(7) In the SNAP program, the costs for and related to medical use of marijuana, including registry identification cards, are not deductible.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404 & 411.816

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 27-2012(Temp), f. & cert. ef. 7-12-12 thru 1-8-13; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-160-0193

### Determining Eligibility and Calculating Payment; Direct Provider Payments for TANF Child Care

(1) Clients in the TANF program are eligible for direct provider payments for child care (see OAR 461-165-0160) if:

(a) The child care cost is deductible under OAR 461-160-0040;

(b) The caretaker relative is employed and is in the financial group.

For the purpose of this rule, work study and a job with earnings that are excluded for the TANF program are not considered employment; and

(c) The child meets the age requirements of OAR 461-120-0510.

(2) Payments are limited as follows:

(a) The cost must be allowed by OAR 461-160-0040;

(b) Payment is limited to the rates provided in OAR 461-155-0150;

(c) The direct child care payment is calculated in accordance with OAR 461-160-0300; and

(d) Payment is made only for child care already provided.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.083

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 22-1992(Temp), f. & cert. ef. 8-10-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 10-1995, f. 3-

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30-95, cert. ef. 4-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-160-0410

### Use of Income and Income Deductions When There Are Ineligible or Disqualified Group Members; SNAP

When a member of the *filing group* (see OAR 461-110-0370) is not in the *need group* (see 461-110-0630), benefits in the SNAP program are calculated as follows:

(1) If the member is a *qualified non-citizen* (see OAR 461-120-0125(1)(a)–(g)) who does not meet the alien status requirements, the following procedure is used:

(a) Benefits are calculated as if the *qualified non-citizen* is eligible, except that a TANF grant received by the *filing group* is prorated among the members of the group. A pro rata share is counted for each *filing group* member who meets the citizenship or alien status requirements.

(b) Benefits are then calculated as if the *qualified non-citizen* is not a member of the *filing group*, except that a TANF grant received by the *filing group* is prorated per section (3) of this rule. Any income received by another member of the *filing group* from the *qualified non-citizen* is counted as income of the *filing group*. No expenses paid by the *qualified non-citizen* are deducted from gross income.

(c) The household's benefits are the lesser of the amounts calculated in subsections (a) and (b) of this section.

(2) The process described in sections (3) and (4) of this rule is used if the member is:

(a) A non-citizen but not a *qualified non-citizen*;

(b) Disqualified for failing to obtain or provide a Social Security Number; or

(c) Unwilling to disclose alien status.

(3) If the member is in a group described in section (2) of this rule:

(a) The member's *countable* (see OAR 461-001-0000) income is prorated among the members in the *filing group*.

(b) The pro rata share of each individual not in the *benefit group* (see OAR 461-110-0750) is excluded.

(c) The rest of the prorated income is *countable* income for the *filing group*.

(4) An ineligible or disqualified member covered by section (2) of this rule is entitled to all income deductions for which the member qualifies. When paid by the member, or billed to the member and unpaid, deductions for shelter, child support, medical costs, and dependent care are calculated as follows:

(a) The deductions, except deductions for the utility standard, are prorated among the members of the *filing group*.

(b) The prorated share of the members of the *benefit group* is deducted.

(c) The deduction for the utility standard is made in accordance with OAR 461-160-0420.

(5) The *countable* income of the following *financial group* (see OAR 461-110-0530) members, subject to allowable deductions, is used to determine benefits:

(a) A client disqualified for failure to comply with the requirements of the OFSET program or because of an intentional program violation.

(b) A client:

(A) Fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the client is fleeing, for a crime, or attempt to commit a crime, that is a felony under the law of the place from which the client is fleeing or that, in the case of New Jersey, is a high misdemeanor under the law of New Jersey; or

(B) Violating a condition of probation or parole imposed under a federal or state law.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 10-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 10-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 6-2002(Temp), f. & cert. ef. 4-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-160-0415

### Medical Deduction; SNAP

(1) This rule explains how to calculate the deduction for medical costs in the SNAP program allowed under OAR 461-160-0055 when incurred by

an *elderly* (see 461-001-0015) member of the *filing group* (see 461-110-0370) or by a *filing group* member with a *disability* (see 461-001-0015).

(2) For each *certification period* (see OAR 461-001-0000), the Department estimates the amount of the client's medical deduction and apportions the amount evenly among the months in the *certification period*. For medical costs payable during the month of certification, the client may choose to deduct each cost in the month of certification or to average the cost over the *certification period*.

(3) For medical costs that were not anticipated when the deduction was estimated but are incurred and reported to the Department during the *certification period*, the client may choose to deduct each cost:

(a) In the month after the cost is reported; or

(b) By averaging the cost over the period from the month after the cost was reported to the end of the *certification period*.

(4) If the client is billed in the last month of a *certification period* for a medical cost that is due after the *certification period*, and the client does not pay the bill during the *certification period*, the cost may be used to compute the deduction in the next *certification period*.

(5) Medical costs paid with a credit card are treated the same as if the cost were paid in full. The ongoing credit card payments are not an allowable medical deduction.

(6) A medical cost is not deductible in any of the following situations:

(a) The client reports a paid medical cost in the last month of the re-termination period, but reports this cost after their benefits for that month have already been issued.

(b) The medical cost is past due, is an amount carried forward from a previous billing period, or has been paid by the client in a previous *certification period*.

(c) The client and creditor have agreed on a monthly payment amount, but the client defaults on the agreement.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; Suspended by AFS 31-2000(Temp), f. & cert. ef. 12-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-160-0420

### Shelter Cost; SNAP

(1) This rule explains how to calculate the client's shelter cost. The shelter cost is used to determine the shelter deduction (see OAR 461-160-0430). The shelter cost is the sum of the *filing group's* cost of housing plus an allowance for utilities, if the client incurs a utility cost. The shelter deduction is based on the shelter cost but is subject to a limitation described in 461-160-0430.

(2) Cost of housing.

(a) The following comprise the cost of housing if they are incurred with respect to the *filing group's* current residence or the home described in section (5) of this rule:

(A) Regular, periodic charges for the shelter of the *filing group* (see OAR 461-110-0370), such as rent, mortgage payments, and condominium or association fees. Late fees charged because a mortgage or rent payment was made late are not deductible.

(B) Property taxes, state and local assessments, and property insurance on the structure.

(C) Costs for repairing a home substantially damaged or destroyed by a natural disaster (such as a fire or flood), if such costs are not reimbursed.

(D) If the *filing group* is homeless and living in a vehicle — vehicle payments and collision and comprehensive insurance premiums for the vehicle.

(b) If housing costs are billed on a weekly or biweekly basis, the monthly cost is the weekly cost multiplied by 4.3 or the biweekly cost multiplied by 2.15.

(c) The *filing group* has the following choices about housing costs:

(A) The group may choose to apply the cost in the month it is billed or becomes due.

(B) The group may choose to have periodic costs averaged.

(C) For expenses that are billed less often than monthly, the group may choose to have them averaged over the period they are intended to cover.

(3) Shared housing. If the *filing group* shares housing costs with an individual in the dwelling who is not in the *filing group*, only the housing costs incurred by the *filing group* are included in the calculation. If the portion paid by a person outside the *filing group* cannot be ascertained, the cost is apportioned among the people contributing to the cost. The pro rata share

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of those not in the *filing group* is deducted from the total, and the balance is considered a housing cost of the filing group.

(4) Cost for utilities.

(a) A *filing group* has a cost for utilities if it incurs a cost for heating or cooling; cooking fuel; electricity; water and sewerage; well installation and maintenance; septic tank system installation and maintenance; garbage and trash collection; service for a telephone, such as basic service fee, wire maintenance, subscriber line charges, relay center surcharges, 911 service, and taxes; or initial installation fees charged by a utility provider.

(b) If the group incurs no cost for utilities in either its current home or in the home described in section (5) of this rule, then the shelter cost is calculated without an allowance for utilities.

(c) If a homeless *filing group* uses a vehicle for shelter, the cost of fuel for the vehicle is considered a utility cost.

(d) If a *filing group* incurs a cost for utilities, then the utility allowance is one of the following:

(A) Allowance with heating or cooling. A full standard utility allowance of \$401 per month is used if the *household group* (see OAR 461-110-0210) is billed for heating or cooling costs for its dwelling. Charges for any fuel and for electricity are considered heating costs if they are used for heating. A *filing group* who receives an energy assistance payment for the dwelling provided through the Low Income Energy Assistance Act of 1981 is eligible for the utility allowance established by this paragraph (A).

(B) Allowance without heating or cooling.

(i) A limited standard utility allowance of \$295 per month is used if the *filing group* is not billed for heating or cooling costs but is billed for at least two other costs enumerated in subsection (4)(a) of this rule.

(ii) An individual standard utility allowance of \$48 per month is used if the *filing group* is not billed for heating or cooling costs but is billed for only one of the costs enumerated in subsection (4)(a) of this rule other than the service cost for a telephone, including the related taxes or fees.

(iii) A telephone standard utility allowance of \$54 per month is used if the *filing group* is billed only for telephone service, such as basic service fee, wire maintenance, subscriber line charges, relay center surcharges, 911 service, and taxes.

(5) Housing costs for a home not occupied by the filing group. Housing and utility costs with respect to a home not currently occupied may be considered in calculating the shelter cost if:

(a) The home is temporarily unoccupied because of employment or training away from home, illness, or abandonment caused by casualty or natural disaster;

(b) The *filing group* intends to return to the home;

(c) No other, current occupant is claiming a deduction for shelter costs in the SNAP program; and

(d) The home is not leased during the household's absence.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816 & 411.825

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 21-1998(Temp), f. 10-15-98 & cert. ef. 11-1-98 thru 12-31-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-160-0430

### Income Deductions; SNAP

(1) Deductions from income are subtracted from *countable income* (see OAR 461-140-0010) in the following order to determine *adjusted income* (see 461-001-0000) for the SNAP program:

(a) An earned income deduction of 20 percent of countable earned income. The 20 percent deduction is not taken from the wages funded by grant diversions such as Work Supplementation wages.

(b) A standard deduction of \$149 per month for a *benefit group* (see OAR 461-110-0750) of one, two, or three individuals. A standard deduction of \$160 per month for a *benefit group* of four individuals. A standard deduction of \$187 per month for a *benefit group* of five individuals. A standard deduction of \$214 per month for a *benefit group* of six or more individuals.

(c) A dependent care deduction for dependent care costs billed to a member of the *filing group* (see OAR 461-110-0370) and not paid for through any other program of the Department. For the cost to be deductible under this section, the care must be necessary to enable a member of the *filing group* to:

(A) Accept or continue employment;

(B) Seek employment, including a job search that meets the requirements of a *case plan* (see OAR 461-001-0020); or

(C) Attend vocational or educational training. A student receiving educational income is entitled to a deduction only for costs not excluded from educational income by OAR 461-145-0150.

(d) The medical deduction for *elderly* clients and clients who have a *disability* (see OAR 461-001-0015) in the *filing group*. The deduction is calculated by determining the total of their deductible medical costs (see 461-160-0415) and subtracting \$35. The remainder is the medical deduction.

(e) A deduction for child support payments (including cash medical support) a member of the *filing group* makes under a legal obligation to a child not a member of the *filing group*, including payments for the current month and for payments on arrearages. Child support is not deductible if collected by setoff through the Oregon Department of Revenue or by interception of a federal tax refund.

(f) A shelter deduction, calculated as follows:

(A) For SNAP *filing group* members required to pay room and board in a *nonstandard living arrangement* (see OAR 461-001-0000), the shelter deduction is:

(i) The cost of room and board, minus the payment standard for the *benefit group*; or

(ii) The actual room cost, if the client can prove that the room cost exceeds the cost described in subparagraph (i) of this paragraph.

(B) For all other *filing group* members, the shelter deduction is calculated as follows:

(i) The standard deduction and the deductions of earned income, dependent care, court-ordered child support, and medical expenses are subtracted from *countable income*. Fifty percent of the remainder is subtracted from the shelter cost calculated in accordance with OAR 461-160-0420.

(ii) The rounded balance is the deduction, except the deduction is limited if the filing group has no member who has a *disability* or is *elderly* (see OAR 461-001-0015). The limit is \$469 per month.

(2) If a *filing group* member cannot verify a medical or court-ordered child-support expense or cannot verify any other expense when asked to do so, the unverified expense is not used to calculate the deduction. If the client provides verification, the deduction is applied when calculating the next month's benefits. If verification is provided within the period authorized for processing applications (see OAR 461-115-0210), the benefits for the *initial month* (see OAR 461-001-0000) are recalculated using the deduction.

Stat. Auth.: ORS 411.816

Stat. Implemented: ORS 411.816 & 411.825

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1995(Temp), f. 10-30-95, cert. ef. 11-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 41-1996(Temp), f. & cert. ef. 12-31-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 23-2000(Temp) Suspended by AFS 28-2000(Temp), f. 10-31-00, cert. ef. 11-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 3-2001, f. 2-27-01, cert. ef. 3-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 39-2010(Temp), f. & cert. ef. 11-4-10 thru 5-3-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 43-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 4-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-165-0160

### Direct Provider Payments; General Information

(1) The Department makes payments on behalf of eligible clients to the providers they select to care for their children. The payments are made directly to the provider. To be eligible for payment, a provider must:

(a) Charge Department clients at a rate no higher than the rate charged other customers;

(b) Provide the Department his or her social security number (SSN) or IRS identification number; and

(c) Meet the requirements of OAR 461-165-0180.

(2) Payments to a client's provider are subject to each of the following limitations:

(a) A payment is made only for child care already provided.

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(b) Payment is made for the amount charged to the client but may not exceed the rate authorized in OAR 461-155-0150.

(c) No payment will be authorized unless the client has designated a primary provider.

(d) No payment will be made for less than one dollar.

(e) A payment is made only for child care provided on or after the date the designated provider has met the requirements to be listed and paid through the Department.

(3) In the ERDC and TANF programs, the Department may issue a payment to an eligible provider during a month for which child care is being provided to meet an unexpected need of the provider related to the care of a covered child. The payment may be made if, without the payment, continued care by the same provider would be jeopardized and the client could not immediately obtain child care from another provider.

Stat. Auth.: ORS 411.060, 411.070, 411.122 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.122 & 412.049

Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 2-1997, f. 2-27-97, cert. ef. 3-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 12-1997, f. & cert. ef. 8-25-97; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 22-2000(Temp) f. 9-27-00, cert. ef. 9-27-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-165-0180

### Eligibility of Child Care Providers

(1) The Department must approve a child care provider to receive payment for child care if information available to the Department provides no basis for denying eligibility unless the Department determines, following a preliminary or final fitness determination (see OAR 407-007-0320) or Child Protective Service (CPS) records checks, that the provider or other *subject individual* (see 407-007-0210(30)(A), (B), (F), (I), and (O)) is not eligible for payment.

(2) Ineligibility for payment may result from any of the following:

(a) A finding of "denied". A provider may be denied under OAR 461-165-0410 and 461-165-0420. If, after conducting a weighing test as described in 407-007-0210, the Department finds substantial risk to the health or safety of a child in the care of the provider, the provider must be denied and is ineligible for payment. A provider who has been denied has the right to a hearing under 407-007-0330.

(b) A finding of "failed". A provider may be failed if the Department determines, based on a specific eligibility requirement and evidence, that a provider does not meet the eligibility requirements of this rule. A provider with a status of "failed" may reapply at any time by providing the required documents and information to the Department for review.

(c) The Department has referred an overpayment against the provider for collection and the claim is unsatisfied.

(3) The provider must submit a completed Child Care Provider Listing Form (DHS 7494) to the Department within 30 calendar days from the date the Department issues the listing form to the client. The provider and each individual identified under section (4) of this rule must complete and sign the authorization for a records check through the Criminal History (CH) record system maintained by the Oregon State Police (OSP), Federal Bureau of Investigation (FBI), and the Child Protective Service (CPS) record system maintained by the Department and, if necessary, an authorization to release information and fingerprint cards. The provider, each individual described in section (4) of this rule, and each subject individual described in OAR 407-007-0210(30)(a)(A), (B), (F), (I) or (O) must fully disclose all requested information as part of the records check.

(4) This rule also establishes additional requirements for the following individuals:

(a) The site director of an exempt child care facility and each employee of the facility who may have unsupervised access to a child in care.

(b) The child care provider and each individual the provider uses to supervise a child in his or her absence.

(c) In the case of a provider who provides care for a child in the provider's home:

(A) Each individual 16 years of age or older who lives in the provider's home; and

(B) Each individual who visits the home of the provider during the hours care is provided and may have unsupervised access to a child in care.

(5) To receive payment or authorization for payment, the provider must meet the requirements of either subsection (a) or (b) of this section:

(a) Currently be certified or registered with the Child Care Division (CCD) of the Employment Department under OAR 414-205-0000 to 414-

205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250 unless legally exempt, and be in compliance with the applicable rules. The provider must also complete the Department's listing process and be approved by the Department.

(b) If legally exempt from being certified or registered with the CCD, complete the Department's background check process and be approved by the Department.

(6) Each individual described in section (4) of this rule must:

(a) Allow the Department to conduct a national criminal history records check through the Oregon State Police and the Federal Bureau of Investigation as specified in OAR 407-007-0250.

(b) Provide, in a manner specified by the Department, information required to conduct CH, FBI, OSP, and CPS records checks or determine whether the provider meets health and safety requirements.

(c) Have a history of behavior that indicates no substantial risk to the health or safety of a child in the care of the provider.

(7) Each provider must:

(a) Obtain written approval from their certifier or certifier's supervisor if the provider is also certified as a foster parent.

(b) Be 18 years of age or older and in such physical and mental health as will not affect adversely the ability to meet the needs of safety, health, and well-being of a child in care.

(c) Not be in the same filing group as the child cared for and cannot be the *parent* (see OAR 461-001-0000) of the child.

(d) Allow the Department to inspect the site of care while child care is provided.

(e) Keep daily attendance records showing the arrival and departure times for each child in care and billing records for each child receiving child care benefits from the Department. The provider must keep written records of any attendance that is not able to be recorded in the Child Care Billing and Attendance Tracking (CCBAT) system. These written records must be retained for a minimum of 12 months and provided to the Department upon request.

(f) Be the individual or facility listed as providing the child care. The provider may only use someone else to supervise a child on a temporary basis if the person was included on the most current listing form and the provider notifies the Department's Direct Pay Unit.

(g) Not bill a Department client for an amount collected by the Department to recover an overpayment or an amount paid by the Department to a creditor of the provider because of a lien, garnishment, or other legal process.

(h) Report to the Department's Direct Pay Unit within five days of occurrence:

(A) Any arrest or conviction of any *subject individual* or individual described in section (4) of this rule.

(B) Any involvement of any *subject individual* or individual described in section (4) of this rule with CPS or any other agency providing child protective services.

(C) Any change to the provider's name or address including any location where care is provided.

(D) The addition of any *subject individual* or individual described in section (4) of this rule.

(i) Report suspected child abuse of any child in his or her care to CPS or a law enforcement agency.

(j) Supervise each child in care at all times.

(k) Prevent any individual who behaves in a manner that may harm children from having access to a child in the care of the provider.

(l) Allow the custodial parent of a child in his or her care to have immediate access to the child at all times.

(m) Inform a parent of the need to obtain immunizations for a child.

(n) Take reasonable steps to protect a child in his or her care from the spread of infectious diseases.

(o) Ensure that the home or facility where care is provided meets all of the following standards:

(A) Each floor level used by a child has two usable exits to the outdoors (a sliding door or window that can be used to evacuate a child is considered a usable exit). If a second floor is used for child care, the provider must have a written plan for evacuating occupants in the event of an emergency.

(B) The facility has safe drinking water.

(C) The facility has a working smoke detector on each floor level and in any area where a child naps.

(D) Each fireplace, space heater, electrical outlet, wood stove, stairway, pool, pond, and any other hazard has a barrier to protect a child. Gates



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and enclosures should have the Juvenile Products Manufacturers Association (JPMA) certification seal to ensure safety.

(E) Any firearm, ammunition, and other dangerous item such as any medicine, drug, cleaning supply, paint, plastic bag, and poisonous and toxic material is kept in a secure place out of a child's reach.

(F) The building, grounds, any toy, equipment, and furniture are maintained in a clean, sanitary, and hazard free condition.

(G) The facility has a telephone in operating condition.

(H) No person may smoke or use smokeless tobacco in the home or facility during the hours the child care business is conducted. No person may smoke or use smokeless tobacco in motor vehicles while child care children are passengers.

(I) No one may consume alcohol or use non-prescription controlled substances in the presence of children. No one under the influence of alcohol or non-prescription controlled substances may be in the home when child care children are present.

(J) Is not a hotel, motel, shelter, or other temporary housing such as a tent, trailer, or motor home. The restriction in this paragraph does not apply to licensed (registered or certified) care approved in a hotel, motel, or shelter.

(K) Is not a structure:

(i) Designed to be transportable; and

(ii) Not attached to the ground, another structure, or to any utilities system on the same premises.

(p) Complete and submit a new listing form every two years, or sooner at the request of the Department, so that the Department may review the provider's eligibility. This requirement does not apply to a provider registered or licensed by CCD.

(q) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.

(r) Complete registration for the CCBAT system within 45 days of the date of the registration notice.

(s) Comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, and crib standards under 16 CFR 1219 and 1220.

(t) Place infants to sleep on their backs.

(8) A child care provider not subject to certification or registration with the Oregon Employment Department, Child Care Division (CCD) under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250, must complete an orientation provided by the Department or a Child Care Resource and Referral agency within 90 days of being approved by the Department if he or she:

(a) Receives funds from the Department; and

(b) Begins providing child care services after June 30, 2010, or resumes providing child care services, after a break of more than one year that began after June 30, 2010.

Stat. Auth.: ORS 181.537, 409.050, 411.060 & 411.070

Stats. Implemented: ORS 181.537, 409.010, 409.610, 411.060, 411.070, 411.122 & 657A.340

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 17-1994(Temp), f. & cert. ef. 8-15-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 2-1997, f. 2-27-97, cert. ef. 3-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 12-1997, f. & cert. ef. 8-25-97; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 13-2004, f. 4-29-04, cert. ef. 5-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2005(Temp), f. & cert. ef. 4-25-05 thru 9-30-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-180-0070

### Effective Dates; Initial Month Benefits

(1) In the EA program, the effective date for opening the case is the day benefits are issued to the *benefit group* (see OAR 461-110-0750). For a *benefit group* whose only eligible child is an unborn, the effective date cannot be earlier than the first day of the calendar month preceding the month in which the due date falls.

(2) In the ERDC program, the effective date for starting benefits is one of the following:

(a) The first day of the month in which the request for benefits is made, as long as:

(A) All eligibility requirements are met in that month; and

(B) Verification is provided within the application processing timeframes.

(b) If all eligibility requirements are not met in the month of request, the effective date is the first day of the month in which they are met, if verification is provided within the application processing timeframes.

(c) For a *benefit group* that received TANF program benefits within the 30 days before applying for ERDC program benefits, the effective date is the first of the month following closure of their TANF program benefits.

(3) In the GA program, the effective date for the *initial month* (see OAR 461-001-0000) of benefits is whichever of the following occurs first:

(a) The day all eligibility requirements are met and verified.

(b) The 45th day from the date the client requests benefits, if all eligibility requirements were met, but the Department did not receive documentation until after the 45th day.

(4) In the OSIP program, the effective date for the *initial month* of benefits is whichever of the following occurs first:

(a) The date the client requests benefits, if he or she was eligible as of that date.

(b) The date all eligibility requirements are met.

(5) In the REF and TANF programs, the effective date for the *initial month* of benefits is as follows:

(a) For a client in the Pre-TANF program, it is the later of the following:

(A) The day the Pre-TANF program ends in accordance with OAR 461-135-0475.

(B) The 30th day following the date the client requests benefits, if the Department does not receive required verification until after the 30th day.

(b) For a client not in the Pre-TANF program (see OAR 461 135 0475), it is the day the client meets and verifies all eligibility requirements.

(c) In the TANF program, if the only eligible child is an unborn, it may not be earlier than the first day of the calendar month preceding the month in which the due date falls.

(d) For a JOBS support service payment, it is the date the client meets all eligibility requirements in OAR 461-190-0211.

(6) For TANF program recipients moving to the SFPSS program, the effective date for the *initial month* of SFPSS program benefits is:

(a) Except as provided in subsection (b) of this section, the first of the month following the day all eligibility requirements are met and verified.

(b) If the day all eligibility requirements are met and verified falls after the compute deadline, the initial month of SFPSS program benefits will be the first of the month following the month after compute deadline. For purposes of this rule, the "compute deadline" means the Department computer system monthly deadline after which changes will not take effect until the month following the first of the next month.

Stat. Auth.: ORS 411.060, 411.070, 412.014 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 412.014 & 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 8-2013, f. & cert. ef. 4-1-13

## 461-190-0211

### Case Plan Activities and Standards for Support Service Payments; JOBS, Post-TANF, Pre-TANF, REF, SFPSS, TA-DVS, TANF

In the JOBS, Post-TANF, Pre-TANF, REF, SFPSS, TA-DVS, and TANF programs, notwithstanding any other administrative rule in Chapter 461 and subject to the limitations of state funding, the following special provisions apply:

(1) Participation in an *activity* (see OAR 461-001-0025) is limited as provided in each of the following subsections:

(a) An individual who is determined to be a work-eligible individual according to federal definition (45 CFR 261.2(n)(1)). Unless section (10) of this rule applies, no other individual may participate in and access JOBS contract activities and *support services* (see OAR 461-001-0025).

(b) An individual who is an applicant in the Pre-TANF program or a recipient of TANF or Post-TANF program benefits.

(2) For eligible individuals, subject to the requirements and limitations in sections (1), (5), (6), and (7) of this rule, the following activities will be available, and include *support services* payments if needed:

(a) *Job search* (see OAR 461-001-0025).

(b) *JOBS Plus* (see OAR 461-001-0025 and 461-101-0010) is limited to six months per individual, unless circumstances unique to the employ-

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ment situation are identified and warrant the Department to approve a limited number of additional months.

- (c) *Work experience* (see OAR 461-001-0025).
- (d) *Sheltered or supported work* (see OAR 461-001-0025).
- (e) *High School or GED Completion Attendance* (see OAR 461-001-0025) limited to a *teen parent* (see 461-001-0000 and 461-001-0025).
- (f) *Parents as Scholars* (see OAR 461-001-0025).
- (g) *Limited family stability* (see OAR 461-001-0000).
- (A) *Drug and alcohol services* (see OAR 461-001-0025).
- (B) *Mental health services* (see OAR 461-001-0025).
- (C) Attending medical appointments or services.
- (D) *Rehabilitative activities* (see OAR 461-001-0025).
- (h) *Vocational training* (see OAR 461-001-0025).
- (3) The following activities will not include *support services* payments:

- (a) Domestic Violence Intervention.
- (b) Family Stability (see OAR 461-001-0000), unless subsection (2)(g) of this rule applies.
- (c) Family Support & Connection.
- (d) *On-the-job training* (see OAR 461-001-0025).
- (e) Post-TANF.
- (f) *Program entry* (see OAR 461-001-0025).
- (g) Self Initiated Training (see OAR 461-001-0025).
- (h) SSI Application Process.
- (i) Unsubsidized employment (work).
- (4) Participation in an *activity* is based on whether an individual is Job Ready, Near Job Ready, Not Job Ready, or a teen parent.

(a) Job Ready means the individual has no *barrier* (see OAR 461-001-0025) or current barriers do not impact participation or employment. In addition, the individual has all of the following:

- (A) Prior stable work history, either paid or unpaid.
- (B) Had not voluntarily quit or been dismissed from their *most recent employment* (see OAR 461-135-0070), without *good cause* (see OAR 461-135-0070).
- (C) Reliable or available transportation.
- (D) No outstanding legal issues that would impact or prevent employment.

(E) Access to reliable child care within *support services* limits, or does not need help to pay for child care, or does not need child care.

(b) Near Job Ready means the individual has minimal barriers to participation or employment and the individual is addressing the barriers. In addition, the individual has all of the following:

- (A) Limited or no work history, either paid or unpaid.
- (B) Reliable or available transportation.
- (C) No outstanding legal issues that would impact or prevent employment, or such legal issues are identified and are being addressed.
- (D) Access to reliable child care within *support services* limits, or does not need help to pay for child care, or does not need child care.

(c) Not Job Ready means the individual has one or more barriers to participation or employment or is in crisis, and the individual is not addressing the barriers. For example, the individual has one or more of the following:

- (A) Lack of stable housing that is preventing participation in an activity or employment.
- (B) Domestic violence, mental health or alcohol and drug issues, and the individual is not addressing the issue.
- (C) Medical issues that prevent participation in an activity or employment.
- (D) Outstanding legal issues that would impact or prevent employment.
- (E) Literacy issues that impact the ability for the individual to participate in an activity or obtain employment.

(5) In approving JOBS program *support services* payments, the Department must consider lower cost alternatives. It is not the intent of the Department or of this rule to supplant Department funding with other funding that is available in the community. It is the Department's expectation that case managers and clients will work collaboratively to seek resources that are reasonably available to the client in order to participate in activities.

- (6) Payments for *support services* are only provided when:
  - (a) Necessary to participate in activities in a signed *case plan*;
  - (b) Authorized in advance; and
  - (c) All other provisions of this rule are met.
- (7) Payments for *support services* are subject to the following limitations:

(a) Job Ready and Near Job Ready individuals may be eligible for:

- (A) Child care;
- (B) Transportation; or
- (C) Payments needed to look for work, accept a job offer, or complete district-approved *vocational training*.

(b) Not Job Ready individuals are not eligible for *support services*, unless subsection (2)(g) of this rule applies.

(c) A *teen parent* may be eligible for child care, transportation, or other *support services*, for participation in a *basic education* (see OAR 461-001-0025) *component* (see 461-001-0025).

(d) Child Care. Payments for child care may be authorized, as limited by OAR 461-160-0040, if necessary to enable a single-parent Job Ready or Near Job Ready individual or *teen parent* to participate in an approved JOBS program activity specified in the individual's *case plan*, or a Not Job Ready individual approved by the district to complete a *family stability activity*. If authorized, payment for child care will be:

(A) The lesser of the actual rate charged by the care provider and the rate established in OAR 461-155-0150. The Department rate for children in care less than 158 hours in a month is limited by OAR 461-155-0150.

(B) The minimum hours necessary, including meal and commute time, for the individual to participate in an approved JOBS program *activity*.

(e) Transportation. The Department may provide payments for a Job Ready or Near Job Ready individual or *teen parent* for transportation costs incurred in travel to and from an approved JOBS program *activity* or a Not Job Ready individual approved by the district to complete a *family stability activity*. Payment is made only for the cost of public transportation or the cost of fuel. Payments are subject to the following considerations:

(A) Payment for public transportation is a priority over payment for a privately owned vehicle.

(B) Payment for fuel costs for a privately-owned vehicle is only provided if the client or individual providing the transportation has a valid driver's license and vehicle insurance and either of the following is true:

(i) No public transportation is available or the client is unable to use public transportation because of a verifiable medical condition or disability for which no accommodation is available.

(ii) Public transportation is available but is more costly than the cost of fuel.

(f) Housing and Utilities. Payments for housing and utilities are not allowed.

(g) Other Payments. When the need is identified by the district and no other sources are available, the Department may provide other payments needed:

- (A) To look for work.
- (B) To accept a job offer.
- (C) For a *teen parent* to attain a high school diploma or GED.
- (D) For books and supplies for a participant to complete a district-approved *vocational training*.
- (E) Other payments with manager approval that are not otherwise restricted by rule.

(h) None of the following payments are allowed:

- (A) Non-essential items.
- (B) Television, cable, and internet.
- (C) Fines, reinstatement fees, restitution, legal fees, civil fees, court costs, or other costs associated with a penalty.
- (D) Purchase of a car, recreational vehicle, or motor home.
- (E) Child care for two-parent families, except for two-parent families in which both parents meet the definition of *teen parent*.
- (F) *Support services* for exempt individuals.
- (G) Pet-related costs.
- (H) ERDC co-payments.

(8) The Department may require an individual to provide verification of a need for, or costs associated with, *support services* prior to approval and issuance of payment if verification is reasonably available.

(9) The Department may reduce, close, or deny in whole or in part an individual's request for a *support services* payment in the following circumstances:

(a) The individual is disqualified for failing to comply with a *case plan*, unless the payment in question is necessary for the individual to demonstrate cooperation with his or her *case plan*.

(b) The purpose for the payment is not related to the individual's case plan.

(c) The individual disagrees with a *support services* payment offered or made by the Department as outlined in the individual's case plan.

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(d) The individual is not determined to be a Job Ready or Near Job Ready individual or *teen parent*.

(10) An individual who has gone over-income for the TANF program due to earnings and needs to increase *activity* hours to meet Post-TANF *federally required participation rates* (see OAR 461-001-0025) may be a *volunteer* and participate.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.009, 412.014, 412.049, 412.124 & 2011 OL 604

Stats. Implemented: ORS 409.010, 411.060, 411.070, 412.001, 412.006, 412.009, 412.014, 412.049, 412.124 & 2011 OL 604

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 11-2005(Temp), f. & cert. ef. 9-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 30-2011(Temp), f. & cert. ef. 11-1-11 thru 4-29-12; SSP 11-2012, f. & cert. ef. 4-6-12; SSP 12-2012(Temp), f. & cert. ef. 4-6-12 thru 9-30-12; SSP 18-2012(Temp), f. & cert. ef. 5-23-12 thru 9-30-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 34-2012(Temp), f. & cert. ef. 11-6-12 thru 5-5-13; SSP 38-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 5-5-13; SSP 2-2013(Temp), f. & cert. ef. 1-23-13 thru 5-5-13; SSP 8-2013, f. & cert. ef. 4-1-13

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

**Adm. Order No.:** SSP 9-2013(Temp)

**Filed with Sec. of State:** 4-10-2013

**Certified to be Effective:** 4-10-13 thru 10-7-13

**Notice Publication Date:**

**Rules Amended:** 461-110-0430, 461-160-0010

**Subject:** OAR 461-110-0430 about filing groups is being amended to base eligibility for the Refugee Medical (REFM) program on an ineligible MAA (Medical Assistance Assumed) or MAF (Medical Assistance to Families) filing group rather than an ineligible TANF filing group. MAA and MAF are medical programs and should be used for REFM eligibility determination. TANF is not a medical program. A filing group consists of the group of individuals whose combined circumstances are considered in making an eligibility determination.

OAR 461-160-0010 about use of resources in determining financial eligibility is being amended to remove the Refugee Medical (REFM) program from the list of programs that require the financial group to have resources below the countable resource limit. The financial group consists of the filing group members whose income and resources the Department considers in determining eligibility.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-110-0430

### Filing Group; REF, REFM

In the REF and REFM programs:

(1) The filing group consists of:

(a) A single adult who has no *spouse* (see OAR 461-001-0000) or *dependent child* (see 461-001-0000) in the *household group* (see 461-110-0210); or

(b) A *legally married* (see OAR 461-001-0000) couple who is in the same *household group* and has no *dependent child*.

(2) A TANF program filing group (see OAR 461-110-0330) that has at least one adult and is ineligible for TANF program benefits may form an REF filing group.

(3) An MAA or MAF program filing group (see OAR 461-110-0330 and 461-110-0340) that has at least one adult and is ineligible for MAA or MAF program benefits may form an REFM filing group.

(4) A separate REF and REFM program filing group may be formed within a *household group* consisting of only the newly arriving refugees, if there is at least one adult in the newly formed filing group, and the requirements of at least one of the following subsections is met:

(a) The newly arrived refugee is rejoining a *spouse* (see OAR 461-001-0000) who has been more than eight consecutive months in the United States, and there are no minor children in the *household group*.

(b) The newly arrived refugee is rejoining a *spouse* whose income is equal to or over the REF *countable* (see OAR 461-001-0000) income and

*adjusted income* (see 461-001-0000) limits (see 461-155-0030). There are also no minor children in the *household group*.

(c) The newly arrived refugee is rejoining a *spouse* or a *parent* (see OAR 461-001-0000) of a common child in the *household group* who does not meet the REF program eligibility requirement under 461-135-0900(2).

(d) The previously arrived *spouse* or *parent* of a common child is working, and the individual's income is equal to or exceeds both the REF and TANF program *countable* income and *adjusted income* limits (see OAR 461-155-0030).

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.116, 412.006 & 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.116, 412.006 & 412.049

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.116, 412.006 & 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.116, 412.006 & 412.049

Hist.: AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 9-2013(Temp), f. & cert. ef. 4-10-13 thru 10-7-13

## 461-160-0010

### Use of Resources in Determining Financial Eligibility

*Countable* (see OAR 461-001-0000) resources are used to determine eligibility as follows:

(1) In the EA program, the *countable* resources of a *financial group* (see OAR 461-110-0530) are used to reduce benefits.

(2) In the GA, GAM, MAA, MAF, QMB, REF, SAC, SNAP, and TANF programs, a *need group* (see OAR 461-110-0630) is not eligible for benefits if the *financial group* has *countable* resources above the resource limit (461-160-0015).

(3) In the OHP program:

(a) *Need group* members who are HPN (see OAR 461-001-0000) or OHP CHP (see 461-135-1100) are not eligible if the *countable* resources of the *financial group* are above the resource limit (461-160-0015).

(b) If an HPN or OHP-CHP client is determined eligible, changes in resources do not affect eligibility during the *certification period* (see OAR 461-001-0000) or until their eligibility otherwise ends.

(4) In the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs, a *need group* (see OAR 461-110-0630) is not eligible for benefits if the *financial group* has *countable* resources above the resource limit.

(a) When a *child* (see OAR 461-001-0000) is applying, the *parental resources* are deemed available to the *child*. The amount deemed available to the child is the amount the *parental resources* exceed the resource limit (461-160-0015) of:

(A) A one person *need group*, if one parent lives in the child's household; or

(B) A two person *need group*, if two parents (or one parent and the spouse of that parent) live in the child's household.

(b) As used in this section, parental resources mean the countable resources of:

(A) Each parent in the child's financial group, and

(B) Each spouse of a parent in the child's financial group.

(c) If more than one child is applying, the value of the deemed resources is divided evenly between the applying children.

(d) The parental resources are not deemed available to an ineligible child.

(e) The value of the parental resources is subject to deeming whether or not those resources are available to the child.

(5) In the OSIP-EPD and OSIPM-EPD programs:

(a) A *need group* (see OAR 461-110-0630) is not eligible for benefits if the *financial group* has *countable* resources above the resource limit (461-160-0015).

(b) Any money in an *approved account* (see OAR 461-001-0035) is excluded during the determination of eligibility.

(c) Assets purchased from moneys in an *approved account* are excluded, provided they meet the requirements of OAR 461-145-0025.

(d) Assets purchased as *employment and independence expenses* (see OAR 461-001-0035) are excluded, provided they meet the requirements of 461-145-0025.

Stat. Auth.: ORS 411.060, 411.400, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.117, 411.400, 411.816 & 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 9-2013(Temp), f. & cert. ef. 4-10-13 thru 10-7-13

# ADMINISTRATIVE RULES

## Department of Oregon State Police, State Athletic Commission Chapter 230

**Rule Caption:** Amends rule to authorize the OSP Superintendent to issue licenses on an annual basis.

**Adm. Order No.:** SAC 2-2013(Temp)

**Filed with Sec. of State:** 4-15-2013

**Certified to be Effective:** 4-15-13 thru 10-12-13

**Notice Publication Date:**

**Rules Amended:** 230-020-0002

**Subject:** Oregon Administrative Rule (OAR) 230-020-0002 sets out that the licensing year for all licenses issued by the Superintendent shall run from July 1 to June 30 of the following year.

It is recommended that Administrative Rule (OAR) 230-020-0002 be amended to authorize the OSP Superintendent to continue issuing licenses on an annual basis and waive the requirement for the licensing year to be constricted from July 1 to June 30th.

**Rules Coordinator:** Shannon Peterson—(503) 934-0183

### 230-020-0002

#### Licensing Year

The OSP Superintendent will issue licenses on an annual basis.

Stat. Auth.: ORS 463.113

Stats. Implemented: ORS 463.025

Hist.: BWC 1-1991, f. & cert. ef. 9-20-91; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 2-2013(Temp), f. & cert. ef. 4-15-13 thru 10-12-13

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## Department of Public Safety Standards and Training Chapter 259

**Rule Caption:** Updates discretionary disqualifying crimes and presumptive categories (HB 2712)

**Adm. Order No.:** DPSST 7-2013

**Filed with Sec. of State:** 3-26-2013

**Certified to be Effective:** 3-26-13

**Notice Publication Date:** 3-1-2013

**Rules Amended:** 259-009-0070

**Subject:** HB 2712, passed during the 2011 legislative session, updated and simplified the current statutory revenue and distribution structure related to criminal fines, assessments and other financial penalties imposed on convictions for felonies, misdemeanors and violations other than parking infractions. The passage of this bill brought to light a number of misdemeanor and felony crimes previously unknown to the fire service. These crimes were reviewed by Department staff and a workgroup comprised of various members of the Fire Policy Committee. Based on their recommendations, a number of crimes are added to the discretionary disqualifying crimes list with presumptive categories.

**Rules Coordinator:** Linsay Hale—(503) 378-2431

### 259-009-0070

#### Denial/Revocation

(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, to insure the highest levels of professionalism and discipline. These standards shall be upheld at all times unless the Board determines that neither the safety of the public or respect of the profession is compromised.

#### Definitions

(2) For purposes of this rule, the following definitions will apply:

(a) “Denial” or “Deny” means the refusal to grant a fire service certification for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in (9) of this rule.

(b) “Discretionary Conviction” means a conviction identified in OAR 259-009-0070(6).

(c) “Discretionary Disqualifying Misconduct” means misconduct identified in OAR 259-009-0070(4).

(d) “Revocation” or “Revoke” means to withdraw the certification of a fire service professional or instructor for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in subsection (9) of this rule.

#### Grounds for Mandatory Denial or Revocation of Certification

(3) Mandatory Grounds for Denying or Revoking Certification of a Fire Service Professional or Instructor:

(a) The Department must deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing if requested, based upon a finding that:

(A) The fire service professional or instructor has been convicted in this state of a crime listed in ORS 137.700 or in any other jurisdiction of a crime that, if committed in this state would constitute a crime listed in 137.700. Those crimes are:

163.095 Attempted Aggravated Murder;

163.115 Attempted Murder;

163.115 Murder;

163.118 Manslaughter in the First Degree;

163.125 Manslaughter in the Second Degree;

163.149 Aggravated Vehicular Homicide;

163.175 Assault in the Second Degree;

163.185 Assault in the First Degree;

163.225 Kidnapping in the Second Degree;

163.235 Kidnapping in the First Degree;

163.365 Rape in the Second Degree;

163.375 Rape in the First Degree;

163.395 Sodomy in the Second Degree;

163.405 Sodomy in the First Degree;

163.408 Sexual Penetration in the Second Degree;

163.411 Sexual Penetration in the First Degree;

163.427 Sexual Abuse in the First Degree;

163.670 Using a Child in a Display of Sexually Explicit Conduct;

164.325 Arson in the First Degree (See exception under OAR 259-009-0070(4));

164.403 Robbery in the Second Degree;

164.415 Robbery in the First Degree;

167.017 Compelling Prostitution.

(B) The fire service professional or instructor has been discharged for cause from employment as a fire service professional or instructor.

(b) For purposes of this rule, “discharged for cause”, means an employer initiated termination of employment for any of the following reasons after a final determination has been made. If, after service by the Department of a Notice of Intent to Deny or Revoke Certifications (NOI), the fire service professional or instructor provides notice to the Department within the time stated in the NOI that the discharge has not become final, then the Department may stay further action pending a final determination.

(A) Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Gross Misconduct means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable fire service professional or instructor would observe in a similar circumstance;

(D) Incompetence: means a demonstrated lack of ability to perform the essential tasks of a fire service professional or instructor that remedial measures have been unable to correct.

(E) Misuse of Authority: Includes abuse of public trust, abuse of authority to obtain a benefit, avoid a detriment, or harm another, and abuse under the color of office.

Discretionary Disqualifying Misconduct as Grounds for Denying or Revoking Certification

(4) Discretionary disqualifying misconduct as Grounds for Denying or Revoking Certification(s) of a Fire Service Professional or Instructor:

(a) The Department may deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:

(A) The fire service professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The fire service professional or instructor has been convicted of an offense listed in subsection (4)(c), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.

(b) For purposes of this rule, the Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

(A) Category I: Honesty. Honesty includes straightforwardness of conduct; integrity, adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.

(B) Category II: Professionalism. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.

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(C) Category III: Justice. Justice includes just treatment, the quality or characteristics of being just, impartial, or fair.

(c) Pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a Fire Service Professional or Instructor who has been convicted of the following crimes has violated the core values of the fire service profession and may not be fit to receive or hold certification:

25.785(3) (False Submission Social Security Number) – Category I;  
92.337 (Furnishing False Information or Making a False Representation) – Category I;  
162.015 (Bribe Giving) – Category III;  
162.025 (Bribe Receiving) – Category III;  
162.065 (Perjury) – Category I;  
162.117 (Public Investment Fraud) – Category I;  
162.155 (Escape in the Second Degree) – Category II;  
162.165 (Escape in the First Degree) – Category II;  
162.185 (Supplying Contraband) – Category II;  
162.205 (Failure to Appear in the First Degree) – Category II;  
162.265 (Bribing a Witness) – Category III;  
162.275 (Bribe Receiving by a Witness) – Category III;  
162.285 (Tampering with a Witness) – Category III;  
162.305 (Tampering with Public Records) – Category III;  
162.325 (Hindering Prosecution) – Category III;  
162.355 (Simulating Legal Process) – Category III;  
162.365 (Criminal Impersonation) – Category I;  
162.367 (Criminal Impersonation of a Peace Officer) – Category I;  
162.415 (Official Misconduct in the First Degree) – Category II;  
163.145 (Criminally Negligent Homicide) – Category III;  
163.160 (Assault in the Fourth Degree) – Category III;  
163.165 (Assault in the Third Degree) – Category III;  
163.205 (Criminal Mistreatment in the First Degree) – Category III;  
163.207 (Female Genital Mutilation) – Category III;  
163.208 (Assaulting a Public Safety Officer) – Category III;  
163.213 (Unlawful Use of an Electrical Stun Gun, Tear Gas or Mace in the First Degree) – Category II;  
163.245 (Custodial Interference in the Second Degree) – Category III;  
163.257 (Custodial Interference in the First Degree) – Category III;  
163.275 (Coercion) – Category III;  
163.355 (Rape in the Third Degree) – Category III;  
163.425 (Sexual Abuse in the Second Degree) – Category III;  
163.465 (Public Indecency) – Category III;  
163.515 (Bigamy) – Category III;  
163.525 (Incest) – Category III;  
163.535 (Abandonment of a Child) – Category III;  
163.537 (Buying or Selling a Person Under 18 years of age) – Category III;  
163.547 (Child Neglect in the First Degree) – Category III;  
163.555 (Criminal Non-Support) – Category III;  
163.684 (Encouraging Child Sexual Abuse in the First Degree) – Category III;  
163.686 (Encouraging Child Sexual Abuse in the Second Degree) – Category III;  
163.688 (Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree) – Category III;  
163.689 (Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree) – Category III;  
163.732 (Stalking) – Category III;  
163.750 (Violating Court's Stalking Protective Order) – Category III;  
164.045 (Theft in the Second Degree) – Category I;  
164.055 (Theft in the First Degree) – Category I;  
164.057 (Aggravated Theft in the First Degree) – Category I;  
164.075 (Theft by Extortion) – Category I;  
164.125 (Theft of Services: by Deception) – Category I;  
164.135 (Unauthorized Use of a Vehicle) – Category I;  
164.140 (Criminal Possession of Rented or Leased Personal Property: felony only) – Category I;  
164.170 (Laundering a Monetary Instrument) – Category I;  
164.172 (Engaging in a Financial Transaction in Property Derived from Unlawful Activity) – Category I;  
164.215 (Burglary in the Second Degree) – Category III;  
164.225 (Burglary in the First Degree) – Category III;  
164.235 (Possession of a Burglary Tool or Theft Device) – Category III;  
164.315 (Arson in the Second Degree) – Category II;  
164.325 (Arson in the First Degree – If not a conviction under ORS 137.700) – Category II;  
164.365 (Criminal Mischief in the First Degree) – Category III;  
164.377 (Computer Crime) – Category III;  
164.395 (Robbery in the Third Degree) – Category III;  
164.868 (Unlawful Labeling of a Sound Recording) – Category III;  
164.869 (Unlawful Recording of a Live Performance) – Category III;  
164.872 (Unlawful Labeling of a Videotape Recording) – Category III;  
164.885 (Endangering Aircraft) – Category II;  
164.889 (Interference with Agricultural Research) – Category III;  
165.013 (Forgery in the First Degree) – Category I;  
165.022 (Criminal Possession of a Forged Instrument in the First Degree) – Category I;  
165.032 (Criminal Possession of a Forged Device) – Category I;  
165.055 (Fraudulent Use of a Credit Card: Felony Only) – Category I;  
165.065 (Negotiating a Bad Check) – Category I;  
165.070 (Possessing Fraudulent Communications Device) – Category I;  
165.074 (Unlawful Factoring of Payment Card Transaction) – Category I;  
165.085 (Sports Bribery) – Category III;  
165.090 (Sports Bribe Receiving) – Category III;  
165.579 (Cellular Counterfeiting in the Second Degree) – Category III;  
165.581 (Cellular Counterfeiting in the First Degree) – Category III;  
165.692 (Making False Claim for Health Care Payment) – Category I;  
165.800 (Identity Theft) – Category I;  
165.810 (Unlawful Possession of a Personal Identification Device) – Category I;

165.813 (Unlawful Possession of Fictitious Identification) – Category I;  
166.005 (Treason) – Category II;  
166.015 (Riot) – Category II;  
166.085 (Abuse of Corpse in the Second Degree) – Category II;  
166.087 (Abuse of Corpse in the First Degree) – Category II;  
166.155 (Intimidation in the Second Degree) – Category III;  
166.165 (Intimidation in the First Degree) – Category III;  
166.220 (Unlawful Use of Weapon) – Category I;  
166.270 (Possession of Weapons by Certain Felons: Felony only) – Category II;  
166.275 (Possession of Weapons by Inmates of Institutions) – Category II;  
166.370 (Possession of Firearm or Dangerous Weapon in Public Building or Court Facility; Exceptions; Discharging Firearm at School) – Category II;  
166.382 (Possession of Destructive Device Prohibited) – Category II;  
166.384 (Unlawful Manufacture of Destructive Device) – Category II;  
166.429 (Firearms Used in Felony) – Category II;  
166.438 (Transfer of Firearms at Gun Shows: Felony Only) – Category II;  
166.450 (Obliteration or Change of Identification Number on Firearms) – Category II;  
166.642 (Felon in Possession of Body Armor) – Category II;  
166.643 (Unlawful Possession of Body Armor) – Category II;  
166.649 (Throwing an Object Off an Overpass in the Second Degree) – Category III;  
166.651 (Throwing an Object Off an Overpass in the First Degree) – Category III;  
166.660 (Unlawful Paramilitary Activity) – Category III;  
166.720 (Racketeering Activity Unlawful) – Category II;  
167.012 (Promoting Prostitution) – Category III;  
167.062 (Sadomasochistic Abuse or Sexual Conduct in Live Show: Felony Only) – Category III;  
167.164 (Possession of Gray Machine) – Category I;  
167.212 (Tampering with Drug Records) – Category I;  
167.262 (Adult Using Minor in Commission of Controlled Substance Offense: Felony Only) – Category III;  
167.322 (Aggravated Animal Abuse in the First Degree) – Category III;  
167.339 (Assaulting Law Enforcement Animal) – Category III;  
305.815 (False Return, Statement or Document) – Category I;  
411.630 (Unlawfully Obtaining Public Assistance) – Category I;  
411.675 (Submitting Wrongful Claim for Payment) – Category I;  
411.840 (Unlawfully Obtaining or Disposing of Supplemental Nutrition Assistance) – Category I;  
433.010(1) (Willfully Causing the Spread of Communicable Disease) – Category II;  
475.840 (Prohibited Acts Generally: Manufacture or Deliver a Controlled Substance) – Category II;  
475.846 (Unlawful Manufacture of Heroin) – Category II;  
475.848 (Unlawful Manufacture of Heroin Within 1,000 Feet of School) – Category III;  
475.850 (Unlawful Delivery of Heroin) – Category II;  
475.852 (Unlawful Delivery of Heroin Within 1,000 Feet of School) – Category III;  
475.854 (Unlawful Possession of Heroin) – Category II;  
475.856 (Unlawful Manufacture of Marijuana) – Category II;  
475.858 (Unlawful Manufacture of Marijuana Within 1,000 Feet of School) – Category III;  
475.860 (Unlawful Delivery of Marijuana: Felony only) – Category II;  
475.862 (Unlawful Delivery of Marijuana Within 1,000 Feet of School) – Category III;  
475.864 (Unlawful Possession of Marijuana: Felony only) – Category II;  
475.866 (Unlawful Manufacture of 3,4-Methylenedioxymethamphetamine (Ecstasy)) – Category II;  
475.868 (Unlawful Manufacture of 3,4-Methylenedioxymethamphetamine (Ecstasy) Within 1,000 Feet of School) – Category III;  
475.870 (Unlawful Delivery of 3,4-Methylenedioxymethamphetamine (Ecstasy)) – Category II;  
475.872 (Unlawful Delivery of 3,4-Methylenedioxymethamphetamine (Ecstasy) Within 1,000 Feet of School) – Category II;  
475.874 (Unlawful Possession of 3,4-Methylenedioxymethamphetamine (Ecstasy)) – Category II;  
475.876 (Unlawful Manufacture of Cocaine) – Category II;  
475.878 (Unlawful Manufacture of Cocaine Within 1,000 Feet of School) – Category III;  
475.880 (Unlawful Delivery of Cocaine) – Category II;  
475.882 (Unlawful Delivery of Cocaine Within 1,000 Feet of School) – Category III;  
475.884 (Unlawful Possession of Cocaine) – Category II;  
475.886 (Unlawful Manufacture of Methamphetamine) – Category II;  
475.888 (Unlawful Manufacture of Methamphetamine Within 1,000 Feet of School) – Category III;  
475.890 (Unlawful Delivery of Methamphetamine) – Category II;  
475.892 (Unlawful Delivery of Methamphetamine Within 1,000 Feet of School) – Category III;  
475.894 (Unlawful Possession of Methamphetamine) – Category II;  
475.904 (Unlawful Manufacture or Delivery of Controlled Substance Within 1,000 Feet of School) – Category III;  
475.908 (Causing Another Person to Ingest a Controlled Substance) – Category III;  
475.910 (Application of Controlled Substance to the Body of Another Person) – Category III;  
475.914 (Prohibited Acts for Registrants: Deliver or Dispense Controlled Substance) – Category II;  
475.962 (Distribution of Equipment, Solvent, Reagent or Precursor Substance with Intent to Facilitate Manufacture of Controlled Substances) – Category II;  
475.967 (Possession of Precursor Substance With Intent to Manufacture Controlled Substance) – Category II;  
475.977 (Possessing or Disposing of Methamphetamine Manufacturing Waste) – Category II;  
476.150 (Entry and Inspection of Premises; Interfering or Preventing Entry) – Category II;  
476.380 (Burning without a Permit) – Category II;  
476.510 to 476.610 (Violations of the Emergency Conflagration Act) – Category II;  
532.140 (Branding or Marking Forest Products and Booming Equipment with the Intent to Injure or Defraud) – Category I;  
632.470 (False Representation as to Raising, Production or Packing) – Category I;

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632.475 (Possession of Unlabeled, Falsely Labeled or Deceptively Packed Products) – Category I;  
659.815 (Deceptive Representations or Advertisements by Persons Employing Labor) – Category I;  
688.120 (Fraudulent Representation) – Category I;  
689.995(3) (Willfully Furnishing False Information) – Category I;  
689.995(4) (Making or Causing to be Made Any False Representations) – Category I;  
731.260 (False or Misleading Filings) – Category I;  
759.360(2) (Furnishing False Information or Making a False Representation) – Category I;  
811.182 (Criminal Driving While Suspended or Revoked) – Category II;  
811.540 (Fleeing or Attempting to Elude Police Officer: Felony Only) – Category II;  
811.705 (Failure to Perform Duties of a Driver to Person Injured) – Category II;  
813.010 (DUI: Felony Only) – Category II.

Any crime that requires the fire service professional or instructor to register as a sex offender. “Attempt,” “Solicitation,” or “Conspiracy” to commit a crime listed in ORS 137.700 or in any other jurisdiction that, if committed in this state would constitute an attempt, solicitation, or conspiracy to commit a crime listed in 137.700 (and identified in OAR 259-009-0070(3)). Conviction of felony or Class A misdemeanor “Attempt,” “Solicitation” or “Conspiracy” to commit a crime identified in this rule as a discretionary disqualifier.

(d) If a fire service professional or instructor held certification on or before January 15, 2008 and applies for a new certification, the Department will proceed as follows:

(A) No action will be taken on a discretionary conviction that occurred prior to January 15, 2003.

(B) The Department will not initiate revocation proceedings based on a discretionary disqualifying conviction that occurred between January 15, 2003 and January 15, 2008.

(C) The Department may initiate denial of a new certification based on a discretionary disqualifying conviction that occurred between January 15, 2003 and January 15, 2008.

(e) If a fire service professional or instructor held certification on January 15, 2008 and applies for or obtains certification after that date, the Department may initiate denial or revocation of all certifications held based on a discretionary disqualifying conviction that occurred prior to January 15, 2008.

(f) If a fire service professional or instructor is convicted of a discretionary disqualifying crime on or after January 15, 2008, the Department may initiate a denial or revocation of all certification(s) upon learning of the conviction.

### *Initial Minimum Periods of Ineligibility*

(5) Upon determination to proceed with the denial or revocation of a fire service professional’s or instructor’s certification based on discretionary disqualifying misconduct identified in section (4), the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

(a) In determining the initial minimum period of ineligibility for discretionary disqualifying misconduct listed in section (4) of this rule, the Fire Policy Committee and the Board will take into consideration any aggravating or mitigating factors subject to the provisions of section (7) of this rule.

(b) A person is not eligible to reapply for training or certification if the person had training or certification denied or revoked for mandatory grounds identified in section (3) of this rule.

(c) The initial minimum period of ineligibility will be included in any Final Order of the Department.

(d) Any subsequent eligibility to apply for certification will be determined by the Board, after a review by the Fire Policy Committee, subject to the provisions of section (9) of this rule.

### *Procedure for Denial or Revocation of a Certificate*

(6) Scope of Revocation. Except as provided in (4) above, when the Department denies or revokes the certification of any fire service professional or instructor under the provisions of OAR 259-009-0070, the revocation will encompass all fire service certificates the Department has issued to that person.

### *(7) Denial and Revocation Procedure.*

(a) Agency Initiated Review: When the entity utilizing a fire service professional or instructor requests that a fire service professional’s or instructor’s certification be revoked or denied, it must submit in writing to the Department the reason for the requested revocation or denial and all factual information supporting the request.

(b) Department Initiated Review: Upon receipt of factual information from any source, and pursuant to ORS 181.662, the Department may request that the fire service professional’s or instructor’s certification be revoked or denied.

(c) Department Staff Review: When the Department receives information, from any source, that a fire service professional or instructor may

not meet the established standards for Oregon fire service professionals or instructors, the Department will review the request and the supporting factual information to determine if the request for denial or revocation meets statutory and administrative rule requirements.

(A) If the reason for the request does not meet the statutory and administrative rule requirements for denial or revocation the Department will notify the requestor.

(B) If the reason for the request does meet statutory and administrative rule requirements but is not supported by adequate factual information, the Department will request further information from the employer or conduct its own investigation of the matter.

(C) If the Department determines that a fire service professional or instructor may have engaged in discretionary disqualifying misconduct listed in subsection (4), the case may be presented to the Board, through the Fire Policy Committee.

(D) The Department will seek input from the affected fire service professional or instructor, allowing him or her to provide, in writing, information for the Fire Policy Committee and Board’s review.

(E) In misconduct cases in which there has been an arbitrator’s opinion related to the fire service professional’s or instructor’s employment, the Department will proceed as follows:

(i) If the arbitrator’s opinion finds that underlying facts supported the allegations of misconduct, the department will proceed as identified in paragraphs (A) through (D) of this subsection.

(ii) If the arbitrator has ordered employment reinstatement after a discharge for cause without a finding related to whether the misconduct occurred, the Department will proceed as identified in paragraphs (A) through (D) of this subsection.

(iii) If the arbitrator’s opinion finds that underlying facts did not support the allegation(s) of misconduct, the Department will proceed as identified in paragraph (A) of this subsection and administratively close the matter.

(d) Policy Committee and Board Review: In making a decision to authorize initiation of proceedings under subsection (e) of this rule, based on discretionary disqualifying misconduct, the Fire Policy Committee and Board will consider mitigating and aggravating circumstances including, but not limited to the following:

(A) When the misconduct occurred in relation to the fire service professional’s or instructor’s service as a fire service professional or instructor (i.e., before, during, after);

(B) Whether the fire service professional or instructor served time in prison/jail; and if so, the length of incarceration;

(C) Whether restitution was ordered, and if so, whether the fire service professional or instructor met all obligations;

(D) Whether the fire service professional or instructor has ever been on parole or probation. If so, the date on which the parole or probation period expired or is set to expire;

(E) Whether the fire service professional or instructor has more than one conviction and if so, over what period of time;

(F) Whether the misconduct involved domestic violence;

(G) Whether the fire service professional or instructor self-reported the misconduct;

(H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;

(I) Whether the conduct was prejudicial to the administration of justice;

(J) Whether the conduct adversely reflects on the fitness of the fire service professional or instructor to perform as a fire service professional or instructor;

(K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency’s or public’s loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession; and

(L) What the fire service professional’s or instructor’s physical or emotional condition was at the time of the conduct.

(e) Initiation of Proceedings: Upon determination by the policy committee that the reason for denial or revocation is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared and served on the fire service professional or instructor.

(f) Contested Case Notice:

(A) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General’s Model Rules of Procedures adopted under OAR 259-005-0015.

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(B) In discretionary cases heard by a policy committee, the contested case notice will be served on the fire service professional or instructor prior to Board review. If the Board disapproves the policy committee's recommendation, the Department will withdraw the Contested Case Notice.

(g) Response Time:

(A) A party who has been served with a "Contested Case Notice of Intent to Deny Certification" has 60 days from the date of mailing or personal service of the notice in which to file a written request for a hearing with the Department.

(B) A party who has been served with a "Contested Case Notice of Intent to Revoke Certification" has 20 days from the date of mailing or personal service of the notice in which to file a written request for a hearing with the Department.

(h) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order revoking or denying certification pursuant to OAR 137-003-0672.

(i) Hearing Request: If a timely request for a hearing is received, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(j) Proposed and Final Orders:

(A) In cases in which a hearing is requested, proposed orders, exceptions, and final orders will be issued pursuant to the applicable provision of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(B) Department-proposed amendments to a proposed order issued by an Administrative Law Judge in a case that was originally heard by a policy committee must be considered and approved by the policy committee that originally reviewed the case before a final order can be issued.

(k) Stipulated Order Revoking Certification: The Department may enter a stipulated order revoking the certification of a fire service professional or instructor upon the person's voluntary agreement to terminate an administrative proceeding to revoke a certification, or to relinquish a certification under the terms and conditions outlined in the stipulated order.

*Appeals, Reapplication, and Eligibility Determinations*

(8) Appeal Procedure. A fire service professional or instructor, aggrieved by the findings and Order of the Department may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final Order of the Department.

(9) Reapplication Process.

(a) Any fire service professional or instructor whose certification has been denied or revoked under section (4) of this rule for discretionary disqualifying misconduct may reapply for certification within the applicable timeframes described in (4) and (5) of this rule.

(b) Any fire service professional or instructor whose certification has been denied or revoked based on discretionary disqualifying misconduct may not reapply for certification until:

(A) The initial minimum period of ineligibility stated in an Order of the Department denying or revoking certification has been satisfied;

(i) If the initial period of ineligibility for the individual was for a period of less than the maximum period identified in section (4) of this rule, and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not reapply for certification under the provisions of this rule until the maximum initial period of ineligibility identified in (5) of this rule has been satisfied.

(ii) If the individual has satisfied the maximum initial period of ineligibility and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not submit any further requests for an eligibility determination, and the original denial or revocation remains permanent.

(B) A written request for an eligibility determination has been submitted to the Department and the Fire Policy Committee has recommended that a fire service professional's or instructor's eligibility to apply for fire service or instructor certification be restored and the Board has upheld the recommendation;

(i) A request for an eligibility determination should include documentation or information that supports the fire service professional's or instructor's request for eligibility to apply for certification.

(ii) In considering a request for an eligibility determination, the Fire Policy Committee and the Board may consider mitigating and aggravating circumstances identified in Section (7)(d) of this rule.

(iii) After reviewing a written request for an eligibility determination, the Board, through the Fire Policy Committee, may determine that the individual's eligibility to apply for certification be restored if the criteria for certification have been met; or determine that the factors that originally

resulted in denial or revocation have not been satisfactorily mitigated and the individual must remain ineligible to apply for certification.

(C) The fire service professional or instructor is employed or utilized by a fire service agency; and

(D) All requirements for certification have been met.

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

Stat. Auth.: ORS 181.640, 181.661, 181.662, 181.664 & 183.341

Stats. Implemented: ORS 181.640, 181.661, 181.662 & 181.664

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 3-2008, f. & cert. ef. 1-15-08; DPSST

7-2009, f. & cert. ef. 7-13-09; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10; DPSST 1-2011, f.

2-24-11, cert. ef. 4-1-11; DPSST 11-2011, f. & cert. ef. 7-1-11; DPSST 19-2012, f. & cert. ef.

8-31-12; DPSST 7-2013, f. & cert. ef. 3-26-13

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**Rule Caption:** Update NFPA 1041 standards for professional qualifications for Fire Service Instructor

**Adm. Order No.:** DPSST 8-2013

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**Subject:** Adopts NFPA 1041 standards for Fire Service Instructor Professional Qualifications, 2012 Edition.

**Rules Coordinator:** Linsay Hale—(503) 378-2431

**259-009-0005**

**Definitions**

(1) "Advanced Wildland Interface Fire Fighter (FFT1)" means a person who is an entry level supervisory position with the knowledge and skills to tactically supervise other fire line firefighters.

(2) "Authority having jurisdiction" means the Department of Public Safety Standards and Training.

(3) "Agency Head" means the chief officer of a fire service agency directly responsible for the administration of that unit.

(4) "Board" means the Board on Public Safety Standards and Training.

(5) "Cargo Tank Specialty" means a person who provides technical support pertaining to cargo tank cars, provided oversight for product removal and movement of damaged cargo tanks, and acts as liaison between technicians and outside resources.

(6) "Chief Officer" means an individual of an emergency fire agency at a higher level of responsibility than a company officer. A chief officer supervises two or more fire companies in operations or manages and supervises a particular fire service agency program such as training, communications, logistics, prevention, emergency medical services provisions and other staff related duties.

(7) "Community College" means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the needs of a geographical area by providing educational services, including but not limited to vocational or technical education programs or lower division collegiate programs.

(8) "Company Officer" means a fire officer who supervises a company of fire fighters assigned to an emergency response apparatus.

(9) "Content Expert" means a person who documents their experience, knowledge, training and education for the purposes of course instruction.

(10) "Content Level Course" is a course that includes an identifiable block of learning objectives or outcomes that are required for certification at one or more levels.

(11) "Department" means the Department of Public Safety Standards and Training.

(12) "Director" means the Director of the Department of Public Safety Standards and Training.

(13) "Entry Level Fire Fighter" means an individual at the beginning of his/her fire service involvement. During the probationary period an entry level fire fighter is in a training and indoctrination period under constant supervision by a more senior member of a fire service agency.

(14) "Field Training Officer" means an individual who is authorized by a fire service agency of by the Department to sign as verifying completion of tasks required by task books.

(15) "Fire Company" means a group of fire fighters, usually 3 or more, who staff and provide the essential emergency duties of a particular emergency response apparatus.

(16) "Fire Fighter" is a term used to describe an individual who renders a variety of emergency response duties primarily to save lives and protect property. This applies to career and volunteer personnel.

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(17) "Fire Ground Leader" means a Fire Service Professional who is qualified to lead emergency scene operations."

(18) "Fire Inspector" means an individual whose primary function is the inspection of facilities in accordance with the specific jurisdictional fire codes and standards.

(19) "Fire Service Agency" means any unit of state or local government, a special purpose district or a private firm which provides, or has authority to provide, fire protection services.

(20) "Fire Service Professional" means a paid (career) or volunteer fire fighter, an officer or a member of a public or private fire protection agency who is engaged primarily in fire investigation, fire prevention, fire safety, fire control or fire suppression or providing emergency medical services, light and heavy rescue services, search and rescue services or hazardous materials incident response. "Fire service professional" does not include forest fire protection agency personnel.

(21) "Fire Training Officer" means a fire service member assigned the responsibility for administering, providing, and managing and/or supervising a fire service agency training program.

(22) "First Responder" means an "Operations Level Responder"

(23) "Hazardous Materials Safety Officer" means a person who works within an incident management system (IMS) (specifically, the hazardous materials branch/group) to ensure that recognized hazardous materials/WMD safe practices are followed at hazardous materials/weapons of mass destruction (WMD) incidents.

(24) "Hazardous Materials Technician" means a person who responds to hazardous materials/weapons of mass destruction (WMD) incidents using a risk-based response process by which they analyze a problem involving hazardous materials/weapons of mass destruction (WMD), select applicable decontamination procedures, and control a release using specialized protective and control equipment.

(25) "Incident Commander" (IC) means a person who is responsible for all incidents activities, including the development of strategies and tactics and the ordering and release of resources.

(26) "Intermodal Tank Specialty" means a person who provides technical support pertaining to intermodal tanks, provided oversight for product removal and movement of damaged intermodal tanks, and acts as a liaison between technicians and outside resources.

(27) "Marine Tank Vessel Specialty" means a person who provides technical support pertaining to marine tank vessels, provided oversight for product removal and movement of damaged marine tank vessels, and acts as a liaison between technicians and outside resources.

(28) "NFPA" stands for National Fire Protection Association which is a body of individuals representing a wide variety of professions, including fire protection, who develop consensus standards and codes for fire safety by design and fire protection agencies.

(29) "NFPA Aircraft Rescue and Fire-Fighting Apparatus" means a Fire Service Professional who has met the requirements of Fire Fighter II as specified in NFPA 1001, Fire Apparatus Driver/Operator as specified in NFPA 1002 Chapter 4, NFPA Airport Fire Fighter as specified in NFPA 1003 and the job performance requirements defined in NFPA 1002 Sections 9.1 and 9.2.

(30) "NFPA Airport Firefighter" means a member of a Fire Service Agency who has met job performance requirements of NFPA Standard 1003.

(31) "NFPA Apparatus Equipped with an Aerial Device" means a Fire Service Professional who has met the requirements of Fire Fighter I as specified in NFPA 1001, Fire Apparatus Driver/Operator as specified in NFPA 1002 Chapter 4 and the job performance requirements defined in NFPA 1002 Sections 6.1 and 6.2.

(32) "NFPA Apparatus Equipped with a Tiller" means a Fire Service Professional who has met the requirements of Fire Fighter I as specified in NFPA 1001, Fire Apparatus Driver/Operator as specified in NFPA 1002 Chapter 4, Apparatus Equipped with an Aerial Device as specified in NFPA 1002 Chapter 6 and the job performance requirements defined in NFPA 1002 Sections 7.2.

(33) "NFPA Apparatus Equipped with Fire Pump" means a Fire Service Professional who has met the requirements of Fire Fighter I as specified in NFPA 1001, Fire Apparatus Driver/Operator as specified in NFPA 1002 Chapter 4 and the job performance requirements defined in NFPA 1002 Sections 5.1 and 5.2.

(34) "NFPA Confined Space Rescue" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 7 sections 7.1 and 7.2.

(35) "NFPA Dive Rescue" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 11 sections 11.1 and 11.2, and Chapter 13 sections 13.1 and 13.2.

(36) "NFPA Fire Apparatus Driver/Operator" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1002, Chapter 4 sections 4.2 and 4.3.

(37) "NFPA Fire Fighter I" means a member of a fire service agency who has met the Level I job performance requirements of NFPA standard 1001. Sometimes referred to as a journeyman fire fighter.

(38) "NFPA Fire Fighter II" means a member of a fire service agency who met the more stringent Level II job performance requirements of NFPA Standard 1001. Sometimes referred to as a senior fire fighter.

(39) "NFPA Fire Inspector I" means an individual who conducts basic fire code inspections and has met the Level I job performance requirements of NFPA Standard 1031.

(40) "NFPA Fire Inspector II" means an individual who conducts complicated fire code inspections, reviews plans for code requirements, and recommends modifications to codes and standards. This individual has met the Level II job performance requirements of NFPA standard 1031.

(41) "NFPA Fire Inspector III" means an individual at the third and most advanced level of progression who has met the job performance requirements specified in this standard for Level III. The Fire Inspector III performs all types of fire inspections, plans review duties, and resolves complex code-related issues.

(42) "NFPA Fire Investigator" means an individual who conducts post fire investigations to determine the cause and the point of origin of fire. This individual has met the job performance requirements of NFPA Standard 1033.

(43) "NFPA Fire Officer I" means the fire officer, at the supervisory level, who has met the job performance requirements specified in NFPA 1021 Standard Fire Officer Professional Qualifications. (Company officer rank)

(44) "NFPA Fire Officer II" means the fire officer, at the supervisory/managerial level, who has met the job performance requirements in NFPA Standard 1021. (Station officer, battalion chief rank)

(45) "NFPA Fire Officer III" means the fire officer, at the managerial/administrative level, who has met the job performance requirements in NFPA Standard 1021. (District chief, assistant chief, division chief, deputy chief rank)

(46) "NFPA Fire Officer IV" means the fire officer, at the administrative level, who has met the job performance requirements in NFPA Standard 1021. (Fire Chief)

(47) "NFPA Fire Instructor I" means a fire service instructor who has demonstrated the knowledge and ability to deliver instruction effectively from a prepared lesson plan, including instructional aids and evaluation instruments; adapt lesson plans to the unique requirements of the students and authority having jurisdiction; organize the learning environment so that learning is maximized; and meet the record-keeping requirements of authority having jurisdiction.

(48) "NFPA Fire Instructor II" means a fire service instructor who, in addition to meeting NFPA Fire Instructor I qualifications, has demonstrated the knowledge and ability to develop individual lesson plans for a specific topic including learning objectives, instructional aids, and evaluation instruments; schedule training sessions based on overall training plan of authority having jurisdiction; and supervise and coordinate the activities of other instructors.

(49) "NFPA Fire Instructor III" means a fire service instructor who, in addition to meeting NFPA Fire Instructor II qualifications, has demonstrated the knowledge and ability to develop comprehensive training curricula and programs for use by single or multiple organizations; conduct organization needs analysis; and develop training goals and implementation strategies.

(50) "NFPA Marine Land-Based Fire Fighter" means a member of a fire service agency who meets the job performance requirements of NFPA 1005.

(51) "NFPA Mobile Water Supply Apparatus" means a Fire Service Professional who has met the requirements of Fire Apparatus Driver/Operator as specified in NFPA 1002 Chapter 4 and the job performance requirements defined in NFPA 1002 Sections 10.1 and 10.2.

(52) "NFPA Rope Rescue — Level I" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 6 section 6.1.

(53) "NFPA Rope Rescue — Level II" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 6 section 6.2.



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(54) "NFPA Surf Rescue" means a Fire Service Professional who had met the job performance requirements defined in NFPA 1006, Chapter 11 sections 11.1 and 11.2, and Chapter 15 sections 15.1 and 15.2.

(55) "NFPA Surface Water Rescue — Level I" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 11 section 11.1.

(56) "NFPA Surface Water Rescue — Level II" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 11 section 11.2.

(57) "NFPA Swiftwater Rescue" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 6 sections 6.1 and 6.2, Chapter 11 sections 11.1 and 11.2, and Chapter 12 sections 12.1 and 12.2.

(58) "NFPA Trench Rescue" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 8 sections 8.1 and 8.2.

(59) "NFPA Structural Collapse Rescue" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 9 sections 9.1 and 9.2.

(60) "NFPA Vehicle and Machinery Rescue" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 10 sections 10.1 and

(61) "NFPA Wildland Fire Apparatus" means a Fire Service Professional who has met the requirements of Fire Apparatus Driver/Operator as specified in NFPA 1002 Chapter 4 and the job performance requirements defined in NFPA 1002 Sections 8.1 and 8.2.

(62) "Operations Level Responder" means a person who responds to hazardous materials/weapons of mass destruction (WMD) incidents for the purpose of implementing or supporting actions to protect nearby persons, the environment, or property from the effects of the release.

(63) "Service Delivery" means to be able to adequately demonstrate, through job performance, the knowledge, skills, and ability of a certification level.

(64) "Staff" means those employees occupying full-time, part-time, and/or temporary positions with the Department.

(65) "Tank Car Specialty" means a person who provides technical support pertaining to tank cars, provided oversight for product removal and movement of damaged tank cars, and acts as a liaison between technicians and outside resources.

(66) "Task Performance" means to be able to demonstrate the ability to perform the tasks, of a certification level, in a controlled environment while being evaluated.

(67) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.705).

(68) "Topical Level Course" is a course that does not include an identifiable block of learning objectives or outcomes that are required for certification at one or more levels.

(69) "Track" means a field of study required for certification.

(70) "Waiver" means to refrain from pressing or enforcing a rule.

(71) "Wildland Interface Crew Boss" means a person who is in supervisory position in charge of 16 to 21 fire fighters and is responsible for their performance, safety, and welfare.

(72) "Wildland Interface Division/Group Supervisor" means a person who is responsible to act in an ICS position responsible for commanding and managing resources on a particular geographic area of a wildland fire. Reports to a Branch Director or Operations Section Chief.

(73) "Wildland Interface Engine Boss" means a person who is in supervisory position who has demonstrated the skills and depth of knowledge necessary to function under general supervision while operating a piece of apparatus such as an engine.

(74) "Wildland Interface Fire Fighter (FFT2)" means a person at the first level of progression who demonstrated the knowledge and skills necessary to function safely as a member of a wildland fire suppression crew whose principal function is fire suppression. This position has direct supervision.

(75) "Wildland Interface Strike Team Leader Crew" means a person who is responsible to act in an ICS position and is responsible for the direct supervision of a crew strike team.

(76) "Wildland Interface Strike Team Leader Engine" means a person who is responsible to act in an ICS position and is responsible for the direct supervision of an engine strike team.

(77) "Wildland Interface Structural Group Supervisor" means a person who is responsible to act in an ICS position responsible for supervising equipment and personnel assigned to a group. Groups are composed of resources assembled to perform a special function not necessarily within a

single geographic division. Groups, when activated, are located between branches and resources in the operations section. Reports to a Branch Director or Operations Section Chief.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06; DPSST 9-2006, f. & cert. ef. 7-7-06; DPSST 2-2007, f. & cert. ef. 1-12-07; DPSST 10-2008, f. & cert. ef. 7-15-08; DPSST 7-2009, f. & cert. ef. 7-13-09; DPSST 12-2009, f. & cert. ef. 10-15-09; DPSST 16-2009(Temp), f. & cert. ef. 12-15-09 thru 6-11-10; DPSST 5-2010, f. 6-11-10, cert. ef. 6-14-10; DPSST 11-2010, f. & cert. ef. 11-12-10; DPSST 3-2011, f. 3-28-11, cert. ef. 5-1-11; DPSST 12-2011, f. & cert. ef. 8-1-11; DPSST 21-2012, f. & cert. ef. 10-1-12; DPSST 8-2013, f. & cert. ef. 3-26-13

## 259-009-0062

### Fire Service Personnel Certification

(1) A fire service professional affiliated with an Oregon fire service agency may be certified by satisfactorily completing the requirements specified in section (2) of this rule: through participation in a fire service agency training program accredited by the Department; or through a course certified by the Department; or by evaluation of experience as specified in OAR 259-009-0063. The Department may certify a fire service professional who has satisfactorily completed the requirements for certification as prescribed in section (2) of this rule, including the Task Performance Evaluations (TPE) if applicable.

(2) The following standards for fire service personnel are hereby adopted by reference:

(a) The provisions of the NFPA Standard 1001, 2008 Edition, entitled "Fire Fighter Professional Qualifications";

(A) "Authority having jurisdiction" means the Department of Public Safety Standards and Training.

(B) Delete section 1.3.1.

NOTE: This references NFPA 1500.

(C) Delete section 2.2.

NOTE: This references NFPA 1500 and 1582.

(D) Entry Level Fire Fighter means an individual trained to the requirements of Section 2-1 Student Prerequisites, NFPA Standard 1403, 1997 Edition, entitled "Live Fire Training Evolutions" and the applicable safety requirements adopted by OR-OSHA. An individual trained to this level and verified so by the agency head is qualified to perform live-fire training exercises and to perform on the emergency scene under constant supervision. An Entry Level Fire Fighter should be encouraged to complete Fire Fighter I training within one year.

(E) Before an applicant can qualify for certification, the applicant must complete either a Task Performance Evaluation or a Department approved Task Book for Fire Fighter I and Fire Fighter II, signed off by the Agency Head or Training Officer.

(b) The provisions of the NFPA Standard 1002, 2009 Edition, entitled "Standard for Fire Apparatus Driver/Operator Professional Qualifications," are adopted subject to the following definitions and modifications hereinafter stated:

(A) 5.1 General. The job performance requirements defined in Sections 5.1 and 5.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Pumper.

(B) 6.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 6.1 and 6.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aerial.

(C) 7.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 7.1 and 7.2 must be met prior to certification as a Fire Service Agency Driver/Operator-Tiller.

(D) 8.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 8.1 and 8.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Wildland Fire Apparatus.

(E) 9.1 General. The requirements of NFPA 1001 Fire Fighter II and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 9.1 and 9.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aircraft Rescue and Fire Fighting Apparatus (ARFF).

(F) 10.1 General. The requirements of NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 10.1 and 10.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Mobile Water Supply Apparatus.

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(G) Delete “the requirements of NFPA 1500, Standard on Fire Department Occupational Safety and Health Program”.

(H) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for: Driver, Pumper Operator, Aerial Operator, Tiller Operator, Wildland Fire Apparatus Operator, Aircraft Rescue and Fire-Fighting Apparatus Operator or Mobile Water Supply Apparatus Operator and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(c) The provisions of the NFPA Standards 1003, 2005 Edition, entitled “Standard for Airport Fire Fighter Professional Qualifications,”

(A) 6.1 General. Prior to certification as a Fire Service Agency NFPA 1003 Airport Fire Fighter, the requirements of NFPA 1001 Fire Fighter II and NFPA 1002 Aircraft Rescue and Fire Fighting Apparatus Operator (ARFF), as specified by the Department, and the job performance requirements defined in sections 6.1 through 6.4 must be met.

(B) All applicants for certification must complete either a Task Performance Evaluation or a Department-approved Task Book for: Airport Fire Fighter and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(d) The provisions of NFPA Standard 1005, 2007 Edition, entitled “Marine Fire Fighting for Land Based Fire Fighters Professional Qualifications,” are adopted subject to the following definitions and modifications:

(A) “Authority having jurisdiction” means the Department of Public Safety Standards and Training.

(B) Delete section 2.2.

NOTE: This references NFPA 1500.

(C) Delete sections of 2.4.

NOTE: This references NFPA 1000, NFPA 1081, NFPA 1405, NFPA 1670 and NFPA 1710.

(D) 5.1 General. Prior to certification as a Fire Service Agency NFPA 1005 Marine Land-Based Fire Fighter, the requirements of NFPA 1001 Fire Fighter II, as specified by the Department.

(E) All applicants for certification must complete a Department approved Task Book for: Marine Fire Fighting for Land Based Fire Fighters and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(e) The provisions of the NFPA Standards 1003, 2005 Edition, entitled “Standard for Airport Fire Fighter Professional Qualifications,”

(A) 6.1 General. Prior to certification as a Fire Service Agency NFPA 1003 Airport Fire Fighter, the requirements of NFPA 1001 Fire Fighter II and NFPA 1002 Aircraft Rescue and Fire Fighting Apparatus Operator (ARFF), as specified by the Department, and the job performance requirements defined in sections 6.1 through 6.4 must be met.

(B) All applicants for certification must complete either a Task Performance Evaluation or a Department-approved Task Book for: Airport Fire Fighter and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(f) The provisions of NFPA Standard 1005, 2007 Edition, entitled “Marine Fire Fighting for Land Based Fire Fighters Professional Qualifications,” are adopted subject to the following definitions and modifications:

(A) “Authority having jurisdiction” means the Department of Public Safety Standards and Training.

(B) Delete section 2.2.

NOTE: This references NFPA 1500.

(C) Delete sections of 2.4.

NOTE: This references NFPA 1000, NFPA 1081, NFPA 1405, NFPA 1670 and NFPA 1710.

(D) 5.1 General. Prior to certification as a Fire Service Agency NFPA 1005 Marine Land-Based Fire Fighter, the requirements of NFPA 1001 Fire Fighter II, as specified by the Department.

(E) All applicants for certification must complete a Department approved Task Book for: Marine Fire Fighting for Land Based Fire Fighters and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(F) Transition Phase:

(i) An application for certification in Marine Fire Fighting for Land Based Fire Fighters must be submitted to the Department no later than June 30, 2009 to receive consideration for certification without having to complete a task book.

(ii) All applications received on or after July 1, 2009, will need to show completion of the approved task book.

(g) The provisions of the NFPA Standard No. 1031, Edition of (2009), entitled “Professional Qualifications for Fire Inspector and Plan Examiner” are adopted.

(A) All applicants for certification as an NFPA Fire Inspector I must:

(i) Successfully complete a Department approved Task Book; and  
(ii) Furnish proof that they have passed an exam demonstrating proficiency in the model fire code adopted by the State of Oregon or an equivalent.

(B) All applicants for certification as an NFPA Fire Inspector II must:

(i) Hold a certification as a Fire Inspector I; and

(ii) Successfully complete a Department approved Task Book.

(C) All applicants for certification as an NFPA Fire Inspector III must:

(i) Hold a certification as a Fire Inspector II; and

(ii) Successfully complete a Department approved Task Book.

(D) Task books must be monitored by a Field Training Officer approved by the Department. The Field Training Officer must be certified at or above the level being monitored and have at least five (5) years inspection experience. The Department may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department staff.

(h) The provisions of the NFPA Standard No. 1033, Edition of (2009), entitled “Professional Qualifications for Fire Investigator” are adopted subject to the following definitions and requirements:

(A) An individual must successfully complete a Department approved Task Book before the Department will administer a written examination for the Fire Investigator certification level. Exception: Anyone holding a valid IAAI Fire Investigator Certification, National Association of Fire Investigators (NAFI) certification, or Certified Fire Explosion Investigators (CFEI) certification is exempt from taking the Department’s Fire Investigator written exam.

(B) A Department approved Field Training Officer must monitor the completion of a Task Book. The Field Training Officer must be certified at or above the level being monitored and have at least five (5) years fire investigation experience. Exception: The Department may approve a Field Training Officers with equivalent training, education and experience.

(i) The provisions of the NFPA Standard No. 1035, Edition of 2000, entitled “Professional Qualifications for Public Fire and Life Safety Educator” are adopted subject to the following definitions and modifications:

(A) Chapter 6 (Six) “Juvenile Firesetter Intervention Specialist I” and Chapter 7 (Seven) “Juvenile Firesetter Intervention Specialist II,” Oregon-amended, shall be adopted with the following changes:

(i) Change the following definitions:

(I) 1-4.4 Change the definition of “Assessment” to read: “A structured process by which relevant information is gathered for the purpose of determining specific child or family intervention needs conducted by a mental health professional.”

(II) 1-4.11 Change the title of “Fire Screener” to “Fire Screening” and the definition to read “The process by which we conduct an interview with a firesetter and his or her family using state approved forms and guidelines. Based on recommended practice, the process may determine the need for referral for counseling and/or implementation of educational intervention strategies to mitigate effects of firesetting behavior.”

(III) 1-4.14 Include “insurance” in list of agencies.

(IV) 1-4.15 Change the definition to read: “...that may include screening, education and referral for assessment for counseling, medical services.”

(V) 1-4.16 Change “person” to “youth” and change age from 21 to 18.

(VI) 1-4.17 Add “using state-approved prepared forms and guidelines.”

(VII) 1-4.22 Add “...or by authority having jurisdiction.”

(VIII) 1-4.24 Add “...or as defined by the authority having jurisdiction.”

(ii) Under 6-1 General Requirements, delete the statement, “In addition, the person shall meet the requirements for Public Fire and Life Safety Educator I prior to being certified as a Juvenile Firesetter Intervention Specialist I.”

(B) A task book shall be completed prior to certification as a Public Fire and Life Safety Educator I, II or III.

(C) A task book shall be completed prior to certification as a Public Information Officer.

(D) A task book shall be completed prior to certification as a Juvenile Firesetter Intervention Specialist I and II.

(j) The provisions of the NFPA Standard No. 1041, Edition of 2012, entitled “Standard for Fire Service Instructor Professional Qualifications,” are adopted subject to the successful completion of an approved task book for NFPA Fire Instructor I, II and III.

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(k) The provisions of the NFPA Standard 1021, 2009 Edition, entitled "Standards for Fire Officer Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) 4.1 General. For certification as Fire Officer I, the candidate must be certified at NFPA 1001 Fire Fighter II, and NFPA 1041 Fire Instructor I, as defined by the Department, and meet the job performance requirements defined in Sections 4.1 through 4.7 of this Standard.

(i) Amend section 4.1.2 General Prerequisite Skills to include college courses or Department approved equivalent courses in the following areas of study: Communications, Math, Physics, Chemistry, or Fire Behavior and Combustion. Refer to the suggested course guide for detailed course, curriculum and training information.

(ii) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for; NFPA Fire Officer I and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(B) 5.1 General. For certification as NFPA Fire Officer II, the candidate must be certified as NFPA Fire Officer I, as defined by the Department, and meet the job performance requirements defined in Section 5.1 through 5.7 of the Standard.

(i) Amend section 5.1.2 General Prerequisite Skills to include college courses or Department approved equivalent courses in the following areas of study: Psychology or Sociology.

(ii) Amend section 5.3 Community and Government Relations to include State and Local Government or Department approved equivalent courses.

(iii) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for NFPA Fire Officer II, and signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(C) 6.1 General. For certification as NFPA Fire Officer III, the candidate must be certified as a NFPA Fire Officer II, NFPA, NFPA 1041 Fire Instructor II, as defined by the Department, and meet the job performance requirements defined in Sections 6.1 through 6.7 of the Standard.

(i) All applicants for certification must complete a Department approved Task Book for NFPA Fire Officer III, and signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(D) 7.1 General. For certification as NFPA Fire Officer IV the candidate must be certified as NFPA Fire Officer III, as defined by the Department, and meet the job performance requirements in Sections 7.1 through 7.7 of the Standard.

(i) All applicants for certification must complete a Department approved Task Book for NFPA Fire Officer IV, and signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(l) Hazardous Materials Responder (DPSST-P-12 1/96).

(m) Fire Ground Leader.

(A) This is a standard that is Oregon-specific.

(B) An applicant applying for Fire Ground Leader must first be certified as an NFPA Fire Fighter II.

(C) An applicant applying for Fire Ground Leader must document training in all of the following areas:

(i) Building Construction: Non-Combustible and Combustible;

(ii) Emergency Service Delivery;

(iii) Fire Behavior;

(iv) Fire Ground Safety; and

(v) Water Supply Operations.

(D) All applicants for certification must complete a Task Performance Evaluation or a Department-approved Task Book for Fire Ground Leader. The Evaluation or Task Book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(n) Advanced Wildland Interface Fire Fighter (FFT1).

(A) This standard includes NWCG Wildland Fire Fighter Type 1.

(B) An individual applying for Wildland Interface Fire Fighter (FFT1) must be certified as Wildland Interface Fire Fighter (FFT2) prior to applying for Wildland Interface Fire Fighter (FFT1) and must document training in all of the following areas at the time of application:

(i) S-131 Firefighter Type I;

(ii) S-133 Look Up, Look Down, Look Around; and

(iii) Completion of the NWCG Firefighter Type 1 (FFT1)/Incident Commander Type 5 (ICT5) Task Book.

(o) Wildland Interface Fire Fighter (FFT2).

(A) This standard includes NWCG Wildland Fire Fighter Type 2.

(B) An individual applying for Wildland Interface Fire Fighter (FFT2) must document training in all of the following areas at the time of application:

(i) S-130 Fire Fighter Training;

(ii) S-190 Wildland Fire Behavior;

(iii) L-180 Human Factors on the Fireline; and

(iv) I-100 Introduction to ICS.

(p) Wildland Interface Engine Boss.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Engine Boss must be certified as Wildland Interface Fire Fighter prior to applying for Wildland Interface Engine Boss and must document training in all of the following areas at the time of application:

(i) I-200 Basic Incident Command;

(ii) S-230 or S-231 Crew Boss (Single Resource);

(iii) S-290 Intermediate Wildland Fire Behavior; and

(iv) Completion of the Task Book for NWCG Single Resource Boss Engine.

(q) Wildland Interface Crew Boss.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Crew Boss must be certified as Wildland Interface Fire Fighter prior to applying for Wildland Interface Crew Boss and must document training in all of the following areas at the time of application:

(i) I-200 Basic Incident Command;

(ii) S-230 Crew Boss (Single Resource);

(iii) S-290 Intermediate Wildland Fire Behavior; and

(iv) Completion of the Task Book for NWCG Single Resource Boss Crew.

(r) Wildland Interface Strike Team Leader Engine.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Strike Team Leader Engine must be certified as Wildland Interface Engine Boss prior to applying for Wildland Interface Strike Team/Leader Engine and must document training in all of the following areas at the time of application:

(i) S-215 Fire Operations in the WUI;

(ii) S-330 Task Force/Strike Team Leader;

(iii) I-300 Intermediate ICS; and

(iv) Completion of the Task Book for NWCG Strike Team Leader Engine.

(s) Wildland Interface Strike Team Leader Crew.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Strike Team Leader Crew must be certified as Wildland Interface Crew Boss prior to applying for Wildland Interface Strike Team Leader Crew and must document training in all of the following areas at the time of application:

(i) S-215 Fire Operations in the WUI;

(ii) S-330 Task Force/Strike Team Leader;

(iii) I-300 Intermediate ICS; and

(iv) Completion of the Task Book for NWCG Strike Team Leader Crew.

(t) Wildland Interface Structural Group Supervisor.

(A) This is an Oregon standard.

(B) An individual applying for Wildland Interface Structural Group Supervisor must be certified as Wildland Interface Strike Team Leader Engine prior to applying for certification as Wildland Structural Interface Group Supervisor and must document training in all of the following areas at the time of application:

(i) S-390 Introduction to Wildland Fire Behavior Calculations;

(ii) S-339 Division/Group Supervisor; and

(iii) Completion of the Task Book for NWCG Group Supervisor.

(u) Wildland Interface Division/Group Supervisor.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Division/Group Supervisor must be certified as Wildland Interface Strike Team Leader Engine and a Wildland Interface Strike Team Leader Crew prior to applying for certification as Wildland Interface Division/Group Supervisor and must document training in all of the following areas at the time of application:

(i) S-390 Introduction to Wildland Fire Behavior Calculations;

(ii) S-339 Division/Group Supervisor; and

(iii) Completion of the Task Book for NWCG Division/Group Supervisor.

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(v) Maritime Fire Service Operator Standards Professional Qualifications (October, 1999) and completion of an approved task book. Historical Recognition:

(A) The application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.

(B) The application must be submitted to the Department no later than October 1, 2004, to receive certification for Maritime Fire Service Operator without having to complete the task book.

(C) All applications received after October 1, 2004, will need to show completion of the approved task book.

(w) Certification guide for Wildland Fire Investigator (August, 2005).

(x) The provisions of the 2008 Edition of NFPA 1006 entitled, "Standards for Technical Rescuer Professional Qualifications" are adopted subject to the following modifications:

(A) The "Authority Having Jurisdiction" means the local or regional fire service agency.

(B) Historical Recognition:

(i) Applicants who currently hold active Department of Public Safety Standards and Training NFPA Surface Water Rescue Technician and NFPA Rope Rescue levels of certification may apply for NFPA Swiftwater Rescue level of certification.

(ii) The NFPA Technical Rescuer application for certification under (i) above must be submitted to the Department of Public Safety Standards and Training on or before December 30, 2011.

(C) Instructors:

(i) Curriculum must be certified by the Department to meet NFPA 1006 standards.

(ii) An instructor delivering training under a fire service agency's accreditation agreement must be a certified technician in that specialty rescue area.

(D) Task Books:

(i) A task book must be completed for each of the eleven specialty rescue areas applied for.

(ii) Only a certified technician in that specialty rescue area can sign off on the task book.

(iii) The requirements in Chapters 4 and 5 need only to be met once for all eleven specialty rescue areas.

(y) Urban Search and Rescue.

(A) This is a standard that is Oregon-specific.

(B) The following eleven (11) specialty Urban Search and Rescue (USAR) certifications are adopted:

(i) Task Force Leader;

(ii) Safety Officer;

(iii) Logistics Manager;

(iv) Rescue Team Manager;

(v) Rescue Squad Officer;

(vi) Rescue Technician;

(vii) Medical Technician;

(viii) Rigging Technician;

(ix) Search Team Manager;

(x) Search Squad Officer;

(xi) Search Technician.

(C) An applicant applying for any USAR certification(s) must complete the appropriate application(s) attesting to completion of the required training.

(z) The provisions of the NFPA Standard 472, 2008 Edition, entitled "Standard for Hazardous Materials and Weapons of Mass Destruction" are adopted subject to the following definitions and modifications hereinafter stated:

(A) Hazardous Materials Technician: All applicants for certification must first certify as an Operations Level Responder and complete a Department approved Task Book, signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(B) Hazardous Materials Safety Officer: All applicants for certification must first certify as a Hazardous Materials Technician and complete a Department approved Task Book, signed off by the Agency Head or Training Officer, before an applicant can qualify for certification. This certification level includes, but is not limited to, the following course work:

(i) Analyzing the Incident;

(ii) Planning the Response;

(iii) Implementing the Planned Response;

(iv) Evaluating the Progress.

(C) Incident Commander: The level of certification formerly known as "On-Scene Incident Commander" is now known as "Incident Commander." The Incident Commander correlates directly with NFPA 472.

All applicants for certification must first certify as an Operations Level Responder.

(D) Operations Level Responder: The level of certification formerly known as "First Responder" is now known as "Operations Level Responder." The Operations Level Responder correlates directly with NFPA 472. Successful completion of skills sheets or task performance evaluations (TPE) must be met prior to certification as an Operations Level Responder.

(aa) Specialty Levels of Certification. All applicants for specialty levels of certification must first certify as a Hazardous Materials Technician.

(A) The following four (4) specialty certifications are adopted:

(i) Cargo Tank Specialty;

(ii) Intermodal Tank Specialty;

(iii) Marine Tank Vessel Specialty;

(iv) Tank Car Specialty;

(B) Successful completion of task performance evaluations (TPE) must be met prior to obtaining a specialty level of certification.

(3) Task performance evaluations, where prescribed, shall be required prior to certification. Such examinations shall be conducted in the following manner:

(a) Task performance competency shall be evaluated by three people nominated by the employing fire service agency's Chief Officer for approval by the Department or its designated representative.

(b) The employing fire service agency's equipment and operational procedures shall be used in accomplishing the task performance to be tested.

(c) Specific minimum testing procedures, as provided by the Department, shall be used for administration of the evaluation.

(d) The training officer for an accredited fire service agency training program must notify the Department or its designated representative prior to performing a Task Performance Evaluation.

(e) At the request of the fire chief, a representative of the Department will be designated to monitor the task performance evaluation for personnel from a fire service agency whose training program is not accredited.

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

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 11-2003 f. & cert. ef. 7-24-03; DPSST 13-2003(Temp), f. & cert. ef. 10-27-03 thru 3-31-04; DPSST 3-2004(Temp), f. & cert. ef. 4-9-04 thru 10-1-04; DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06; DPSST 9-2006 f. & cert. ef. 7-7-06; DPSST 14-2006, f. & cert. ef. 10-13-06; DPSST 16-2006, f. & cert. ef. 11-20-06; DPSST 2-2007, f. & cert. ef. 1-12-07; DPSST 10-2008, f. & cert. ef. 7-15-08; DPSST 7-2009, f. & cert. ef. 7-13-09; DPSST 12-2009, f. & cert. ef. 10-15-09; DPSST 16-2009(Temp), f. & cert. ef. 12-15-09 thru 6-11-10; DPSST 5-2010, f. 6-11-10, cert. ef. 6-14-10; DPSST 11-2010, f. & cert. ef. 11-12-10; DPSST 11-2010, f. & cert. ef. 11-12-10; DPSST 3-2011, f. 3-28-11, cert. ef. 5-1-11; DPSST 7-2012, f. & cert. ef. 3-28-12; DPSST 21-2012, f. & cert. ef. 10-1-12; DPSST 8-2013, f. & cert. ef. 3-26-13

## 259-009-0080

### Certification of Instructors

(1) The Department will certify instructors deemed qualified to teach in any of the certified training courses.

(2) Instructors will be certified on the basis of minimum qualifications as established by the Department in areas of education, training, and experience. It is the continuing responsibility of the Department to see that instructors are qualified to teach.

(3) Instructors for subjects must:

(a) Be certified or trained in the subject area they are teaching;

(b) Be certified as an NFPA Fire Instructor I or be a Content Expert.

(A) Applications for instructor certification must be submitted to the Department on an Instructor Certification Application (DPSST Form F-9F).

(B) Applications for Content Expert instructor certification must be submitted to the Department on an Instructor Certification Application (DPSST Form F-9F) and must be accompanied by a detailed resume of individual qualifications.

(4) If an application for Instructor or Content Expert Instructor certification is incomplete, the application will be rejected and the applicant notified in writing of the reasons for the rejection.

(5) Instructor certification is not required for teaching assignments in non-Department certified courses.

(6) Review of instructor certification may be initiated upon the request of an agency head, staff, or other reliable source.

(7) Instructor or Content Expert Instructor certification must be renewed upon the expiration of course certification or when there is a change to the certified course standard.

(8) Instructors delivering a certified course are responsible for ensuring the accuracy of the student rosters by indicating if students passed, failed or did not complete the course (incomplete). Rosters must be sub-

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mitted to the Department on a Department-approved form within thirty (30) calendar days of course completion; otherwise the Department may decertify the course.

(9) Instructors are responsible to provide students with a Department-approved Notice of Course Completion (NOCC) form upon successful completion of the approved course.

Stat. Auth.: ORS 181.640 & 181.650

Stats. Implemented: ORS 181.640 & 181.650

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 4-2005, f. & cert. ef. 5-24-05; DPSST 8-2013, f. & cert. ef. 3-26-13

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**Rule Caption:** Correct model rule adoption.

**Adm. Order No.:** DPSST 9-2013

**Filed with Sec. of State:** 4-1-2013

**Certified to be Effective:** 4-1-13

**Notice Publication Date:**

**Rules Amended:** 259-005-0015

**Subject:** Corrects previous filing and adopts the current version of the Attorney General's Model Rules of Procedure, effective January 31, 2012.

**Rules Coordinator:** Linsay Hale—(503) 378-2431

## 259-005-0015

### Rules of Procedures

Pursuant to the provisions of ORS 183.341, the Board and Department adopt the Attorney General's Model Rules of Procedure applicable to contested cases under the Administrative Procedures Act as amended and in effect on January 31, 2012.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 1-1983, f. & ef. 12-15-83; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 6-2000, f. & cert. ef. 9-29-00; DPSST 13-2011, f. & cert. ef. 8-29-11; DPSST 4-2012, f. & cert. ef. 3-7-12; DPSST 9-2013, f. & cert. ef. 4-1-13

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## Department of Revenue

### Chapter 150

**Rule Caption:** Property Tax: Supervisory authority, conferences, senior deferral, property tax refunds

**Adm. Order No.:** REV 1-2013

**Filed with Sec. of State:** 3-28-2013

**Certified to be Effective:** 3-28-13

**Notice Publication Date:** 11-1-2012

**Rules Amended:** 150-294.187, 150-306.115, 150-306.115-(A), 150-306.115-(C), 150-311.670(1), 150-311.684, 150-311.806-(A)

**Rules Repealed:** 150-309.110, 150-311.668(1)(a)(A), 150-311.668(1)(a)(B), 150-311.679(10), 150-311.706, 150-311.706(1)

**Subject:** Refiling due to filing error.

150-294.187 requires counties to notify the Department of Revenue of the amount it deposits into the Count Assessment Function Assistance (CAFFA) account at the same time they request the quarterly pool transfer at the State Treasury. This amendment is to change the date by which that should happen each quarter as dictated by statute.

150-306.115 establishes the criteria under which the department will consider the merits of a petition through its supervisory authority. The rule is amended to recognize two additional instances where the department will accept a petition request for review.

150-306.115-(A) prescribes what information is necessary on a petition to the department requesting review under our supervisory authority. This amendment expands what facts must be included in the petition.

150-306.115-(C) provides specific structure regarding the proceedings in a property tax conference under the department's supervisory authority. The amendments (a) allow the director to delegate the conference review responsibility; (b) remove the procedures for modification of the conference decision by the director; (c) change

all references to "tape" recording; and (d) update deadline requirements for submission.

150-311.670(1) defines homestead requirements for senior deferral of property tax. The amendment clarifies what is meant "by reason of health" in absences from the home.

150-311.684 explains when the senior deferred taxes must be repaid. The amendment adds a definition of "inactivated" account to the list of cancelled and disqualified accounts.

150-311.806-(A) gives direction to counties for determining the correct recipient of a property tax refund. The amendment is to change the requirement that a senior deferral refund be sent to DOR. Rather, DOR will assist in determining where it should go.

150-309.110 provides for the correction of clerical errors or errors in jurisdictional orders from the county boards of property tax appeals (BoPTA) that are found after the board's term ends on June 30 each year. This rule conflicts with another, repealing and adding some language to OAR 150-306.115.

150-311.668(1)(a)-(A) and 150-311.668(1)(a)-(B) list the requirements to qualify for the Senior Deferral Program. Repealing both as those requirements are now in statute.

150-311.679(10) explains the process of creating tax liens for deferred disabled property. Repealing, there is no longer a separate process for disabled property.

150-311.706 and 150-311.706(1) explain the application process and requirements for the Senior Special Assessment Deferral program. Repealing both rules as this program sunset in 2011.

**Rules Coordinator:** Ken Ross—(503) 945-8890

## 150-294.187

### Transfers from the CATF to the CAFFA Account

Each county must notify the Department of Revenue of the amount it deposits into the County Assessment Function Funding Assistance (CAFFA) account from the County Assessment and Taxation Fund (CATF) account at the time of deposit. The deposit must occur on or before the 10th working day of the month following the last day of the fiscal quarter.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 294.187

Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; REV 3-2001, f. 7-31-01, cert. ef. 8-1-01. Renumbered from 150-294.005(Note)-(F); REV 6-2003, f. & cert. ef. 12-31-03; REV 8-2012, f. 12-18-12, cert. ef. 1-1-13; REV 1-2013, f. & cert. ef. 3-28-13

## 150-306.115

### Supervisory Authority

(1) ORS 306.115 is an extraordinary remedy that gives the Department of Revenue authority to order a change or correction to a separate assessment of property. An assessor or taxpayer may request a change or correction by filing a petition with the department. A petition must meet the requirements of OAR 150-306.115-(A).

(2) The department may correct any errors or omissions in the assessment or tax roll under ORS 306.115(2) through (4), including but not limited to clerical errors and errors in property value, classification, or exemption.

(3) Before the department will consider the substantive issue in a petition (for example, value of the property, qualification for exemption, etc.), the petitioner has the burden of showing that the requirements for supervisory jurisdiction, as stated in ORS 306.115 and section (4) of this rule, have been met. The department will base its determination on the record before it.

(a) The department may request supplemental information from the petitioner if it determines the petition is inadequate. The department may dismiss the petition if the petitioner does not provide the requested information within the time specified.

(b) If a determination can be made from the written information, a supervisory conference will not be held.

(c) If a determination cannot be made from the written information, a supervisory conference will be held. At a supervisory conference, the department will consider only whether the requirements of ORS 306.115 and this rule have been met. The substantive issue in the petition will not be considered.

(d) If the department determines that it has the authority under ORS 306.115(3) to consider the substantive issue in the petition, it will hold a merits conference, if necessary, to consider the substantive issue. If the department determines that it does not have the authority to consider the substantive issue in the petition, the petition will be denied.

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(4) The department will consider the substantive issue in the petition only when:

(a) The assessor or taxpayer has no remaining statutory right of appeal; and

(b) The department determines that an error on the roll is likely as indicated by at least one of the following standards:

(A) The parties to the petition agree to facts indicating likely error; or

(B) There is an extraordinary circumstance indicating a likely error.

Extraordinary circumstances under this provision are:

(i) The taxation of nonexistent property, property that is exempt as a matter of law without an application, or property outside the taxing jurisdiction;

(ii) Taxpayers' computational or clerical errors in reporting the value of personal property pursuant to ORS 308.290;

(iii) Instances in which a bona fide purchaser had no notice of a real property roll correction made under ORS Chapter 311 during the appeal period set forth in 305.280;

(iv) A clerical or jurisdictional error exists in an order from a county Board of Property Tax Appeals;

(v) An increase in maximum assessed value above the 3% limitation during the years for which the department has supervisory jurisdiction where there has been no change to the property that qualifies as an exception under ORS 308.146(3), and there is no dispute involving valuation judgment, the identification of activity as general ongoing maintenance and repair, or an account modification under 308.162; or

(vi) Instances in which a question of fact exists which is of interest to the department, does not fall within any other provision of ORS 306.115 or this rule and does not involve an error in valuation judgment.

(5) The department may correct the assessment or tax roll with respect to a separate assessment of property for the current tax year, for either or both of the tax years immediately preceding the current tax year, or for any combination of such years. The requirements of ORS 306.115 and this rule must be met for each year that a correction is to be made. The department may make a correction under 306.115(3) only when:

(a) The requirements of subsections (4)(a) and (4)(b) of this rule have been met and the department determines that an error exists on the roll; or

(b) The requirements of section (6) of this rule have been met.

(6) Notwithstanding the requirements of section (4) of this rule, the department may correct the roll when:

(a) The assessor requests a reduction in value; or

(b) The taxpayer and assessor stipulate to an assessment change.

(7) The remedies provided by ORS 306.115 should not be viewed as substitutes for the ordinary appeal remedies provided by other sections or the provisions of 305.288.

Stat. Auth.: ORS 305.100  
Stats. Implemented: ORS 306.115

Hist.: RD 4-1984(Temp), f. & cert. ef. 8-6-84; RD 7-1984, f. 12-5-84, cert. ef. 12-31-84; RD 9-1985, f. 12-26-85, cert. ef. 12-31-85; RD 10-1987(Temp), f. & cert. ef. 11-1-87; RD 2-1988, f. 1-11-88, cert. ef. 1-15-88; RD 6-1991, f. 12-30-91, cert. ef. 12-31-91; RD 5-1992, f. & cert. ef. 12-29-92; RD 10-1992, f. 12-30-92, cert. ef. 12-31-92, Renumbered from 306.115-(B); RD 2-1997(Temp), f. & cert. ef. 9-15-97 thru 3-9-98; RD 9-1997, f. & cert. ef. 12-31-97; REV 1-1999(Temp), f. 3-2-99, cert. ef. 3-3-99 thru 8-3-99; REV 3-1999, f. & cert. ef. 9-1-99; REV 13-1999, f. 12-30-99, cert. ef. 12-31-99; REV 5-2003, f. & cert. ef. 12-31-03; REV 8-2012, f. 12-18-12, cert. ef. 1-1-13; REV 1-2013, f. & cert. ef. 3-28-13

## 150-306.115-(A)

### Sufficiency of a Petition

(1) A petitioner must be one of the following for each of the years that supervisory jurisdiction is requested:

(a) An owner of the property;

(b) A person holding an interest in the property that obligates the person to pay taxes imposed on the property. An interest that obligates the person to pay taxes includes a contract, lease, or other intervening instrumentality;

(c) The assessor of the county in which the property is located; or

(d) The clerk or tax collector of the county in which the property affected by the petition is located, if the petition involves a clerical or jurisdictional error in an order from a county Board of Property Tax Appeals.

(2) The purpose of a petition is to inform the department and the non-petitioning participant of the nature of the claim for relief. For this reason, petitions to the department must include the following information:

(a) Specific facts asserted that satisfy the conditions of OAR 150-306.115(4);

(b) A statement of the specific result requested by the petitioner;

(c) Petitioner's address and phone number;

(d) The signature of the petitioner or authorized representative, verified by a written declaration that the contents of the petition are true and made subject to the statutory penalties for false swearing;

(e) The assessor's tax account number or identification number of the property in question;

(f) In a petition regarding an act or omission by a county tax official or the department, a copy of the written notice of the act or omission that is the subject of the petition must be attached.

(A) The department will review all petitions filed (except those filed pursuant to ORS 308.584, relating to properties centrally assessed by the department) and determine their compliance with this rule. If the department finds a petition to be deficient in any material respect, the department will provide written notice of the deficiency to the petitioner by a letter mailed to the address appearing on the filing. The petitioner has 30 days from the mailing date of the notice to provide the information requested by the department. If the deficiency is not cured within the 30-day period, the petition may be dismissed without further proceedings.

(B) Any petition which is filed by someone who does not appear to be a proper petitioner, or authorized representative pursuant to ORS 305.230, will not be considered a valid petition. The petition will be returned to the sender. The petition may be refiled at a later time with the appropriate authorization. However, the filing date is the day the petition from a proper petitioner or an authorized representative is deemed to be filed or received pursuant to 305.820.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 306.115

Hist.: 12-31-77; RD 8-1983, f. 12-20-83, cert. ef. 12-31-83, Renumbered from 150-305.275; RD 10-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1991, f. 12-30-91, cert. ef. 12-31-91; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 4-1999, f. 12-1-99, cert. ef. 12-31-99, Renumbered from 150-305.275-(A); REV 3-2001, f. 7-31-01, cert. ef. 8-1-01; REV 8-2012, f. 12-18-12, cert. ef. 1-1-13; REV 1-2013, f. & cert. ef. 3-28-13

## 150-306.115-(C)

### Property Tax Conference Procedures

This rule applies only to conferences conducted in the Property Tax Division.

(1) The department will hold a conference if it determines that the written record is insufficient to make a decision. If a conference is necessary, it will be held by telephone unless the department finds it more appropriate to hold the conference in person. The department will record the conferences.

(2) When the department schedules a conference, it will send written notice to the participants 30 to 90 days in advance.

(a) The department may grant postponement requests for good cause. The department may require that a participant requesting a postponement obtain the approval of the other participants prior to granting a postponement.

(b) The department may dismiss the petition if the petitioner or authorized representative fails to appear or be available at the time of the conference.

(3) Conferences will be conducted by a conference officer who is in charge of the conference proceedings.

(4) Conference participants may authorize any person to be a witness on their behalf; however, only those persons qualified under ORS 305.230 may be authorized to act as a taxpayer's representative. The department will not require any particular person to testify. The conference officer will administer an oath to all persons giving testimony.

(5) The burden of proof in all conferences is on the person seeking relief. A preponderance of the evidence is sufficient to sustain the burden of proof.

(6) Any evidence to be considered during the conference must have been mailed to the department and all participants at least ten business days prior to the conference, or it must have been actually received by the department and all participants at least five business days prior to the conference.

(7) No information will be accepted after the conference unless the conference officer determines that more information is needed to clarify an issue raised during the conference.

(8) Conference participants must not communicate privately with the conference officer concerning the substantive issue in a petition. If such a communication occurs, the conference officer will inform the other participants of the communication and give them a reasonable opportunity to respond.

(9) The conference decision is an order for purposes of ORS 309.115.

(a) Conference decisions may be appealed to the Oregon Tax Court within 90 days of the mailing date, as provided in ORS 305.275 and 305.280.

(b) The department may correct or amend a conference decision if a written request is received within 90 days of the date the conference deci-

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sion was issued. The department will not amend a conference decision that has been appealed to the Tax Court.

(c) The department may issue a preliminary ruling when an intermediate decision is required prior to making the final decision. A preliminary ruling is not a final decision for purposes of appeal.

(10) Participants to a conference may request a copy of the recording of the proceeding and shall pay reasonable costs. See OAR 150-192-440. No written transcripts will be provided.

(11) Any exhibit introduced at the conference may be destroyed by the department anytime after 90 days following the issuance of an order, unless, prior to the end of the 90-day period, the person who presented the exhibit makes a written request for the return of the exhibit.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 306.115

Hist.: 11-73; 12-31-77; TC 16-1979, f. 12-20-79, cert. ef. 12-31-79; TC 6, 1981, f. 12-7-81, cert. ef. 12-31-81; RD 8-1983, f. 12-20-83, cert. ef. 12-31-83; RD 5-1986, f. & cert. ef. 12-31-86; RD 10-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1991, f. 12-30-91, cert. ef. 12-31-91; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 4-1999, f. 12-1-99, cert. ef. 12-31-99, Renumbered from 150-305.115(A); REV 1-2003, f. & cert. ef. 7-31-03; REV 8-2012, f. 12-18-12, cert. ef. 1-1-13; REV 1-2013, f. & cert. ef. 3-28-13

## 150-311.670(1)

### Homestead Requirements

(1) For property to qualify for tax deferral under ORS 311.666 to 311.701, the property must be the homestead of the applicant while the property taxes are being deferred. This means all individual or joint applicants must live on the property.

(2) The only exception to section (1) is for situations in which the applicant is required to live away from the homestead by reason of the applicant's health "By reason of health" means that the applicant needs to be away from the property in order to facilitate or obtain medical care or to provide the applicant's basic life needs. Basic life needs include but are not limited to preparation of meals, personal hygiene, or daily care of oneself.

(3) If the applicant in the deferral program is not living at the homestead for reasons of health, the applicant must provide a letter from a medical provider stating the applicant is unable to provide medical care or basic life needs for himself or herself.

(4) Neither the applicant nor the medical provider is required to give a specific date by which the applicant will return to the homestead.

(5) If the applicant is absent from the homestead by reason of the health of the applicant, the Oregon Department of Revenue will continue paying the property taxes as long as the property remains otherwise eligible or until one of the events under ORS 311.684 occurs.

Example 1: Jack and Jane are co-applicants and have been participants in the Senior Deferral program for five years. During a snowstorm in February, Jack fell and broke a hip. Jack has been sent to a nursing home for physical therapy and rehabilitation. Jane notified the department of the situation through a letter from Jack's doctor. Because Jack and Jane both meet the homestead requirement, the Oregon Department of Revenue will continue to pay the property taxes to the county through the deferral program.

Example 2: Same basic scenario as in Example 1. Jane, Jack's co-applicant, moves closer to the nursing home so she doesn't have so far to travel to visit him. All applicants must either live on the property or meet "by reason of health" requirements. Because Jane does not meet the "by reason of health" exception and does not live on the property, the property will not qualify for the deferral program. Both co-applicants must meet the homestead requirements.

(6) An applicant who is away from the homestead by reason of health may rent or lease part of the homestead to another individual. This activity will not affect the payment of the property taxes by the department unless it causes the household income to exceed the maximum income allowed for the year in question.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.670

Hist.: REV 17-2008, f. 12-26-08, cert. ef. 1-1-09; REV 8-2012, f. 12-18-12, cert. ef. 1-1-13; REV 1-2013, f. & cert. ef. 3-28-13

## 150-311.684

### Timing and Repayment of Disqualified, Cancelled or Inactivated Accounts Under the Property Tax Deferral Program

(1) The Department of Revenue will pay property taxes to the county on behalf of each applicant that has been approved for the property tax deferral programs under ORS 311.666 to 311.701. Once the application is approved, the department will pay the taxes each year for as long as the property and applicant remain eligible. A lien will be placed on the property. The department account will include the deferred taxes, lien fees, and interest on the deferred taxes..

(2) "Disqualification" means an account is no longer subject to deferral and the department will no longer pay taxes on behalf of the applicant. The department will send notice of disqualification to the applicant which includes a statement that repayment is required by August 15 of the year

following the calendar year in which any one of the following events occurs:

(a) The applicant(s) dies;

(b) The property is sold or transferred and a person other than the applicant(s) has become the owner of the property;

(c) The property is no longer the homestead of the taxpayer, except in the case the applicant(s) is required to be absent from the home due to medical reasons; or

(d) The property is a manufactured structure or floating home that is moved out of the state.

(3) "Cancellation" means that an account has been removed from the deferral program at the written request of the applicant, and not for reason of any of the events listed in subsection (2) of this rule.

(a) If an account is cancelled prior to September 1, the department will not pay the current year taxes to the county on behalf of the applicant.

(b) The department will pay the current year taxes to the county on behalf of the applicant if an account is cancelled on or after September 1.

(c) A cancelled account may be paid in full at any time after cancellation but no later than as required by ORS 311.686.

(4) "Inactivated" means the department has determined that the applicant or property has become ineligible for deferral of future property taxes due to failure to meet eligibility requirements. If an account is inactivated, the department will send the applicant a notice of inactivation and not pay current or future year taxes to the county on behalf of the applicant. (4) The department will release its lien on the property only after all taxes, interest and fees that were deferred have been paid.

(a) Repayment of a disqualified account is due and payable to the department August 15 of the year following the calendar year in which a disqualifying circumstance occurred.

(b) By itself, cancellation or inactivation of an account is not an event requiring repayment of all deferred taxes, interest and fees.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.666 & 311.684

Hist.: TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; TC 2-1979, f. & cert. ef. 3-5-79; REV 1-2003, f. & cert. ef. 7-31-03; REV 12-2007, f. 12-28-07, cert. ef. 1-1-08; REV 8-2012, f. 12-18-12, cert. ef. 1-1-13; REV 1-2013, f. & cert. ef. 3-28-13

## 150-311.806-(A)

### Process for Determining Recipient of Property Tax Refund

(1) Definitions: For the purpose of this rule:

(a) "Owner of record on the tax roll" means the owner or an owner of the property or each person in whose name the property is assessed on the last certified tax roll.

(b) "At the time of the refund" means the time at which the tax collector calculates the refund and any applicable interest.

(2) The tax collector must determine the recipients of a refund as follows:

(a) Whenever a refund is the result of an appeal, the refund for each year included in the petition must be made payable to, and be mailed or delivered to, the petitioner as shown on the petition.

(b) If an appeal results in a lowering of value under ORS 309.115 for a subsequent year that was not included in the petition and a refund results, the refund for each subsequent year must be made payable to, and be mailed or delivered to, the petitioner for each year in which that person was the owner, an owner, or the person in whose name the property was assessed; and to the current owner of record on the tax roll at the time of the refund for each year thereafter.

(c) Whenever taxes are collected against property not within the jurisdiction of the levying body, the refund must be made payable to, and be mailed or delivered to the owner of record on the tax roll at the time of the refund.

(d) Whenever taxes are paid on property in excess of the amount actually due the refund must be made payable to, and be mailed or delivered to, the owner of record on the tax roll at the time of the refund.

(e) Whenever taxes are paid on the property of another by mistake of any kind:

(A) The refund must be made payable to, and be mailed or delivered to, the payer of the tax.

(B) If the Department of Revenue pays the taxes on a deferral account under ORS 311.676, and the owner, or another party acting on behalf of the owner, also pays the tax for the same property, the department will determine the refund recipient for the overpayment based on information it deems appropriate. The department may contact the deferral applicant and the "other party" to make the determination.

(f) Pursuant to OAR 150-309.110(1)-(D), a refund resulting from a petition to a Board of Property Tax Appeals, the Department of Revenue, or the tax court by one or more owners of property assessed as an undivided

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interest must be apportioned to all of the owners of the property according to the percentage of interest owned.

(3) Notwithstanding section (2) of this rule, the refund will not be mailed or delivered to the petitioner, owner of record on the tax roll, or payer of the tax if:

(a) The refund is the result of an appeal as described in section (2)(a) or (2)(b) of this rule and the petitioner is represented by an attorney. The refund to which the petitioner is entitled must be made payable to the petitioner, or to someone else if so directed by the petitioner in writing, but must be mailed or delivered to the representing attorney.

(b) The refund is the result of an appeal as described in section (2)(f) of this rule and the petitioner who filed the appeal is represented by an attorney. The refund apportioned to the petitioner must be made payable to the petitioner, or to someone else if so directed by the petitioner in writing, but must be mailed or delivered to the representing attorney. The refund or refunds due to the other owners who did not file petitions must be made payable to, and be mailed or delivered to those individual owners.

(c) The petitioner, owner of record, or payer of the tax named in section (2) of this rule is not represented by an attorney and instructs the tax collector, in writing, to make the refund payable to or to mail or deliver it to someone else. The tax collector must follow such instructions.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.806

Hist.: 10-5-84, 12-31-84, Renumbered from 150-311.806 to 150-311.806(A); 12-31-87; 12-31-92; REV 6-2001, f. & cert. ef. 12-31-01; REV 6-2003, f. & cert. ef. 12-31-03; REV 6-2003, f. & cert. ef. 12-31-03; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 12-2007, f. 12-28-07, cert. ef. 1-1-08; REV 8-2012, f. 12-18-12, cert. ef. 1-1-13; REV 1-2013, f. & cert. ef. 3-28-13

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**Rule Caption:** Personal Tax: College Savings plan, surplus refund, appeal language, pass-through entity payments, gain deferral

**Adm. Order No.:** REV 2-2013

**Filed with Sec. of State:** 3-28-2013

**Certified to be Effective:** 3-28-13

**Notice Publication Date:** 11-1-2012

**Rules Adopted:** 150-305.796

**Rules Amended:** 150-291.349, 150-314.781

**Rules Repealed:** 150-316.871(3), 150-316.873, 150-316.874, 150-316.876, 150-316.877, 150-316.878, 150-316.879, 150-316.882, 150-316.884

**Rules Ren. & Amend:** 150-305.265(14)-(A) to 150-305.265(14)

**Subject:** REFILED DUE TO FILING ERROR.

150-305.796 is a new rule to specify the number of college savings accounts in which a taxpayer can deposit their tax refund.

150-291.349 This rule outlines the surplus refund processes, which was changed from a check to a tax credit on the return. Changes to the rule give examples for calculating the credit.

150-314.781 discusses payments that a pass-through entity makes on behalf of the non-resident owners. The changes to the rule require an annual reconciliation to specify amounts paid for each owner.

150-305.265(14)-(A) describes when the Department of Revenue will "assess" a Notice of Deficiency. The assessment date starts the 90 day window to appeal to the Tax Court. Changes to this rule make the language clearer, there are no policy changes.

150-316.871(3), 150-316.873, 150-316.874, 150-316.876, 150-316.877, 150-316.878, 150-316.879, 150-316.882, 150-316.884 are all rules for the Deferral of Reinvested Gain program. These rules are repealed, the program sunsetted in 2011.

**Rules Coordinator:** Ken Ross—(503) 945-8890

## 150-305.265(14)

### Appeal from a Notice of Deficiency: Periods of Limitation

(1) Date of assessment if taxpayer does not file a timely appeal with the department. If a taxpayer pays a deficiency in full before the department issues a notice of assessment and does not send a timely written objection or request for a conference, the deficiency is considered assessed on the date the deficiency is paid or 30 days from the date of the notice, whichever is later. A taxpayer has 90 days from the date of assessment in which to appeal to the Magistrate Division of the Oregon Tax Court. If a taxpayer does not appeal to the Magistrate Division of the Oregon Tax Court within the 90-day period, the assessment is final, unless the taxpayer appeals under ORS 305.280(3) following payment of the tax.

(2) Date of assessment if taxpayer files a timely appeal with the department. If a taxpayer files a timely request for a conference or written

objections, the deficiency is not considered assessed until the department sends a written determination of the issues to the taxpayer. Also, if a timely conference request or written objections accompany or follow the payment of a deficiency, the department will not assess the deficiency until it sends a written determination of the issues to the taxpayer. Payment of the deficiency is a credit to the taxpayer's account. If the balance is zero, the written determination of the issues is considered the notice of assessment.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.265

Hist.: 12-31-77; 12-31-79; 12-31-84, Renumbered from 150-305.265(13); RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 10-1986, f. & cert. ef. 12-31-86; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90, Renumbered from 150-305.265(14); RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 5-2000, f. & cert. ef. 8-3-00; Renumbered from 150.305.265(14)-(A) by REV 9-2012, f. 12-18-12, cert. ef. 1-1-13; Renumbered from 150.305.265(14)-(A) by REV 2-2013, f. & cert. ef. 3-28-13

## 150-291.349

### Procedures for Handling State Personal Income Tax Surplus Credit

(1) Surplus Credit Generally. This rule applies for biennia beginning on or after July 1, 2011, when personal income taxpayers are credited a surplus of tax revenues under ORS 291.349(4). Taxpayers claim the credit in odd-numbered tax years and calculate the credit based on the tax return information for the immediately preceding even-numbered tax year (base tax year).

(2) Surplus Credit Procedure. No later than October 15 following the end of the biennium for which a surplus is determined, the department will make publicly available to taxpayers the applicable surplus percentage amounts and information giving guidance on the calculation of the surplus credit.

(a) Personal income taxpayers calculate their surplus credit by multiplying the applicable surplus percentage amount by their total personal income tax liability for the base tax year.

(b) The total personal income tax liability is determined after allowing a credit for income taxes paid to another state (under ORS 316.082, 316.131, and 316.292) and before any other credit or offset against tax liability, allowed or allowable.

(c) If a surplus credit reduces tax liability to zero, the department will refund any unused surplus credit amount as an overpayment of tax. The department may offset an overpayment of tax due to any unused surplus credit amount to pay debts owing to the State of Oregon or other parties as indicated in ORS 314.415 and 293.250. The department will issue a notice when this occurs. The department will offset any unused surplus credit amount consistent with the priority set out in OAR 150-314.415(2)(f)-(B).

(3) Changes in filing status or spouse/registered domestic partner (RDP). A taxpayer who files returns using a different filing status in the base tax year and the immediately succeeding tax year, when claiming a surplus credit, or who files jointly with a different taxpayer in the base tax year and the immediately succeeding tax year, when claiming a surplus credit, must compute their surplus credit as follows:

(a) From another filing status to married/RDP filing jointly. The surplus credit allowed on the joint return is the combination of the surplus credits as calculated based on each taxpayer's separate return from the base tax year.

Example 1: George and Robin each file their 20XX personal income tax returns, using the single filing status. George has a total personal income tax liability of \$2,000. Robin has a total personal income tax liability of \$3,000. In 20X1, George and Robin marry. After the end of the biennium in 20X1, a surplus credit is determined with an applicable percentage amount of 5%. George and Robin file their 20X1 personal income tax return jointly. They must each calculate their surplus credit separately and report the sum on their return. George's surplus credit is \$100 (\$2,000 x 0.05) and Robin's surplus credit is \$150 (\$3,000 x 0.05). They will claim a surplus credit of \$250 on their 20X1 joint personal income tax return.

(b) From married/RDP filing jointly to another filing status. The surplus credits claimed by each taxpayer on their separate returns must bear the same proportion to the total surplus credit calculated according to ORS 291.349(5) as the federal adjusted gross income of each taxpayer bears to the federal adjusted gross income of both taxpayers on the joint return for the base tax year.

Example 2: Shawna and Nathan are married and file their 20XX personal income tax return, using the married filing jointly filing status. Their total federal adjusted gross income (AGI) is \$65,000. Their total personal income tax liability is \$5,000. Shawna's portion of the total AGI is \$45,500, or 70%. Nathan's portion of the total AGI is \$19,500, or 30%. In 20X1 Shawna and Nathan divorce and neither remarries during that year. After the end of the biennium in 20X1, a surplus credit is determined with an applicable percentage amount of 4%. When Shawna and Nathan file their separate 20X1 personal income tax returns, they will calculate separate surplus credits based on their 20XX AGI. Shawna will claim a surplus credit of \$140 (5,000 x 0.04 x 0.70). Nathan will claim a surplus credit of \$60 (5,000 x 0.04 x 0.30).

(c) From married/RDP filing jointly to married/RDP filing jointly with a different spouse/RDP. The provisions of this subsection apply to a



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taxpayer who files a joint return with one spouse/RDP for the base tax year and then divorces, marries a different spouse/RDP during the immediately succeeding tax year, and files a joint return with their new spouse/RDP for the immediately succeeding tax year. The surplus credit allowed on the joint return with the new spouse/RDP is the combination of the surplus credits as calculated based on each taxpayer's separate return from the base tax year.

Example 3: Duane and Fern are married and file their 20XX personal income tax return, using the married filing jointly filing status. Their total AGI is \$80,000. Their total personal income tax liability is \$7,500. Duane's portion of the total AGI is \$48,000, or 60%. Fern's portion of the total AGI is \$32,000, or 40%. In 20X1, Duane and Fern finalize their divorce. Duane marries Leslie that same year. Leslie filed a 20XX personal income tax return, using the single filing status. Her total personal income tax liability was \$2,000. After the end of the biennium in 20X1, a surplus credit is determined with an applicable percentage amount of 2%. When Duane and Leslie file their joint 20X1 personal income tax return, they must each calculate their surplus credits separately and report the sum on their return. Duane's surplus credit is \$90 ( $\$7,500 \times 0.02 \times 0.60$ ), calculated according to subsection (b) of this section. Leslie's surplus credit is \$40 ( $\$2,000 \times 0.02$ ). They will then add their separate credits and claim a \$130 surplus credit on their joint 20X1 personal income tax return. Fern will claim a surplus credit of \$60 ( $\$7,500 \times 0.02 \times 0.40$ ) on her 20X1 personal income tax return.

(d) Death of a taxpayer. The provisions of this subsection apply when a taxpayer dies during the base or immediately succeeding tax year and personal income taxpayers are credited a surplus of tax revenues after the end of that biennium. The taxpayer's representative may file a return on their behalf to claim the surplus credit. If one of the two taxpayers on a jointly filed return from the base tax year dies, the surviving taxpayer from the joint return may claim the full amount of the surplus credit.

(4) Surplus Credit and subsequent increase in tax liability. If a taxpayer claims a surplus credit and subsequently there is an increase in the tax liability for the base tax year, the taxpayer must recalculate and apply their surplus credit in the following manner:

(a) Determine the revised surplus credit under section (2) of this rule using the total personal income tax liability as determined in an audit or review or as self-assessed by the taxpayer if an amended return is filed with the department;

(b) If within the time allowed by law, adjust or amend the return for the odd-numbered tax year to include the revised surplus credit.

Example 4: Beth files her 20XX Oregon personal income tax return showing a total personal income tax liability of \$5,000. A surplus credit of 10% of 20XX tax year personal income tax liabilities is determined for tax year 20X1. Beth files her 20X1 Oregon personal income tax return claiming a surplus credit of \$500 ( $\$5,000 \times 0.10$ ). Later, the department adjusts her 20XX personal income tax return increasing her tax liability before credits by \$2,000. Beth's revised 20XX total personal tax liability is \$7,000 ( $\$5,000 + \$2,000$ ). She will multiply this amount by 10% to calculate her revised surplus credit of \$700 for tax year 20X1. Within the time allowed by law, Beth must correct her 20X1 personal income tax return to claim the additional \$200 ( $\$700$  [allowed] -  $\$500$  [already claimed]) of surplus credit. The department may offset the additional \$200 to any outstanding debt before refunding any portion to Beth.

(5) Surplus Credit and subsequent decrease in liability. If a taxpayer claims a surplus credit and subsequently there is a decrease in tax liability for the base tax year, the taxpayer must recalculate and apply their surplus credit in the following manner:

(a) Determine the revised surplus credit under section (2) of this rule using the total personal income tax liability as determined in an audit or review or as self-assessed by the taxpayer if an amended return is filed with the department;

(b) If within the time allowed by law, adjust or amend the return for the odd-numbered tax year to include the revised surplus credit.

Example 5: Use the same facts as example 4, except Beth files a 20XX amended personal income tax return reducing her total personal income tax liability from \$5,000 to \$3,000 and claiming a refund of \$2,000. Beth's revised surplus credit for tax year 20X1 is \$300 ( $\$3,000 \times 0.10$ ). Within the time allowed by law, Beth must correct her 20X1 personal income tax return to include the revised credit and determine the amount previously allowed that she must pay back. Beth's original surplus credit was \$500. This means she must pay back \$200 ( $\$500$  [original surplus credit] -  $\$300$  [revised surplus credit]). In addition to any other allowable offsets, the department will offset the refund from Beth's 20XX amended return to pay back the excess surplus credit she previously claimed, plus interest.

(6) Interest accrual.

(a) Interest accrues according to ORS 314.415 on a refund of any unused surplus credit amount under subsection (2)(c) of this rule.

(b) Interest accrues according to ORS 314.400(7) on the amount of any surplus credit that a taxpayer must pay back under section (5) of this rule.

(7) Tax determined by the department on behalf of a delinquent taxpayer. If a taxpayer fails to file a return, the department may determine the taxpayer's tax liability under ORS 314.400. If the department determines a taxpayer's tax liability for a tax year in which personal income taxpayers are credited a surplus of tax revenues under 291.349(4), the amount of surplus credit will not be included in the department's calculation of tax liability until:

(a) The taxpayer files a return with the department for the base tax year;

(b) The taxpayer accepts the tax liability assessed by the department for the base tax year; or

(c) The taxpayer's liability is determined by the court for the base tax year.

(8) Returns and the statute of limitations. The department will refund any unused surplus credit amount as an overpayment of tax only as the limitations under ORS 314.415 will allow.

(9) Claiming a surplus credit when a taxpayer otherwise has no requirement to file. The provisions of this section apply to taxpayers who are not otherwise required to file a return. If a taxpayer files a return and has, or the department determines the taxpayer has, a personal income tax liability for the base tax year, the taxpayer must file a return in the immediately succeeding tax year in order to claim a surplus credit and receive a refund.

(10) Joint return apportionment of refund. If two taxpayers together file a joint return claiming a surplus credit and either spouse requests the department make separate refunds under ORS 314.415(7), the department will apportion the total refund according to 314.415(7) and OAR 150-314.415(7). The following is an example applying this section and subsection (3)(a) of this rule:

Example 6: John and Mary were not married and filed their 20XX personal income tax returns separately. John had a total personal income tax liability of \$3,000. Mary had a total personal income tax liability of \$1,000. In 20X1, they marry and later file their personal income tax return using the married filing jointly filing status. A surplus credit of 4% of 20XX tax year personal income tax liabilities is determined for tax year 20X1. John and Mary calculate their total surplus credit according to subsection (3)(a) of this rule. John calculates a separate surplus credit of \$120 ( $\$3,000 \times 0.04$ ) and Mary calculates a separate surplus credit of \$40 ( $\$1,000 \times 0.04$ ). They claim a total surplus credit of \$160 on their 20X1 personal income tax return.

Mary is behind on her student loan payments and the department offsets Mary and John's entire 20X1 refund to pay that debt. John requests that the department split the 20X1 refund, to avoid offsetting his portion of the refund to pay Mary's loan. Their 20X1 joint return contains the following information:

AGI: \$50,000; John's AGI: \$40,000 (80% of total AGI); Mary's AGI: \$10,000 (20% of total AGI); Total Refund \$1,000.

The surplus credit calculation and the calculation for splitting refunds are independent of each other. The department splits the total refund according to ORS 314.415(7) and OAR 150-314.415(7). John's portion of the refund is \$800 ( $\$1,000 \times 0.80$ ) and the department sends it to him. Mary's portion of the refund is \$200 ( $\$1,000 \times 0.20$ ) and the department offsets it to pay her student loan.

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

Stat. Auth.: ORS 291.349 & 305.100

Stats. Implemented: ORS 291.349

Hist.: REV 6-2008, f. 8-29-08, cert. ef. 8-31-08; REV 9-2012, f. 12-18-12, cert. ef. 1-1-13;

REV 2-2013, f. & cert. ef. 3-28-13

## 150-305.796

### Depositing Refunds into College Savings Account

A taxpayer electing to make contributions authorized by ORS 305.796 to one or more accounts established under 348.857:

(1) May contribute to a maximum of four accounts;

(2) Must contribute at least \$25 per account; and

(3) May deduct contributions made under this section on the subsequent year's tax return in accordance with ORS 316.699.

Stat. Auth.: ORS 305.100 & 305.796

Stats. Implemented: ORS 305.796

Hist.: REV 9-2012, f. 12-18-12, cert. ef. 1-1-13; REV 2-2013, f. & cert. ef. 3-28-13

## 150-314.781

### Pass-through Entity Withholding Requirements

(1) Withholding requirement. A pass-through entity with Oregon-source distributive income and one or more nonresident owners that have no other Oregon-source income, is required to withhold tax on behalf of the owner unless that owner makes an election as described in OAR 150-314.778 or meets an exception described in 150-314.784. "Tax payment" or "owner payment" means pass-through entity withholding, which is an estimated tax payment sent on behalf of the owner. The entity must withhold tax as follows:

(a) For nonelecting owners subject to tax under ORS Chapter 316, each owner's share of estimated Oregon-source distributive income for the taxable year multiplied by the highest percent in 316.037; and

(b) For nonelecting owners subject to tax under ORS Chapter 317 or 318, each owner's share of estimated Oregon-source distributive income for the taxable year multiplied by the rates in 317.061.

(2) Information retention requirement. The pass-through entity must retain in its records the information listed in this section and submit it to the Department of Revenue on request:

(a) Calculation of the amount required to be withheld pursuant to this rule;

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(b) Whether payments were submitted in addition to the quarterly withholding tax amounts required to be remitted under section (4) of this rule; and

(c) A detailed summary of the nonelecting owner's share of the aggregate withholding tax payments made by the pass-through entity for the taxable year and the nonelecting owner's share of the aggregate additional withholding tax liability paid. See the annual report requirement in section (5) of this rule.

(3) Information reporting to owner requirement. The pass-through entity, by the due date of its information return, must provide each applicable nonelecting owner with an information statement containing the owner's share of the entity's withholding tax payments to be claimed as estimated tax payments on the owner's tax return.

(4) Periodic remittance requirement.

(a) The entity must remit amounts required to be withheld to the department on a quarterly basis using a method approved by the department. The quarterly withholding tax remittance amounts are generally the sum of:

(A) The highest marginal tax rate for the end of the entity's tax year in ORS 316.037 multiplied by the sum of the noncorporate nonelecting owner's estimated share of the entity's Oregon-source distributive income and then multiplied by 25 percent; and

(B) The applicable rate in ORS 317.061 multiplied by the sum of the corporate nonelecting owner's estimated share of the entity's Oregon-source distributive income and then multiplied by 25 percent.

(b) The due dates of these required payments are the 15th day of the 4th, 6th, 9th, and 12th month of the entity's tax year. Due dates are moved to the next business day when they occur on a weekend or legal holiday. Exception: Fiscal year entities whose owners are all noncorporate taxpayers using a calendar tax year can elect to use the due dates for the owners' calendar tax year instead. This is the 15th day of the 4th, 6th, and 9th month of the tax year and the 1st month of the succeeding tax year for the calendar year containing the entity's fiscal year end.

Example 1: Mountain LLC uses a fiscal tax year ending April 30th. Its fiscal year 2013 is from May 1, 2013 to April 30, 2014. Using its tax year, the quarterly payments are due August 15th, 2013; October 15th, 2013; January 15, 2014; and April 15, 2014. Since all of the owners of Mountain LLC are individuals using a calendar tax year, the LLC can opt to use the due dates for the owners' tax year instead. Because those owners report this income on their 2014 calendar year return, those due dates are: April 15, 2014; June 16, 2014; September 15, 2014; and January 15, 2015.

(5) Annual report requirement. For estimated tax payments due on or after January 1, 2013, the entity will submit an annual report. The report is due the last day of the second month following the close of the entity's tax year. The report will have the following information for each owner included in the pass-through entity withholding payments: owner's name, owner's federal tax identification number, owner's mailing address, owner's share of each payment made on the owner's behalf, and any additional information requested by the department in the filing instructions. The department may request other information as needed. The owners will not receive credit for payments made on their behalf until the annual report has been filed by the entity.

Example 2: ABC Partners, an Oregon partnership, has 2 nonresident owners who each own 25 percent of the partnership. One is an individual, Rachel, and one is a corporation, Eli & Alexandria Inc. (E&A). Because neither elects to join in filing a composite return and neither has filed an affidavit, ABC must withhold Oregon tax. ABC Partners estimates its Oregon-source distributive income for 2013 will be \$1,500,000. For 2013, the entity will calculate the tax payment for each period based on the nonresident owners' share of 25 percent of \$1,500,000 and the appropriate tax rate. Rachel's pass-through entity withholding is 9.9 percent (the highest marginal tax rate for 2013) multiplied by \$375,000 multiplied by 25 percent. This is \$9,281 (rounded) for each period. E&A's pass-through entity withholding is 6.6 percent multiplied by \$375,000 multiplied by 25 percent. This is \$6,188 (rounded) for each period. ABC Partners will add together the amounts estimated for all owners and send in one payment each period of \$15,469. ABC Partners will submit these payments using its tax year. Since ABC Partners uses a calendar tax year, the due dates for each payment for tax year 2013 are April 15, June 17, September 16, 2013 and January 15, 2014. If ABC Partners was a fiscal year taxpayer, then it would submit pass-through entity owner payments by the estimated tax payment due dates for that fiscal tax year instead. At the end of its tax year, ABC Partners will submit an annual report. Since it has no changes to account for, it will show \$9,281 of each quarterly payment belongs to Rachel and \$6,188 of each quarterly payment belongs to E&A Inc.

[Publications: Publications referenced are available from the agency.]  
 Stat. Auth.: ORS 305.100  
 Stats. Implemented: ORS 314.781  
 Hist.: REV 10-2010, f. 7-23-10, cert. ef. 7-31-10; REV 9-2012, f. 12-18-12, cert. ef. 1-1-13;  
 REV 2-2013, f. & cert. ef. 3-28-13

**Rule Caption:** Business: Updating interest rates charged and paid; cigarette tax invoices, single pack sales language  
**Adm. Order No.:** REV 3-2013  
**Filed with Sec. of State:** 3-28-2013  
**Certified to be Effective:** 3-28-13

**Notice Publication Date:** 11-1-2012

**Rules Adopted:** 150-323.220(B)

**Rules Amended:** 150-305.220(1), 150-305.220(2), 150-323.160(1), 150-323.160(2), 150-323.220(A)

**Subject:** REFILED DUE TO FILING ERROR.

150-323.220-(B) Invoices showing purchases of cigarettes are required, this new rule details what information needs to be included on the cigarette sales invoice.

150-305.220(1) specifies the interest rate charged on deficiencies and delinquencies of tax debt, reducing to 4% annually.

150-305.220(2) specifies the interest rate paid on tax refunds, reducing to 4% annually.

150-323.160(1) outlines the type of tax stamp units sold by the Dept. of Revenue. Single cigarette stamps are listed, but DOR no longer sells single tax stamps as sales of single cigarettes are prohibited by federal law. Removing references to single sales.

150-323.160(2) outlines how to affix tax stamps to packages of cigarettes. There are references to single cigarette stamps, but sales of single cigarettes are prohibited by federal law. Updating to remove references to single sales.

150-323.220-(A) gives requirements for segregation of stamped and unstamped cigarettes. This amendment removes all references to single cigarette sales and clarifies language around a dealer who is also a distributor.

**Rules Coordinator:** Ken Ross—(503) 945-8890

## 150-305.220(1)

### Interest on Deficiencies and Delinquencies

(1) Adjustment to statutory rate. For interest periods beginning on or after January 1, 2013, unless otherwise provided by law, every deficiency and delinquency arising under any law administered by the Department of Revenue will bear interest at the rate of 0.3333 percent per month (4 percent annually). For a fraction of a month, interest will be computed at 0.0110 percent per day. For historic interest rates, see section (4) of this rule.

(2) Interest starting date. The interest starting date for deficiencies and delinquencies will be one day after the due date of the return, excluding extensions.

(3) Interest periods. An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be computed on a daily basis for a fraction of a month. The daily rate is based on a 365-day year.

(4) Interest rates. The following table shows interest rates and interest periods used by the Oregon Department of Revenue to compute interest due from taxpayers on deficiencies and delinquencies.

Effective date	Annual rate	Monthly rate	Daily rate
Prior to January 1, 1969	6	0.5	—
January 1, 1969	8	0.6667	—
September 13, 1975	12	1.0	—
June 1, 1982	18	1.5	0.0493
August 1, 1986	17	1.4167	0.0466
January 1, 1987	16	1.3333	0.0438
January 1, 1988	11	0.9167	0.0301
January 1, 1993	8	0.6667	0.0219
January 1, 1995	10	0.8333	0.0274
January 1, 1999	9	0.75	0.0247
January 1, 2001	10	0.8333	0.0274
February 1, 200	8	0.6667	0.0219
February 1, 2003	7	0.5833	0.0192
January 1, 2004	6	0.5	0.0164
January 1, 2005	5	0.4167	0.0137
January 1, 2006	7	0.5833	0.0192
January 1, 2007	9	0.75	0.0247
January 1, 2009	6	0.5	0.0164
January 1, 2010	5	0.4167	0.0137
January 1, 2103	4	0.3333	0.0110

(5) Decimal places used in computations. In all computations, the interest rate will consist of six decimal places.

Example A: A 2002 return is filed and a tax of \$500 is paid on February 25, 2006.

Interest is computed as follows:

4/16/2003 — 1/15/2004 9 mos. @ .5833% = \$ 26.25

1/16/2004 — 1/15/2005 12 mos. @ .5% = 30.00

1/16/2005 — 1/15/2006 12 mos. @ .4167% = 25.00

1/16/2006 — 2/15/2006 1 month @ .5833% = 2.92

2/16/2006 — 2/25/2006 10 days @ .0192% = .96

Total interest \$ 85.13

The new interest rate, even though effective on the first day of a month, does not

apply until the first day of the first interest period that begins after the effective date.

In this example, the first interest period begins on the 16th of the month.

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Stat. Auth.: ORS 305.100 & 305.220

Stats. Implemented: ORS 305.220

Hist.: RD 2-1986, f. 7-2-86, cert. ef. 8-1-86; RD 8-1986, f. & cert. ef. 12-31-86; RD 14-1987, f. 12-18-87, cert. ef. 1-16-88; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03; REV 10-2004, f. 12-29-04, cert. ef. 12-31-04; REV 5-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09; REV 9-2009, f. 12-21-09, cert. ef. 1-1-10; REV 10-2012, f. 12-18-12, cert. ef. 1-1-13; REV 3-2013, f. & cert. ef. 3-28-13

## 150-305.220(2)

### Interest on Refunds

(1) Adjustment to statutory rate. For interest periods beginning on or after January 1, 2013, unless specifically provided by statute or by rule, every refund arising under any law administered by the Department of Revenue will bear interest at the rate of 0.3333 percent per month (4 percent annually). For a fraction of a month, interest will be computed at 0.0110 percent per day. For historic rates, see section (6) of this rule.

(2) Interest starting date.

(a) As provided in OAR 150-314.415, the interest starting date for refunds of individual income tax, corporate excise tax, or corporate income tax, is 45 days after the date the tax was paid, 45 days after the return was due or 45 days after the original return was filed, whichever is latest.

(b) The interest starting date for refunds not described in (2)(a) is 45 days after the return was due or 45 days after the date the tax was paid, whichever is later.

(3) Interest periods. An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be computed on a daily basis for a fraction of a month. The daily rate is based on a 365 day year.

(4) Interest rates. For interest periods beginning on or after June 1, 1983, the interest rate paid on refunds will be the same as the interest rate charged on deficiencies and delinquencies.

(5) Decimal places used in computations. In all computations, the interest rate will consist of six decimal places.

(6) The following table shows interest rates used by the Oregon Department of Revenue to compute interest due to taxpayers on refunds.

Effective date	Annual rate	Monthly rate	Daily rate
January 1, 1969	8	0.6667	—
September 13, 1975	6	0.5	—
June 1, 1982	12	1.0	0.0329
June 1, 1983	18	1.5	0.0493
August 1, 1986	17	1.4167	0.0466
January 1, 1987	16	1.3333	0.0438
January 1, 1988	11	0.9167	0.0301
January 1, 1993	8	0.6667	0.0219
January 1, 1995	10	0.8333	0.0274
January 1, 1999	9	0.75	0.0247
January 1, 2001	10	0.8333	0.0274
February 1, 2002	8	0.6667	0.0219
February 1, 2003	7	0.5833	0.0192
January 1, 2004	6	0.5	0.0164
January 1, 2005	5	0.4167	0.0137
January 1, 2006	7	0.5833	0.0192
January 1, 2007	9	0.75	0.0247
January 1, 2009	6	0.5	0.0164
January 1, 2010	5	0.4167	0.0137
January 1, 2013	4	0.3333	0.0110

Example 1: Debby files her 2002 return on April 15, 2003. Debby later files a 2002 amended return on May 15, 2005, asking for a refund of \$500. The refund is paid on July 22, 2005. The interest is computed as follows:  
5/30/2003 — 1/29/2004 8 mos. @ .5833% = \$23.33  
1/30/2004 — 1/29/2005 12 mos. @ .5% = 30.00  
1/30/2005 — 6/29/2005 5 mos. @ .4167% = 10.42  
6/30/2005 — 7/22/2005 23 days @ .0137% = 1.58  
Total interest \$65.33

The new interest rate, even though effective on the first day of a month, does not apply until the first day of the first interest period that begins after the effective date. In this example, the first interest period begins on the 30th of the month.

Example 2: Tom filed his 2004 return and paid the tax due on April 6, 2005. On November 1, 2006, Tom filed a 2004 amended return to claim a refund of \$1,000. The refund was paid on December 11, 2006. The interest starting date is May 30, 2005, the 45th day after the return was due. The interest is computed as follows:

5/30/2005 — 01/29/2006 8 mos. @ .4167% = 33.34  
1/30/2006 — 11/29/2006 10 mos. @ .5833% = 58.33  
11/30/2006 — 12/11/2006 12 days @ .0192% = 2.30  
Total interest \$93.97

Stat. Auth.: ORS 305.100 & 305.220

Stats. Implemented: ORS 305.220

Hist.: 5-5-82, 6-15-82; 12-31-82, Renumbered from Ch. 16. Or Laws 1982 (2nd SS) to 150-314.415(1)(a); 12-31-85; 12-31-86; Renumbered from 150-314.415(1)(a); RD 15-1987, f. 12-10-87, cert. ef. 12-31-87, Renumbered from 305.220; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1992, f. & cert. ef. 12-29-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-

1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03; REV 10-2004, f. 12-29-04, cert. ef. 12-31-04; REV 5-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09; REV 9-2009, f. 12-21-09, cert. ef. 1-1-10; REV 10-2012, f. 12-18-12, cert. ef. 1-1-13; REV 3-2013, f. & cert. ef. 3-28-13

## 150-323.160(1)

### Tax Stamp Units of Sale; Minimum Sales

(1) The Department of Revenue will sell cigarette tax stamps only to licensed distributors and their properly authorized employees whose signature cards are in the possession of the designated agent of the department. The department has set the minimum unit purchases for each sale as follows:

(2)(a) Heat-applied decal tax stamps for the denominated value of 20 units per pack are sold in rolls containing 30,000 stamps. The stamps are sold in full rolls only and the smallest sale unit is one roll.

(b) Heat-applied decal tax stamps for the denominated value of 25 units per pack are sold in rolls containing 7,200 stamps. The stamps are sold in full rolls only and the smallest sale unit is one roll.

(c) Heat-applied decal tax stamps for the denominated value of 20 units per pack are sold in pads containing 10 sheets of 100 stamps per sheet. The stamps are sold in full pads and the smallest sale unit is one pad of 10 sheets totaling 1,000 stamps.

Stat. Auth.: ORS 305.100 & 323.440

Stats. Implemented: ORS 323.160

Hist.: 6-66; 9-71; RD 8-1984, f. 12-5-84, cert. ef. 12-31-84; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; REV 11-1999, f. 12-30-99, cert. ef. 12-31-99; Renumbered from 150-323.155, REV 5-2004, f. 7-30-04, cert. ef. 7-31-04; REV 2-2007(Temp), f. & cert. ef. 3-21-07 thru 7-30-07; REV 5-2007, f. 7-30-07, cert. ef. 7-31-07; REV 10-2012, f. 12-18-12, cert. ef. 1-1-13; REV 3-2013, f. & cert. ef. 3-28-13

## 150-323.160(2)

### Manner of Affixing Stamps

(1) The department will sell the following cigarette tax stamp types and denominations:

(a) A heat-applied decal tax stamp with the denominated value of 20 units per pack.

(b) A heat-applied decal tax stamp with the denominated value of 25 units per pack.

(2) Stamps must be affixed to each individual package of cigarettes, as distinguished from cartons or large containers, in an aggregate denomination not less than the amount of tax upon the contents therein.

(3) Stamps must be affixed to the bottoms of such packages in a manner that is clearly visible to subsequent purchasers. No other stamp, label, decal, mark or sign shall be affixed to or displayed on the bottom of a package of cigarettes without prior written approval from the department. If packaging is different from the typical 20 or 25 cigarette packages, written department approval specifying where the stamp(s) will be affixed is required before stamps can be affixed to the packaging. Such approval will be given only to licensed cigarette agents who agree to purchase such indicia from the department.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 323.160

Hist.: REV 11-1999, f. 12-30-99, cert. ef. 12-31-99; REV 8-2002, f. & cert. ef. 12-31-02; Renumbered from 150-323.160, REV 7-2004, f. & cert. ef. 8-11-04; REV 5-2007, f. 7-30-07, cert. ef. 7-31-07; REV 10-2012, f. 12-18-12, cert. ef. 1-1-13; REV 3-2013, f. & cert. ef. 3-28-13

## 150-323.220-(A)

### Segregation of Cigarette Inventories

(1) The following rules apply to inventories of cigarettes held by distributors:

(a) Untaxed cigarettes must be stored in an area separate from cigarettes bearing tax stamps.

(b) Cigarettes stamped with the tax stamp of another state must be stored in a separate area from cigarettes bearing an Oregon tax stamp.

(2) Any dealer who serves as the dealers own distributor or who buys directly from a manufacturer and is licensed as a distributor must maintain strict separation of the wholesale and retail stocks of cigarettes and must maintain separate records of the wholesale portion of the business and keep such records, including invoices, separate and apart for the inspection of the wholesale business by the Department of Revenue. The records must show the amount of stamps purchased, stamps affixed, records of purchases of cigarettes and of all sales, whether the dealer is also acting as a distributor or retailer or selling to another retailer.

(3) The requirement to segregate cases or cartons of cigarettes under subsections (1) and (2) of this rule is satisfied if the distributor or dealer keeps the stocks of cigarettes separated by clearly marking the cases or

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cartons of cigarettes indicating whether the packs of cigarettes inside are taxed or untaxed, and whether they are wholesale or retail stock.

Stat. Auth.: ORS 305.100 & 323.440

Stats. Implemented: ORS 323.220

Hist.: 6-66; 9-71; REV 6-1999, f. 12-1-99, cert. ef. 12-31-99; Renumbered from 150-323.220, REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 10-2012, f. 12-18-12, cert. ef. 1-1-13; REV 3-2013, f. & cert. ef. 3-28-13

## 150-323.220-(B)

### Cigarette Invoice Requirements

(1) Any “distributor” as defined in ORS 323.015(2) and any “dealer” as defined in 323.010(5) in this state must keep sales invoices related to cigarette transactions.

(2) The required sales invoice must contain the following:

(a) Name and address of the seller;

(b) Name and address of the purchaser;

(c) Date of the sale;

(d) Quantity and description of cigarette products;

(e) Price paid for cigarette products; and

(f) The applicable license identification number of the distributor and/or wholesaler.

(3) Records must be preserved for five years from the time to which it relates and must be made available for inspection by representatives of the department. Per ORS 323.245, failure to comply could result in forfeiture of cigarettes.

Stat. Auth.: ORS 305.100 & 323.220

Stats. Implemented: ORS 323.220

Hist.: REV 10-2012, f. 12-18-12, cert. ef. 1-1-13; REV 3-2013, f. & cert. ef. 3-28-13

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

**Rule Caption:** Hardship and Probationary Permits; Restrictions and Conditions that Cause Suspension or Revocation of Permit

**Adm. Order No.:** DMV 2-2013

**Filed with Sec. of State:** 3-22-2013

**Certified to be Effective:** 3-22-13

**Notice Publication Date:** 2-1-2013

**Rules Amended:** 735-001-0050, 735-064-0005, 735-064-0020, 735-064-0060, 735-064-0100, 735-064-0110

**Subject:** ORS 807.240(5) allows DMV to suspend or revoke a hardship permit upon satisfactory evidence of a violation of any limitation, condition or requirement of a permit. ORS 807.270(10) provides the same authority to suspend or revoke a probationary permit. These statutes do not specify the length of a revocation for violation of a requirement, restriction or condition of a hardship or probationary permit, so DMV has established these periods by rule. Due to complaints that the sanctions for violating a requirement, restriction or condition of a hardship permit were too harsh, DMV recently reviewed this issue.

Based on this review DMV amended OAR 735-064-0110 to establish a 30 day revocation period for a violation of a condition or restriction of a hardship permit and to establish a process for suspending a hardship permit if a person fails to maintain the requirements of the permit such as submission of future financial responsibility, maintaining an ignition interlock device or withdrawal of a court or Addictions and Mental Health Division recommendation. The amendment also specifies that a hardship permit that is suspended may be reinstated when the person meets the requirement and pays a reinstatement fee, and provides for an administrative review when a hardship permit is suspended.

DMV amended OAR 735-064-0060 to allow a person with a probationary permit to drive to obtain medical treatment on a regular basis for the person or a member of the person’s immediate family. Such driving was previously allowed only for a hardship permit.

DMV amended OAR 735-001-0050 to specify that a person is entitled to an administrative review for a suspension of a hardship permit when DMV receives notification from a judge, from a treatment provider, from an ignition interlock provider or from an insur-

ance company that a requirement for a hardship or probationary permit has been withdrawn.

DMV amended OAR 735-064-0020 to delete language that prohibits DMV from issuing a hardship permit to a person whose driving privileges are suspended for court denial of juvenile driving privileges. Prior to 2007, a suspension of driving privileges under ORS 809.260 only applied to juveniles between the ages of 13 and 17 years and DMV determined it was not necessary to issue a hardship permit because they were eligible for an emergency driving permit. An emergency driving permit allows a person to drive to school, but restricts driving for work purposes only if employment is essential to the welfare of the person’s family. In 2007, the statute was amended to include suspension of driving privileges of persons between the ages of 13 and 20 years of age. DMV has determined that it is necessary to allow issuance of a hardship permit because now certain persons suspended under ORS 809.260 need a permit for travel to work, rather than for travel to school. DMV amended OAR 735-064-0060 to allow a person whose driving privileges are suspended under ORS 809.260 to choose to apply for either a hardship permit or an emergency permit, but not both. The person can choose to apply for the permit that grants the privileges most needed.

Amendments to OAR 735-064-0005 and 735-064-0100 updated references and made other changes for consistency and clarity.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-001-0050

### Administrative Review

In addition to those circumstances specified in ORS 809.140, Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will provide an administrative review of a suspension, revocation, or cancellation action for:

(1) Failure to install or maintain installation of an ignition interlock device under ORS 813.602;

(2) Failure to complete and pass a security threat assessment required for a hazardous materials endorsement from the federal Transportation Security Administration (TSA) or being assessed as a security threat by TSA under ORS 807.173;

(3) Notice of violating of an out-of-service order ORS 809.413(7);

(4) Notification from the Federal Motor Carrier Safety Administration that a person is disqualified from operating a commercial motor vehicle as an imminent hazard under ORS 809.413(8);

(5) Failure to submit proof of medical qualification to operate a commercial motor vehicle under ORS 807.100(2);

(6) Failure to pay a judgment under ORS 809.415(1);

(7) A lapse in making future financial responsibility filings under ORS 809.415(3)(c) or 807.240(3)(e);

(8) Notification from the superintendent of a hospital under ORS 807.700;

(9) A request by a school superintendent or a school district board under ORS 339.254;

(10) Notice that a person under 18 years of age has withdrawn from school under ORS 339.257;

(11) Notification from a program approved by AMH that it has withdrawn its recommendation for a person to be issued a hardship or probationary permit; and

(12) Notification from a judge that he or she has withdrawn the recommendation for a person to be issued a hardship or probationary permit.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 809.440

Stats. Implemented: ORS 809.440

Hist.: MV 27-1991, f. & cert. ef. 12-16-91; DMV 23-2004, f. & cert. ef. 11-17-04; DMV 10-2010, f. & cert. ef. 5-18-10; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12; DMV 2-2013, f. & cert. ef. 3-22-13

## 735-064-0005

### Definitions

As used in Division 64 rules, unless the context requires otherwise:

(1) “AMH” means the Addictions and Mental Health Division of the Oregon Health Authority.

(2) “DMV” means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(3) “DUII” means driving under the influence of intoxicants.

(4) “Family necessities” means driving to and from grocery shopping, driving a household member to and from work, driving the applicant or the applicant’s children to and from school, driving the applicant’s children to

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and from child care, driving to and from medical appointments and caring for elderly family members.

(5) "Fee" is an amount defined in ORS 807.370.

(6) "Hardship/probationary permit" means a restricted driving privilege issued to a person whose privilege is both suspended and revoked and who is required to install an IID due to a DUII suspension.

(7) "IID" means ignition interlock device.

(8) "Intoxicants" means intoxicating liquor, any controlled substance, any inhalant or any combination of the three.

(9) "Immediate family" means the applicant's spouse or partner in a domestic relationship, children, stepchildren, brother, sister, mother, father, mother-in-law, father-in-law, grandmother or grandfather.

(10) "Oregon resident" means a person who is domiciled in this state as defined by ORS 803.355 or is a resident of this state as defined by ORS 807.062(4) and (5).

(11) "Private transportation" means family members, friends or fellow employees who are able to serve the applicant's transportation needs.

(12) "Public transportation" means bus, shuttle or commuter service that is able to serve the applicant's transportation needs.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.240, 807.270 & Sec. 3, Ch. 99, OL 2007

Stats. Implemented: ORS 807.240, 807.270 & 813.520

Hist.: DMV 12-1996, f. & cert. ef. 12-20-96; DMV 2-2001, f. & cert. ef. 1-17-01; DMV 15-2001, f. & cert. ef. 9-21-01; DMV 2-2006, f. & cert. ef. 2-15-06; DMV 17-2006, f. & cert. ef. 11-17-06; DMV 5-2008, f. & cert. ef. 2-4-08; DMV 2-2013, f. & cert. ef. 3-22-13

## 735-064-0020

### Who Can Apply for a Hardship or Probationary Permit

(1) Any Oregon resident whose driving privileges are suspended may apply for a hardship permit unless the person's driving privileges are revoked for any reason or suspended under:

(a) ORS 25.780 for failure to pay child support because 807.250(3) does not allow the issuance of a hardship permit;

(b) ORS 809.280(10) for a controlled substance conviction because 807.250(2) does not allow the issuance of a hardship permit;

(c) ORS 809.419(1) for failure to appear for or pass required tests because 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(d) ORS 809.419(2) for failure to obtain a required medical clearance because 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(e) ORS 809.419(3) for a mental or physical condition because 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(f) ORS 809.421(1) for habitual incompetence, recklessness or criminal negligence or committing a serious violation of the motor vehicle laws because 809.421(1)(b) states this suspension is subject to any conditions the department determines necessary. The department has determined that a person suspended under this subsection may not be issued a hardship permit;

(g) ORS 809.419(5) upon notification by the superintendent of a hospital because 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(h) ORS 809.419(6) when a person charged with a traffic offense has been found guilty except for insanity because 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(i) ORS 813.400 and 813.403, and the person fails to install or use an IID in a vehicle(s) the person intends to operate, because under 813.602(1)(a) an IID must be installed before the person is eligible for a hardship permit;

(j) ORS 813.602(6) for tampering with an ignition interlock device because tampering with an ignition interlock device shows the person is a reckless driver and does not qualify for a hardship permit under 807.240(3)(d).

(k) ORS 809.280(5) or 809.416(1) for failure to appear in court, because 807.250(4) does not allow the issuance of a hardship permit; or

(L) ORS 809.416(2) for failure to pay a fine or obey a court order, because 807.250(4) does not allow the issuance of a hardship permit.

(2) DMV will not issue a hardship permit that authorizes a person to operate a commercial motor vehicle because 807.240(2) does not allow the issuance of a hardship permit to drive a commercial motor vehicle.

(3) Any Oregon resident whose driving privileges are revoked as a habitual traffic offender may apply for a probationary permit unless the per-

son's driving privileges are also revoked for any reason other than being a habitual traffic offender or are also suspended for any of the reasons listed in section (1) of this rule. DMV will not issue a probationary permit that authorizes a person to operate a commercial motor vehicle because ORS 807.270(4) does not allow the issuance of a probationary permit to drive a commercial motor vehicle.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.240, 807.252 & 807.270

Stats. Implemented: ORS 807.062, 807.240, 807.250, 807.270, 809.265, 809.380, 809.390, 809.419, 809.421, 813.500 & 813.602

Hist.: MV 7-1984, f. 6-29-84, ef. 7-1-84; MV 17-1986, f. & ef. 10-1-86; MV 12-1987(Temp), f. 9-16-87, ef. 9-27-87; MV 31-1987, f. & ef. 10-5-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0085; MV 12-1989, f. & cert. ef. 3-20-89; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 4-1999(Temp), f. & cert. ef. 10-13-99 thru 4-9-00; DMV 1-2000, f. & cert. ef. 3-10-00; DMV 27-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-29-02; DMV 11-2002, f. 6-24-02, cert. ef. 6-30-02; DMV 25-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 12-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 12-2009, f. & cert. ef. 6-25-09; DMV 9-2011, f. & cert. ef. 7-22-11; DMV 2-2013, f. & cert. ef. 3-22-13

## 735-064-0060

### Standards for Issuance of Hardship or Probationary Permits

(1) All hardship or probationary permits shall be restricted to minimally meet the applicant's needs. Upon request, the permit holder shall be required to submit verification to DMV and/or law enforcement.

(2) DMV may issue hardship and probationary permits only for the following purposes:

(a) Occupational and employment purposes;

(b) Occupational training or education that is required by the applicant's employer;

(c) Transportation to and from an alcohol or drug treatment or rehabilitation program;

(d) To look for work; and

(e) To obtain medical treatment on a regular basis for the person or a member of the person's immediate family.

(3) Hardship permits may also be issued for family necessities, as defined in OAR 735-064-0005, if the person's driving privileges are suspended only for violation of ORS 165.805, 471.430 or 806.010.

(4) A hardship or probationary permit will not be issued for more than 12 hours of driving on any one day, except for transportation to and from an alcohol or drug treatment or rehabilitation program.

(5) A hardship or probationary permit issued to look for work will be restricted to 12 hours per day, seven days per week. It will not be issued for a period of more than 120 days at a time.

(6) DMV may deny a hardship or probationary permit to an applicant who has public or private transportation available which is sufficient to serve the applicant's transportation needs as established in sections (2) and (3) of this rule.

(7) DMV will determine whether public or private transportation is sufficient to serve the applicant's need based upon the following criteria:

(a) Convenience in terms of hours and distance;

(b) Requirements of occupation or employment;

(c) Physical limitations of applicant; and

(d) Personal safety of applicant.

(8) If the applicant is suspended for two or more reasons, the applicant must satisfy the requirements for each type of suspension.

(9) If the applicant is revoked as a habitual traffic offender and the applicant's driving privileges are also suspended, the applicant must satisfy all hardship permit requirements for each suspension in addition to the probationary permit requirements.

(10) If the applicant is suspended under ORS 809.260 for court denial of juvenile driving privileges the applicant may apply either for privileges granted under a hardship permit as described in this rule or an emergency permit as described in OAR 735-064-0230, but not both.

(11) Notwithstanding section (2) of this rule, DMV will not issue a hardship or probationary permit that authorizes a person to drive a commercial motor vehicle.

Stat. Auth.: ORS 184.616, 184.619, 807.240, 807.252 & 807.270

Stats. Implemented: ORS 25.780, 807.062, 807.240, 807.250, 807.270, 809.265, 809.380, 809.390, 809.409-423, 813.500 & 813.602

Hist.: MV 7-1984, f. 6-29-84, ef. 7-1-84; MV 17-1986, f. & ef. 10-1-86; MV 12-1987(Temp), f. 9-16-87, ef. 9-27-87; MV 31-1987, f. & ef. 10-5-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0105; MV 17-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 25-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 2-2013, f. & cert. ef. 3-22-13

## 735-064-0100

### Hardship or Probationary Permit Restrictions

(1) A person issued a hardship or probationary permit must not do any of the following:

(a) The person must not drive outside the hardship or probationary permit driving restrictions;

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(b) The person must not be convicted of or forfeit bail for more than one traffic offense listed in ORS 809.600(2)(b) (including city traffic offenses and similar offenses under federal or state law) within any 12-month period. See OAR 735-064-0220 for a list of offenses and statutory references;

(c) The person must not be convicted of or forfeit bail for an offense as specified in ORS 809.600(1)(a) through (g). These offenses are: murder, manslaughter, criminally negligent homicide, assault, recklessly endangering another person, menacing, or criminal mischief resulting from the operation of a motor vehicle; reckless driving, driving while under the influence of intoxicants, failure to perform the duties of a driver involved in an accident or collision, criminal driving while suspended or revoked, fleeing or attempting to elude a police officer, aggravated vehicular homicide or aggravated driving while suspended or revoked;

(d) The person must not use intoxicants and drive;

(e) The person must not refuse to submit to a chemical breath test, blood test or urine test;

(f) The person must not be convicted of or forfeit bail for an offense under ORS 811.170; or

(g) The person must not falsify any information appearing on the Hardship/Probationary Application.

(2) The person required to have an IID must not violate the following [provisions] conditions:

(a) Drive any vehicle which does not have an IID installed unless exempted by statute and administrative rule;

(b) Drive an employer's owned or leased vehicle without an IID unless the person is carrying a copy of an employer's exemption letter, Employer IID Exemption form or medical exemption letter in his or her possession;

(c) Tamper with the IID; or

(d) Solicit another person to blow into the IID.

(3) Evidence that a restriction or condition has been violated includes, but is not limited to the following:

(a) Police reports;

(b) Accident reports;

(c) Written reports from family members or the general public;

(d) A written report which indicates the person has driven outside the hardship or probationary permit restrictions;

(e) A written report which indicates the person has been driving after using intoxicants;

(f) A written report from a police officer that indicates the person has refused the chemical breath test, blood test or urine test following an arrest for driving under the influence of intoxicants;

(g) A report from a police officer;

(h) A court conviction; and

(i) A written report from an IID provider that the person has tampered with the IID installed in his or her vehicle.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.270 & 813.510

Stats. Implemented: ORS 807.240, 807.270, 813.100, 813.510, 813.602, 813.608, 813.610, 813.612, & 813.614

Hist.: MV 7-1984, f. 6-29-84, ef. 7-1-84; MV 17-1986, f. & ef. 10-1-86; MV 12-1987(Temp), f. 9-16-87, ef. 9-27-87; MV 31-1987, f. & ef. 10-5-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0120; MV 30-1989, f. & cert. ef. 10-3-89; DMV 4-1994, f. & cert. ef. 7-21-94; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 2-2006, f. & cert. ef. 2-15-06; DMV 3-2008, f. & cert. ef. 1-25-08; DMV 27-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 2-2013, f. & cert. ef. 3-22-13

## 735-064-0110

### Consequences of Violations of Restrictions, Conditions, Limitations or Requirements of a Hardship or Probationary Permit

(1) DMV will suspend a person's hardship or probationary permit when a person fails to maintain any of the requirements listed in this section. The suspension will remain in effect until the person complies with the requirement or until the requirement is no longer a condition of the hardship or probationary permit, as follows:

(a) Failure to maintain a future responsibility filing required by ORS 807.240(3)(e);

(b) Failure to maintain installation of an ignition interlock device as required by ORS 813.602(a);

(c) Failure to maintain a recommendation from a program approved by AMH as required by ORS 813.500; or

(d) Failure to maintain a recommendation from the judge that convicted the person as required by ORS 807.250.

(2) DMV will revoke a person's hardship or probationary permit when a person commits a violation of any of the restrictions or conditions of a hardship or probationary permit as listed in OAR 735-064-0100.

(3) DMV will revoke the hardship permit for 30 days, during which period the person is not eligible for another hardship permit.

(4) DMV will revoke the probationary permit for one year, during which period the person is not eligible for another probationary permit and is not eligible to reinstate driving privileges.

(5) A person whose hardship or probationary permit is revoked based on a notice from a court as specified in ORS 809.140, is entitled to an administrative review under 809.440(2). The revocation will remain in effect pending the outcome of the administrative review.

(6) A person whose hardship or probationary permit is revoked based on information other than that described in ORS 809.140, is entitled to a contested case hearing under 183.310 to 183.550. The revocation will not go into effect pending the outcome of the hearing.

(7) A person whose hardship or probationary permit is suspended due to failure to maintain a requirement of the permit is entitled to an administrative review under OAR 735-001-0050. The suspension will remain in effect pending the outcome of the administrative review.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.270 & 813.510

Stats. Implemented: ORS 807.240, 807.270, 813.500 & 813.510

Hist.: MV 7-1984, f. 6-29-84, ef. 7-1-84; MV 17-1986, f. & ef. 10-1-86; MV 12-1987(Temp), f. 9-16-87, ef. 9-27-87; MV 31-1987, f. & ef. 10-5-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0125; MV 4-1991, f. 6-18-91, cert. ef. 7-1-91; MV 17-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 5-1995, f. & cert. ef. 3-9-95; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 4-2002, f. & cert. ef. 3-14-02; DMV 2-2006, f. & cert. ef. 2-15-06; DMV 28-2008, f. & cert. ef. 12-15-08; DMV 2-2013, f. & cert. ef. 3-22-13

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## Mortuary and Cemetery Board Chapter 830

**Rule Caption:** Implements requirements for remains found in cemetery, advertising and contract rules; clarifies refund criteria.

**Adm. Order No.:** MCB 1-2013

**Filed with Sec. of State:** 3-25-2013

**Certified to be Effective:** 3-29-13

**Notice Publication Date:** 11-1-2012

**Rules Amended:** 830-001-0000, 830-020-0030, 830-020-0040, 830-030-0000, 830-030-0070, 830-030-0100, 830-040-0005, 830-040-0050

**Subject:** Rule implements requirements and clarifies cemetery actions when human remains or partial remains are found in a presumed unoccupied grave; clarifies refundable fee if applicant withdraws from taking an examination; removes five-day right to cancel purchases on at need contracts; requires facility name on contracts; requires internet advertising to include link to effective general price list when a price is stated; clarifies need for registration by the Department of Consumer & Business Services to sell trust-funded preneed goods and services;

The amendments are necessary to maintain consistency with developments in funeral service industry practices, and to clarify cemetery practices. This rulemaking also provides the opportunity to update a state agency name and fix a section error.

**Rules Coordinator:** Lynne Nelson—(971) 673-1503

### 830-001-0000

#### Model Rules of Procedure and Notice of Proposed Rulemaking

(1) The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, which became effective January 1, 2012, are by this reference adopted as rules of administrative procedure of the Board and shall be controlling except as otherwise required by statute or rule.

(2) Prior to the adoption, amendment or repeal of any rule, the Mortuary and Cemetery Board shall give notice of the intended action:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;

(b) By mailing, or if requested, emailing a copy of the notice to persons on the Mortuary and Cemetery Board's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule;

(c) By mailing, emailing, or furnishing a copy of the notice to the United Press International and Associated Press, Oregon Funeral Directors Association and the Cemetery Association of Oregon;

(d) By mailing, emailing, or furnishing a copy of the notice to licensees, certificate holders of the Board, State Medical Examiner, the Center for Health Statistics of the State Health Division, District Attorneys within the state;

# ADMINISTRATIVE RULES

(e) By emailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the intended action.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Mortuary Board.]  
Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320  
Stats. Implemented: ORS 183.335 & 183.360  
Hist.: FDB 15, f. & ef. 10-15-76; FDB 2-1979, f. & ef. 2-21-79; FDB 1-1980, f. & ef. 3-28-80; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09; MCB 1-2013, f. 3-25-13, cert. ef. 3-29-13

## 830-020-0030

### Reciprocal Licensure

(1) An applicant for reciprocal licensure must apply to the Board on the most current form provided by the Board. The application must be accompanied by the following:

- (a) The reciprocal fee as prescribed by OAR 830-020-0040;
- (b) A certified copy of the applicant's birth certificate;

(c) A certified copy of transcripts from a school accredited by an Association of Schools and Colleges demonstrating completion of an Associate's degree or higher degree (for funeral service practitioner licensure) or proof of passing an accredited course of funeral service education (for embalmer licensure);

(d) A certification from the state(s) the applicant is or was licensed in that includes: length of apprenticeship, if any, examination score, date licensed, status of license at the present time, and whether the applicant's license has ever been suspended or revoked or other disciplinary action taken;

(e) Proof that the applicant is or was licensed and has practiced, respectively, as a funeral service practitioner or an embalmer in another state for three of the past five years immediately preceding the respective application date; and

(2) An applicant for reciprocal funeral service practitioner license must pass the Board's funeral service practitioner examination as a means of providing satisfactory proof to the Board that the applicant has the requisite qualifications for licensing as a funeral service practitioner in this state. The examination must include questions related to:

(a) Oregon and federal laws, rules and regulations relating to the care, preparation, disposition and transportation of human remains; and survivor death benefits.

(b) Reciprocal applicants for funeral service practitioner license will receive a score of not less than 75 percent, based on the total number of questions, in order to pass the examination. Reciprocal applicants are eligible to take the examination at the regularly scheduled examination dates if their examination application is received at least 14 days prior to the examination date.

(3) Applicants for reciprocal embalmer licensure must show evidence satisfactory to the Board that the applicant has successfully passed the National Board Examination as administered by the Conference of Funeral Service Examining Boards or an equivalent examination written by the Conference of Funeral Service Examining Boards. The examination must include two sections, funeral service arts and funeral service sciences, and the applicant must receive a cumulative average score of at least 75 percent on the sections with not less than 70 percent on either of these two sections.

(4) A license must not be issued to a reciprocal applicant before a complete background check has been performed and Board approval has been received.

Stat. Auth.: ORS 692.160 & 692.320  
Stats. Implemented: ORS 692.140

Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11; MCB 1-2012, f. 3-27-12, cert. ef. 4-1-12; MCB 1-2013, f. 3-25-13, cert. ef. 3-29-13

## 830-020-0040

### License, Certificate and Registration Fees

(1) Initial application fees:

(a) Funeral establishment, immediate disposition company, crematory, alternative disposition facility or a cemetery that performs more than ten interments annually — \$150 (includes first principal) plus \$50 for each additional principal;

(b) Cemetery that performs ten or fewer interments annually — an initial fee of \$100 and a fee not to exceed \$50 for registration of all principals regardless of the total number of principals

(c) Change of principal — \$50 per licensed facility;

(d) Apprentice funeral service practitioner or apprentice embalmer — \$50;

(e) Reciprocal funeral service practitioner or reciprocal embalmer — \$160;

(f) Intern Apprentice — \$25;

(g) Preneed Salesperson — \$150;

(h) Certificate of Removal Registration — \$30;

(i) Funeral Service Practitioner — \$80 per year;

(j) Embalmer — \$80 per year;

(k) Death Care Consultant — \$80 per year.

(2) Renewal application fees:

(a) Funeral establishment or immediate disposition company — \$350 per year, payable biennially;

(b) Crematory or Alternative Disposition Facility — \$100 per year plus \$2 per disposition performed during the two calendar years preceding the year in which the current license expires, payable biennially;

(c) Cemetery — \$4 per interment performed during the two calendar years preceding the year in which the current license expires up to a maximum of 150 interments or \$600 per year, payable biennially; (Cemeteries with ten or fewer interments annually are not required to pay a renewal fee in accordance with ORS 692.275.)

(d) Funeral service practitioner — \$80 per year, payable biennially;

(e) Embalmer — \$80 per year, payable biennially;

(f) Combination funeral service practitioner/embalmer — \$160 per year, payable biennially;

(g) Apprentice funeral service practitioner — \$25 per year, payable annually;

(h) Apprentice embalmer — \$25 per year, payable annually;

(i) Preneed salesperson — \$25 per year, payable biennially;

(j) Death care consultant — \$80 per year, payable biennially.

(3) Exam fees:

(a) Funeral service practitioner exam — \$100;

(b) Embalmer exam (written or practical) — \$130 to \$400 (depending on the cost to the Board).

(c) Death care consultant exam — \$100.

(4) License, certificate and registration reissue fees:

(a) Transfer of apprenticeship, replacement license, name change or manager change — \$25;

(b) Licensed facility location change — \$250.

(5) Reinstatement of lapsed license, certificate or registration — \$50 each.

(6) Funeral service practitioners, embalmers, and preneed salespersons must renew their licenses on even numbered years. Facilities must renew on odd numbered years.

(7) Fees paid under this section are not refundable or transferable.

(8) Notwithstanding the above, a registrant for the funeral service practitioner examination may notify the Board in writing that he or she is withdrawing the application for the examination and request a refund of the examination fee at any time before the date of the examination. Examination fee refunds will be refunded to the person that paid the examination fee to the board; fees paid by credit card will be refunded to the credit card holder, fees paid by money order or cashier's check will be refunded to the applicant.

Stat. Auth.: ORS 692.160, 692.320 & 97.931

Stats. Implemented: ORS 692.160 & 97.931

Hist.: SMB 1-1984, f. & ef. 10-22-84; MCB 1-1985(Temp), f. & ef. 7-3-85; MCB 2-1985(Temp), f. & ef. 11-5-85; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0110; MCB 2-1989(Temp), f. 10-2-89, cert. ef. 11-1-89; MCB 3-1989, f. 12-4-89, cert. ef. 12-1-89; MCB 1-1992, f. & cert. ef. 2-11-92; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 3-1993, f. 10-28-93, cert. ef. 11-1-93; MCB 1-1994, f. 6-28-94, cert. ef. 8-1-94; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2001(Temp), f. 12-12-01, cert. ef. 1-1-02 thru 6-29-02; MCB 1-2002, f. 5-30-02, cert. ef. 6-30-02; MCB 1-2004, f. 9-30-04, cert. ef. 11-1-04; MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10; MCB 2-2010, f. 9-23-10, cert. ef. 9-24-10; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11; MCB 1-2012, f. 3-27-12, cert. ef. 4-1-12; MCB 1-2013, f. 3-25-13, cert. ef. 3-29-13

## 830-030-0000

### In General

(1) No licensee, operator of a licensed facility, or their agent may interfere with another licensee, operator of a licensed facility, or their agent who has been legally called to take care of human remains, or perform services relating to the disposition of human remains. The choice of licensed facility or licensed person must be left entirely to the individual with the legal right to control final disposition

(2) Alternative Disposition Facility Authorities must comply with the requirements in this division (Division 30) for the handling and tracking of human remains prior to, during, and after cremation as if the Alternative Disposition Facility Authority is a Crematory Authority, the alternative disposition remains are cremated remains and the dissolution chamber is a cremation chamber.

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(3) Alternative Disposition Facility Authorities using alkaline hydrolysis for dissolution must comply with the following requirements:

(a) The Alternative Disposition Facility Authority must only employ a purpose-built vessel as a dissolution chamber.

(b) Dissolution systems which operate above atmospheric pressure must only employ an American Society of Mechanical Engineers' (ASME) certified pressure vessel as a dissolution chamber.

(c) The dissolution system must use parameters of heat, time and solution circulation sufficient to achieve complete dissolution of all tissue remains.

(d) The Alternative Disposition Facility Authority must ensure that the discharge liquid that is a byproduct of the dissolution process meets the facility's sewage collection and treatment facility requirements regarding acceptable temperature and pH level.

(4) It is the responsibility of the funeral service practitioner or person acting as a funeral service practitioner as that term is defined in ORS Chapter 432.005(11) to ensure that an identifying metal disc with a number assigned by the State Registrar's Office imprinted on the disc is attached to the casket or other receptacle containing human remains, or is attached to the remains if there is no receptacle.

(a) When human remains are to be cremated the identifying metal disc must be secured to the head end of the receptacle, or to the remains if no receptacle is used, at all times until the remains are placed in the cremation chamber.

(b) When human remains are going to be buried or entombed, the identifying metal disc must be attached to the head end of the casket or receptacle, or to the remains if no receptacle is used.

(c) The number on the identifying metal disc must be written or typed on the certificate of death and final disposition permit by the responsible funeral service practitioner or person acting as a funeral service practitioner as that term is defined in ORS Chapter 432.005(11).

(5) It is the responsibility of the Crematory Authority to see that the identifying metal disc accompanies human remains through the cremation process.

(6) It is the responsibility of the Cemetery Authority or Crematory Authority to see that the identifying metal disc is properly secured to each receptacle containing human remains, or, when no receptacle is used, to the remains, when remains are delivered to the facility and that the number on the identifying metal disc is the number recorded on the final disposition permit. The Cemetery Authority or Crematory Authority must sign the final disposition permit verifying this fact prior to accepting the remains. The Cemetery Authority or Crematory Authority may not accept remains without the proper identifying metal disc unless death occurred in a state other than Oregon.

(7) If, when the human remains are delivered to the crematory, cemetery or alternative disposition facility, no metal disc is attached to the receptacle or remains as required, or the disc number does not match the permit number as required, the funeral service practitioner or person acting as a funeral service practitioner as that term is defined in ORS Chapter 432.005(11) must retain responsibility for the proper care and storage of the remains until the correct disc is obtained and ensure it is affixed to the receptacle or remains. If the discrepancy cannot be resolved prior to any scheduled service, the funeral service practitioner or person acting as a funeral service practitioner as that term is defined in ORS Chapter 432.005(11), must take responsibility for notifying the person with the legal right to control final disposition that the disposition is postponed.

(8) If human remains or partial human remains, other than processed cremated remains, are discovered in a presumed unoccupied grave or crypt when opening the grave or crypt for purposes of an interment, the following is the responsibility of the cemetery authority:

(a) The cemetery authority must report the discovery to the Board on a form that has been approved by the Board.

(b) The cemetery authority must exercise diligence under the circumstances to identify the human remains.

(c) If positive identification of the remains is made, and if disinterment is not authorized pursuant to ORS 97.220 or 146.045, the human remains must not be further disturbed, the interment space must be immediately closed and the cemetery authority must update the cemetery records for that grave or crypt to include all relevant information known to the cemetery authority regarding the human remains, as outlined in OAR 830-040-0000 and ORS 97.720.

(d) If the human remains cannot be identified, and if disinterment is not authorized pursuant to ORS 97.220 or 146.045, the human remains must not be further disturbed, the interment space must be immediately closed, and the cemetery records must reflect that the interment space is

occupied by unidentified remains, the date of discovery, and indicate that the space is not available for further interments.

(e) If the human remains are positively identified as remains that were originally interred in a grave adjacent to the opened grave but entered the opened grave during excavation or due to the operation of natural forces underground, the cemetery authority must make a reasonable effort to return all soil, human remains, and funerary objects to the interment space from which the material originated. The cemetery authority, if feasible, may then proceed with opening the unoccupied grave for interment.

(9) If processed cremated remains are discovered in a presumed unoccupied grave, crypt or niche when opening the grave, crypt or niche the following is the responsibility of the cemetery authority:

(a) The cemetery authority must report the discovery to the Board on a form that has been approved by the Board.

(b) If the cremated remains are identified, the cemetery authority must use reasonable diligence under the circumstances to determine if such cremated remains were placed with the permission of the cemetery authority. If no such permission was given, the cemetery authority must attempt to deliver the cremated remains to a person within the first applicable listed class in ORS 97.130(2).

(c) If the cremated remains cannot be identified or if the cemetery authority is unable to deliver the cremated remains to a person within a listed class under ORS 97.130(2), the cemetery authority must hold the cremated remains indefinitely and at a minimum, place the cremated remains in a common grave, crypt or niche, and record the specific location of the remains therein.

(d) The cemetery authority must retain a permanent record of the known circumstances of the cremated remains including at a minimum: The original location where the cremated remains were discovered, the steps taken to identify and deliver the cremated remains, and the ultimate re-disposition of the cremated remains.

(10) When a licensee arranges for the scattering of cremated remains, the licensee must include in the licensee's permanent records the final location of the cremated remains and make the identifying metal disc a part of the licensee's permanent record.

(11) It is the responsibility of the funeral establishment or immediate disposition company licensee handling the disposition of human remains to pay the death certificate filing fee as required in ORS 432.312(1). This fee must be paid within 30 days after the billing and, in no case longer than 90 days after the billing. Failure to pay death certificate filing fees is cause for disciplinary action by the Board.

(12) It is the responsibility of each licensed facility to assign a manager for each facility and to notify the Board in writing within 30 days of the assignment. In the case of funeral establishments and immediate disposition companies, the manager must be an Oregon licensed funeral service practitioner.

(13) Upon providing written notification to the Board, a funeral service practitioner may be permitted to manage two funeral establishments or two immediate disposition companies, or one of each. A funeral service practitioner may be authorized by the Board to manage more than two funeral establishments or immediate disposition companies, or a combination of same, upon providing a written request to the Board that describes the basis for the request. The Board may approve the request after consideration of relevant facts or circumstances including, but not limited to, information that the Board may request from the funeral service practitioner.

Stat. Auth.: ORS 692.160 & 692.320

Stats. Implemented: ORS 692.180 & 692.405

Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0150; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09; MCB 1-2012, f. 3-27-12, cert. ef. 4-1-12; MCB 1-2013, f. 3-25-13, cert. ef. 3-29-13

## 830-030-0070

### Transportation and Care of Persons Who Have Died of or With Communicable Diseases

(1) Except for transportation of remains from place of death to a licensed facility or other holding facility, transportation of persons who have died of or with communicable diseases specified by the Oregon Health Authority shall be permitted only under the following conditions: the human remains shall be thoroughly embalmed with approved disinfectant solution; all orifices shall be closed with absorbent cotton; and the body shall be washed.

(2) Communicable diseases which apply to this section are as follows:

(a) Acquired immunodeficiency syndrome;

(b) Diphtheria;



# ADMINISTRATIVE RULES

- (c) Hemorrhagic fevers (e.g., Ebola);
- (d) Hepatitis B;
- (e) Hepatitis C;
- (f) Hepatitis, delta;
- (g) Human immunodeficiency virus;
- (h) Plague;
- (i) Rabies;
- (j) Tularemia; and
- (k) Tuberculosis.

(3) If religious custom or the conditions of the remains prohibit embalming, a human remains shall be received for transportation by a common carrier if the human remains are placed in a sealed impervious container enclosed in a strong transportation case or in a sound container designed for that purpose enclosed in a sealed impervious transportation case.

Stat. Auth.: ORS 692.160 & 692.320  
Stats. Implemented: ORS 692.025  
Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11; MCB 1-2013, f. 3-25-13, cert. ef. 3-29-13

## 830-030-0100

### Misleading Business Practices

The following practices are prohibited and are considered misrepresentation in the conduct of doing business:

(1) Any sales presentation or practice that conceals or misstates a material fact is considered a misrepresentation in the conduct of doing business.

(2) Any guarantee or representation that the prospective purchase would realize a profit by reselling at a later date.

(3) Any use of interment space used for the interment of human remains including cremated remains, other than those of the owner of that space or interment rights thereto, or placement of other materials belonging to a person other than the owner, without the prior written authorization by the owner of such space or interment rights. If the person authorizing such interment or placement of materials represents that he or she has authority to direct the interment or placement, a licensee is not in violation of this rule if, after due diligence, the licensee reasonably believes such person may direct the interment or placement of materials.

(4) Any failure to comply with the terms of the sales contracts or state or local law requirements, with respect to irrevocable permanent care, and failure to comply with any other applicable laws and regulations relating to cemeteries.

(5) Any advertising or other presentation or indication that a licensee is in any way connected with the federal government, any other government agency, or any veterans' or other organization. If a veterans' organization or government agency is referred to in any advertisement, sales program or presentation the licensee must include a disclaimer in bold type to the effect that "This facility is not financed or connected in any manner with any government agency or veterans' or other organization".

(6) Any use of advertisements, printed materials, forms, or any other materials that resemble or suggest official government documents or publications.

(7) In addition to the provisions of ORS 97.943(8), which provides the purchaser may cancel a revocable prearrangement contract at any time prior to death and receive a full refund including earnings, a licensee must, in a preneed sales contract, include a reasonable period of not less than five business days during which the purchasers may cancel the funeral or cemetery contract for delivered goods that are unused and undamaged, and during which the purchaser may cancel any contract for interment rights.

Stat. Auth.: ORS 692.320  
Stats. Implemented: ORS 692.025 & 692.180  
Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11; MCB 1-2012, f. 3-27-12, cert. ef. 4-1-12; MCB 1-2013, f. 3-25-13, cert. ef. 3-29-13

## 830-040-0005

### Contract Requirements

(1) It is the responsibility of each licensed facility entering into contracts, either at need, prearrangement or preconstruction, for death care goods and services to have printed (in a minimum 10-point print) at the bottom of each contract "This facility is licensed and regulated by the Oregon Mortuary and Cemetery Board" followed immediately by the current area code and phone number of the Oregon Mortuary and Cemetery Board.

(2) Each licensed facility must ensure that all contracts (at need, prearrangement or preconstruction) for death care goods and services have the registered business name and physical location of the facility printed, in a minimum 10-point font, on the front of the contract.

Stat. Auth.: ORS 692.320  
Stats. Implemented: ORS 692.320  
Hist.: MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11; MCB 1-2013, f. 3-25-13, cert. ef. 3-29-13

## 830-040-0050

### Advertising

(1) Any licensed facility advertising through any media (including but not limited to telephone books, newspapers, direct mail, bill boards, etc.) must include the licensed facility's registered name and physical address as it appears on the Board's records.

(2) No person, firm or corporation may advertise, promote, or market at need or preneed funeral arrangements without first having received a license from the Board.

(3) No cemetery or cremation facility, or person, firm or corporation may advertise, promote, or market at need or preneed cemetery or cremation plans without first having received a certificate of authority to operate that cemetery or crematorium.

(4) No person, firm or corporation may advertise, promote, or market at need or preneed immediate disposition or alternative disposition arrangements without having first registered with the Board.

(5) Any advertisement or marketing materials which intentionally conceals or misstates a material fact is considered misrepresentation

(6) Whenever a funeral establishment states a price for "funeral good" or "funeral service", as these terms are defined in the Federal Trade Commission Funeral Rule, 16 CFR 453.1, on the facility's website, the facility must include a hyperlink to the facility's complete General Price List for funeral goods and services in effect at that time.

Stat. Auth.: ORS 692.160 & 692.320  
Stats. Implemented: ORS 692.160  
Hist.: FDB 1-1978, f. & ef. 6-30-78; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0220; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10; MCB 2-2010, f. 9-23-10, cert. ef. 9-24-10; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11; MCB 1-2012, f. 3-27-12, cert. ef. 4-1-12; MCB 1-2013, f. 3-25-13, cert. ef. 3-29-13

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## Oregon Board of Naturopathic Medicine Chapter 850

**Rule Caption:** Updates fee schedule and includes the fee for an inactive natural childbirth certificate

**Adm. Order No.:** OBNM 1-2013

**Filed with Sec. of State:** 4-12-2013

**Certified to be Effective:** 4-12-13

**Notice Publication Date:** 3-1-2013

**Rules Amended:** 850-030-0035

**Subject:** Updates the fee schedule and includes a fee for an inactive natural childbirth certificate

**Rules Coordinator:** Anne Walsh—(971) 673-0193

## 850-030-0035

### Fees for Licensure, Examination and Certification

(1) Fees schedule:

(a) The fee to apply to take the jurisprudence and formulary examinations to be eligible for licensure shall be \$150.

(b) Effective January 1, 2012, the fee for an initial license to practice naturopathic medicine (including reciprocity) shall be \$300 and pro-rated according to receipt of application:

(A) If the application for initial licensure is received January 1 through March 31, the fee for initial licensure will be \$300;

(B) If the application for initial licensure is received April 1 through June 30, the fee for initial licensure will be \$225;

(C) If the application for initial licensure is received July 1 through September 30, the fee for initial licensure will be \$150; and

(D) If the application for initial licensure is received October 1 through December 31, the fee for initial licensure will be \$75.

(c) The fee for a criminal background check shall be \$50.

(d) The fee for an initial certificate of special competency in natural childbirth shall be \$60.

(e) The annual license renewal fee for an active Naturopathic license shall be \$300.

(f) The annual license renewal fee for an inactive license shall be \$140.

(g) The annual renewal fee for an Inactive Certificate in Natural Childbirth shall be \$30;

(h) The annual renewal fee for a retired license shall be \$15.

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(i) The annual renewal fee for a certificate of special competency in natural childbirth shall be \$60.

(j) A late fee of \$100 will be charged for any renewal that does not meet the December 15 deadline per OAR 850-030-0195.

(k) The fee to reinstate a lapsed license to active status within 12 months of being lapsed shall be \$300 plus a restoration fee of \$150.

(l) The annual fee mandated for all licensees with the authority to prescribe shall be \$25;

(m) Duplicate license fee shall be \$25;

(n) Wall certificate shall be \$25;

(o) The fee for mailing an examination packet shall be \$40 or the current rate charged for the secure overnight mailing of examinations;

(p) Mailing list in any version shall be \$50;

(q) Copies of public documents shall be \$15 for the first ten single-sided pages and 10 cents per page hereafter.

(2) All Board fees and fines are non-refundable.

Stat. Auth.: ORS 685.100(6)(b) & 685.100(6)(c)

Stats. Implemented: ORS 685.100 & 685.102

Hist.: NE 1-1987(Temp), f. 9-17-87, ef. 10-1-87; NE 1-1988, f. & cert. ef. 3-15-88; NE 1-1996, f. & cert. ef. 10-18-96; NE 2-1997(Temp), f. 12-1-97, cert. ef. 12-2-97 thru 5-31-98; BNE 1-1998(Temp), f. 7-15-98, cert. ef. 8-3-98 thru 1-30-99; BNE 2-1998, f. 7-31-98, cert. ef. 8-3-98; BNE 2-1999, f. & cert. ef. 9-24-99; BNE 5-2000, f. & cert. ef. 12-6-00; BNE 4-2003, f. & cert. ef. 10-9-03; Renumbered from 850-010-0035, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 3-2008, f. 4-21-08, cert. ef. 6-10-08; BNE 3-2009, f. & cert. ef. 10-6-09; OBNM 5-2011(Temp), f. & cert. ef. 10-17-11 thru 1-17-12; Administrative correction, 2-24-12; OBNM 1-2013, f. & cert. ef. 4-12-13

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**Rule Caption:** Updates language for Hearing Request and Answer Rule

**Adm. Order No.:** OBNM 2-2013

**Filed with Sec. of State:** 4-12-2013

**Certified to be Effective:** 4-12-13

**Notice Publication Date:** 2-1-2013

**Rules Amended:** 850-001-0015

**Subject:** Updates the language for a hearing request and answer to a notice

**Rules Coordinator:** Anne Walsh—(971) 673-0193

## 850-001-0015

**Hearing Request and Answers: Consequences of Failure to Answer**

(1) A hearing request shall be made in writing to the board by the party or the parties' attorney.

(2) An answer, when required, shall be made in writing to the board by the party or the parties' attorney. The answer shall include the following:

(a) An admission or denial of each factual matter alleged in the notice; and

(b) A short and plain statement of each relevant affirmative defense the party may have.

(3) An answer filed in section (2) may be amended at any time up to 28 days before any scheduled hearing.

Stat. Auth.: ORS 183 & 685

Stats. Implemented:

Hist.: NE 2-1985(Temp), f. & ef. 3-11-85; NE 1-1986, f. & ef. 4-10-86; OBNM 2-2013, f. & cert. ef. 4-12-13

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**Rule Caption:** Clarifies rule on natural childbirth certificate and allows an inactive license status

**Adm. Order No.:** OBNM 3-2013

**Filed with Sec. of State:** 4-12-2013

**Certified to be Effective:** 4-12-13

**Notice Publication Date:** 2-1-2013

**Rules Amended:** 850-035-0230

**Subject:** allows an inactive status for NDs holding a natural childbirth certificate and clarifies certification requirement

**Rules Coordinator:** Anne Walsh—(971) 673-0193

## 850-035-0230

**Requirements for Certification to Practice Natural Childbirth**

A naturopathic physician maintaining an active license in Oregon, who wishes to practice natural childbirth must apply to and receive from the board a certificate of special competency in natural childbirth. To receive and maintain a certificate, the licensee must fulfill the following requirements:

(1) Complete at least 200 hours of course work at an approved naturopathic college or hospital in obstetrics and furnish a signed log showing evidence that (a) and (b) and (c) of this subsection have been completed

under the direct supervision of a licensed practitioner with specialty training in obstetrics and/or natural childbirth:

(a) Licensee must have taken part in the care of 50 cases each in prenatal and postnatal care; one case may qualify for both areas of care; and

(b) Licensee must have observed and assisted in the intrapartum care and delivery of 50 childbirths in a hospital or alternative birth setting.

(c) A minimum of 5 births must have taken place within 2 years of the date of the application.

(d) A minimum of 26 total births must be under the supervision of a naturopathic doctor. No more than 10 of the 50 births may be under the supervision of a medical doctor. No more than 10 of the births may be observation only. A labor and delivery that starts under the care of a naturopathic doctor and includes hospitalization shall count as a birth; and

(e) Licensee must hold a current neonatal resuscitation certificate.

(2) Licensee must pass a specialty exam in obstetrics given by or approved by the Board, after first completing the 200 hours of coursework as required above, and participating in the care of at least 15 cases each in prenatal, intrapartum, and postnatal care; one case may qualify for all these areas of care.

(3) Review of birth records as required by (1)(b) must be completed and approved by a Board appointed licensee of this Board holding a certificate of special competency in natural childbirth for at least five years.

(4) A complete application for a certificate of special competency in natural childbirth must be submitted within three years of passing the specialty examination and must include:

(a) A completed application form furnished by the Board;

(b) Birth/Prenatal/Postnatal logs, meeting all the requirements of this rule;

(c) Verification of passage of an approved specialty examination per subsection (2) of this rule;

(d) Current neonatal resuscitation certification; and

(e) Appropriate fee(s) per OAR 850-0035.

(5) Licensee holding a natural childbirth certification must annually, including initial year of certification, submit 15 hours of Board approved continuing education relevant to natural childbirth, which may be used to satisfy ORS 685.102.

(a) Licensee must submit proof of current certification in neonatal resuscitation annually.

(b) Licensee will participate in at least 3 hours of case review per year with other out-of-hospital birth providers; ideally other naturopathic physicians with natural childbirth certification.

(c) The hours in case review may count towards the continuing education hours required for renewal up to a maximum of 12 hours annually.

(6) Inactive Status: A licensee who holds an active natural childbirth certificate may elect to have certification go inactive. To maintain an Inactive certificate in Natural Childbirth a licensee must:

(a) Complete a minimum of 10 hours of continuing education relevant to natural childbirth annually;

(b) Pay the annual fee for an Inactive Certificate in Natural Childbirth per OAR 850-030-0035;

(7) To reactivate from inactive to active a certificate in natural childbirth, the licensee must submit this request using the form furnished by the Board, as well as satisfy the following:

(a) Must complete 30 additional hours in continuing education relevant to natural childbirth within the year prior to reactivation.

(b) The first 5 births attended after reactivation must also be attended by another licensee of this Board holding a certificate in natural childbirth for at least five years, or a Certified Nurse Midwife or Direct Entry midwife who has been licensed by the State of Oregon for at least five years.

(8) Licensing action by the Board under ORS 685.100 shall be deemed to have an equal effect upon a certificate of special competency issued the practitioner, unless specifically provided otherwise in the Board action. When the subject of a disciplinary proceeding under 685.100 relates specifically to the practice of natural childbirth by a licensee who possesses a certificate of special competency, the license action may in lieu of effecting the entire scope of the licensee's practice, suspend, revoke, or curtail only the practitioner's authority under a certificate of special competency.

Stat. Auth.: ORS 183 & 685

Stats. Implemented: ORS 685.100, 685.102, 685.135 & 685.160

Hist.: NE 3-1985(Temp), f. & ef. 9-23-85; NE 1-1986, f. & ef. 4-10-86; NE 1-1996, f. & cert. ef. 10-18-96; NE 2-1997(Temp), f. 12-1-97, cert. ef. 12-2-97 thru 5-31-98; administrative correction 8-9-99; BNE 1-2001, f. & cert. ef. 2-7-0; Renumbered from 850-010-0230, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 1-2009, f. & cert. ef. 4-30-09; BNE 4-2009, f. & cert. ef. 10-6-09; BNE 5-2009(Temp), f. & cert. ef. 10-13-09 thru 12-31-09; BNE 6-2009, f. 11-2-09, cert. ef. 1-1-10; OBNM 3-2011, f. & cert. ef. 6-15-11; OBNM 3-2013, f. & cert. ef. 4-12-13

# ADMINISTRATIVE RULES

## Oregon Business Development Department Chapter 123

**Rule Caption:** Minor housekeeping changes made to the distressed areas rules.

**Adm. Order No.:** OBDD 2-2013

**Filed with Sec. of State:** 3-29-2013

**Certified to be Effective:** 4-1-13

**Notice Publication Date:** 3-1-2013

**Rules Amended:** 123-024-0001, 123-024-0011, 123-024-0021, 123-024-0031, 123-024-0046

**Subject:** Minor housekeeping changes have been made to these rules. The context of the rules have not changed.

**Rules Coordinator:** Mindie Sublette—(503) 986-0036

### 123-024-0001

#### Scope and Purpose

In accordance with ORS 285A.020(5), the department shall give priority when providing funding for a project, a program or activity, to counties, cities, communities or other geographic areas that are designated as distressed by the department. The designation of distressed areas must be based on indicators of economic distress, including but not limited to unemployment, poverty and job loss.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.020, 285A.075, 285B.062 & 285B.065

Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 12-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; EDD 10-2008(Temp), f. & cert. ef. 3-20-08 thru 9-15-08; EDD 27-2008, f. 8-28-08, cert. ef. 9-1-08; OBDD 2-2013, f. 3-29-13, cert. ef. 4-1-13

### 123-024-0011

#### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001 The following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) "City" means the area within the corporate limits of any incorporated city in Oregon.

(2) "Quartile" means any of the three values which divide a sorted data set into four equal parts, so that each part represents one fourth of the sampled population.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.020, 285A.075, 285B.062 & 285B.065

Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 12-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; EDD 10-2008(Temp), f. & cert. ef. 3-20-08 thru 9-15-08; EDD 27-2008, f. 8-28-08, cert. ef. 9-1-08; EDD 24-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2013, f. 3-29-13, cert. ef. 4-1-13

### 123-024-0021

#### Distressed Area List

At least once per biennium, the department will review the economic conditions in Oregon and prepare a list of distressed areas. The distressed area list on file with the department's Director's Office is adopted as part of these rules by reference. The department will make the distressed area list available to all interested parties. A copy of the distressed area list, as well as further information related to the methodology described in OAR 123-024-0031 and so forth, may be obtained from the Director's Office, Oregon Business Development Department, State Lands Building Suite 200, 775 Summer Street NE, Salem, Oregon 97301-1280.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.095, 285B.062 & 285B.065

Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 4-2003, f. & cert. ef. 3-26-03; OBDD 2-2013, f. 3-29-13, cert. ef. 4-1-13

### 123-024-0031

#### Methodology for Determining Distressed Areas

The department will consider a county, City, or other geographic area to be a distressed area under one of the following methods:

(1) Using the most recent data available on the date of calculation, a county is considered distressed when, an index is calculated as the product of the values calculated using four composite factors. It is distressed if its index is less than 1.0. If the index is more than 1.0 the county is considered non-distressed. The following are the four factors used to determine a distressed county:

(a) The county's unemployment rate divided by this state's unemployment rate;

(b) The county's per capita personal income divided by the state's per capita personal income;

(c) The change in the county's average covered payroll per worker over a two year period;

(d) The sum of the change in the county's employment over a two year period; or

(2) A City outside of a county identified as a distressed area under subsection (1) of this section may be designated as distressed when its variable values are below the designated threshold value as determined by at least three of the four indicators listed below. The threshold values for each of the four indicators shall be determined by using reliable data from each of the distressed counties based on a demonstrated methodology, as approved by the director of the department. Threshold values are calculated using the most recent 5 year American Community Survey data from the U.S. Census Bureau.

(a) Percent of city population of 25 years old with a bachelor's degree or higher. The threshold value for variable A is calculated as follows: calculate the third quartile and the inter-quartile range. Multiply the inter-quartile range by 1.5 and add this to the third quartile. This is the threshold value for variable A. Any value above this threshold is not distressed.

(b) The City's unemployment rate. The threshold value for variable B is calculated as follows: calculate the first quartile and the inter-quartile range. Multiply the inter-quartile range by 1.5 and add this to the first quartile. This is the threshold value for variable B. Any value below this threshold is not distressed.

(c) The percent of the city's population below the poverty level. The threshold value for variable C is calculated as follows: calculate the third quartile and the inter-quartile range. Multiply the inter-quartile range by 1.5 and add this to the third quartile. This is the threshold value for variable C. A value below this threshold is not distressed.

(d) The City's per capita personal income. The threshold value for variable D is calculated as follows: calculate the first quartile and the inter-quartile range. Multiply the inter-quartile range by 1.5 and add this to the first quartile. This is the threshold value for variable D. A value above this threshold is not distressed.

(3) A county, City, or other geographic area that has demonstrated in writing, through a Temporary Distressed Petition, to the satisfaction of the director of the department, that it is suffering or is likely to suffer economic distress equal to or greater than those counties and cities qualifying as distressed areas under subsections (1) and (2) of this section. The director shall have the authority to declare counties, cities, and other geographic areas distressed as allowed under the Temporary Methodology for Determining Distressed Areas, OAR 123-024-0046.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.020, 285A.075, 285B.062 & 285B.065

Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 3-2005(Temp), f. & cert. ef. 4-21-05 thru 10-15-05; Administrative correction 10-19-05; EDD 7-2005(Temp), f. & cert. ef. 10-24-05 thru 12-21-05; EDD 10-2005(Temp), f. & cert. ef. 11-4-05 thru 12-21-05; Administrative correction 1-19-06; EDD 12-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; EDD 10-2008(Temp), f. & cert. ef. 3-20-08 thru 9-15-08; EDD 27-2008, f. 8-28-08, cert. ef. 9-1-08; EDD 4-2009(Temp), f. & cert. ef. 5-7-09 thru 11-2-09; Administrative correction 11-19-09; EDD 24-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2013, f. 3-29-13, cert. ef. 4-1-13

### 123-024-0046

#### Temporary Methodology for Determining Distressed Areas

The following methodology will be used to determine temporarily distressed areas when economic distress is abundant throughout the state of Oregon.

(1) State Temporary Distressed Test: In a given month, if Oregon's unemployment rate exceeds 8.0%, the County Temporary Distressed Methodology will be used.

(2) County Temporary Distressed Test: In a given month, if Oregon's unemployment rate exceeds 8.0% and if the county's unemployment rate exceeds 8.0%, the county is considered temporarily distressed.

(a) When a temporarily distressed county's unemployment falls below 8.0%, it will remain distressed for 180 days or until the regular distressed communities list is published, whichever is less.

(b) All places and cities within a temporarily distressed county are considered distressed.

(3) Any county that is unable to pass the County Temporary Distressed Test is not considered to be temporarily distressed. All cities or places within a county that is unable to pass the County Temporary Distressed Test may seek temporary distressed status by filing a temporary distressed petition defined in OAR 123-024-0031(3).

(4) Temporary Distressed Petition: Any city or place not considered distressed may submit a formal petition asking for temporary distressed status in accordance with OAR 123-500-0031(3)

(a) Temporary distressed petitions will describe in narrative form local conditions that warrant temporary distressed status.

(b) Local conditions may include, but are not limited to, first-source anecdotal discussions of changes in employment, temporary lay-offs, fur-

# ADMINISTRATIVE RULES

loughs, firm closures, firm idlings, reduced sales revenue, home foreclosure rates, welfare assistance, and unemployment assistance.

(c) The temporary distressed status granted under the petitions will last no longer than 180 days or until the normal distressed communities list is published.

(5) If Oregon fails to pass the State Temporary Distressed Test, the regular distressed communities' methodology will be used in December of the same year. The distressed communities list will be published at this time. All counties, cities, and places will maintain their temporary distressed status until the distressed communities list is published.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.020, 285A.075, 285B.062 & 285B.065

Hist.: EDD 24-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2013, f. 3-29-13, cert. ef. 4-1-13

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## Oregon Department of Education Chapter 581

**Rule Caption:** Implements kindergarten assessment.

**Adm. Order No.:** ODE 8-2013

**Filed with Sec. of State:** 4-5-2013

**Certified to be Effective:** 4-5-13

**Notice Publication Date:** 2-1-2013

**Rules Adopted:** 581-022-2130

**Subject:** The rule directs the Department of Education to implement the kindergarten assessment as part of the statewide assessment system. The rule describes the kindergarten assessment based on the recommendations of the Early Learning Council. The rule also directs school districts to administer the kindergarten assessment to students in kindergarten beginning with the 2013–2014 school year.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

### 581-022-2130

#### Kindergarten Assessment

(1) The Department of Education shall implement a kindergarten assessment as part of the statewide assessment system implemented pursuant to ORS 329.485. The kindergarten assessment shall allow for the assessment of children to determine their readiness for kindergarten.

(2) The Department shall work jointly with the Early Learning Council to adopt a tool to be used for the kindergarten assessment. The kindergarten assessment shall measure areas of school readiness, which may include physical and social-emotional development, early literacy, language, cognitive (including mathematics), and logic and reasoning. The tool selected will be appropriate for all children including children with high needs and English language learners, and will align with Oregon's early learning and development standards as well as the adopted Common Core State Standards.

(3) Prior to November 1, 2013 the department shall make the kindergarten assessment available to school districts.

(4) Beginning with the 2013–2014 school year, all school districts shall administer the kindergarten assessment to students who are enrolled in kindergarten.

(5) The Department shall include the results of the kindergarten assessment in the statewide longitudinal data system and shall provide the results of the kindergarten assessment to the Oregon Education Investment Board for inclusion in school districts' achievement compacts.

Stat. Auth. ORS 326.051 & 329.485

Stat. Implemented: ORS 329.485 & 2013 OL Ch. 37, Sec. 14 (Enrolled HB 4165)

Hist.: ODE 8-2013, f. & cert. ef. 4-5-13

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**Rule Caption:** Allows for reconsideration of agency final orders relating to special education complaints.

**Adm. Order No.:** ODE 9-2013(Temp)

**Filed with Sec. of State:** 4-9-2013

**Certified to be Effective:** 4-9-13 thru 10-6-13

**Notice Publication Date:**

**Rules Amended:** 581-015-2030

**Subject:** An organization or individual may file a complaint with the Department of Education that a program or district has violated the Individuals with Disabilities Education Act (IDEA). Under IDEA, the Department is required to issue a final order within 60 days of receiving a complaint.

The rule amendments allow for a party to ask the Department for reconsideration of the final order. Pursuant to federal guidance the

rule does not allow the Department to stay the final order pending disposition of the reconsideration request.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

### 581-015-2030

#### Procedures for Complaints as Required by IDEA Regulations

(1) An organization or individual, including an organization or individual from another state, may file with the State Superintendent of Public Instruction a written, signed complaint that the Department, or a sub grantee, including but not limited to a regional program, an education service district or a local education agency is violating or has violated the Individuals with Disabilities Education Act or regulations under that Act.

(2) The complainant must send a copy of the complaint to the public agency serving the child at the same time the complainant files the complaint with the Department.

(3) Upon receipt of a complaint under this provision, the Department will provide a copy of the Notice of Procedural Safeguards to a parent or adult student who files a complaint.

(4) If a complaint alleges violations outside the scope of the Individuals with Disabilities Education Act, the complainant will be informed of alternative procedures that are available to address the complainant's allegations.

(5) The complaint must allege a violation that occurred not more than one year before the date that the complaint is received by the Department.

(6) The complaint must include the facts on which the complaint is based. If the facts as alleged by the complainant would be considered a violation of the Individuals with Disabilities Education Act:

(a) The Superintendent will request the public agency to respond to the allegations. The Superintendent (or designee) may also initiate attempts to resolve the complaint through mediation or alternative dispute resolution, including local resolution.

(b) The respondent must respond to the allegations and furnish any information or documents requested by the Superintendent within ten business days from the receipt of request for response from the Superintendent unless another time period is specified by the Superintendent. At the same time, the respondent must send a copy of the response and documents to the complainant. If the complainant does not otherwise have access to confidential information in the response, the respondent must provide the complainant with the non-confidential portion(s) of the response.

(7) The Superintendent will give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint or the public agency's response. The complainant must provide a copy of any further written information to the public agency that is the subject of the complaint, unless it would be a hardship to do so. In those situations, the Department will provide a copy of the written information to the public agency.

(8) The Superintendent will review all of the written information submitted by the complainant and the public agency to resolve the allegations in the complaint.

(9) The Superintendent may conduct further investigation, such as telephone or onsite interviews, to the extent necessary to resolve the complaint allegations.

(10) If a written complaint is received that is also the subject of a due process hearing under OAR 581-015-2345, or contains multiple issues of which one or more are part of that hearing, the Superintendent will set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. Any issue in the complaint that is not a part of the due process hearing will be resolved using the time limit and procedures in this rule.

(11) If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the Superintendent will inform the complainant to that effect. A complaint alleging a school district's failure to implement a due process decision will be resolved by the Superintendent.

(12) The Superintendent will issue a written decision that addresses each allegation in the complaint and contains findings of fact, conclusions, and reasons for the Department's final decision within 60 days of receipt of the complaint unless:

(a) Exceptional circumstances related to the complaint require an extension; or

(b) The complainant and public agency agree in writing to extend the time to try mediation or local resolution.

(13) If the Superintendent finds a violation, the Superintendent's written decision will include any necessary corrective action to be undertaken as well as any documentation to be supplied by any party to ensure that the

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corrective action has occurred. If the decision is that a school district has failed to provide appropriate services, the Superintendent will address:

(a) How to remediate the failure to provide those services, including, as appropriate, compensatory education, monetary reimbursement or other corrective action appropriate to the needs of the child; and

(b) Appropriate future provision of services for all children with disabilities.

(14)(a) Parties may seek judicial review of the final order under ORS 183.484. Judicial review may be obtained by filing a petition for review within 60 days of service of the final order with the Marion County Circuit Court or with the Circuit Court for the County where the party resides.

(b) Pursuant to OAR 137-004-0080 and ORS 183.484(2), a party may request reconsideration of the final order by the Superintendent within 60 days after the date of the order. Except as provided in this subsection, the Superintendent and a party seeking reconsideration shall follow the procedure for reconsideration described in OAR 137-004-0080.

(c) Notwithstanding OAR 137-004-0080, the Superintendent may not stay a final order upon request by a party and any party subject to Corrective Action resulting from the order must commence the Corrective Action according to the final order.

(15) Corrective action ordered by the Superintendent must be completed within the timelines established in the final order unless another time period is specified by the Department.

(16) At any time during the pendency of the complaint, if the Superintendent determines that there is a strong likelihood that the respondent has significantly breached the Individuals with Disabilities Education Act and that delay may cause irreparable harm, the Superintendent may order interim relief.

(17) If the respondent refuses to voluntarily comply with a plan of correction when so ordered, the Superintendent may take one or more of following actions:

(a) Disapprove in whole or part, the respondent's application for federal funding;

(b) Withhold or terminate further assistance to the respondent for an approved project;

(c) Suspend payments, under an approved project, to a respondent;

(d) Order, in accordance with a final state audit resolution determination, the repayment of specified federal funds; and

(e) Withhold all or part of a district's basic school support in accordance with ORS 327.103.

(18) Before the Superintendent denies or withholds funding or orders reimbursement as provided in Section (17) of this rule, the Superintendent will notify the respondent of the right to request a hearing in accordance with ORS 183.415.

(a) The hearing request must be made to the Superintendent within 30 days of receiving notice;

(b) The Superintendent will appoint a hearings officer who will conduct the hearing in accordance with ORS 183.413 to 183.470;

(c) The burden of proof at the hearing is on the Department;

(d) The Superintendent's decision is final, subject to appeal to the United States Secretary of Education or the Oregon Court of Appeals.

(19) No person may be subject to retaliation or discrimination for having filed or participated in this complaint procedure. Any person who believes that she or he has been subject to retaliation or discrimination may file a complaint under this rule with the Superintendent.

Stat. Auth.: ORS 343.041

Stats. Implemented: ORS 343.041, 34 CFR 300.151-153; 34 CFR 300.504(a)(2)

Hist.: 1EB 28-1980, f. & ef. 12-23-80; EB 26-1987(Temp), f. & ef. 11-17-87; EB 22-1988, f. & cert. ef. 5-24-88; EB 32-1988, f. & cert. ef. 8-3-88; EB 44-1990, f. & cert. ef. 9-12-90; EB 35-1992(Temp), f. & cert. ef. 11-24-92; EB 8-1993, f. & cert. ef. 3-25-93; ODE 15-1999, f. & cert. ef. 9-24-99, Renumbered from 581-001-0010; ODE 29-2000, f. & cert. ef. 12-11-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0054, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 6-2011, f. & cert. ef. 4-22-11; ODE 9-2013(Temp), f. & cert. ef. 4-9-13 thru 10-6-13

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**Rule Caption:** Modifies rule relating to human sexuality education to align with Health Education Standards and Benchmarks.

**Adm. Order No.:** ODE 10-2013

**Filed with Sec. of State:** 4-10-2013

**Certified to be Effective:** 4-10-13

**Notice Publication Date:** 9-1-2012

**Rules Amended:** 581-022-1440

**Subject:** Modifies rule relating to human sexuality education to align rule with Oregon Health Education Standards and Benchmarks

adopted by State Board of Education. Defines and updates terminology.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 581-022-1440

### Human Sexuality Education

(1) The following definitions apply to Oregon Administrative Rule 581-022-1440:

(a) "Age-appropriate" means curricula designed to teach concepts, information, and skills based on the social, cognitive, emotional, experiential and developmental level of students;

(b) "Balanced" means instruction that provides information with the understanding of, and strength of the preponderance of evidence;

(c) "Best practice" means a practice/curriculum that is based in proven theory and practices, and has some evidence of effectiveness, but has not specifically gone through a randomized controlled trial that is needed to become an evidence-based practice;

(d) "Comprehensive plan of instruction" (as defined by Oregon education statutes) means k-12 programs that emphasize abstinence, but not to the exclusion of condom and contraceptive skills-based education. The human sexuality information provided is complete, balanced, and medically accurate. Opportunities are provided for young people to develop and understand their values, attitudes, beliefs and decisions about sexuality as a means of helping young people exercise responsibility regarding sexual relationships and sexual health decisions as further defined by subsections (2) and (3);

(e) "Consensual" means the presence of a "yes" when "no" is a viable option;

(f) "Culturally inclusive" means using materials and instruction strategies that respond to culturally diverse individuals, families, and communities in a respectful and effective manner;

(g) "Gender expression" means how people express their gender based on mannerisms, dress, etc. A person's gender expression/presentation may not always match their gender identity;

(h) "Gender identity" means a person's internal sense of being male, female or some other gender, regardless of whether the individual's appearance, expression or behavior differs from that traditionally associated with the individual's sex assigned at birth;

(i) "Gender role" means the socially determined sets of behaviors assigned to people based on their biological sex;

(j) "Gender sensitive" means using materials and instruction strategies that are sensitive to individual's similarities and differences regarding gender role, gender identity and/or sexual orientation;

(k) "Healthy relationship" means one in which both people feel a healthy sense of "self". Each person feels comfortable and safe when spending time with the other person. Two individuals try to meet each other's needs, and each can ask for help and support, within and outside of the relationship without fear of criticism or harm;

(l) "Medically accurate" means information that is established through the use of the 'scientific method.' Results can be measured, quantified, and replicated to confirm accuracy, and are reported or recognized in peer-reviewed journals or other authoritative publications;

(m) "Non-consensual sexual behavior" means any sexual act that is inflicted upon a person who is unable to grant consent or that is unwanted and compelled through the use of physical force, manipulation, threats, or intimidation;

(n) "Research-based" means intervention is based on theoretical approaches that have been shown through scientific evaluation to be effective in achieving the intended outcomes. Evaluation based on studies using scientifically based designs; results published in recognized, peer-reviewed journals;

(o) "Sexual intercourse" means a type of sexual contact or activity involving one of the following:

(A) Vaginal sex;

(B) Oral sex; or

(C) Anal sex;

(p) "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, bisexuality or other romantic and/or sexual attraction;

(q) "Shame or fear based" means terminology, activities, scenarios, context, language, and/or visual illustrations that are used to devalue, ignore, and/or disgrace students who have had or are having sexual relationships. Not all curricula or activities that describe risks of sexual activities can be considered "fear-based;"

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(r) "Skills-based" means instructional strategy that has students practice the desired skill; and

(s) "Student bystander behavior" means behaviors in which students who witness or learn about a peer's harmful behaviors or attitudes intervene when it is safe to do so.

(2) Each school district shall provide an age-appropriate, comprehensive plan of instruction focusing on human sexuality education, HIV/AIDS and sexually transmitted infections and disease prevention in elementary and secondary schools as an integral part of health education and other subjects. Course material and instruction for all human sexuality education courses that discuss human sexuality in public elementary and secondary schools shall enhance students' understanding of sexuality as a normal and healthy aspect of human development. In addition, the HIV/AIDS and sexually transmitted infections and disease prevention education and the human sexuality education comprehensive plan shall provide adequate instruction at least annually, for all students' grades 6-8 and at least twice during grades 9-12.

(3) Parents, teachers, school administrators, local health department staff, other community representatives, and persons from the medical community who are knowledgeable of the latest scientific information and effective education strategies shall develop the plan of instruction required by this rule, and in alignment with the Oregon Health Education Standards and Benchmarks, cooperatively.

(4) Local school boards shall approve the plan of instruction and require that it be reviewed and updated biennially in accordance with new scientific information and effective education strategies.

(5) Any parent may request that his/her child be excused from that portion of the instructional program required by this rule under the procedures set forth in ORS 336.035(2).

(6) The comprehensive plan of instruction shall include information that:

(a) Promotes abstinence for school-age youth and mutually monogamous relationships with an uninfected partner for adults as the safest and mostly responsible sexual behavior to reduce the risk of unintended pregnancy and exposure to HIV, Hepatitis B/C and other sexually transmitted infectious diseases;

(b) Allays those fears concerning HIV that are scientifically groundless;

(c) Is balanced and medically accurate;

(d) Provides balanced, accurate information, and skills-based instruction on the risks and benefits of contraceptives, condoms and other disease reduction measures which reduce the risk of unintended pregnancy, exposure to HIV, hepatitis B/C and other sexually transmitted infections and diseases;

(e) Discusses responsible sexual behaviors and hygienic practices which may reduce or eliminate unintended pregnancy, exposure to HIV, hepatitis B/C and other sexually transmitted infections and diseases;

(f) Stresses the risks of contracting HIV, hepatitis B and C and other infectious diseases through sharing of needles or syringes for injecting illegal drugs and controlled substances;

(g) Discusses the characteristics of the emotional, physical and psychological aspects of a healthy relationship;

(h) Discusses the benefits of delaying pregnancy beyond the adolescent years as a means to better ensure a healthy future for parents and their children. Students shall be provided with statistics based on the latest medical information regarding both the health benefits and the possible side effects of all forms of contraceptives, including the success and failure rates for prevention of pregnancy, sexually transmitted infections and diseases;

(i) Stresses that HIV/STDs and hepatitis B/C can be possible hazards of sexual contact;

(j) Provides students with information about Oregon laws that address young people's rights and responsibilities relating to childbearing and parenting, and prevention of the spread of STDs, STIs, including testing for STDs, STIs, HIV and pregnancy;

(k) Advises pupils of the circumstances in which it is unlawful under ORS 163.435 and 163.445 for persons 18 years of age or older to have sexual relations with persons younger than 18 years of age to whom they are not married;

(l) Encourages positive family communication and involvement and helps students learn to make responsible, respectful and healthy decisions;

(m) Teaches that no form of sexual expression, or behavior is acceptable when it physically or emotionally harms oneself or others and that it is wrong to take advantage of or exploit another person;

(n) Teaches that consent is an essential component of healthy sexual behavior. Course material shall promote positive attitudes and behaviors

related to healthy relationships and sexuality, and encourage active student bystander behavior;

(o) Teaches students how to identify and respond to attitudes and behaviors which contribute to sexual violence;

(p) Validates through course material and instruction the importance of honesty with oneself and others, respect for each person's dignity and well-being, and responsibility for one's actions;

(q) Uses inclusive materials, language, and strategies that recognizes different sexual orientations, gender identities and gender expression;

(r) Includes information about relevant community resources, how to access these resources, and the laws that protect the rights of minors to anonymously access these resources; and

(s) Is culturally inclusive.

(7) The comprehensive plan of instruction shall emphasize skills-based instruction that:

(a) Assists students to develop and practice effective communication skills, the development of self-esteem and the ability to resist peer and partner pressure;

(b) Provides students with the opportunity to learn about and personalize peer, media, technology and community influences that both positively and negatively impact their attitudes and decisions related to healthy sexuality, relationships, and sexual behaviors, including decisions to abstain from sexual intercourse;

(c) Enhances students' ability to access valid health information and resources related to their sexual health;

(d) Teaches how to develop and communicate relational, sexual and reproductive boundaries;

(e) Is research-based, evidence-based and/or best practice; and

(f) Aligns with the Oregon Health Education Content Standards and Benchmarks.

(8) All human sexuality education programs shall emphasize that abstinence from sexual intercourse, when practiced consistently and correctly, is the only method that is 100 percent effective against unintended pregnancy, HIV infection (when transmitted sexually), hepatitis B/C infection, and other sexually transmitted infections and diseases. Abstinence is to be stressed, but not to the exclusion of contraceptives and condoms for preventing unintended pregnancy, HIV infection, sexually transmitted infections and diseases, and hepatitis B/C. Such courses are to acknowledge the value of abstinence while not devaluing, ignoring or stigmatizing those students who have had or are having sexual relationships. Further, sexuality education materials, instructional strategies, and activities must not, in any way, use shame or fear based tactics.

(9) Materials and information shall be presented in a manner sensitive to the fact that there are students who have experienced, perpetrated, or witnessed sexual abuse and relationship violence.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 336.455 & 336.455

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; EB 2-1997, f. & cert. ef. 3-27-97; ODE 25-2002, f. & cert. ef. 11-15-02; ODE 15-2007, f. & cert. ef. 7-6-07; ODE 25-2009, f. & cert. ef. 12-10-09; ODE 10-2013, f. & cert. ef. 4-10-13

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

**Rule Caption:** Amendment of HERC Prioritized List of Health Services reflecting approved modifications effective 10-1-2012.

**Adm. Order No.:** DMAP 11-2013

**Filed with Sec. of State:** 3-21-2013

**Certified to be Effective:** 3-21-13

**Notice Publication Date:** 2-1-2013

**Rules Amended:** 410-141-0520

**Subject:** The Oregon Health Plan (OHP) Program administrative rules govern Division of Medical Assistance Programs' (Division) payments for services provided to clients. The Division is amending 410-141-0520 HERC Prioritized List of Health Services to reference the January 1, 2011-December 31, 2013, Prioritized List of Health Services effective October 1, 2012 which includes interim modifications and technical changes made for 2009 national code set.  
**Rules Coordinator:** Cheryl Peters—(503) 945-6527

### 410-141-0520 Prioritized List of Health Services

(1) The Health Evidenced Review Commission (HERC) shall assume responsibility for the former HSC's Prioritized List of Health Services

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(Prioritized List). The Prioritized List is the listing of physical and mental health services with “expanded definitions” of preventive services and the practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HERC. The HERC maintains the most current list on their Web site: [www.oregon.gov/OHA/OHPR/HERC/Pending\\_shtml](http://www.oregon.gov/OHA/OHPR/HERC/Pending_shtml), or for a hardcopy contact the Division of Medical Assistance Programs. This rule incorporates by reference the Centers for Medicare and Medicaid Services (CMS) approved biennial January 1, 2011–December 31, 2013 Prioritized List, including October 1, 2012 modifications and technical revisions, expanded definitions, practice guidelines and condition treatment pairs funded through line 498.

(2) Certain mental health services are only covered for payment when provided by a Mental Health Organization (MHO), Community Mental Health Program (CMHP) or authorized Coordinated Care Organization (CCO).

(3) Chemical dependency (CD) services are covered for eligible OHP clients when provided by an FCHP, PCO, or by a provider who has a letter of approval from the Addictions and Mental Health Division and approval to bill Medicaid for CD services.

Stat. Auth.: ORS 192.527, 192.528, 413.042 & 414.065

Stats. Implemented: ORS 192.527, 192.528, 414.065 & 414.727

Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. & cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. & cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-0; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 6-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 14-2007(Temp), f. & cert. ef. 10-1-07 thru 3-28-08; DMAP 28-2007(Temp), f. & cert. ef. 12-20-07 thru 3-28-08; DMAP 8-2008, f. & cert. ef. 3-27-08; DMAP 10-2008(Temp), f. & cert. ef. 4-1-08 thru 9-15-08; DMAP 23-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 31-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DMAP 40-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 4-2009(Temp), f. & cert. ef. 1-30-09 thru 6-25-09; DMAP 6-2009(Temp), f. 3-26-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 8-2009(Temp), f. & cert. ef. 4-17-09 thru 9-25-09; DMAP 26-2009, f. 8-3-09, cert. ef. 8-5-09; DMAP 30-2009(Temp), f. 9-15-09, cert. ef. 10-1-09 thru 3-29-10; DMAP 36-2009(Temp), f. 12-10-09 ef. 1-1-10 thru 3-29-10; DMAP 1-2010(Temp), f. & cert. ef. 1-15-10 thru 3-29-10; DMAP 3-2010, f. 3-5-10, cert. ef. 3-17-10; DMAP 5-2010(Temp), f. 3-26-10, cert. ef. 4-1-10 thru 9-1-10; DMAP 10-2010, f. & cert. ef. 4-26-10; DMAP 27-2010(Temp), f. 9-24-10, cert. ef. 10-1-10 thru 3-25-11; DMAP 43-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 4-2011, f. 3-23-11, cert. ef. 4-1-11; DMAP 24-2011(Temp), f. 9-15-11, cert. ef. 10-1-11 thru 3-26-12; DMAP 45-2011, f. 12-21-11, cert. ef. 12-23-11; DMAP 47-2011(Temp), f. 12-13-11, cert. ef. 1-1-12 thru 6-25-12; DMAP 22-2012(Temp), f. 3-30-12, cert. ef. 4-1-12 thru 9-21-12; DMAP 43-2012(Temp), f. 9-21-12, cert. ef. 9-23-12 thru 3-21-12; DMAP 11-2013, f. & cert. ef. 3-21-13

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**Rule Caption:** Align with Department of Human Services OAR chapter 461, medical eligibility rules

**Adm. Order No.:** DMAP 12-2013

**Filed with Sec. of State:** 3-27-2013

**Certified to be Effective:** 4-1-13

**Notice Publication Date:** 2-1-2013

**Rules Amended:** 410-120-0006

**Subject:** The General Rules Program administrative rules govern the Division’s payments for services provided to clients, and medical assistance eligibility determinations made by the Oregon Health Authority. In coordination with the Department of Human Services’ (Department) revision of medical eligibility rules in chapter 461, the Division is amending OAR 410-120-0006 to assure that the Division’s medical eligibility rule aligns with and reflects information found in the Department’s medical eligibility rules. In OAR 410-120-0006, the Division adopts in rule by reference Department eligibility rules and must update OAR 410-120-0006 in conjunction.

**Rules Coordinator:** Cheryl Peters—(503) 945-6527

## 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 April 1, 2013, for all medical eligibility requirements for medical assistance when the Authority conducts eligibility determinations.

(2) Any reference to OAR chapter 461 in Oregon Administrative Rules or contracts of the Authority are deemed to be references to the requirements of this rule, and shall be construed to apply to all eligibility policies, procedures and determinations by or through the Authority.

(3) For purposes of this rule, references in OAR chapter 461 to the Department or to the Authority shall be construed to be references to both agencies.

(4) Effective on or after July 1, 2011 the Authority shall conduct medical eligibility determinations using the OAR chapter 461 rules which are in effect on the date the Authority makes the medical eligibility determination.

(5) A request for a hearing resulting from a determination under this rule, made by the Authority shall be handled pursuant to the hearing procedures set out in division 25 of OAR chapter 461. References to “the Administrator” in division 25 of chapter 461 or “the Department” are hereby incorporated as references to the Authority.”

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

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.065

Hist.: DMAP 10-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 18-2011(Temp), f. & cert. ef. 7-15-11 thru 1-11-12; DMAP 21-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-11-12; DMAP 25-2011(Temp), f. 9-28-11, cert. ef. 10-1-11 thru 1-11-12; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 1-2012(Temp), f. & cert. ef. 1-13-12 thru 7-10-12; DMAP 2-2012(Temp), f. & cert. ef. 1-26-12 thru 7-10-12; DMAP 3-2012(Temp), f. & cert. ef. 1-31-12 thru 2-1-12; DMAP 4-2012(Temp), f. 1-31-12, cert. ef. 2-1-12 thru 7-10-12; DMAP 9-2012(Temp), f. & cert. ef. 3-1-12 thru 7-10-12; DMAP 21-2012(Temp), f. 3-30-12, cert. ef. 4-1-12 thru 7-10-12; DMAP 25-2012(Temp), f. & cert. ef. 5-1-12 thru 7-10-12; Administrative correction 8-1-12; DMAP 35-2012(Temp), f. & cert. ef. 7-20-12 thru 1-16-13; DMAP 45-2012(Temp), f. & cert. ef. 10-5-12 thru 1-19-13; DMAP 50-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 53-2012(Temp), f. & cert. ef. 11-1-12 thru 4-29-13; DMAP 56-2012(Temp), f. 11-30-12, cert. ef. 12-1-12 thru 4-1-13; DMAP 60-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 65-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-29-13; DMAP 2-2013(Temp), f. & cert. ef. 1-8-13 thru 6-29-13; DMAP 3-2013(Temp), f. & cert. ef. 1-30-13 thru 6-29-13; DMAP 5-2013(Temp), f. & cert. ef. 2-20-13 thru 6-29-13; DMAP 7-2013(Temp), f. & cert. ef. 3-1-13 thru 6-29-13; DMAP 12-2013, f. 3-27-13, cert. ef. 4-1-13

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**Rule Caption:** April 1, 2013 Dental Services rule changes for clarification and new CDT codes

**Adm. Order No.:** DMAP 13-2013

**Filed with Sec. of State:** 3-27-2013

**Certified to be Effective:** 4-1-13

**Notice Publication Date:** 3-1-2013

**Rules Amended:** 410-123-1060, 410-123-1160, 410-123-1200, 410-123-1220, 410-123-1240, 410-123-1260, 410-123-1490, 410-123-1620

**Subject:** Revisions to rules based on the American Dental Association’s Current Dental Terminology 2013 changes. Adds coverage detail for newly-created procedures, removes language for codes no longer valid, revises language based on Health Evidence Review Commission’s Prioritized List changes for April 1, 2013. Clarifies coverage of services to avoid ambiguity in the interpretation. House-keeping changes as necessary.

**Rules Coordinator:** Cheryl Peters—(503) 945-6527

## 410-123-1060

### Definition of Terms

(1) Anesthesia — The following depicts the Division of Medical Assistance Programs’ (Division) usage of certain anesthesia terms, however for further details refer also to the Oregon Board of Dentistry administrative rules (OAR chapter 818, division 026):

(a) Conscious Sedation:

(A) Deep Sedation — A drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance maintaining a patient airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained;

(B) Minimal sedation — A minimally depressed level of consciousness, produced by non-intravenous pharmacological methods, that retains the patient’s ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. When the

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intent is minimal sedation for adults, the appropriate initial dosing of a single non-intravenous pharmacological method is no more than the maximum recommended dose (MRD) of a drug that can be prescribed for unmonitored home use. Nitrous oxide/oxygen may be used in combination with a single non-intravenous pharmacological method in minimal sedation;

(C) Moderate sedation — A drug-induced depression of consciousness during which the patient responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patient airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained;

(b) General Anesthesia — A drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patient airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired;

(c) Local anesthesia — The elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug;

(d) Nitrous Oxide Sedation — An induced controlled state of minimal sedation, produced solely by the inhalation of a combination of nitrous oxide and oxygen, in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command;

(2) Citizen/Alien-Waived Emergency Medical (CAWEM) — Refer to OAR 410-120-0000 for definition of clients who are eligible for limited emergency services under the CAWEM benefit package. The definition of emergency services does not apply to CAWEM clients. OAR 410-120-1210 provides a complete description of limited emergency coverage pertaining to the CAWEM benefit package.

(3) Covered Services — Services on the Health Evidence Review Commission's (HERC) Prioritized List of Health Services (Prioritized List) that have been funded by the Legislature and identified in specific program rules. Services are limited as directed by General Rules — Excluded Services and Limitations (OAR 410-120-1200), the Division's Dental Services Program rules (chapter 410, division 123) and the Prioritized List. Services that are not considered emergency dental services as defined by OAR 410-123-1060(12) are considered routine services.

(4) Dental Hygienist — A person licensed to practice dental hygiene pursuant to State law.

(5) Dental Hygienist with Expanded Practice Dental Hygiene Permit (EPDH) — A person licensed to practice dental hygiene with an EPDH permit issued by the Board of Dentistry and within the scope of an EPDH permit pursuant to State law.

(6) Dental Practitioner — A person licensed pursuant to State law to engage in the provision of dental services within the scope of the practitioner's license and/or certification.

(7) Dental Services — Services provided within the scope of practice as defined under State law by or under the supervision of a dentist or dental hygienist, or denture services provided within the scope of practice as defined under State law by a denturist.

(8) Dental Services Documentation — Must meet the requirements of the Oregon Dental Practice Act statutes; administrative rules for client records and requirements of OAR 410-120-1360, "Requirements for Financial, Clinical and Other Records;" and any other documentation requirements as outlined in the Dental rules.

(9) Dentally Appropriate — In accordance with OAR 410-141-0000, services that are required for prevention, diagnosis or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community, evidence-based medicine and professional standards of care as effective;

(c) Not solely for the convenience of a OHP member or a provider of the service; and

(d) The most cost effective of the alternative levels of dental services that can be safely provided to a Division member.

(10) Dentist — A person licensed to practice dentistry pursuant to State law.

(11) Denturist — A person licensed to practice denture technology pursuant to State law.

(12) Direct Pulp Cap — The procedure in which the exposed pulp is covered with a dressing or cement that protects the pulp and promotes healing and repair.

(13) Emergency Services:

(a) Refer to OAR 410-120-0000 for the complete definition of emergency services. (This definition of emergency services does not apply to CAWEM clients. OAR 410-120-1210 provides a complete description of limited emergency coverage pertaining to the CAWEM benefit package);

(b) Covered services for an emergency dental condition manifesting itself by acute symptoms of sufficient severity requiring immediate treatment. This includes services to treat the following conditions:

(A) Acute infection;

(B) Acute abscesses;

(C) Severe tooth pain;

(D) Unusual swelling of the face or gums; or

(E) A tooth that has been avulsed (knocked out);

(c) The treatment of an emergency dental condition is limited only to covered services. The Division recognizes that some non-covered services may meet the criteria of treatment for the emergency condition however this rule does not extend to those non-covered services. Routine dental treatment or treatment of incipient decay does not constitute emergency care;

(d) The OHP Standard Benefit Package includes a limited emergency dental benefit. Refer to OAR 410-123-1670.

(14) Hospital Dentistry — Dental services normally done in a dental office setting, but due to specific client need (as detailed in OAR 410-123-1490) are provided in an ambulatory surgical center, inpatient, or outpatient hospital setting under general anesthesia (or IV conscious sedation, if appropriate).

(15) Medical Practitioner — A person licensed pursuant to State law to engage in the provision of medical services within the scope of the practitioner's license and/or certification.

(16) Procedure Codes — The procedure codes in the Dental Services rulebook (OAR chapter 410, division 123) refer to Current Dental Terminology (CDT), unless otherwise noted. Codes listed in this rulebook and other documents incorporated in rule by reference are subject to change by the American Dental Association (ADA) without notification.

(17) Standard of Care — What reasonable and prudent practitioners would do in the same or similar circumstances.

Stat. Auth.: ORS 413.042, 414.065 & 414.707

Stats. Implemented: ORS 414.065 & 414.707

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 46-2011, f. 12-23-11, cert. ef. 1-1-12; DMAP 13-2013, f. 3-27-13, cert. ef. 4-1-13

## 410-123-1160

### Prior Authorization (PA)

(1) Division of Medical Assistance Programs (Division) prior authorization (PA) requirements:

(a) For fee-for-service (FFS) dental clients, the following services require PA:

(A) Crowns (porcelain fused to metal);

(B) Crown repair;

(C) Retreatment of previous root canal therapy – anterior;

(D) Complete dentures;

(E) Immediate dentures;

(F) Partial dentures;

(G) Prefabricated post and core in addition to fixed partial denture retainer;

(H) Fixed partial denture repairs;

(I) Skin graft; and

(J) Orthodontics (when covered pursuant to OAR 410-123-1260);

(b) Hospital dentistry always requires PA, regardless of the client's enrollment status. Refer to OAR 410-123-1490 for more information;

(c) Oral surgical services require PA when performed in an ambulatory surgical center (ASC) or an outpatient or inpatient hospital setting and related anesthesia. Refer to OAR 410-123-1260 (Oral Surgery Services), and the current Medical Surgical Services administrative rule 410130-0200 for information;

(d) Maxillofacial surgeries may require PA in some instances. Refer to the current Medical Surgical Services administrative rule 410-130-0200, for information.

(2) The Division does not require PA for outpatient or inpatient services related to life-threatening emergencies. The client's clinical record



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must document any appropriate clinical information that supports the need for the hospitalization.

(3) How to request PA:

(a) Submit the request to the Division in writing. Refer to the Dental Services Provider Guide for specific instructions and forms to use. Telephone calls requesting PA will not be accepted;

(b) Treatment justification: The Division may request the treating dentist to submit appropriate radiographs or other clinical information that justifies the treatment:

(A) When radiographs are required they must be:

(i) Readable copies;

(ii) Mounted or loose;

(iii) In an envelope, stapled to the PA form;

(iv) Clearly labeled with the dentist's name and address and the client's name; and

(v) If digital x-ray, they must be of photo quality;

(B) Do not submit radiographs unless it is required by the Dental Services administrative rules or they are requested during the PA process.

(4) The Division will issue a decision on PA requests within 30 days of receipt of the request. The Division will provide PA for services when:

(a) The prognosis is favorable;

(b) The treatment is practical;

(c) The services are dentally appropriate; and

(d) A lesser-cost procedure would not achieve the same ultimate results.

(5) PA does not guarantee eligibility or reimbursement. It is the responsibility of the provider to check the client's eligibility on the date of service.

(6) For certain services and billings, the Division will seek a general practice consultant or an oral surgery consultant for professional review to determine if a PA will be approved. The Division will deny PA if the consultant decides that the clinical information furnished does not support the treatment of services.

(7) For managed care PA requirements:

(a) For services other than hospital dentistry, contact the client's Dental Care Organization (DCO) for PA requirements for individual services and/or supplies listed in the Dental Services administrative rules. DCOs may not have the same PA requirements for dental services as listed in this administrative rule;

(b) For hospital dentistry, refer to OAR 410-123-1490 for details regarding PA requirements.

Stat. Auth.: ORS 413.042, 414.065 & 414.707

Stats. Implemented: ORS 414.065 & 414.707

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 32-1994, f. & cert. ef. 11-1-94; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 13-2013, f. 3-27-13, cert. ef. 4-1-13

## 410-123-1200

### Services Not To Be Billed Separately

(1) Services that are not to be billed separately may be included in the Current Dental Terminology (CDT) codebook and may not be listed as combined with another procedure, however they are considered to be either minimal, included in the examination, part of another service, or included in routine post-op or follow-up care.

(2) The following services do not warrant an additional fee:

(a) Alveolectomy/Alveoloplasty in conjunction with extractions;

(b) Cardiac and other monitoring;

(c) Curettage and root planing — per tooth;

(d) Diagnostic casts;

(e) Dietary counseling;

(f) Direct pulp cap (exception: direct pulp cap is covered separately for OHP Standard clients; the Standard benefit plan does not cover restorations);

(g) Discing;

(h) Dressing change;

(i) Electrosurgery;

(j) Equilibration;

(k) Gingival curettage — per tooth;

(l) Gingivectomy or gingivoplasty to allow for access for restorative procedure, per tooth;

(m) Indirect pulp cap;

(n) Local anesthesia;

(o) Medicated pulp chambers;

(p) Occlusal adjustments;

(q) Occlusal analysis;

(r) Odontoplasty;

(s) Oral hygiene instruction;

(t) Periodontal charting, probing;

(u) Post removal;

(v) Polishing fillings;

(w) Post extraction treatment for alveolaritis (dry socket treatment) if done by the provider of the extraction;

(x) Pulp vitality tests;

(y) Smooth broken tooth;

(z) Special infection control procedures;

(aa) Surgical procedure for isolation of tooth with rubber dam;

(bb) Surgical splint;

(cc) Surgical stent; and

(dd) Suture removal.

Stat. Auth.: ORS 413.042, 414.065 & 414.707

Stats. Implemented: ORS 414.065 & 414.707

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 32-1994, f. & cert. ef. 11-1-94; OMAP 48-2002, f. & cert. ef. 10-1-02; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 13-2013, f. 3-27-13, cert. ef. 4-1-13

## 410-123-1220

### Coverage According to the Prioritized List of Health Services

(1) This rule incorporates by reference the "Covered and Non-Covered Dental Services" document, dated April 1, 2013, and located on the Division of Medical Assistance Programs (Division) Web site at: [www.dhs.state.or.us/policy/healthplan/guides/dental/main.html](http://www.dhs.state.or.us/policy/healthplan/guides/dental/main.html).

(a) The "Covered and Non-Covered Dental Services" document lists coverage of Current Dental Terminology (CDT) procedure codes according to the Oregon Health Evidence Review Commission (HERC) Prioritized List of Health Services (Prioritized List) and the client's specific Oregon Health Plan benefit package;

(b) This document is subject to change if there are funding changes to the Prioritized List.

(2) Changes to services funded on the Prioritized List are effective on the date of the Prioritized List change:

(a) The Division administrative rules (chapter 410, division 123) will not reflect the most current Prioritized List changes until they have gone through the Division rule filing process;

(b) For the most current Prioritized List, refer to the HERC Web site at <http://www.oregon.gov/oha/OHPR/Pages/herc/Current-Prioritized-List.aspx>;

(c) In the event of an alleged variation between a Division-listed code and a national code, the Division shall apply the national code in effect on the date of request or date of service.

(3) Refer to OAR 410-123-1260 for information about limitations on procedures funded according to the Prioritized List. Examples of limitations include frequency and client's age.

(4) The Prioritized List does not include or fund the following general categories of dental services and the Division does not cover them for any client. Several of these services are considered elective or "cosmetic" in nature (i.e., done for the sake of appearance):

(a) Desensitization;

(b) Implant and implant services;

(c) Masticque or veneer procedure;

(d) Orthodontia (except when it is treatment for cleft palate);

(e) Overhang removal;

(f) Procedures, appliances or restorations solely for aesthetic/ cosmetic purposes;

(g) Temporomandibular joint dysfunction treatment; and

(h) Tooth bleaching.

Stat. Auth.: ORS 413.042, 414.065 & 414.707

Stats. Implemented: ORS 414.065 & 414.707

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 21-1994(Temp), f. 4-29-94, cert. ef. 5-1-94; HR 32-1994, f. & cert. ef. 11-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; HR 9-1996, f. 5-31-96, cert. ef. 6-1-96; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 17-2011, f. & cert. ef. 7-12-11; DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 46-2011, f. 12-23-11, cert. ef. 1-1-12; DMAP 13-2013, f. 3-27-13, cert. ef. 4-1-13

## 410-123-1240

### The Dental Claim Invoice

(1) Providers: Refer to the Dental Services Provider Guide for information regarding claims submissions and billing information.

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(2) Providers billing dental services on paper must use the 2006 version of the American Dental Association (ADA) claim form.

(3) Submission of electronic claims directly or through an agent must comply with the Electronic Data Interchange (EDI) rules. OAR 407-1200100 et.seq.

(4) Specific information regarding Health Insurance Portability and Accountability Act (HIPAA) requirements can be found on the Division Web site.

(5) Providers will not include any client co-payments on the claim when billing for dental services.

Stat. Auth.: ORS 413.042, 414.065 & 414.707

Stats. Implemented: ORS 414.065 & 414.707

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 76-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 65-2003, f. 9-10-03, cert. ef. 10-1-03; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 36-2005, f. & cert. ef. 8-1-05; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 13-2013, f. 3-27-13, cert. ef. 4-1-13

## 410-123-1260

### OHP Plus Dental Benefits

#### (1) GENERAL:

(a) Early and Periodic Screening, Diagnosis and Treatment (EPSDT):

(A) Refer to Code of Federal Regulations (42 CFR 441, Subpart B) and OAR chapter 410, division 120 for definitions of the EPSDT program, eligible clients, and related services. EPSDT dental services includes, but are not limited to:

(i) Dental screening services for eligible EPSDT individuals; and

(ii) Dental diagnosis and treatment which is indicated by screening, at as early an age as necessary, needed for relief of pain and infections, restoration of teeth and maintenance of dental health;

(B) Providers must provide EPSDT services for eligible Division of Medical Assistance Programs (Division) clients according to the following documents:

(i) The Dental Services Program administrative rules (OAR chapter 410, division 123), for dentally appropriate services funded on the Oregon Health Evidence Review Commission Prioritized List of Health Services (Prioritized List); and

(ii) The "Oregon Health Plan (OHP) — Recommended Dental Periodicity Schedule," dated January 1, 2010, incorporated by reference and posted on the Division Web site in the Dental Services Provider Guide document at

[www.dhs.state.or.us/policy/healthplan/guides/dental/main.html](http://www.dhs.state.or.us/policy/healthplan/guides/dental/main.html);

(b) Restorative, periodontal and prosthetic treatments:

(A) Such treatments must be consistent with the prevailing standard of care, documentation must be included in the client's charts to support the treatment, and may be limited as follows:

(i) When prognosis is unfavorable;

(ii) When treatment is impractical;

(iii) A lesser-cost procedure would achieve the same ultimate result;

or

(iv) The treatment has specific limitations outlined in this rule;

(B) Prosthetic treatment (including porcelain fused to metal crowns) are limited until rampant progression of caries is arrested and a period of adequate oral hygiene and periodontal stability is demonstrated; periodontal health needs to be stable and supportive of a prosthetic.

#### (2) DIAGNOSTIC SERVICES:

(a) Exams:

(A) For children (under 19 years of age):

(i) The Division shall reimburse exams (billed as D0120, D0145, D0150, or D0180) a maximum of twice every 12 months with the following limitations:

(I) D0150: once every 12 months when performed by the same practitioner;

(II) D0150: twice every 12 months only when performed by different practitioners;

(III) D0180: once every 12 months;

(ii) The Division shall reimburse D0160 only once every 12 months when performed by the same practitioner;

(B) For adults (19 years of age and older) — The Division shall reimburse exams (billed as D0120, D0150, D0160, or D0180) once every 12 months;

(C) For problem focused exams (urgent or emergent problems), the Division shall reimburse D0140 for the initial exam. The Division shall reimburse D0170 for related problem focused follow-up exams. Providers should not bill D0140 and D0170 for routine dental visits;

(D) The Division only covers oral exams by medical practitioners when the medical practitioner is an oral surgeon;

(E) As the American Dental Association's Current Dental Terminology (CDT) codebook specifies the evaluation, diagnosis and treatment planning components of the exam are the responsibility of the dentist, the Division does not reimburse dental exams when furnished by a dental hygienist (with or without an expanded practice permit);

(b) Assessments of a patient (D0191):

(A) When performed by a dental practitioner, the Division shall reimburse:

(i) If performed by a dentist outside of a dental office;

(ii) If performed by a dental hygienist with an expanded practice dental hygiene permit;

(iii) Only if an exam (D0120-D0180) is not performed on the same date of service. An oral assessment is included in the exam;

(iii) For children (under 19 years of age), a maximum of twice every 12 months; and

(iv) For adults (age 19 and older), a maximum of once every 12 months;

(B) When performed by a medical practitioner, the Division shall cover:

(i) Only for children under 7 years of age; and

(ii) A maximum of once a year;

(C) Medical practitioners performing D0191 shall bill the client's medical coverage for reimbursement (Coordinated Care Organization (CCO) or Prepaid Health Plan (PHP) if enrolled member, or Division if fee-for-service);

(D) The maximum limits for this procedure for dental practitioners do not affect the maximum limits for medical providers, and vice versa; and

(E) An assessment does not take the place of the need for oral evaluations/exams;

(b) Radiographs:

(A) The Division shall reimburse for routine radiographs once every 12 months;

(B) The Division shall reimburse bitewing radiographs for routine screening once every 12 months;

(C) The Division shall reimburse a maximum of six radiographs for any one emergency;

(D) For clients under age six, radiographs may be billed separately every 12 months as follows:

(i) D0220 — once;

(ii) D0230 — a maximum of five times;

(iii) D0270 — a maximum of twice, or D0272 once;

(E) The Division shall reimburse for panoramic (D0330) or intra-oral complete series (D0210) once every five years, but both cannot be done within the five-year period;

(F) Clients must be a minimum of six years old for billing intra-oral complete series (D0210). The minimum standards for reimbursement of intra-oral complete series are:

(i) For clients age six through 11 — a minimum of 10 periapicals and two bitewings for a total of 12 films;

(ii) For clients ages 12 and older — a minimum of 10 periapicals and four bitewings for a total of 14 films;

(G) If fees for multiple single radiographs exceed the allowable reimbursement for a full mouth complete series (D0210), the Division shall reimburse for the complete series;

(H) Additional films may be covered if dentally or medically appropriate, e.g., fractures (Refer to OAR 410-123-1060 and 410-120-0000);

(I) If the Division determines the number of radiographs to be excessive, payment for some or all radiographs of the same tooth or area may be denied;

(J) The exception to these limitations is if the client is new to the office or clinic and the office or clinic was unsuccessful in obtaining radiographs from the previous dental office or clinic. Supporting documentation outlining the provider's attempts to receive previous records must be included in the client's records;

(K) Digital radiographs, if printed, should be on photo paper to assure sufficient quality of images.

#### (3) PREVENTIVE SERVICES:

(a) Prophylaxis:

(A) For children (under 19 years of age) — Limited to twice per 12 months;

(B) For adults (19 years of age and older) — Limited to once per 12 months;

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(C) Additional prophylaxis benefit provisions may be available for persons with high risk oral conditions due to disease process, pregnancy, medications or other medical treatments or conditions, severe periodontal disease, rampant caries and/or for persons with disabilities who cannot perform adequate daily oral health care;

(D) Are coded using the appropriate Current Dental Terminology (CDT) coding:

(i) D1110 (Prophylaxis — Adult) — Use for clients 14 years of age and older; and

(ii) D1120 (Prophylaxis — Child) — Use for clients under 14 years of age;

(b) Topical fluoride treatment:

(A) For adults (19 years of age and older) — Limited to once every 12 months;

(B) For children (under 19 years of age) — Limited to twice every 12 months;

(C) For children under 7 years of age, topical fluoride varnish may be applied by a medical practitioner during a medical visit:

(i) Bill the Division directly regardless of whether the client is fee-for-service (FFS) or enrolled in a CCO or a PHP;

(ii) Bill using a professional claim format with the appropriate CDT code (D1206 — Topical Fluoride Varnish);

(D) Additional topical fluoride treatments may be available, up to a total of 4 treatments per client within a 12-month period, when high-risk conditions or oral health factors are clearly documented in chart notes for the following clients who:

(i) Have high-risk oral conditions due to disease process, medications, other medical treatments or conditions, or rampant caries;

(ii) Are pregnant;

(iii) Have physical disabilities and cannot perform adequate, daily oral health care;

(iv) Have a developmental disability or other severe cognitive impairment that cannot perform adequate, daily oral health care; or

(v) Are under seven year old with high-risk oral health factors, such as poor oral hygiene, deep pits and fissures (grooves) in teeth, severely crowded teeth, poor diet, etc;

(E) Fluoride limits include any combination of fluoride varnish (D1206) or other topical fluoride (D1208);

(c) Sealants (D1351):

(A) Are covered only for children under 16 years of age;

(B) The Division limits coverage to:

(i) Permanent molars; and

(ii) Only one sealant treatment per molar every five years, except for visible evidence of clinical failure;

(d) Tobacco cessation:

(A) For services provided during a dental visit, bill as a dental service using CDT code D1320 when the following brief counseling is provided:

(i) Ask patients about their tobacco-use status at each visit and record information in the chart;

(ii) Advise patients on their oral health conditions related to tobacco use and give direct advice to quit using tobacco and a strong personalized message to seek help; and

(iii) Refer patients who are ready to quit, utilizing internal and external resources to complete the remaining three A's (assess, assist, arrange) of the standard intervention protocol for tobacco;

(B) The Division allows a maximum of 10 services within a three-month period;

(C) For tobacco cessation services provided during a medical visit follow criteria outlined in OAR 410-130-0190;

(e) Space management:

(A) The Division shall cover fixed and removable space maintainers (D1510, D1515, D1520, and D1525) only for clients under 19 years of age;

(B) The Division may not reimburse for replacement of lost or damaged removable space maintainers.

(4) RESTORATIVE SERVICES:

(a) Restorations — amalgam and composite:

(A) The Division shall cover resin-based composite restorations only for anterior teeth (D2330-D2390) and one surface posterior teeth (D2391);

(B) Resin-based composite crowns on anterior teeth (D2390) are only covered for clients under 21 years of age or who are pregnant;

(C) The Division reimburses posterior composite restorations at the same rate as amalgam restorations;

(D) The Division limits payment for replacement of posterior composite restorations to once every five years;

(E) The Division limits payment of covered restorations to the maximum restoration fee of four surfaces per tooth. Refer to the American Dental Association (ADA) CDT codebook for definitions of restorative procedures;

(F) Providers must combine and bill multiple surface restorations as one line per tooth using the appropriate code. Providers may not bill multiple surface restorations performed on a single tooth on the same day on separate lines. For example, if tooth #30 has a buccal amalgam and a mesial-occlusal-distal (MOD) amalgam, then bill MOD, B, using code D2161 (four or more surfaces);

(G) The Division may not reimburse for an amalgam or composite restoration and a crown on the same tooth;

(H) The Division reimburses for a surface once in each treatment episode regardless of the number or combination of restorations;

(I) The restoration fee includes payment for occlusal adjustment and polishing of the restoration;

(b) Crowns and related services:

(A) General payment policies:

(i) The fee for the crown includes payment for preparation of the gingival tissue;

(ii) The Division shall cover crowns only when:

(I) There is significant loss of clinical crown and no other restoration will restore function; and

(II) The crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(iii) The Division shall cover core buildup (D2950) only when necessary to retain a cast restoration due to extensive loss of tooth structure from caries or a fracture and only when done in conjunction with a crown. Less than 50% of the tooth structure must be remaining for coverage of the core buildup. The Division shall not cover core buildup if the crown is not covered under the client's OHP benefit package;

(iv) Reimbursement of retention pins (D2951) is per tooth, not per pin;

(B) The Division shall not cover the following services:

(i) Endodontic therapy alone (with or without a post);

(ii) Aesthetics (cosmetics);

(iii) Crowns in cases of advanced periodontal disease or when a poor crown/root ratio exists for any reason;

(C) The Division shall cover acrylic heat or light cured crowns (D2970 temporary crown, fractured tooth) — allowed only for anterior permanent teeth;

(D) The Division shall cover the following only for clients under 21 years of age or who are pregnant:

(i) Prefabricated plastic crowns (D2932) — allowed only for anterior teeth, permanent or primary;

(ii) Stainless steel crowns (D2930/D2931) — allowed only for anterior primary teeth and posterior permanent or primary teeth;

(iii) Prefabricated stainless steel crowns with resin window (D2933) — allowed only for anterior teeth, permanent or primary;

(iv) Prefabricated post and core in addition to crowns (D2954/D2957);

(v) Permanent crowns (resin-based composite — D2710 and D2712, and porcelain fused to metal (PFM) — D2751 and D2752) as follows:

(I) Limited to teeth numbers 6–11, 22 and 27 only, if dentally appropriate;

(II) Limited to four (4) in a seven-year period. This limitation includes any replacement crowns allowed according to (E)(i) of this rule;

(III) Only for clients at least 16 years of age; and

(IV) Rampant caries are arrested and the client demonstrates a period of oral hygiene before prosthetics are proposed;

(vi) PFM crowns (D2751 and D2752) must also meet the following additional criteria:

(I) The dental practitioner has attempted all other dentally appropriate restoration options, and documented failure of those options;

(II) Written documentation in the client's chart indicates that PFM is the only restoration option that will restore function;

(III) The dental practitioner submits radiographs to the Division for review; history, diagnosis, and treatment plan may be requested. See OAR 410123-1100 (Services Reviewed by the Division of Medical Assistance Programs);

(IV) The client has documented stable periodontal status with pocket depths within 1–3 millimeters. If PFM crowns are placed with pocket depths of 4 millimeter and over, documentation must be maintained in the client's chart of the dentist's findings supporting stability and why the

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increased pocket depths will not adversely affect expected long term prognosis;

(V) The crown has a favorable long-term prognosis; and

(VI) If tooth to be crowned is clasabutment tooth in partial denture, both prognosis for crown itself and tooth's contribution to partial denture must have favorable expected long-term prognosis;

(E) Crown replacement:

(i) Permanent crown replacement limited to once every seven years;

(ii) All other crown replacement limited to once every five years; and

(iii) The Division may make exceptions to crown replacement limitations due to acute trauma, based on the following factors:

(I) Extent of crown damage;

(II) Extent of damage to other teeth or crowns;

(III) Extent of impaired mastication;

(IV) Tooth is restorable without other surgical procedures; and

(V) If loss of tooth would result in coverage of removable prosthetic;

(F) Crown repair (D2980) is limited to only anterior teeth.

(5) ENDODONTIC SERVICES:

(a) Pulp capping:

(A) The Division includes direct and indirect pulp caps in the restoration fee; no additional payment shall be made for clients with the OHP Plus benefit package;

(B) The Division covers direct pulp caps as a separate service for clients with the OHP Standard benefit package because restorations are not a covered benefit under this benefit package;

(b) Endodontic therapy:

(A) Pulpal therapy on primary teeth (D3230 and D3240) is covered only for clients under 21 years of age;

(B) For permanent teeth:

(i) Anterior and bicuspid endodontic therapy (D3310 and D3320) is covered for all OHP Plus clients; and

(ii) Molar endodontic therapy (D3330):

(I) For clients through age 20, is covered only for first and second molars; and

(II) For clients age 21 and older who are pregnant, is covered only for first molars;

(C) The Division covers endodontics only if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(c) Endodontic retreatment and apicoectomy/periradicular surgery:

(A) The Division does not cover retreatment of a previous root canal or apicoectomy/periradicular surgery for bicuspid or molars;

(B) The Division limits either a retreatment or an apicoectomy (but not both procedures for the same tooth) to symptomatic anterior teeth when:

(i) Crown-to-root ratio is 50:50 or better;

(ii) The tooth is restorable without other surgical procedures; or

(iii) If loss of tooth would result in the need for removable prosthodontics;

(C) Retrograde filling (D3430) is covered only when done in conjunction with a covered apicoectomy of an anterior tooth;

(d) The Division does not allow separate reimbursement for open-and-drain as a palliative procedure when the root canal is completed on the same date of service, or if the same practitioner or dental practitioner in the same group practice completed the procedure;

(e) The Division covers endodontics if the tooth is restorable within the OHP benefit coverage package;

(f) Apexification/recalcification and pulpal regeneration procedures:

(A) The Division limits payment for apexification to a maximum of five treatments on permanent teeth only;

(B) Apexification/recalcification and pulpal regeneration procedures are covered only for clients under 21 years of age or who are pregnant.

(6) PERIODONTIC SERVICES:

(a) Surgical periodontal services:

(A) Gingivectomy/Gingivoplasty (D4210 and D4211) — limited to coverage for severe gingival hyperplasia where enlargement of gum tissue occurs that prevents access to oral hygiene procedures, e.g., Dilantin hyperplasia; and

(B) Includes six months routine postoperative care;

(C) The Division shall consider gingivectomy or gingivoplasty to allow for access for restorative procedure, per tooth (D4212) as part of the restoration and will not provide a separate reimbursement for this procedure;

(b) Non-surgical periodontal services:

(A) Periodontal scaling and root planing (D4341 and D4342):

(i) For clients through age 20, allowed once every two years;

(ii) For clients age 21 and over, allowed once every three years;

(iii) A maximum of two quadrants on one date of service is payable, except in extraordinary circumstances;

(iv) Quadrants are not limited to physical area, but are further defined by the number of teeth with pockets 5 mm or greater:

(I) D4341 is allowed for quadrants with at least four or more teeth with pockets 5 mm or greater;

(II) D4342 is allowed for quadrants with at least two teeth with pocket depths of 5 mm or greater;

(v) Prior authorization for more frequent scaling and root planing may be requested when:

(I) Medically/dentally necessary due to periodontal disease as defined above is found during pregnancy; and

(II) Client's medical record is submitted that supports the need for increased scaling and root planing;

(B) Full mouth debridement (D4355):

(i) For clients through age 20, allowed only once every 2 years;

(ii) For clients age 21 and older, allowed once every three years;

(c) Periodontal maintenance (D4910):

(A) For clients through age 20, allowed once every six months;

(B) For clients age 21 and older:

(i) Limited to following periodontal therapy (surgical or non-surgical) that is documented to have occurred within the past three years;

(ii) Allowed once every twelve months;

(iii) Prior authorization for more frequent periodontal maintenance may be requested when:

(I) Medically/dentally necessary, such as due to presence of periodontal disease during pregnancy; and

(III) Client's medical record is submitted that supports the need for increase periodontal maintenance (chart notes, pocket depths and radiographs);

(d) Records must clearly document the clinical indications for all periodontal procedures, including current pocket depth charting and/or radiographs;

(e) The Division may not reimburse for procedures identified by the following codes if performed on the same date of service:

(A) D1110 (Prophylaxis — adult);

(B) D1120 (Prophylaxis — child);

(C) D4210 (Gingivectomy or gingivoplasty — four or more contiguous teeth or bounded teeth spaces per quadrant);

(D) D4211 (Gingivectomy or gingivoplasty — one to three contiguous teeth or bounded teeth spaces per quadrant);

(E) D4341 (Periodontal scaling and root planning — four or more teeth per quadrant);

(F) D4342 (Periodontal scaling and root planning — one to three teeth per quadrant);

(G) D4355 (Full mouth debridement to enable comprehensive evaluation and diagnosis); and

(H) D4910 (Periodontal maintenance).

(7) REMOVABLE PROSTHODONTIC SERVICES:

(a) Clients age 16 years and older are eligible for removable resin base partial dentures (D5211-D5212) and full dentures (complete or immediate, D5110-D5140);

(b) The Division limits full dentures for clients age 21 and older to only those clients who are recently edentulous:

(A) For the purposes of this rule:

(i) "Edentulous" means all teeth removed from the jaw for which the denture is being provided; and

(ii) "Recently edentulous" means the most recent extractions from that jaw occurred within six months of the delivery of the final denture (or, for fabricated prosthetics, the final impression) for that jaw;

(B) See OAR 410-123-1000 for detail regarding billing fabricated prosthetics;

(c) The fee for the partial and full dentures includes payment for adjustments during the six-month period following delivery to clients;

(d) Resin partial dentures (D5211-D5212):

(A) The Division may not approve resin partial dentures if stainless steel crowns are used as abutments;

(B) For clients through age 20, the client must have one or more anterior teeth missing or four or more missing posterior teeth per arch with resulting space equivalent to that loss demonstrating inability to masticate. Third molars are not a consideration when counting missing teeth;

(C) For clients age 21 and older, the client must have one or more missing anterior teeth or six or more missing posterior teeth per arch with documentation by the provider of resulting space causing serious impair-

## ADMINISTRATIVE RULES

ment to mastification. Third molars are not a consideration when counting missing teeth;

(D) The dental practitioner must note the teeth to be replaced and teeth to be clasped when requesting prior authorization (PA);

(e) Replacement of removable partial or full dentures, when it cannot be made clinically serviceable by a less costly procedure (e.g., relines, rebase, repair, tooth replacement), is limited to the following:

(A) For clients at least 16 years and under 21 years of age - the Division shall replace full or partial dentures once every ten years, only if dentally appropriate. This does not imply that replacement of dentures or partials must be done once every ten years, but only when dentally appropriate;

(B) For clients 21 years of age and older - the Division may not cover replacement of full dentures, but shall cover replacement of partial dentures once every 10 years only if dentally appropriate;

(C) The ten year limitations apply to the client regardless of the client's OHP or Dental Care Organization (DCO) enrollment status at the time client's last denture or partial was received. For example: a client receives a partial on February 1, 2002, and becomes a FFS OHP client in 2005. The client is not eligible for a replacement partial until February 1, 2012. The client gets a replacement partial on February 3, 2012 while FFS and a year later enrolls in a DCO. The client would not be eligible for another partial until February 3, 2022, regardless of DCO or FFS enrollment;

(D) Replacement of partial dentures with full dentures is payable ten years after the partial denture placement. Exceptions to this limitation may be made in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene may not warrant replacement;

(f) The Division limits reimbursement of adjustments and repairs of dentures that are needed beyond six months after delivery of the denture as follows for clients 21 years of age and older:

(A) A maximum of 4 times per year for:

(i) Adjusting complete and partial dentures, per arch (D5410-D5422);

(ii) Replacing missing or broken teeth on a complete denture – each tooth (D5520);

(iii) Replacing broken tooth on a partial denture – each tooth (D5640);

(iv) Adding tooth to existing partial denture (D5650);

(B) A maximum of 2 times per year for:

(i) Repairing broken complete denture base (D5510);

(ii) Repairing partial resin denture base (D5610);

(iii) Repairing partial cast framework (D5620);

(iv) Repairing or replacing broken clasp (D5630);

(v) Adding clasp to existing partial denture (D5660);

(g) Replacement of all teeth and acrylic on cast metal framework (D5670D5671):

(A) Is covered for clients age 16 and older a maximum of once every 10 years, per arch;

(B) Ten years or more must have passed since the original partial denture was delivered;

(C) Is considered replacement of the partial so a new partial denture may not be reimbursable for another 10 years; and

(D) Requires prior authorization as it is considered a replacement partial denture;

(h) Denture rebase procedures:

(A) The Division shall cover rebases only if a relines may not adequately solve the problem;

(B) For clients through age 20, the Division limits payment for rebase to once every three years;

(C) For clients age 21 and older:

(i) There must be documentation of a current relines which has been done and failed; and

(ii) The Division limits payment for rebase to once every five years;

(D) The Division may make exceptions to this limitation in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene may not warrant rebasing;

(i) Denture relines procedures:

(A) For clients through age 20, the Division limits payment for relines of complete or partial dentures to once every three years;

(B) For clients age 21 and older, the Division limits payment for relines of complete or partial dentures to once every five years;

(C) The Division may make exceptions to this limitation under the same conditions warranting replacement;

(D) Laboratory relines:

(i) Are not payable prior to six months after placement of an immediate denture; and

(ii) For clients through age 20, are limited to once every three years;

(iii) For clients age 21 and older, are limited to once every five years;

(j) Interim partial dentures (D5820–D5821, also referred to as “flippers”):

(A) Are allowed if the client has one or more anterior teeth missing; and

(B) The Division shall reimburse for replacement of interim partial dentures once every 5 years, but only when dentally appropriate;

(k) Tissue conditioning:

(A) Is allowed once per denture unit in conjunction with immediate dentures; and

(B) Is allowed once prior to new prosthetic placement.

(8) MAXILLOFACIAL PROSTHETIC SERVICES:

(a) Fluoride gel carrier (D5986) is limited to those patients whose severity of oral disease causes the increased cleaning and fluoride treatments allowed in rule to be insufficient. The dental practitioner must document failure of those options prior to use of the fluoride gel carrier;

(b) All other maxillofacial prosthetics (D5900-D5999) are medical services. Refer to the “Covered and Non-Covered Dental Services” document and OAR 410-123-1220:

(A) Bill for medical maxillofacial prosthetics using the professional (CMS1500, DMAP 505 or 837P) claim format:

(B) For clients receiving services through a CCO or PHP, bill medical maxillofacial prosthetics to the CCO or PHP;

(C) For clients receiving medical services through FFS, bill the Division.

(9) ORAL SURGERY SERVICES:

(a) Bill the following procedures in an accepted dental claim format using CDT codes:

(A) Procedures that are directly related to the teeth and supporting structures that are not due to a medical, including such procedures performed in an ambulatory surgical center (ASC) or an inpatient or outpatient hospital setting;

(B) Services performed in a dental office setting (including an oral surgeon's office):

(i) Such services include, but are not limited to, all dental procedures, local anesthesia, surgical postoperative care, radiographs and follow-up visits;

(ii) Refer to OAR 410-123-1160 for any PA requirements for specific procedures;

(b) Bill the following procedures using the professional claim format and the appropriate American Medical Association (AMA) CPT procedure and ICD9 diagnosis codes:

(A) Procedures that are a result of a medical condition (i.e., fractures, cancer);

(B) Services requiring hospital dentistry that are the result of a medical condition/diagnosis (i.e., fracture, cancer);

(c) Refer to the “Covered and Non-Covered Dental Services” document to see a list of CDT procedure codes on the Prioritized List that may also have CPT medical codes. See OAR 410-123-1220. The procedures listed as “medical” on the table may be covered as medical procedures, and the table may not be all-inclusive of every dental code that has a corresponding medical code;

(d) For clients enrolled in a DCO, the DCO is responsible for payment of those services in the dental plan package;

(e) Oral surgical services performed in an ASC or an inpatient or outpatient hospital setting:

(A) Require PA;

(B) For clients enrolled in a CCO or FCHP, the facility charge and anesthesia services are the responsibility of the CCO or FCHP. For clients enrolled in a Physician Care Organization (PCO), the outpatient facility charge (including ASCs) and anesthesia are the responsibility of the PCO. Refer to the current Medical Surgical Services administrative rules in OAR chapter 410, division 130 for more information;

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(C) If a client is enrolled in a CCO or PHP, it is the responsibility of the provider to contact the CCO or PHP for any required authorization before the service is rendered;

(f) All codes listed as “by report” require an operative report;

(g) The Division covers payment for tooth re-implantation only in cases of traumatic avulsion where there are good indications of success;

(h) Biopsies collected are reimbursed as a dental service. Laboratory services of biopsies are reimbursed as a medical service;

(i) The Division does not cover surgical excisions of soft tissue lesions (D7410–D7415);

(j) Extractions — Includes local anesthesia and routine postoperative care, including treatment of a dry socket if done by the provider of the extraction. Dry socket is not considered a separate service;

(k) Surgical extractions:

(A) Include local anesthesia and routine post-operative care;

(B) The Division limits payment for surgical removal of impacted teeth or removal of residual tooth roots to treatment for only those teeth that have acute infection or abscess, severe tooth pain, and/or unusual swelling of the face or gums;

(C) The Division does not cover alveoplasty in conjunction with extractions (D7310 and D7311) separately from the extraction;

(D) The Division covers alveoplasty not in conjunction with extractions (D7320–D7321) only for clients under 21 years of age or who are pregnant;

(L) Frenulectomy/frenulotomy (D7960) and frenuloplasty (D7963):

(A) The Division covers either frenulectomy or frenuloplasty once per lifetime per arch only for clients under age 21;

(B) The Division covers maxillary labial frenulectomy only for clients age 12 through 20;

(C) The Division shall cover frenulectomy/frenuloplasty in the following situations:

(i) When the client has ankyloglossia;

(ii) When the condition is deemed to cause gingival recession; or

(iii) When the condition is deemed to cause movement of the gingival margin when the frenum is placed under tension;

(m) The Division covers excision of pericoronal gingival (D7971) only for clients under age 21 or who are pregnant.

(10) ORTHODONTIA SERVICES:

(a) The Division limits orthodontia services and extractions to eligible clients:

(A) With the ICD-9-CM diagnosis of:

(i) Cleft palate; or

(ii) Cleft palate with cleft lip; and

(B) Whose orthodontia treatment began prior to 21 years of age; or

(C) Whose surgical corrections of cleft palate or cleft lip were not completed prior to age 21;

(b) PA is required for orthodontia exams and records. A referral letter from a physician or dentist indicating diagnosis of cleft palate/cleft lip must be included in the client’s record and a copy sent with the PA request;

(c) Documentation in the client’s record must include diagnosis, length and type of treatment;

(d) Payment for appliance therapy includes the appliance and all follow-up visits;

(e) Orthodontists evaluate orthodontia treatment for cleft palate/cleft lip as two phases. Stage one is generally the use of an activator (palatal expander) and stage two is generally the placement of fixed appliances (banding). The Division shall reimburse each phase individually (separately);

(f) The Division shall pay for orthodontia in one lump sum at the beginning of each phase of treatment. Payment for each phase is for all orthodontia-related services. If the client transfers to another orthodontist during treatment, or treatment is terminated for any reason, the orthodontist must refund to the Division any unused amount of payment, after applying the following formula: Total payment minus \$300.00 (for banding) multiplied by the percentage of treatment remaining;

(g) The Division shall use the length of the treatment plan from the original request for authorization to determine the number of treatment months remaining;

(h) As long as the orthodontist continues treatment, the Division may not require a refund even though the client may become ineligible for medical assistance sometime during the treatment period;

(i) Code:

(A) D8660 — PA required (reimbursement for required orthodontia records is included);

(B) Codes D8010–D8690 — PA required.

(11) ADJUNCTIVE GENERAL AND OTHER SERVICES:

(a) Fixed partial denture sectioning (D9120) is covered only when extracting a tooth connected to a fixed prosthesis and a portion of the fixed prosthesis is to remain intact and serviceable, preventing the need for more costly treatment;

(b) Anesthesia:

(A) Only use general anesthesia or IV sedation for those clients with concurrent needs: age, physical, medical or mental status, or degree of difficulty of the procedure (D9220, D9221, D9241 and D9242);

(B) The Division reimburses providers for general anesthesia or IV sedation as follows:

(i) D9220 or D9241: For the first 30 minutes;

(ii) D9221 or D9242: For each additional 15-minute period, up to three hours on the same day of service. Each 15-minute period represents a quantity of one. Enter this number in the quantity column;

(C) The Division reimburses administration of Nitrous Oxide (D9230) per day of service, not by time;

(D) Oral pre-medication anesthesia for conscious sedation (D9248):

(i) Limited to clients under 13 years of age;

(ii) Limited to four times per year;

(iii) Includes payment for monitoring and Nitrous Oxide; and

(iv) Requires use of multiple agents to receive payment;

(E) Upon request, providers must submit a copy of their permit to administer anesthesia, analgesia and/or sedation to the Division;

(F) For the purpose of Title XIX and Title XXI, the Division limits payment for code D9630 to those oral medications used during a procedure and is not intended for “take home” medication;

(c) The Division limits reimbursement of house/extended care facility call (D9410) only for urgent or emergent dental visits that occur outside of a dental office. This code is not reimbursable for provision of preventive services or for services provided outside of the office for the provider or facilities’ convenience;

(d) Oral devices/appliances (E0485, E0486):

(A) These may be placed or fabricated by a dentist or oral surgeon, but are considered a medical service;

(B) Bill the Division, CCO or the PHP for these codes using the professional claim format.

Stat. Auth.: ORS 413.042, 414.065 & 414.707

Stats. Implemented: ORS 414.065 & 414.707

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03, cert. ef. 10-1-03; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 17-2011, f. & cert. ef. 7-12-11; DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 46-2011, f. 12-23-11, cert. ef. 1-1-12; DMAP 13-2013, f. 3-27-13, cert. ef. 4-1-13

## 410-123-1490

### Hospital Dentistry

(1) The purpose of hospital dentistry is to provide safe, efficient dental care when providing routine (non-emergency) dental services for Division of Medical Assistance Programs (Division) clients who present special challenges that require the use of general anesthesia or IV conscious sedation services in an Ambulatory Surgical Center (ASC), inpatient or outpatient hospital setting. Refer to OAR 410-1231060 for definitions.

(2) Division reimbursement for hospital dentistry is limited to covered services and may be prorated if non-covered dental services are performed during the same hospital visit:

(a) See OAR 410-123-1060 for a definition of Division hospital dentistry services;

(b) Refer to OAR 410-123-1220 and the “Covered and Non-Covered Dental Services” document.

(3) Hospital dentistry is intended for the following Division clients:

(a) Children (18 or younger) who:

(A) Through age 3 — Have extensive dental needs;

(B) 4 years of age or older — Have unsuccessfully attempted treatment in the office setting with some type of sedation or nitrous oxide;

(C) Have acute situational anxiety, fearfulness, extreme uncooperative behavior, uncommunicative such as a client with developmental or mental disability, a client that is pre-verbal or extreme age where dental needs are deemed sufficiently important that dental care cannot be deferred;

(D) Need the use of general anesthesia (or IV conscious sedation) to protect the developing psyche;

(E) Have sustained extensive orofacial or dental trauma;

# ADMINISTRATIVE RULES

(F) Have physical, mental or medically compromising conditions; or  
(G) Have a developmental disability or other severe cognitive impairment and one or more of the following characteristics that prevent routine dental care in an office setting:

- (i) Acute situational anxiety and extreme uncooperative behavior;
- (ii) A physically compromising condition;
- (b) Adults (19 or older) who:

(A) Have a developmental disability or other severe cognitive impairment, and one or more of the following characteristics that prevent routine dental care in an office setting:

- (i) Acute situational anxiety and extreme uncooperative behavior;
- (ii) A physically compromising condition;
- (B) Have sustained extensive orofacial or dental trauma; or
- (C) Are medically fragile, have complex medical needs, contractures

or other significant medical conditions potentially making the dental office setting unsafe for the client.

- (4) Hospital dentistry is not intended for:

(a) Client convenience. Refer to OAR 410-120-1200;

(b) A healthy, cooperative client with minimal dental needs; or

(c) Medical contraindication to general anesthesia or IV conscious sedation.

(5) Required documentation: The following information must be included in the client's dental record:

(a) Informed consent: client, parental or guardian written consent must be obtained prior to the use of general anesthesia or IV conscious sedation;

(b) Justification for the use of general anesthesia or IV conscious sedation. The decision to use general anesthesia or IV conscious sedation must take into consideration:

(A) Alternative behavior management modalities;

(B) Client's dental needs;

(C) Quality of dental care;

(D) Quantity of dental care;

(E) Client's emotional development;

(F) Client's physical considerations;

(c) If treatment in an office setting is not possible, documentation in the client's dental record must explain why, in the estimation of the dentist, the client will not be responsive to office treatment;

(d) The Division, Coordinated Care Organization (CCO) or Prepaid Health Plan (PHP) may require additional documentation when reviewing requests for prior authorization (PA) of hospital dentistry services. See OAR 410-123-1160 and section (6) of this rule for additional information;

(e) If the dentist did not proceed with a previous hospital dentistry plan approved by the Division for the same client, the Division will also require clinical documentation explaining why the dentist did not complete the previous treatment plan.

(6) Hospital dentistry always requires prior authorization (PA) for the medical services provided by the facility:

(a) If a client is enrolled in a CCO or PHP and a Dental Care Organization (DCO):

(A) The dentist is responsible for:

(i) Contacting the CCO or PHP for PA requirements and arrangements; and

(ii) Submitting documentation to both the CCO or PHP and DCO;

(B) The CCO or PHP and DCO should review the documentation and discuss any concerns they have, contacting the dentist as needed. This allows for mutual plan involvement and monitoring;

(C) The total response time should not exceed 14 calendar days from the date of submission of all required documentation for routine dental care and should follow urgent/emergent dental care timelines;

(D) The CCO or PHP is responsible for payment of all facility and anesthesia services. The DCO is responsible for payment of all dental professional services;

(b) If a client is enrolled in a Physician Care Organization (PCO) and a Dental Care Organization (DCO):

(A) The PCO is responsible for payment of all facility and anesthesia services provided in an outpatient hospital setting or an ASC. The Division is responsible for payment of all facility and anesthesia services provided in an inpatient hospital setting. The DCO is responsible for payment of all dental professional services;

(B) The dentist is responsible for:

(i) Contacting the PCO, if services are to be provided in an outpatient setting or an ASC, for PA requirements and arrangements; or

(ii) Contacting the Division, if services are to be provided in an inpatient setting; and

(iii) Submitting documentation to both the PCO (or the Division) and the DCO;

(B) The PCO or the Division and the DCO should review the documentation and discuss any concerns they have, contacting the dentist as needed. This allows for mutual plan involvement and monitoring;

(C) The total response time should not exceed 14 calendar days from the date of submission of all required documentation for routine dental care and should follow urgent/emergent dental care timelines;

(b) If a client is fee-for-service (FFS) for medical services and enrolled in a DCO:

(A) The dentist is responsible for faxing documentation and a completed American Dental Association (ADA) form to the Division. Refer to the Dental Services Provider Guide;

(B) If the client is assigned to a Primary Care Manager (PCM) through FFS medical, the client must have a referral from the PCM prior to any hospital service being approved by the Division;

(C) The Division is responsible for payment of facility and anesthesia services. The DCO is responsible for payment of all dental professional services;

(D) The Division will issue a decision on PA requests within 30 days of receipt of the request;

(c) If a client is enrolled in an CCO or PHP and is FFS dental:

(A) The dentist is responsible for contacting the CCO or PHP to obtain the PA and arrange for the hospital dentistry;

(B) The dentist is responsible for submitting required documentation to the CCO or PHP;

(C) The CCO or PHP is responsible for all facility and anesthesia services. The Division is responsible for payment of all dental professional services;

(d) If a client is FFS for both medical and dental:

(A) The dentist is responsible for faxing documentation and a completed ADA form to the Division. Refer to the Dental Services Provider Guide;

(B) The Division is responsible for payment of all facility, anesthesia services and dental professional charges.

Stat. Auth.: ORS 413.042, 414.065 & 414.707

Stats. Implemented: ORS 414.065 & 414.707

Hist.: OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02;

OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08;

DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09;

DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 46-2011, f. 12-23-11, cert. ef. 1-1-12;

DMAP 13-2013, f. 3-27-13, cert. ef. 4-1-13

## 410-123-1620

### Procedure and Diagnosis Codes

(1) The Division requires providers to use the standardized code sets adopted by the Health Insurance Portability and Accountability Act (HIPAA) and the Centers for Medicare and Medicaid Services (CMS). Unless otherwise directed in rule, providers must accurately code claims according to the national standards in effect for the date the service(s) was provided.

(2) Procedure codes:

(a) For dental services, use Current Dental Terminology (CDT) codes as maintained and distributed by the American Dental Association. Contact the American Dental Association (ADA) to obtain a current copy of the CDT reference manual. Current Dental Terminology (including procedure codes, definitions (descriptors) and other data) is copyrighted by the ADA. © 2012 American Dental Association. All rights reserved. Applicable Federal Acquisition Regulation Clauses/Department of Defense Federal Acquisition Regulation Supplement (FARS/DFARS) apply;

(b) For physician services and other health care services, use Health Care Common Procedure Coding System (HCPCS) and Current Procedural Terminology (CPT) codes.

(3) Diagnosis codes:

(a) International Classification of Diseases 9th Clinical Modification (ICD-9-CM) diagnosis codes are not required for dental services submitted on an ADA claim form;

(b) When Oregon Administrative Rule (OAR) 410-123-1260 requires services to be billed on a professional claim form, ICD-9-CM diagnosis codes are required. Refer to the Medical-Surgical administrative rules for additional information, OAR 410 division 130.

Stat. Auth.: ORS 413.042, 414.065 & 414.707

Stats. Implemented: ORS 414.065 & 414.707

Hist.: OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00;

OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP

25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP

16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 13-2013, f. 3-27-13, cert. ef. 4-1-13

# ADMINISTRATIVE RULES

**Rule Caption:** Increase payment for certain primary care practitioners and increase the VFC administration fee

**Adm. Order No.:** DMAP 14-2013(Temp)

**Filed with Sec. of State:** 3-29-2013

**Certified to be Effective:** 3-29-13 thru 9-25-13

**Notice Publication Date:**

**Rules Adopted:** 410-130-0005

**Rules Amended:** 410-130-0255, 410-120-1340

**Subject:** The Division of Medical Assistance Programs (Division) General Rules, administrative rules govern payments for services provided to certain eligible clients. The Division temporarily adopts 410-130-0005 and amends OAR 410-130-0255, 410-120-1340 to implement changes required by the Affordable Care Act.

OAR 410-120-1340 establishes the federally required payment increase to be effective on or after Jan. 1, 2013. OAR Rule 410-130-0005 establishes the self-attestation process required for the Division to identify providers subject to the federally required payment increase. Rule 410-130-0255 clarifies the procedure codes for the Vaccine For Children program.

**Rules Coordinator:** Cheryl Peters—(503) 945-6527

## 410-130-0005

### Federally Qualified Primary Care Provider

(1) Section 1202 of the Affordable Care Act (ACA) amended sections 1902(a)(13), 1902(jj), 1905(dd) and 1932(f) of the Social Security Act to require increased Medicaid payment for primary care services to qualified providers for calendar years 2013 and 2014 as specified in these rules.

(2) Federally Qualified Primary Care Services are designated as:

(a) Evaluation and Management (E&M) Current Procedural Terminology (CPT) codes 99201 through 99499; and

(b) Vaccine administration CPT codes 90460, 90461, 90471, 90472, 90473 and 90474, or their successor codes; and

(c) Administration of vaccines under Vaccine for Children Program refer to OAR 410-130-0255.

(3) To qualify for the increased payment, the individual physician must submit a self-attestation form to the Division of Medical Assistance Programs (Division) attesting that:

(a) The physician has a primary practice in family medicine, general internal medicine, or pediatric medicine; and

(b) One or both of the following are true:

(A) The physician is Board-certified in a specialty or subspecialty of family medicine, general internal medicine, or pediatric medicine by one of the following boards:

(i) The American Board of Medical Specialties (ABMS);

(ii) The American Osteopathic Association (AOA);

(iii) The American Board of Physician Specialties (ABPS);

(B) The physician has furnished Medicaid billings for the qualifying codes described in section 2 of this rule that equal at least 60% of codes paid by Medicaid:

(i) Over the previous calendar year, if billings exist for this time period; or

(ii) Over the previous month, if billings do not exist for the previous calendar year.

(4) To qualify for the increased payment, a Physician Assistant (PA) or Nurse Practitioner (NP) must submit a self-attestation form to the Division attesting that they work under the direct supervision of a Physician who:

(a) Qualifies for increased primary care payments as described in these rules; and

(b) Assumes professional responsibility for the services rendered by the PA or NP.

(5) Reimbursement: Effective for dates of service on or after January 1, 2013, the Division shall reimburse primary care providers as follows:

(a) Federally qualified primary care providers as described in this rule at the rate specified in OAR 410-120-1340(6)(C)(ii); or

(b) Other primary care providers, including potentially qualified providers who do not self-attest to the Division as described in part (3) of this rule, at the rate specified in OAR 410-120-1340(6)(C)(iii).

(6) Annual review of qualifying providers: The Division will review a statistically valid sample of providers to determine whether they satisfy the criteria described in (3) and (4) of these rules. Providers reviewed who do not satisfy the criteria will be required to reimburse the Division for the difference between the rate they should have received according to OAR

410-120-1340(6)(C)(iii) and enhanced rate in 410-120-1340(6)(C)(ii). The sample will include the following providers:

(a) Physicians who have self-attested to qualifying for the increased rate; and

(b) Providers who have self-attested that they are under the direct supervision of a qualified physician.

(7) Supplemental information on the federally qualified physicians is available at [http://www.oregon.gov/oha/healthplan/pages/tools\\_prov/pcp-rates.aspx](http://www.oregon.gov/oha/healthplan/pages/tools_prov/pcp-rates.aspx).

Stat Auth.: ORS 413.042

Stats Implemented: 414.025 & 414.065

Hist.: DMAP 14-2013(Temp), f. & cert. ef. 3-29-13 thru 9-25-13

## 410-130-0255

### Immunizations and Immune Globulins

(1) Use standard billing procedures for vaccines that are not part of the Vaccines for Children (VFC) Program.

(2) The Division of Medical Assistance Programs (Division) covers Synagis (palivizumab-rsv-igm) only for high-risk infants and children as defined by the American Academy of Pediatric guidelines.

(a) Prior authorization is required for Synagis. See Table 130-0200-1 Prior Authorization;

(b) Bill 90378 for Synagis.

(3) Providers are encouraged to administer combination vaccines when medically appropriate and cost effective.

(4) VFC Program:

(a) Under this federal program, vaccine serums are free for clients' ages 0 through 18. The Division will not reimburse the cost of privately purchased vaccines that are provided through the VFC Program. The Division also will not reimburse for the administration of privately purchased vaccines;

(b) Only providers enrolled in the VFC Program can receive free vaccine serums. To enroll as a VFC provider, contact the Public Health Immunization Program. For contact information, see the Medical-Surgical Supplemental Information found at <http://www.dhs.state.or.us/policy/healthplan/guides/medsurg/med-surgsupp1109.pdf>

(c) The Division will reimburse providers for the administration of any vaccine provided by the VFC Program. Whenever a new vaccine becomes available through the VFC Program, administration of that vaccine is also covered by the Division;

(d) Refer to Table 130-0255-1 for immunization codes provided through the VFC Program;

(e) Providers shall follow the current Advisory Committee on Immunization Practices (ACIP) guidelines for immunization schedules. Exceptions include:

(A) On a case-by-case basis, provider may use clinical judgment in accordance with accepted medical practice to provide immunizations on a modified schedule;

(B) On a case-by-case basis, provider may modify immunization schedule in compliance with the laws of the State of Oregon, including laws relating to exemptions for immunizations due to religious beliefs or other requests.

(f) Use the following procedures when billing for the administration of a VFC vaccine:

(A) When the sole purpose of the visit is to administer a VFC vaccine, the provider should bill the appropriate vaccine specific procedure code (90476-90748) with modifier -SL or -26 for each injection. Do not bill the immunization administration Current Procedural Terminology (CPT) code 90460-90474 or 99211;

(B) When the vaccine is administered as part of an Evaluation and Management service (e.g., well-child visit) the provider should bill the appropriate vaccine specific procedure code with modifier -SL, or -26 for each injection in addition to the Evaluation and Management code.

(g) For clients with private insurance, bill the Division or the client's managed care plan directly for the administration of VFC vaccines. Medicaid is not considered the "payer of last resort" for administration of VFC vaccines.

(5) Table 130-0255-1.

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

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 4-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 2-2002, f. 2-15-02, cert. ef. 4-1-02; OMAP 51-2002, f. & cert. ef. 10-1-02; OMAP 23-2003, f. 3-26-03, cert. ef. 4-1-03; Renumbered from 410-130-0800, OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 45-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-



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1-07; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 18-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 15-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 34-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 43-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 14-2013(Temp), f. & cert. ef. 3-29-13 thru 9-25-13

## 410-120-1340

### Payment

(1) The Division of Medical Assistance Programs (Division) shall make payment only to the enrolled provider (see OAR 410-120-1260) who actually performs the service or to the provider's enrolled billing provider for covered services rendered to eligible clients.

(2) Division reimbursement for services may be subject to review prior to reimbursement.

(3) The Division that is administering the program under which the billed services or items are provided sets fee-for-service (FFS) payment rates.

(4) 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:

(5) Amount billed may not exceed the provider's "usual charge" (see definitions);

(6) The Division's maximum allowable rate setting process uses the following methodology for:

(a) Relative Value Unit (RVU) weight-based rates: For all CPT/HCPCS codes assigned an RVU weight, the 2013 Total RVU weights published in the Federal Register, Vol. 77, November 16, 2012 with technical corrections published Dec. 14, 2012, to be effective for dates of services on or after January 1, 2013.

(A) For professional services not typically performed in a facility, the Non-Facility Total RVU weight;

(B) For professional services typically performed in a facility, the Facility Total RVU weight;

(C) The Division applies the following conversion factors:

(i) \$40.79 for labor and delivery codes (59400-59622);

(ii) \$36.0666 for Federally Qualified primary care codes billed by providers meeting the criteria in OAR 410-130-0005;

(iii) \$27.82 for other Oregon primary care providers and services not specified in (ii). 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)

(iv) \$25.48 for all remaining RVU weight based CPT/HCPCS codes;

(v) \$26.81 for vision codes (92340-92342 and 92352-92353) regardless of the RVU.

(D) Rate calculation: Effective January 1, 2013, The Division will calculate rates each RVU weight-based code using statewide Geographic Practice Cost Indices (GPCIs) as follows:

(i)  $\text{Work RVU} \times (\text{Work GPCI of 1.0}) + (\text{Practice Expense RVU}) \times (\text{Practice GPCI of 0.969}) + (\text{Malpractice RVU}) \times (\text{Malpractice GPCI of 0.625})$ ;

(ii) Sum in (D)(i) multiplied by the applicable conversion factor in section C.

(b) Non RVU based rates:

(A) \$20.78 is the base rate for anesthesia service codes 00100-01996. The rate is based on per unit of service;

(B) Clinical lab codes are priced at 70% of the 2013 Medicare clinical lab fee schedule;

(C) All approved Ambulatory Surgical Center (ASC) procedures are reimbursed at 80% of the 2012 Medicare fee schedule;

(D) 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;

(E) All procedures used for vision materials and supplies are based on contracted rates that include acquisition cost plus shipping and handling.

(F) Individual provider rules may specify reimbursement rates for particular services or items.

(7) The rates in (6) are updated periodically and posted on the Authority Web site at [http://www.oregon.gov/OHA/healthplan/data\\_pubs/feeschedule/main.shtml](http://www.oregon.gov/OHA/healthplan/data_pubs/feeschedule/main.shtml).

(8) 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.

(9) 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.

(10) Payment rates for in-home services provided through Department of Human Services (Department) Aged and Physically Disabled Division (APD) will not be greater than the current Division rate for nursing facility payment.

(11) The Division sets payment rates for out-of-state institutions and similar facilities, such as skilled nursing care facilities, psychiatric and rehabilitative care facilities at a rate that is:

(a) Consistent with similar services provided in the State of Oregon; and

(b) The lesser of the rate paid to the most similar facility licensed in the State of Oregon or the rate paid by the Medical Assistance Programs in that state for that service; or

(c) The rate established by APD for out-of-state nursing facilities.

(12) 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.

(13) 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).

(14) 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.

(15) 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.

(16) 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.

(17) The Division payments, including contracted PHP or CCO payments, unless in error, constitute payment in full, except in limited instances involving allowable spend-down or copayments. For the Division, such payment in full includes:

(a) Zero payments for claims where a third party or other resource has paid an amount equivalent to or exceeding Division allowable payment; and

(b) Denials of payment for failure to submit a claim in a timely manner, failure to obtain payment authorization in a timely and appropriate

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manner, or failure to follow other required procedures identified in the individual provider rules.

(18) 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; DMAP 28-2012, f. 6-21-12, cert. ef. 7-1-12; DMAP 41-2012(Temp), f. 8-22-12, cert. ef. 9-1-12 thru 2-28-13; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 14-2013(Temp), f. & cert. ef. 3-29-13 thru 9-25-13

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**Rule Caption:** Hospital Assessment Rate Increase

**Adm. Order No.:** DMAP 15-2013(Temp)

**Filed with Sec. of State:** 4-1-2013

**Certified to be Effective:** 4-1-13 thru 9-27-13

**Notice Publication Date:**

**Rules Amended:** 410-050-0861

**Subject:** The rule is being amended to implement a change in the hospital provider assessment rate from 4.32% to 5.30% effective April 1, 2013.

This temporary rule is available on the DHS Website: <http://www.oregon.gov/DHS/admin/Pages/dwssrules/index.aspx>. For hardcopy requests, call: (503) 947-5250.

**Rules Coordinator:** Cheryl Peters—(503) 945-6527

## 410-050-0861

### Tax Rate

(1) The tax rate for the period beginning January 1, 2005 and ending June 30, 2006 is .68 percent.

(2) The tax rate for the period beginning July 1, 2006 and ending December 31, 2007 is .82 percent.

(3) The tax rate for the period beginning January 1, 2008 and ending June 30, 2009 is .63 percent.

(4) The tax rate for the period of January 1, 2008 through June 30, 2009 does not apply to the period beginning July 1, 2009.

(5) The tax rate for the period beginning July 1, 2009 and ending September 30, 2009 is .15 percent.

(6) The tax rate for the period beginning October 1, 2009 and ending June 30, 2010 is 2.8 percent.

(7) The tax rate for the period beginning July 1, 2010 and ending June 30, 2011 is 2.32 percent.

(8) The tax rate for the period beginning July 1, 2011 and ending September 30, 2011 is 5.25 percent.

(9) The tax rate for the period beginning October 1, 2011 and ending December 31, 2011 is 5.08 percent.

(10) The tax rate for the period beginning January 1, 2012 and ending March 31, 2013 is 4.32 percent.

(11) The tax rate for the period beginning April 1, 2013 is 5.30 percent.

Stat. Auth.: ORS 413.042  
Stats. Implemented: 2009 OL Ch. 867 § 17, 2007 OL Ch. 780 § 1 & 2003 OL Ch. 736 § 2 & 3  
Hist.: OMAP 28-2005(Temp), f. & cert. ef. 5-10-05 thru 11-5-05; OMAP 34-2005, f. 7-8-05, cert. ef. 7-11-05; OMAP 14-2006, f. 6-1-06, cert. ef. 7-1-06; DMAP 29-2007, f. 12-31-07, cert. ef. 1-1-08; DMAP 3-2008, f. & cert. ef. 1-25-08; DMAP 24-2009, f. & cert. ef. 7-1-09; DMAP 25-2009(Temp), f. & cert. ef. 7-15-09 thru 1-10-10; DMAP 27-2009, f. & cert. ef. 9-1-09; DMAP 33-2009, f. & cert. ef. 10-1-09; DMAP 21-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 16-2011(Temp), f. & cert. ef. 7-1-11 thru 11-1-11; DMAP 26-2011(Temp), f. 9-29-

11, cert. ef. 10-1-11 thru 11-1-11; DMAP 31-2011, f. 10-28-11, cert. ef. 11-1-11; DMAP 50-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 4-30-12; DMAP 8-2012, f. 2-27-12, cert. ef. 3-1-12; DMAP 15-2013(Temp), f. & cert. ef. 4-1-13 thru 9-27-13

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**Rule Caption:** The Authority proposes to amend rules to be consistent with 42 CFR 438.408

**Adm. Order No.:** DMAP 16-2013(Temp)

**Filed with Sec. of State:** 4-10-2013

**Certified to be Effective:** 4-10-13 thru 8-27-13

**Notice Publication Date:**

**Rules Amended:** 410-141-0262, 410-141-3262

**Subject:** Division 141, Oregon Health Plan rules govern policies and requirements for the Coordinated Care Organizations (CCO) under Oregon's Integrated and Coordinated Health Care Delivery System. The Authority proposes to amend rules to be consistent with 42 CFR 438.408

**Rules Coordinator:** Cheryl Peters—(503) 945-6527

## 410-141-0262

### Prepaid Health Plan Appeal Procedures

(1) A Division of Medical Assistance Programs (Division) Member or their representative that disagrees with a Notice of Action may file a Prepaid Health Plan (PHP) level appeal or request a Division administrative hearing. Division members may not be required to go through a PHP level appeal in order to request a Division administrative hearing.

(2) The PHP must have a system in place for Division member which includes an appeal process when a Division member has requested a Division administrative hearing. For purposes of this rule, an appeal includes a request to the PHP for review of an Action upon notification from the Division.

(3) An appeal must be filed with the PHP no later than 45 calendar days from the date on the Notice of Action required under OAR 410-141-0263.

(4) If the Division member initiates an appeal directly with the PHP, it shall be documented in writing by the PHP and handled as an appeal consistent with this rule. The Division member or Division member's representative may file an appeal with the PHP either orally or in writing and, unless he or she requests expedited resolution, must follow an oral filing with a written and signed appeal.

(5) Each PHP must adopt written policies and procedures for handling appeals that, at a minimum, meet the following requirements:

(a) Give Division members any reasonable assistance in completing forms and taking other procedural steps related to filing and resolution of an appeal or administrative hearings request. This includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate Tele Typewriter (TTY)/ Telecommunications Devices for the Deaf (TTD) and interpreter capacity;

(b) Address how the PHP will accept, process and respond to such appeals, including how the PHP will acknowledge receipt of each appeal;

(c) Ensuring that Division members who receive a Notice of Action described in OAR 410-141-0263 are informed of their right to file an appeal and an administrative hearing request and how to do so;

(d) Ensuring that each appeal is transmitted timely to staff having authority to act on it;

(e) Ensuring that each appeal is investigated and resolved in accordance with these rules; and

(f) Ensuring that the individuals who make decisions on appeals are individuals:

(A) Who were not involved in any previous level of review or decision making; and

(B) Who are health care professionals who have the appropriate clinical expertise in treating the Division member's condition or disease if an appeal of a denial is based on lack of medical appropriateness or if an appeal involves clinical issues;

(g) Include a requirement for appeals to be documented in the log to be maintained by the PHP that is in compliance with OAR 410-141-0266.

(6) The PHP shall assure Division members that appeals are handled in confidence consistent with ORS 411.320, 42 CFR 431.300 et seq, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rules, and other applicable federal and state confidentiality laws and regulations. The PHP shall safeguard the Division member's right to confidentiality of information about the appeal as follows:

(a) PHPs shall implement and monitor written policies and procedures to ensure that all information concerning a Division member's appeal is kept confidential consistent with appropriate use or disclosure as treat-

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ment, payment, or health care operations of the PHP, as those terms are defined in 45 CFR 164.501. The PHP and any practitioner whose authorization, treatment, services, items, quality of care, or request for payment is alleged to be involved in the appeal have a right to use this information for purposes of resolving the appeal and for purposes of maintaining the log required in OAR 410-141-0266 and for health oversight purposes by Division, without a signed release from the Division member. The administrative hearing regarding the appeal without a signed release from the Division member, pursuant to 410-120-1360(4);

(b) Except as provided in subsection (a) or as otherwise authorized by all other applicable confidentiality laws, PHPs shall ask the Division member to authorize a release of information regarding the appeal to other individuals. Before any information related to the appeal is disclosed under this subsection, the PHP shall have an authorization for release of information documented in the appeal file.

(7) The process for appeals must:

(a) Provide that oral inquiries seeking to appeal an action are treated as appeals (to establish the earliest possible filing date for the appeal) and must be confirmed in writing, unless the Division member or Division member's representative requests expedited resolution;

(b) Provide the Division member a reasonable opportunity to present evidence and allegations of fact or law in person as well as in writing. (The PHP must inform the Division member or the Division member's representative of the limited time available in the case of an expedited resolution);

(c) Provide the Division member and/or the Division member's representative an opportunity, before and during the appeals process, to examine the Division member's file, including medical records and any other documents or records to be considered during the appeals process; and

(d) Include as parties to the appeal the Division member, the Division member's representative, or the legal representative of a deceased Division member's estate;

(8) The PHP must resolve each appeal and provide a client notice of the appeal resolution as expeditiously as the Division member's health condition requires and within the time frames in this section:

(a) For the standard resolution of appeals and client notices to the Division member and/or Division member's representative, the PHP shall resolve the appeal and provide a client notice no later than 30 calendar days from the day the PHP receives the appeal.

(b) When the PHP has granted a request for expedited resolution of an appeal, the PHP shall resolve the appeal and provide a client notice no later than 3 working days after the PHP receives the appeal. This timeframe may be extended pursuant to subsection (c) of this section;

(c) In accordance with 42 CFR 438.408, the PHP may extend the timeframes from subsections (a) or (b) of this section by up to 14 calendar days (upon request) if:

(A) The Division member or Division members representative requests the extension; or

(B) The PHP shows (to the satisfaction of the Division's Hearings Unit upon its request) that there is need for additional information and how the delay is in the Division member's interest:

(d) If the PHP extends the timeframes, it must, for any extension not requested by the Division member, give the Division member or Division members representative a written notice of the reason for the delay.

(9) For all appeals, the PHP must provide written Notice of Appeal Resolution to the Division member or their representative. If the PHP knows that there is a representative, the PHP must send a copy of the Notice to the representative. For notice on an expedited resolution, the PHP must also make reasonable efforts to provide oral notice.

(10) The written Notice of Appeal Resolution must include the following:

(a) The results of the resolution process and the date it was completed; and

(b) For appeals not resolved wholly in favor of the Division member, the notice must also include the following information:

(A) Reasons for the resolution and a reference to the particular sections of the statutes and rules involved for each reason identified in the Notice of Appeal Resolution relied upon to deny the appeal;

(B) Unless the appeal was referred to the PHP from the Division as part of an administrative hearings process, the right to request a Division Administrative Hearing, and how to do so, which includes attaching the "Notice of Hearing Rights (DMAP 3030) and the Hearing Request form (DHS 443);

(C) The right to request to receive benefits while the hearing is pending, and how to make the request; and

(D) That the Division member may be held liable for the cost of those benefits if the hearing decision upholds the PHP's Action.

(11) Unless the appeal was referred to the PHP as part of an administrative hearing process, a Division member may request a Division administrative hearing not later than 45 calendar days from the date on the Notice of Appeal Resolution. The parties to the Division administrative hearing include the PHP as well as the Division member and/or Division member's representative, or the Representative of the deceased Division member's estate.

(12) Each PHP shall establish and maintain an expedited review process for appeals, consistent with OAR 410-141-0265.

(13) Each PHP shall maintain records of appeals, enter appeals and their resolution into a log, and address the appeals in the context of quality improvement activity (OAR 410-141-0200) as required in OAR 410-141-0266.

(14) Continuation of benefits pending appeal:

(a) As used in this section, "timely" filing means filing on or before the later of the following:

(A) Within 10 calendar days of the PHP mailing the Notice of Action; or

(B) The intended effective date of the PHP's proposed Action;

(b) The PHP must continue the Division member's benefits if:

(A) The Division member or Division member's representative files the appeal or administrative hearing request timely;

(B) The appeal or administrative hearing request involves the termination, suspension, or reduction of a previously authorized course of treatment;

(C) The services were ordered by an authorized provider;

(D) The original period covered by the original authorization has not expired; and

(E) The Division member or representative requests extension of benefits;

(c) Continuation of benefits pending administrative hearing — If, at the Division member's request, the PHP continues or reinstates the Division member's benefits while the appeal or administrative hearing is pending, the benefits must be continued pending administrative hearing pursuant to OAR 410-141-0264.

(15) If the final resolution of the appeal or administrative hearing is adverse to the Division member, that is, upholds the PHP's Action, the PHP may recover the cost of the services furnished to the Division member while the appeal or administrative hearing was pending, to the extent that they were furnished solely because of the requirements of this section and in accordance with the policy set forth in 42 CFR 431.230(b).

(16) If the PHP or a Division administrative hearing decision reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, the PHP must authorize or provide the disputed services promptly, and as expeditiously as the Division member's health condition requires.

(17) If the PHP or the Division administrative hearing decision reverses a decision to deny authorization of services, and the Division member received the disputed services while the appeal was pending, the PHP or the Division must pay for the services in accordance with the Division policy and regulations.

(18) If the appeal was referred to the PHP from the Division as part of an administrative hearing process, the PHP must immediately (within two business days) transmit the Notice of Appeal Resolution and the complete record of the appeal to the Division Hearings Unit.

(19) If the appeal was made directly by the Division member or Representative, and if the Notice of Appeal Resolution was not favorable to the Division member, the PHP must: Retain a complete record of the appeal for not less than 45 days so that, if an administrative hearing is requested, the record can be submitted to the Division's Hearings Unit within two business days of the Division's request.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04; DMAP 22-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 10-2013(Temp), f. & cert. ef. 3-1-13 thru 8-27-13; DMAP 16-2013(Temp), f. & cert. ef. 4-10-13 thru 8-27-13

## 410-141-3262

### Requirements for CCO Appeal

(1) A member, their representative or a subcontractor/provider, with the member's consent, who disagrees with a notice of action (notice) has the authority to file an appeal with their CCO.

(2) For purposes of this rule, an appeal includes a request from the Division to the CCO for review of action.

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(3) The member may request an appeal either orally or in writing directly to their CCO for any action by the CCO unless the member requests an expedited resolution, the member must follow an oral filing with a written, signed and dated appeal. If the member files an oral appeal, the CCO must send the member an appeal request form.

(4) The member must file the appeal no later than 45 calendar days from the date on the notice.

(5) The CCO must have written policies and procedures for handling appeals that:

(a) Address how the CCO will accept, process and respond to such appeals, including how the CCO will acknowledge receipt of each appeal;

(b) Ensure that members who receive a notice are informed of their right to file an appeal and how to do so;

(c) Ensure that each appeal is transmitted timely to staff having authority to act on it;

(d) Consistent with confidentiality requirements, ensure that the CCO's staff person who is designated to receive appeals begins to obtain documentation of the facts concerning the appeal upon receipt of the appeal;

(e) Ensure that each appeal is investigated and resolved in accordance with these rules; and

(f) Ensure that the individuals who make decisions on appeals are:

(A) Not involved in any previous level of review or decision making; and

(B) Health care professionals who have the appropriate clinical expertise in treating the member's condition or disease if an appeal of a denial is based on lack of medical appropriateness; or if an appeal involves clinical issues.

(g) Include a provision that the CCO must document appeals in an appeals log maintained by the CCO that complies with OAR 410-141-3260 and consistent with contractual requirements.

(h) Ensure oral requests for appeal an action are treated as appeals to establish the earliest possible filing date for the appeal; and

(i) Ensure the member is informed that the member must in writing unless the person filing the appeal requests expedited resolution;

(j) Provide the member a reasonable opportunity to present evidence and allegations of fact or law in person as well as in writing;

(k) Provide the member an opportunity before and during the appeals process to examine the member's file, including medical records and any other documents or records to be considered during the appeals process.

(6) Parties to the appeal include:

(a) The CCO;

(b) The member and the member's representative, if applicable;

(c) The legal representative of a deceased member's estate.

(7) The CCO must resolve each appeal and provide the member and their representative with a notice of appeal resolution as expeditiously as the member's health condition requires and within the following periods for:

(a) Standard resolution of appeal: no later than 16 calendar days from the day, the CCO receives the appeal;

(b) Expedited resolution of appeal (when granted by the CCO): no later than three working days from the date the CCO receives the appeal. In addition, the CCO must:

(A) Inform the member and their representative of the limited time available;

(B) Make reasonable efforts to call the member to tell them of the resolution within three calendar days after receiving the request; and

(C) Mail written confirmation of the resolution to the member within three calendar days.

(c) In accordance with 42 CFR 438.408, the CCO may extend these timeframes from subsections (a) or (b) of this section up to 14 calendar days if:

(A) The member or their representative requests the extension; or

(B) The CCO shows (to the satisfaction of the Division's Hearing Unit, upon its request) that there is need for additional information and how the delay is in the member's interest.

(C) Requirements following extension. If the CCO extends the timeframes, it must for any extension not requested by the Member, give the Member written notice of the reason for the delay.

(8) For all appeals, the CCO must provide written notice of appeal resolution to the member and also to their representative when the CCO knows there is a representative for the member.

(9) The written notice of appeal resolution must include the following information:

(a) The results of the resolution process and the date the CCO completed the resolution; and

(b) For appeals not resolved wholly in favor of the member:

(A) Reasons for the resolution and a reference to the particular sections of the statutes and rules involved for each reason identified in the Notice of Appeal Resolution relied upon to deny the appeal;

(B) Unless the appeal was referred to the CCO from the Division as part of a contested case hearings process, the right to request a hearing and how to do so;

(C) The right to request to receive benefits while the hearing is pending and how to do so; and

(D) That the member may be held liable for the cost of those benefits if the hearing decision upholds the CCO's Action.

(10) Unless the appeal was referred to the CCO as part of a contested case hearing process, a member may request a hearing not later than 45 calendar days from the date on the Notice of Appeal Resolution.

(11) If the appeal was referred to the CCO from the Division as part of a contested case hearing process, within two business days from the date of the appeal resolution, the CCO must transmit the:

(a) Notice of Appeal Resolution; and

(b) Complete record of the appeal to the Division's Hearings Unit.

(12) If the appeal was made directly by the member or their representative, and the Notice of Appeal Resolution was not favorable to the member, the CCO must, if a contested case hearing is requested, submit the record to the Division's Hearings Unit within two business days of the Division's request.

(13) Documentation:

(a) The CCO's records must include, at a minimum, a log of all appeals received by the CCO and contain the following information:

(A) Member's name and Medical Care ID number;

(B) Date of the Notice;

(C) Date and nature of the appeal;

(D) Whether continuing benefits were requested and provided; and

(E) Resolution and resolution date of the appeal.

(b) The CCO must maintain a complete record for each appeal included in the log for no less than 45 days to include:

(A) Records of the review or investigation; and

(B) Resolution, including all written decisions and copies of correspondence with the member.

(c) The CCO must review the written appeals log on a monthly basis for:

(A) Completeness;

(B) Accuracy;

(C) Timeliness of documentation;

(D) Compliance with written procedures for receipt, disposition and documentation of appeals; and

(E) Compliance with OHP rules.

(d) The CCO must address the analysis of appeals in the context of quality improvement activity consistent with OAR 410-141-3200 OHP CCO Quality Improvement System and 410-141-3260 General Requirements for CCO Grievance System;

(e) The CCO must have written policies and procedures for the review and analysis of all appeals received by the CCO. The analysis of the grievance system must be reviewed by the CCO's Quality Improvement Committee consistent with contractual requirements and comply with the quality improvement standards.

Stat. Auth.: ORS 414.032

Stats. Implemented: ORS 414.065

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 10-2013(Temp), f. & cert. ef. 3-1-13 thru 8-27-13; DMAP 16-2013(Temp), f. & cert. ef. 4-10-13 thru 8-27-13

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**Rule Caption:** Align with Department of Human Services OAR chapter 461, medical eligibility rules

**Adm. Order No.:** DMAP 17-2013

**Filed with Sec. of State:** 4-10-2013

**Certified to be Effective:** 4-10-13

**Notice Publication Date:** 2-1-2013

**Rules Amended:** 410-120-0006

**Subject:** The General Rules Program administrative rules govern the Division's payments for services provided to clients, and medical assistance eligibility determinations made by the Oregon Health Authority. In coordination with the Department of Human Services' (Department) revision of medical eligibility rules in chapter 461, the Division is amending OAR 410-120-0006 to assure that the Divi-

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sion's medical eligibility rule aligns with and reflects information found in the Department's medical eligibility rules. In OAR 410-120-0006, the Division adopts in rule by reference Department eligibility rules and must update

OAR 410-120-0006 in conjunction.

**Rules Coordinator:** Cheryl Peters—(503) 945-6527

## 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 April 10, 2013, for all medical eligibility requirements for medical assistance when the Authority conducts eligibility determinations.

(2) Any reference to OAR chapter 461 in Oregon Administrative Rules or contracts of the Authority are deemed to be references to the requirements of this rule, and shall be construed to apply to all eligibility policies, procedures and determinations by or through the Authority.

(3) For purposes of this rule, references in OAR chapter 461 to the Department or to the Authority shall be construed to be references to both agencies.

(4) Effective on or after July 1, 2011 the Authority shall conduct medical eligibility determinations using the OAR chapter 461 rules which are in effect on the date the Authority makes the medical eligibility determination.

(5) A request for a hearing resulting from a determination under this rule, made by the Authority shall be handled pursuant to the hearing procedures set out in division 25 of OAR chapter 461. References to "the Administrator" in division 25 of chapter 461 or "the Department" are hereby incorporated as references to the "Authority."

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

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.065

Hist.: DMAP 10-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 18-2011(Temp), f. & cert. ef. 7-15-11 thru 1-11-12; DMAP 21-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-11-12; DMAP 25-2011(Temp), f. 9-28-11, cert. ef. 10-1-11 thru 1-11-12; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 1-2012(Temp), f. & cert. ef. 1-13-12 thru 7-10-12; DMAP 2-2012(Temp), f. & cert. ef. 1-26-12 thru 7-10-12; DMAP 3-2012(Temp), f. & cert. ef. 1-31-12 thru 2-1-12; DMAP 4-2012(Temp), f. 1-31-12, cert. ef. 2-1-12 thru 7-10-12; DMAP 9-2012(Temp), f. & cert. ef. 3-1-12 thru 7-10-12; DMAP 21-2012(Temp), f. 3-30-12, cert. ef. 4-1-12 thru 7-10-12; DMAP 25-2012(Temp), f. & cert. ef. 5-1-12 thru 7-10-12; Administrative correction 8-1-12; DMAP 35-2012(Temp), f. & cert. ef. 7-20-12 thru 1-16-13; DMAP 45-2012(Temp), f. & cert. ef. 10-5-12 thru 1-19-13; DMAP 50-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 53-2012(Temp), f. & cert. ef. 11-1-12 thru 4-29-13; DMAP 56-2012(Temp), f. 11-30-12, cert. ef. 12-1-12 thru 4-1-13; DMAP 60-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 65-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-29-13; DMAP 2-2013(Temp), f. & cert. ef. 1-8-13 thru 6-29-13; DMAP 3-2013(Temp), f. & cert. ef. 1-30-13 thru 6-29-13; DMAP 5-2013(Temp), f. & cert. ef. 2-20-13 thru 6-29-13; DMAP 7-2013(Temp), f. & cert. ef. 3-1-13 thru 6-29-13; DMAP 12-2013, f. 3-27-13, cert. ef. 4-1-13; DMAP 17-2013, f. & cert. ef. 4-10-13

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**Rule Caption:** Implement Federal and state requirements in nursing facility with payment rate changes rule language clarification

**Adm. Order No.:** DMAP 18-2013(Temp)

**Filed with Sec. of State:** 4-11-2013

**Certified to be Effective:** 5-1-13 thru 10-28-13

**Notice Publication Date:**

**Rules Amended:** 410-142-0020, 410-142-0290

**Subject:** This program will be implemented May 1, 2013. The Division needs to amend the rules listed to incorporate federal compliance requirements for payment when a client resides in a nursing facility (NF) and elects hospice care; make rate changes, clarify language, and update definitions based on provider, stakeholder, and Oregon Hospice Association participation and input in the Rules Advisory Committee (RAC) held on March 28, 2013.

**Rules Coordinator:** Cheryl Peters—(503) 945-6527

## 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) Bundled Rate: the Nursing Facility (NF) rate as defined in 411-070-0085.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) Coordinator: A registered nurse designated to coordinate and implement the care plan for each hospice client.

(12) 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.

(13) Curative: Medical intervention used to ameliorate the disease.

(14) Dying: The progressive failure of the body systems to retain normal functioning, thereby limiting the remaining life span.

(15) 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.

(16) 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.

(17) 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.

(18) 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.

(19) 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.

(20) 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

(21) Hospice Program registry: A registry of all licensed hospice programs maintained by the Authority, Public Health Division.

(22) 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

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client/family unit during the final stages of illness, dying and the bereavement period.

(23) Illness: The condition of being sick, diseased or with injury.

(24) 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.

(25) 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.

(26) Medicare certification: Licensed and certified by the Authority, Public Health Division as a program of services eligible for reimbursement.

(27) Nursing facility: A facility licensed and certified by the Department of Human Services (Department) as a nursing facility and defined in OAR 411-070.

(28) Nursing facility services: The bundled rate of services which incorporates all services, including room and board, for which the nursing facility is paid per OAR 411-070.

(29) 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.

(30) 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.

(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 & 414.065

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; DMAP 18-2013(Temp), f. 4-11-13, cert. ef. 5-1-13 thru 10-28-13

## 410-142-0290

### Hospice Services in a Nursing Facility

(1) Pursuant to Title XIX, Section 1902 and 1905, federal statute prohibits the state from paying nursing facility (NF) providers directly for NF services when their Medicaid residents elect hospice care. In these instances, the Centers for Medicare and Medicaid Services (CMS) require the state to pay the hospice provider the additional amount equal to at least 95% of the per diem rate the state would have paid to the NF for NF services for that client in that facility.

(2) When a client resides in a NF and elects hospice care, the hospice provider and the NF must have a written contract which addresses the provision of hospice care and the method upon which the hospice will pay the NF. The hospice and the NF must maintain a copy of the completed and signed contract on file and it must be available upon request.

(3) Reimbursement when a client resides in a NF and elects hospice care:

(a) In accordance with CMS 4308.2, "when hospice care is furnished to an individual residing in a NF, the state will pay hospice an additional amount on routine home care or continuous home care days to take into account the room and board furnished by the NF. In this context, the term 'room and board' includes performance of personal care services, including assistance in the activities of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a residents' room, and supervision and assisting in the use of durable medical equipment and prescribed therapies," as well as any other services considered under the bundled rate for which the NF is paid pursuant to OAR 411-070.

(b) The hospice shall bill the Division of Medical Assistance Programs (Division) directly for the hospice care provided (under routine home care, Revenue code 651, or continuous home care, Revenue code 652) and for the cost of NF services at their usual and customary rate for NF services delivered in that NF for that client;

(c) The Division shall pay the hospice provider for the hospice care provided and not to exceed 100% of the current NF basic, complex medical, pediatric, or special contract rate according to the rate schedule for NF services delivered in that NF for that client;

(d) The hospice provider must reimburse the nursing facility according to their contract and after the hospice receives payment from the Division for that NF for that client; and

(e) Reimbursement for services provided under this rule is available only if the recipient of the services is Medicaid-eligible, hospice-eligible, and been found to need NF care through the Pre-Admission Screening process under OAR 411-070-0040.

(4) NF Services Overpayment: Any payment received from the Division by a NF for services delivered after a client has elected hospice care shall adjust their claims from the day the client first elected hospice care. Failure to submit an adjustment subjects the NF to potential sanctions and all means of overpayment recovery authorized under OAR chapter 410, division 120.

(5) Coordination of Care (COC) must be provided according to CMS Conditions of Participation (CoPs), 42CFR418.112 for hospice and nursing facilities.

(6) Coordinated Care Organization (CCO) and Prepaid Health Plan (PHP) clients who reside in a NF and elect hospice care shall remain in the CCO and PHP for all care other than hospice services in the NF. Hospice services for a resident in a NF shall be excluded from CCO and PHP capitation and the hospice must bill the Division directly for payment of hospice and NF services.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 34-2012, f. & cert. ef. 7-20-12; DMAP 18-2013(Temp), f. 4-11-13, cert. ef. 5-1-13 thru 10-28-13

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

**Rule Caption:** Repeal of Temporary Rule and Amendment to Patient-Centered Primary Care Home Rule

**Adm. Order No.:** OHP 5-2013

**Filed with Sec. of State:** 3-22-2013

**Certified to be Effective:** 4-1-13

**Notice Publication Date:** 3-1-2013

**Rules Amended:** 409-055-0030

**Rules Repealed:** 409-055-0030(T)

# ADMINISTRATIVE RULES

**Subject:** The Oregon Health Authority, Office for Oregon Health Policy and Research is proposing to repeal temporary rule OAR 409-055-0030(T) and make permanent the discretionary 30-day grace period relating to the annual renewal recognition process and criteria for the Primary Care Home (PCPCH) Program.  
**Rules Coordinator:** Zarie Haverkate—(503) 373-1574

## 409-055-0030

### Practice Application and Recognition Process

Application electronically to the Authority via the Program's online application system found on the Program website. The application shall include data per OAR 409-055-0040.

(2) The Authority shall review the application for completed data and compliance with the criteria in OAR 409-055-0040.

(3) When the PCPCH applicant meets the criteria requirements, the Authority shall deem the applicant as a Recognized PCPCH Practice and assign a Tier level.

(4) The Authority shall keep instructions and criteria for submitting a PCPCH Recognition Process Application posted on the Program website.

(5) Practices shall be notified in writing or electronically of a PCPCHs Tier score or contacted for additional information within 60 days of application submission.

(6) A practice may be denied PCPCH recognition if it does not meet the criteria in OAR 409-055-0040.

(7) Practices must file a request for review with the Program within 90 days if the practice disagrees with the calculated Tier score.

(8) PCPCHs must renew their recognition annually or at the discretion of the OHA, but no less than 12 months from the effective recognition date identified to the practice by the Authority. At the Authority's discretion a 30-day grace period may be allowed for PCPCHs to submit their annual renewal application without having a lapse in recognition status. If during the year, a PCPCH believes that it meets the criteria to be recognized at a higher tier, it may request to have its tier status reassessed by re-submitting an application not more than once every six months.

(9) The effective recognition date identified by the Authority shall be the date on which the Authority has completed the application review process.

(10) The Authority reserves the right to identify a recognition date other than the date of application review process completion.

(11) It is the intent of the Program to refine the criteria per OAR 409-055-0040 during the first two years of implementation of the Program based on PCPCH provider and stakeholder feedback. After this time, the Authority intends to move to a recognition renewal process of once every three years.

(12) Recognition requests may be sent electronically or by mail to the address posted on the Program website.

[Tables: Tables reference are available from the agency.]

Stat. Auth: ORS 413.042, 414.655 & 442.210

Stats. Implemented: 413.042, 414.655 & 442.210

Hist.: OHP 6-2011(Temp), f. 9-29-11, cert. ef. 10-1-11 thru 3-15-12; OHP 2-2012, f. 2-29-12, cert. ef. 3-1-12; OHP 7-2012(Temp), f. & cert. ef. 10-4-12 thru 4-1-13; OHP 5-2013, f. 3-22-13, cert. ef. 4-1-13

## Oregon Health Insurance Exchange Chapter 945

**Rule Caption:** Administrative Charges and Fees

**Adm. Order No.:** OHIE 1-2013

**Filed with Sec. of State:** 3-18-2013

**Certified to be Effective:** 3-18-13

**Notice Publication Date:** 1-1-2013

**Rules Adopted:** 945-030-0010, 945-030-0020, 945-030-0030, 945-030-0040

**Subject:** Establishes the process for adoption of administrative charges and fees. Establishes the 2014 administrative charge to be paid by participating insurers.

**Rules Coordinator:** Gregory Jolivet—(503) 373-9406

## 945-030-0010

### Statutory Authority; Purpose

(1) OAR chapter 945, division 30 is adopted pursuant to the general rulemaking authority of the Exchange in ORS 741.002.

(2) The purpose of division 30 is to establish a process for the adoption of an administrative charge to be paid by health insurers offering qualified health plans through the Exchange to pay the administrative and oper-

ational expenses of the corporation, including costs of grants to certified navigators.

Stat. Auth.: ORS 741.002

Stats. Implemented: ORS 741.105

Hist.: OHIE 1-2013, f. & cert. ef. 3-18-13

## 945-030-0020

### Establishment of Administrative Charge Paid by Insurers

(1) Exchange staff will annually provide a Report on Administrative Charges to the Finance and Audit Committee of the Oregon Health Insurance Exchange Board of Directors (Board).

(2) The report will be posted on the Exchange's website for public review and comment.

(3) At a minimum, the report will include

(a) A projection of Exchange operating expenses for the next calendar year,

(b) A projection of Exchange enrollment for the next calendar year, and

(c) A proposed administrative charge for the next calendar year.

(4) The Finance and Audit Committee will hold a public hearing on a proposed administrative charge.

(5) No later than the end of the first quarter of a calendar year the Finance and Audit Committee will recommend to the Board, and the Board shall amend or approve, an administrative charge for the next calendar year.

(6) Any administrative charge adopted by the Board shall be established in rule.

(7) The administrative charge shall be expressed as a per member per month figure.

(8) As a percent of the total premiums of all Exchange enrollees, the annual aggregate administrative charge assessed by the Exchange shall not exceed the limits set forth in ORS 741.105.

Stat. Auth.: ORS 741.002

Stats. Implemented: ORS 741.105

Hist.: OHIE 1-2013, f. & cert. ef. 3-18-13

## 945-030-0030

### Annual Administrative Charge on Insurers

(1) Effective January 1, 2014, each health insurer offering qualified health plans through the Exchange shall pay a monthly administrative charge equal to \$9.38 times the number of members enrolled through the Exchange in that month.

(2) If the total charges collected exceeds the maximum amount permissible under ORS 741.105, Cover Oregon will return excess funds to carriers on a pro-rata basis no later than the end of the 2nd quarter of the next calendar year.

Stat. Auth.: ORS 741.002

Stats. Implemented: ORS 741.105

Hist.: OHIE 1-2013, f. & cert. ef. 3-18-13

## 945-030-0040

### Assessment and Collection of Administrative Charge on Insurers

(1) The Exchange shall assess the administrative charge on or before the 10th business day of each month.

(2) Each insurer's monthly administrative charge will be based on the number of members enrolled through the Exchange in that month. The administrative charge will be adjusted for any changes to prior months enrollment.

(3) The administrative charge is due in full to the Exchange on the last business day of the month assessed.

(4) For any month in which the insurer does not make full payment within 10 days following the last business day of that month, the Exchange shall impose a late payment charge of 1 percent of the amount due.

(5) If an insurer fails to pay the administrative charge, the Board may:

(a) Close that insurer's Exchange plans to new enrollment until all outstanding charges are paid; and/or

(b) De-certify that insurer's qualified health plans.

Stat. Auth.: ORS 741.002

Stats. Implemented: ORS 741.105

Hist.: OHIE 1-2013, f. & cert. ef. 3-18-13

## Rule Caption: Certification of Health Insurance Producers

**Adm. Order No.:** OHIE 2-2013

**Filed with Sec. of State:** 4-15-2013

**Certified to be Effective:** 4-15-13

**Notice Publication Date:** 3-1-2013

**Rules Adopted:** 945-050-0010, 945-050-0020

# ADMINISTRATIVE RULES

**Subject:** Establishes the process and requirements for certifying insurance producers to facilitate the transaction of business through the Exchange.

**Rules Coordinator:** Gregory Jolivet—(503) 373-9406

## 945-050-0010

### Statutory Authority and Purpose

(1) OAR chapter 945, division 50 is adopted pursuant to the general rulemaking authority of the Exchange in ORS 741.002.

(2) The purpose of division 50 is to establish the requirements for certification of health insurance producers.

Stat. Auth.: ORS 741.002  
Stats. Implemented: ORS 741.310  
Hist.: OHIE 2-2013, f. & cert. ef. 4-15-13

## 945-050-0020

### Health Insurance Producer Certification

(1) The Exchange will certify a network of licensed health insurance producers.

(2) To certify with the Exchange, insurance producers must:

- (a) Hold an active Oregon health license;
- (b) Have no history of administrative actions that resulted in a denial, suspension or revocation of their license;
- (c) Complete and pass all training required by the Exchange;
- (d) Uphold privacy and security standards in 45 CFR §155.260;
- (e) Maintain errors and omissions coverage at a minimum level established by the Exchange; and

(f) Agree to contract with the Exchange. Producers that continue to meet the Exchange standards and requirements will maintain certification for as long as a contract is in effect.

(3) An Exchange-certified producer cannot be an employee of a health insurer or a captive producer.

(4) The Exchange reserves the right to adjust or amend the requirements of producer certification, and may do so with 60-day notification.

Stat. Auth.: ORS 741.002  
Stats. Implemented: ORS 741.310  
Hist.: OHIE 2-2013, f. & cert. ef. 4-15-13

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

**Rule Caption:** Change requirements for specialty body piercing education, training and licensing.

**Adm. Order No.:** HLA 6-2013(Temp)

**Filed with Sec. of State:** 3-20-2013

**Certified to be Effective:** 4-1-13 thru 9-28-13

**Notice Publication Date:**

**Rules Amended:** 331-905-0000, 331-905-0005, 331-905-0010, 331-905-0040, 331-905-0050, 331-905-0080

**Rules Suspended:** 331-905-0070

**Subject:** The rule would temporarily amend specialty level 1 genital piercing education and training to remove the requirement of 10 hours of theory. The rule would retain the requirement of 36 hours of practical education or training including practical operations where the student or trainee observes 6 practical operations, participates in 10 practical operations and performs 20 practical operations under direct supervision. The school or approved supervisor is required to submit documentation to the Agency showing proof of having performed the 36 practical operations.

The rule would temporarily amend specialty level 2 genital piercing education and training to remove the requirement of 5 hours of theory. The rule would retain the requirement of 26 hours of practical education or training including practical operations where the student or trainee observes 6 practical operations, participates in 10 practical operations and performs 10 practical operations under direct supervision. The school or approved supervisor is required to submit documentation to the Agency showing proof of having performed the 26 practical operations.

The rule would temporarily eliminate the requirement of taking a written examination regarding genital piercing for both specialty level 1 and 2 genital piercing. The rule requires that if the written standard body piercing examinations are not passed within 2 years of application for a specialist level 1 or 2 genital piercing license the

applicant would have to take and pass the written standard body piercing examinations again.

Suspend rule related to approved specialty body piercing examinations and amend retake requirements to align with standard body piercing retake requirements.

**Rules Coordinator:** Samantha Patnode—(503) 373-1917

## 331-905-0000

### Specialty Body Piercing Definitions

The following definitions apply to OAR chapter 331, division 900:

(1) "Affidavit of Licensure" has the meaning set forth in OAR 331-030-0040.

(2) "Agency" means the Oregon Health Licensing Agency.

(3) "APP" means Association of Professional Piercers.

(4) "Body piercing" has the definition set forth in ORS 690.350.

(5) "Direct supervision" means the supervisor or instructor is present in the facility and actively involved in direct oversight and training of students.

(6) "EPA" means United States Environmental Protection Agency.

(7) "FDA" means Food and Drug Administration.

(8) "Field of practice" has the definition set forth in ORS 690.350.

(9) "High-level disinfectant" means a chemical agent, registered with the EPA, which has demonstrated tuberculocidal activity.

(10) "Instruments" means equipment used during body piercing services. Types of instruments include but are not limited to needles, forceps, hemostats, tweezers, and jewelry.

(11) "Official transcript" means:

(a) An original document authorized by the appropriate office in the Oregon Department of Education and certified by an educational institution indicating applicant identity information, field of practice(s) enrolled under, specific hour requirements for each field of practice if applicable, final practical examination scores for each field of practice, enrollment information and a signature by an authorized representative on file with the agency. Original documents must be submitted directly to the agency from the educational institution by United States Postal Service mail or other recognized mail service providers in a sealed envelope;

(12) "Practitioner" means a person licensed to perform services included within a field of practice.

(13) "Sharps container" means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation, and disposal. The container must be labeled with the "Biohazard" symbol.

(14) "Specialty level one genital piercing" includes the following:

(a) Male genital piercings including the scrotum, frenum, foreskin, or the perineum behind the scrotum, and the piercing of the penis through the urethra, perineum behind the scrotum (Guiche) and exiting on the underside of the penis (called a "Prince Albert"); and

(b) Female genital piercing including the labia majora, labia minors, piercings of the clitoral hood, and perineum between the vagina and the anus (fourchette).

(15) "Specialty level two genital piercing" includes the following:

(a) Male genital piercings including: a vertical piercing through the glans of the penis (called an "apadravya"), horizontal piercing through the glans of the penis (called an "ampallang"), a piercing through the corona or ridge of the glans of the penis (called a "dydoe"), a piercing of the penis entering through the urethra and exiting on the upper side of the penis (called a "reverse Prince Albert"); and

(b) Female genital piercings including the clitoris, a piercing in which jewelry is inserted below the hood behind the clitoris (called a "triangle"), and a piercing of the vagina through the urethra and exiting on the upper side of the vagina (called a "Princess Albertina").

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats. Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 6-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-28-13

## 331-905-0005

### Specialty Level One Genital Piercing Education or Training

Beginning on January 1, 2013, all education curriculum or training for specialty level one genital piercing must meet requirements set forth by the Oregon Health Licensing Agency prior to beginning training or education.

(1) Education Requirements for Specialty Level One Genital Piercing Student: An individual must obtain a standard body piercing license prior to beginning education for specialty level one genital piercing. The



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specialty level one genital piercing career school course of study must include 36 hours of practical education and a minimum of 36 practical operations.

(2) The 36 practical operations required must include:

(a) 6 practical operations observed by the student which must include a minimum of 3 female genital piercings and a minimum of 3 male genital piercings. Out of the 6 practical operations the student must observe at least 4 different piercing procedures listed in subsection (3) of this rule;

(b) 10 practical operations in which the student participated which must include a minimum of 3 female genital piercings and a minimum of 3 male genital piercings. Out of the 10 practical operations the student must participate in at least 4 different piercing procedures listed in subsection (3) of this rule; and

(c) 20 practical operations performed by the student under direct supervision, but without assistance which must include a minimum of 6 female genital piercings and a minimum of 6 male genital piercings. Out of the 20 practical operations the student must perform at least 4 different piercing procedures listed in subsection (3) of this rule.

(3) The 36 piercings included in the practical training must include at least 3 different piercing procedures listed in Subsection (a) through (i) below of this rule:

(a) Scrotum;

(b) Frenum;

(c) Foreskin;

(d) Perineum behind the scrotum (Guiche);

(e) Piercing of the penis through the urethra and exiting on the underside of the penis (Prince Albert);

(f) Labia majora;

(g) Labia minora;

(h) Piercing of the perineum between the vagina and the anus (fourchette); and

(i) Piercing of the clitoral hood.

(4) Education must be conducted by a Department of Education, Private Career School licensed instructor who holds an active specialty level one genital piercing license.

(5) A Department of Education, Private Career School licensed instructor must provide direct supervision of practical training on a one-to-one student/teacher ratio for students performing practical training while working on the general public.

(6) Supervised Training Requirements for Specialty Level One Genital Piercing Temporary Trainee: An individual must obtain a standard body piercing license prior to beginning training for specialty level one genital piercing. The specialty level one genital piercing training program must include 36 hours of practical training and a minimum of 36 practical operations.

(7) The 36 practical operations required must include:

(a) 6 practical operations observed by the trainee which must include a minimum of 3 female genital piercings and a minimum of 3 male genital piercings. Out of the 6 practical operations the trainee must observe at least 4 different piercing procedures listed in subsection (8) of this rule;

(b) 10 practical operations in which the trainee participated which must include a minimum of 3 female genital piercings and a minimum of 3 male genital piercings. Out of the 10 practical operations the trainee must participate in at least 4 different piercing procedures listed in subsection (8) of this rule; and

(c) 20 practical operations performed by the trainee under direct supervision, but without assistance which must include a minimum of 3 female genital piercings and a minimum of 3 male genital piercings. Out of the 20 practical operations the trainee must perform at least 3 different piercing procedures listed in subsection (8) of this rule.

(8) The 36 piercings included in the practical training must include at least 3 different piercing procedures listed below in subsection (a) through (i) of this rule:

(a) Scrotum;

(b) Frenum;

(c) Foreskin;

(d) Perineum behind the scrotum (Guiche);

(e) Piercing of the penis through the urethra and exiting on the underside of the penis (Prince Albert);

(f) Labia majora;

(g) Labia minora;

(h) Piercing of the perineum between the vagina and the anus (fourchette); and

(i) Piercing of the clitoral hood.

(9) Training must be completed in no less than two months from the date the Agency issues a specialty level one genital piercing temporary trainee license.

(10) A supervisor must provide direct supervision of practical training on a one-to-one trainee to trainer ratio for trainees performing practical training while the trainee is working on the general public.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats. Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 6-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-28-13

## 331-905-0010

### Specialty Level Two Genital Piercing Education or Training

Beginning on January 1, 2013, all education curriculum or training for specialty level two genital piercing must meet requirements set forth by the Oregon Health Licensing Agency prior to beginning training or education.

(1) Education Requirements for Specialty Level Two Genital Piercing Student: An individual must obtain a standard body and specialty level one genital piercing license prior to beginning education for specialty level two genital piercing. The specialty level two genital piercing career school course of study must include 26 hours of practical education and a minimum of 26 practical operations.

(2) The 26 practical operations required must include:

(a) 6 practical operations observed by the student. Out of the 6 practical operations the student must observe at least 3 different piercing procedures listed in subsection (3) of this rule;

(b) 10 practical operations in which the student participated. Out of the 10 practical operations the student must participate in at least 3 different piercing procedures listed in subsection (3) of this rule; and

(c) 10 practical operations performed by the student under direct supervision, but without assistance. Out of the 10 practical operations the student must perform at least 3 different piercing procedures listed in subsection (3) of this rule.

(3) The 26 piercings included in the practical training must include at least 3 different piercing procedures listed in Subsection (a) through (g) below:

(a) Piercing of the penis entering through the urethra and exiting on the upper side of the penis (reverse Prince Albert);

(b) Piercing through the corona or ridge of the glans of the penis (dydoe);

(c) Horizontal piercing through the glans of the penis (ampallang);

(d) Vertical piercing through the glans of the penis (apadravya);

(e) Clitoris;

(f) Piercing in which jewelry is inserted below the hood behind the clitoris (triangle);

(g) Any piercing of the female genitals through the urethra; and

(h) Any other genital piercings not listed in specialty level one genital piercing.

(4) As part of the approved course of study, all hours of theory must be completed prior to practical work being performed.

(5) Education must be conducted by a Department of Education, Private Career School licensed instructor who holds an active specialty level two genital piercing license.

(6) A Department of Education, Private Career School licensed instructor must provide direct supervision of practical training on a one-to-one student/teacher ratio for students performing practical training while working on the general public.

(7) Supervised Training Requirements for Specialty Level Two Genital Piercing Temporary Trainee: An individual must obtain a standard body and specialty level one genital piercing license prior to beginning training for specialty level two genital piercing. The specialty level two genital piercing training program must include 26 hours of practical training and a minimum of 26 practical operations. The training must include a minimum of

(8) The 26 practical operations required must include:

(a) 6 practical operations observed by the trainee. Out of the 6 practical operations the trainee must observe at least 3 different piercing procedures listed in subsection (9) of this rule;

(b) 10 practical operations in which the trainee participated. Out of the 10 practical operations the trainee must participate in at least 3 different piercing procedures listed in subsection (9) of this rule; and

(c) 10 practical operations performed by the trainee under direct supervision, but without assistance. Out of the 10 practical operations the

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trainee must perform at least 3 different piercing procedures listed in subsection (9) of this rule.

(9) The 26 piercings included in the practical training must include at least three different piercing procedures listed in Subsection (a) through (h) below and must include content listed in subsection (12) of this rule:

(a) Piercing of the penis entering through the urethra and exiting on the upper side of the penis (reverse Prince Albert);

(b) Piercing through the corona or ridge of the glans of the penis (dydoe);

(c) Horizontal piercing through the glans of the penis (ampallang);

(d) Vertical piercing through the glans of the penis (apadravya);

(e) Clitoris;

(f) Piercing in which jewelry is inserted below the hood behind the clitoris (triangle);

(g) Any piercing of the female genitals through the urethra; and

(h) Any other genital piercings not listed in specialty level one genital piercing.

(10) Training must be completed in no less than 2 months from the date the Agency issues a specialty level two genital piercing temporary trainee license.

(11) A supervisor must provide direct supervision of practical training on a one-to-one trainee to trainer ratio for trainees performing practical training while the trainee is working on the general public.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats. Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 6-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-28-13

## 331-905-0040

### Application Requirements for Specialty Level One Genital Piercing License

(1) An individual applying for licensure to practice specialty level one genital piercing must:

(a) Meet the requirements of OAR 331 division 30;

(b) Submit a completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees;

(c) Submit proof of current cardiopulmonary resuscitation and basic first aid training from an Agency approved provider;

(d) Submit proof of current blood borne pathogens training from an Agency approved provider;

(e) Submit proof of being 18 years of age documentation may include identification listed under OAR 331-030-0000;

(f) Submit proof of having a high school diploma or equivalent; and

(g) Provide documentation of completing a qualifying pathway.

(2) License Pathway 1 — Graduate from an Oregon Licensed Career School for Specialty Level One Genital Piercing must:

(a) Submit official transcript from a specialty level one genital piercing career school under ORS 345 showing proof of completion of required specialty level one genital piercing curriculum as approved by the Agency under OAR 331-905-0005 (1) through (5);

(b) If applicable, pay examination fees;

(c) Submit passing score of the Agency approved standard body piercing written examinations in accordance with OAR 331-900-0060 (2) and (3). Completion of the written examination is not required if the applicant has passed the examinations listed under OAR 331-900-0060 (2) and (3) within two years before the date of application; and

(d) Upon passage of all required examinations, if applicable, and before issuance of license, applicant must pay all license fees.

(3) License Pathway 2 — Qualification through Specialty Level One Genital Piercing Temporary Trainee License:

(a) Submit documentation approved by the Agency showing proof of having completed required specialty level one genital training listed under OAR 331-905-0005 (6) through (10), and verified by a supervisor approved under OAR 331-905-0055, on a form prescribed by the Agency;

(b) If applicable, pay examination fees;

(c) Submit passing score of the Agency approved standard body piercing written examinations in accordance with OAR 331-900-0060 (2) and (3). Completion of the written examination is not required if the applicant has passed the examinations listed under OAR 331-900-0060 (2) and (3) within two years before the date of application; and

(d) Upon passage of all required examinations, if applicable, and before issuance of license, applicant must pay all license fees.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats. Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35  
Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 6-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-28-13

## 331-905-0050

### Application Requirements for Specialty Level Two Genital Piercing License

(1) An individual applying for licensure to practice specialty level two genital piercing must:

(a) Meet the requirements of OAR 331 division 30;

(b) Submit a completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees;

(c) Submit proof of current cardiopulmonary resuscitation and basic first aid training from an Agency approved provider;

(d) Submit proof of current blood borne pathogens training from an Agency approved provider;

(e) Submit proof of being 18 years of age documentation may include identification listed under OAR 331-030-0000;

(f) Submit proof of having a high school diploma or equivalent; and

(g) Provide documentation of completing a qualifying pathway;

(2) License Pathway 1 — Graduate from an Oregon Licensed Career School for Specialty Level Two Genital Piercing:

(a) Submit official transcript from a specialty level two genital piercing career school under ORS 345 and showing proof of completion of required specialty level two genital piercing curriculum as approved by the Agency under OAR 331-905-0010 (1) through (6);

(b) If applicable, pay examination fees;

(c) Submit passing score of the Agency approved standard body piercing written examinations in accordance with OAR 331-900-0060 (2) and (3). Completion of the written examination is not required if the applicant has passed the examinations listed under OAR 331-900-0060 (2) and (3) within two years before the date of application; and

(d) Upon passage of all required examinations, if applicable, and before issuance of license, applicant must pay all license fees.

(3) License Pathway 2 — Qualification through Specialty Level Two Genital Piercing Temporary Trainee License:

(a) Submit documentation approved by the Agency showing proof of having completed required specialty level two genital training listed under OAR 331-905-0010 (7) through (11), verified by a supervisor approved under OAR 331-905-0060 on a form prescribed by the Agency;

(b) If applicable, pay examination fees;

(c) Submit passing score of the Agency approved standard body piercing written examinations in accordance with OAR 331-900-0060 (2) and (3). Completion of the written examination is not required if the applicant has passed the examinations listed under OAR 331-900-0060 (2) and (3) within two years before the date of application; and

(d) Upon passage of all required examinations, if applicable, and before issuance of license, applicant must pay all license fees.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats. Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 6-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-28-13

## 331-905-0070

### Approved Specialty Body Piercing Examinations

The Agency has approved the following examinations for specialty body piercing:

(1) Written specialty level one genital piercing examination;

(2) Written specialty level two genital piercing examination; or

(3) Oregon safety, sanitation and infection control written examination;

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats. Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12; Suspended by HLA 6-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-28-13

## 331-905-0080

### Written Examination Retake Requirements

Individuals failing the written examination must meet the requirements listed under OAR 331-900-0070 before taking the examination a subsequent time.

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345  
Stats. Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35  
Hist.: HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 6-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-28-13

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## Oregon Housing and Community Services Department Chapter 813

**Rule Caption:** Adopts statutory amendments regarding contested case hearings and education requirements

**Adm. Order No.:** OHCS 2-2013(Temp)

**Filed with Sec. of State:** 3-21-2013

**Certified to be Effective:** 3-21-13 thru 9-17-13

**Notice Publication Date:**

**Rules Amended:** 813-007-0005, 813-007-0040

**Subject:** 813-007-0005 Amends the statutory references as well and removes language adopted within 2005 OL Ch. 619, as amended by 2009 OL Ch. 816 and repealed in 2011 OL Ch. 503, sec 21

813-007-0040 Amends the education requirements for persons in manufactured dwelling parks who has authority to manage the premises of the park from six hours to four hours of continuing education every two years.

**Rules Coordinator:** Sandy McDonnell—(503) 986-2012

### 813-007-0005

#### General Purpose

OAD chapter 813, division 007 is adopted to implement section 9, chapter 816, Oregon Laws 2009, and sections 2, 3 and 4, chapter 619, Oregon Laws 2005, as amended by sections 10 to 12, chapter 816, Oregon Laws 2009, and sections 19, and 21, chapter 503, Oregon Laws 2011 for the purpose of regulating manufactured dwelling parks. These rules pertain to:

- (1) Manufactured dwelling park advisory committee.
- (2) Annual registration procedures.
- (3) Annual registration charges.
- (4) Annual registration notification reminders.
- (5) Annual registration changes.
- (6) Manufactured dwelling park continuing education requirements.
- (7) Continuing education notification reminders.
- (8) Approval of statewide nonprofit trade association trainers.
- (9) Civil penalty assessment for noncompliance.
- (10) Liens for noncompliance.
- (11) Contested case hearings.

Stat. Auth.: 2005 OL Ch. 619, Sec. 2, 3 & 4, 2009 OL Ch. 816, Sec. 9 & 2011 OL Ch. 503, Sec. 21  
Stats. Implemented: 2009 OL Ch. 816 & 2011 OL Ch. 503  
Hist.: OHCS 1-2010, f. & cert. ef. 1-7-10; OHCS 2-2013(Temp), f. & cert. ef. 3-21-13 thru 9-17-13

### 813-007-0040

#### Manufactured Dwelling Park Continuing Education Requirements

(1) At least one person for each manufactured dwelling park who has authority to manage the premises of the park shall, every two years, complete four hours of continuing education satisfactory to the department relating to the management of manufactured dwelling parks. The training must be completed by personally attending classes and cannot be satisfied by remote, self-study or online training.

(2) The following apply for a person whose continuing education is required:

(a) If there is any manager or owner who lives in the park, the person completing the continuing education must be a manager or owner who lives in the park.

(b) If no manager or owner lives in the park, the person completing the continuing education must be a manager who lives outside the park, or if there is no manager, an owner of the park.

(c) A manager or owner may satisfy the continuing education requirement for more than one park that does not have a manager or owner who lives in the park.

(3) If a person becomes the manufactured dwelling park manager or owner who is responsible for completing continuing education, and the person does not have a current certificate of completion issued under 813-007-0040(4)(d), the person shall complete the continuing education requirement by taking the next regularly scheduled continuing education class or by taking a continuing education class held within 75 days.

(4) The department will ensure that:

(a) Continuing education classes are offered at least once every six months;

(b) Continuing education classes are offered by a statewide nonprofit trade association in Oregon representing manufactured housing interests and approved by the department;

(c) Continuing education classes have at least one-half of the class instruction on one or more of the provisions of ORS Chapter 90, 105.105 to 105.168, fair housing law or other law relating to landlords and tenants;

(d) Continuing education providers provide a certificate of completion to all attendees; and

(e) Continuing education providers provide the department with the following information:

(A) The name and title (owner or manager) of each person who attends a class;

(B) The name of the attendee's manufactured dwelling park;

(C) The city or county in which the attendee's park is located;

(D) The date of the class; and

(E) The names of the persons who taught the class.

(5) The department, a trade association or instructor is not responsible for the conduct of a manufactured dwelling park landlord, manager, owner or other person attending a continuing education class under this section. This section does not create a cause of action against the department, a trade association or instructor related to the continuing education class.

(6) The owner of a manufactured dwelling park is responsible for ensuring compliance with the continuing education requirements in this section.

Stat. Auth.: 2005 OL Ch. 619, Sec. 2, 3 & 4, 2009 OL Ch. 816 & 2011 OL Ch. 503, Sec. 19  
Stats. Implemented: 2009 OL Ch. 816, 2011 OL Ch. 503 & 2011 OL Ch. 503, Sec. 19  
Hist.: OHCS 1-2010, f. & cert. ef. 1-7-10; OHCS 2-2013(Temp), f. & cert. ef. 3-21-13 thru 9-17-13

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**Rule Caption:** Adopts the Attorney General's Mediation Confidentiality Rules

**Adm. Order No.:** OHCS 3-2013

**Filed with Sec. of State:** 3-28-2013

**Certified to be Effective:** 3-28-13

**Notice Publication Date:** 2-1-2013

**Rules Adopted:** 813-004-0001, 813-004-0002

**Rules Repealed:** 813-004-0001(T), 813-004-0002(T)

**Subject:** 813-004-0001 Adopts the Attorney General's model rule for Confidentiality and Inadmissibility of Mediation Communications

813-004-0002 Adopts the Attorney General's model rule for Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediations

**Rules Coordinator:** Sandy McDonnell—(503) 986-2012

### 813-004-0001

#### Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

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(d) Mediation in which two or more public bodies and a private entity are parties if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation;

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule; or

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must refer to this mediation confidentiality rule.

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise

confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation, or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation, or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712, or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege, or

(B) Attorney work product prepared in anticipation of litigation or for trial, or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency, or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation, or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Oregon Housing and Community Services Director or designee determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under 17.095 or state or federal law requires the terms to be confidential.

(p) In any mediation in a case that that has been filed in court or when a public body's role in a mediation is solely to make mediation available to the parties the mediator may report the disposition of the mediation to that public body or court at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency conducting the mediation or making the mediation available or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(q) Notwithstanding this rule, a written agreement executed pursuant to section (8) of this rule may be introduced into evidence in a subsequent proceeding.

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this

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rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224  
Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232  
Hist.: OHCS 5-2012(Temp), f. & cert. ef. 10-15-12 thru 4-12-13; OHCS 3-2013, f. & cert. ef. 3-28-13

## 813-004-0002

### Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)-(j) of section (7) of this rule.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation, and;

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator, and

(B) Is designated by the agency to authorize confidentiality for the mediation, and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224  
Stats. Implemented: ORS 36.230(4)  
Hist.: OHCS 5-2012(Temp), f. & cert. ef. 10-15-12 thru 4-12-13; OHCS 3-2013, f. & cert. ef. 3-28-13

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**Oregon Medical Board**  
**Chapter 847**

**Rule Caption:** Organizing and clarifying fee schedule

**Adm. Order No.:** OMB 5-2013

**Filed with Sec. of State:** 4-5-2013

**Certified to be Effective:** 4-5-13

**Notice Publication Date:** 12-1-2012

**Rules Amended:** 847-005-0005

**Rules Repealed:** 847-005-0005(T)

**Subject:** Rule amendment reorganizes the fee schedule for accuracy and clarity, deletes charges for certain information requests that are no longer offered due to electronic availability of the information, and corrects a typo in the fines for delinquent registrations for physicians and podiatrists.

**Rules Coordinator:** Nicole Krishnaswami—(971) 673-2667

### 847-005-0005

#### Fees

(1) Licensing Fees:

(a) Doctor of Medicine/Doctor of Osteopathy (MD/DO) Initial License Application — \$375.

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(b) MD/DO Registration: Active, Administrative Medicine, Inactive, Locum Tenens, Military/Public Health, Telemedicine, Telemonitoring and Teleradiology — \$232/year\*.

(c) MD/DO Registration: Emeritus — \$50/year.

(d) MD/DO Limited License, SPEX/COMVEX, Visiting Professor, Fellow, Medical Faculty, Postgraduate, Special Application — \$185.

(e) Acupuncture Initial License Application — \$245.

(f) Acupuncture Registration: Active, Inactive, Locum Tenens and Military/Public Health — \$148/year\*.

(g) Acupuncture Registration: Emeritus — \$50/year.

(h) Acupuncture Limited License, Special, Visiting Professor, Postgraduate Application — \$75.

(i) Physician Assistant Initial License Application — \$245.

(j) Physician Assistant Registration: Active, Inactive, Locum Tenens and Military/Public Health — \$175/year\*.

(k) Physician Assistant Registration: Emeritus — \$50/year.

(l) Physician Assistant Limited License, Special, Postgraduate Application — \$75.

(m) Podiatrist Initial Application — \$340.

(n) Podiatrist Registration: Active, Administrative Medicine, Inactive, Locum Tenens, Military/Public Health, Telemedicine and Telemonitoring — \$222/year\*.

(o) Podiatrist Registration: Emeritus — \$50/year.

(p) Podiatrist Limited License, Special, Postgraduate Application — \$185.

(q) Reactivation Application Fee — \$50.

(r) Electronic Prescription Drug Monitoring Program — \$25/year\*\*.

(s) Workforce Data Fee — \$5/license period\*\*\*.

(t) Oral Specialty or Competency Examination (\$1,000 deposit required) — Actual costs.

(2) Delinquent Registration Renewals:

(a) Delinquent MD/DO Registration Renewal — \$195.

(b) Delinquent Acupuncture Registration Renewal — \$80.

(c) Delinquent Physician Assistant Registration Renewal — \$80.

(d) Delinquent Podiatrist Registration Renewal — \$195.

(3) Licensee Information Request Charges:

(a) Verification of Licensure — Individual Requests (1-4 Licenses) — \$10 per license.

(b) Verification of Licensure — Multiple (5 or more) — \$7.50 per license.

(c) Malpractice Report — Individual Requests — \$10 per license.

(d) Malpractice Report — Multiple (monthly report) — \$15 per report.

(e) Disciplinary — Individual Requests — \$10 per license.

(4) Base Service Charges for Copying — \$5 + .20/page.

(5) Record Search Charges (+ copy charges in section (4) of this rule):

(a) Clerical — \$20 per hour.

(b) Administrative — \$40 per hour.

(c) Executive — \$50 per hour.

(d) Medical — \$75 per hour.

(6) Data Order Charges:

(a) Standard Licensee Data Order — \$150 each.

(b) Custom Licensee Data Order — \$150.00 + \$40.00 per hour

Administrative time.

(c) Address Label Disk — \$100 each.

(7) All Board fees and fines are non-refundable and non-transferable.

+ Per ORS 677.290(3), fee includes \$10.00 for the Oregon Health and Science University Library.

\* Collected biennially excepted where noted in the Administrative Rules.

\*\* Per ORS 431.960-431.978, fee is assessed to licensees authorized to prescribe or dispense controlled substances in Oregon for the purpose of creating and maintaining the Prescription Drug Monitoring Program administered by the Oregon Health Authority.

\*\*\*Per ORS 676.410, fee is assessed for the purpose of creating and maintaining a healthcare workforce data base administered by the Oregon Health Authority.

Stat. Auth.: ORS 431.972, 676.410, 677.265 & 677.290

Stats. Implemented: ORS 431.972, 676.410, 677.265 & 677.290

Hist.: ME 7-1984, f. & ef. 1-26-84; ME 17-1984, f. & ef. 11-5-84; ME 6-1985, f. & ef. 7-30-85; ME 3-1986(Temp), f. & ef. 4-23-86; ME 4-1986, f. & ef. 4-23-86; ME 9-1986, f. & ef. 7-31-86; ME 2-1987, f. & ef. 1-10-87; ME 7-1987(Temp), f. & ef. 1-26-87; ME 9-1987, f. & ef. 4-28-87; ME 25-1987, f. & ef. 11-5-87; ME 9-1988, f. & cert. ef. 8-5-88; ME 14-1988, f. & cert. ef. 10-20-88; ME 1-1989, f. & cert. ef. 1-25-89; ME 5-1989(Temp), f. & cert. ef. 2-16-89; ME 6-1989, f. & cert. ef. 4-27-89; ME 9-1989(Temp), f. & cert. ef. 8-1-89; ME 17-1989, f. & cert. ef. 10-20-89; ME 4-1990, f. & cert. ef. 4-25-90; ME 9-1990, f. & cert. ef. 8-2-90; ME 5-1991, f. & cert. ef. 7-24-91; ME 11-1991(Temp), f. & cert. ef. 10-21-91; ME 6-1992, f. & cert. ef. 5-26-92; ME 1-1993, f. & cert. ef. 1-29-93; ME 13-1993, f. & cert. ef. 11-1-93; ME 14-1993(Temp), f. & cert. ef. 11-1-93; ME 1-1994, f. & cert. ef. 1-24-94; ME 6-1995, f. & cert. ef. 7-28-95; ME 7-1996, f. & cert. ef. 10-29-96; ME 3-1997, f. & cert. ef. 11-3-97; BME 7-1998, f. & cert. ef. 7-22-98; BME 7-1999, f. & cert. ef. 4-22-99; BME 10-1999, f. & cert. ef. 8-3-99; BME 14-1999, f. & cert. ef. 10-28-99; BME 4-2000, f. & cert. ef. 2-22-00; BME 6-2001(Temp), f. & cert. ef. 7-18-01 thru 11-30-01; BME 10-2001, f. & cert.

ef. 10-30-01; BME 8-2003, f. & cert. ef. 4-24-03; BME 16-2003, f. & cert. ef. 10-23-03; BME 17-2004, f. & cert. ef. 9-9-04; BME 6-2005, f. & cert. ef. 7-20-05; BME 15-2006, f. & cert. ef. 7-25-06; BME 1-2007, f. & cert. ef. 1-24-07; BME 1-2008, f. & cert. ef. 1-22-08; BME 15-2008, f. & cert. ef. 7-21-08; BME 1-2009, f. & cert. ef. 1-22-09; BME 15-2009(Temp), f. & cert. ef. 9-11-09 thru 3-8-10; BME 1-2010, f. & cert. ef. 1-26-10; OMB 10-2011(Temp), f. & cert. ef. 7-13-11 thru 1-4-12; OMB 18-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; OMB 22-2011, f. & cert. ef. 10-18-11; OMB 33-2011(Temp), f. & cert. ef. 1-1-12 thru 6-29-12; OMB 3-2012, f. & cert. ef. 2-10-12; OMB 9-2012(Temp), f. & cert. ef. 3-2-12 thru 8-29-12; OMB 20-2012, f. & cert. ef. 8-3-12; OMB 27-2012(Temp), f. & cert. ef. 10-12-12 thru 4-10-13; OMB 5-2013, f. & cert. ef. 4-5-13

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**Rule Caption:** Renumbers rule requiring fingerprint background checks and clarifies that fingerprints must be legible

**Adm. Order No.:** OMB 6-2013

**Filed with Sec. of State:** 4-5-2013

**Certified to be Effective:** 4-5-13

**Notice Publication Date:** 2-1-2013

**Rules Ren. & Amend:** 847-020-0155 to 847-008-0068

**Subject:** The rule amendment moves (renumbers) the rule on criminal records checks from Division 020 to Division 008 to accurately show that it applies to all Board applicants and licensees. Rule amendment also clarifies that the submitted fingerprints must be legible.

**Rules Coordinator:** Nicole Krishnaswami—(971) 673-2667

## 847-008-0068

### State and Nationwide Criminal Records Checks, Fitness Determinations

(1) The purpose of these rules is to provide for the reasonable screening of applicants and licensees in order to determine if they have a history of criminal behavior such that they are not fit to be granted or renewed a license that is issued by the Board.

(2) These rules are to be applied when evaluating the criminal history of an applicant or licensee and conducting fitness determinations based upon such history. The fact that an applicant or licensee has cleared the criminal history check does not guarantee the granting or renewal of a license.

(3) The Board may require legible fingerprints of all applicants for a medical (MD/DO), podiatric (DPM), physician assistant (PA), and acupuncturist (LAc) license, licensees reactivating their license, licensees renewing their license and licensees under investigation to determine the fitness of an applicant or licensee. These fingerprints will be provided on prescribed forms made available by the Board. Fingerprints may be obtained at a law enforcement office or at a private service acceptable to the Board; the Board will submit fingerprints to the Oregon Department of State Police to conduct a Criminal History Check and a National Criminal History Check. Any original fingerprint cards will subsequently be destroyed.

(4) The Board will determine whether an applicant or licensee is fit to be granted a license based on the criminal records background check, any false statements made by the applicant or licensee regarding the criminal history of the individual, any refusal to submit or consent to a criminal records check including fingerprint identification, and any other pertinent information obtained as part of an investigation. If an applicant is determined to be unfit, the applicant may not be granted a license. If the licensee is determined to be unfit, the licensee's license may not be reactivated or renewed. The Board may make a fitness determination conditional upon applicant's or licensee's acceptance of probation, conditions, limitations, or other restrictions upon licensure.

(5) In making the fitness determination, the Board will consider:

(a) The nature of the crime;

(b) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the applicant's or licensee's present or proposed license; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the license. Intervening circumstances include but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the applicant or licensee 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

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(F) A recommendation of an employer.

(6) All background checks must include available state and national data, unless obtaining one or the other is an acceptable alternative.

(7) In order to conduct the Oregon and National Criminal History Check and fitness determination, the Board may require additional information from the licensee or applicant as necessary, such as but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial or other background information.

(8) Criminal offender information is confidential. Information received may be disseminated 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).

(9) The Board will permit the individual for whom a fingerprint-based criminal records check was conducted to inspect the individual's own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.

(10) 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 and court records that may be indicative of an individual's inability to perform as a licensee with care and safety to the public.

(11) If an applicant or licensee is determined not to be fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.414-183.470. Challenges to the accuracy or 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.

(12) If the applicant discontinues the application process or fails to cooperate with the criminal history check process, the application is considered incomplete.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 181.534, 677.100, 677.265

Hist. BME 20-2006(Temp), f. & cert. ef. 9-14-06 thru 3-12-07; BME 4-2007, f. & cert. ef. 1-24-07; BME 4-2008, f. & cert. ef. 1-22-08; OMB 20-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; OMB 5-2012, f. & cert. ef. 2-10-12; OMB 10-2012(Temp), f. & cert. ef. 3-2-12 thru 8-29-12; OMB 24-2012, f. & cert. ef. 8-3-12; Renumbered from 847-020-0155 by OMB 6-2013, f. & cert. ef. 4-5-13

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**Rule Caption:** License renewal registration certificates may be provided electronically

**Adm. Order No.:** OMB 7-2013

**Filed with Sec. of State:** 4-5-2013

**Certified to be Effective:** 4-5-13

**Notice Publication Date:** 2-1-2013

**Rules Amended:** 847-008-0040

**Rules Repealed:** 847-008-0040(T)

**Subject:** The rule amendment reflects the Board's online registration renewal process and the Board's provision of certificates of registration electronically rather than by mail. The rule amendment also reorganizes the subsections, streamlines the language, and contains general grammar and housekeeping changes.

**Rules Coordinator:** Nicole Krishnaswami—(971) 673-2667

## 847-008-0040

### Process of Registration

(1) The application for registration must be submitted to the Board by the first day of the month in which the license is due to expire.

(2) The application for registration must be accompanied by the appropriate fee as listed in 847-005-0005.

(3) At its discretion, the Board may waive the fee for good and sufficient reason.

(4) 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 for registration must include any updates to existing practice agreements or Board-approved practice descriptions for every physician assistant the licensee supervises.

(5) If the licensee has been out of practice for more than 12 consecutive months or there are other concerns regarding the licensee's medical competency or fitness to practice, the Board may renew licensee at Inactive status once the license renewal form has been completed satisfactorily.

(6) The Board must provide to all licensees who have complied with this section a certificate of registration, which must be displayed in a prominent place in the licensee's primary practice location through the end of the last business day of the registration period.

(7) Omissions or false, misleading or deceptive statements or information on an application for registration is a violation of ORS 677.190(8) and is grounds for a \$195 fine. The licensee may be subject to further disciplinary action by the Board.

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; OMB 4-2012, f. & cert. ef. 2-10-12; OMB 22-2012, f. & cert. ef. 8-3-12; OMB 4-2013(Temp), f. & cert. ef. 1-11-13 thru 7-10-13; OMB 7-2013, f. & cert. ef. 4-5-13

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**Rule Caption:** Clarifies that electronic records are "health information" and corrects a statutory reference

**Adm. Order No.:** OMB 8-2013

**Filed with Sec. of State:** 4-5-2013

**Certified to be Effective:** 4-5-13

**Notice Publication Date:** 2-1-2013

**Rules Amended:** 847-012-0000

**Subject:** The rule amendment clarifies that electronic records are also "health information" for the purpose of these rules and corrects statutory references due to amendments of the implemented ORS.

**Rules Coordinator:** Nicole Krishnaswami—(971) 673-2667

## 847-012-0000

### Patient's Access to Medical Records

(1) Licensees of the Oregon Medical Board must make protected health information in the medical record available to the patient or the patient's representative upon their request, to inspect and obtain a copy of protected health information about the individual, except as provided by law and this rule. The patient may request all or part of the record. A summary may substitute for the actual record only if the patient agrees to the substitution. Board licensees are encouraged to use the written authorization form provided by ORS 192.566.

(2) For the purpose of this rule, "health information in the medical record" means any oral, written or electronic information in any form or medium that is created or received and relates to:

- (a) The past, present, or future physical or mental health of the patient.
- (b) The provision of healthcare to the patient.

(c) The past, present, or future payment for the provision of healthcare to the patient.

(3) Upon request, the entire health information record in the possession of the Board licensee will be provided to the patient. This includes records from other healthcare providers. Information which may be withheld includes:

(a) Information which was obtained from someone other than a healthcare provider under a promise of confidentiality and access to the information would likely reveal the source of the information;

(b) Psychotherapy notes;

(c) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and

(d) Other reasons specified by federal regulation.

(4) Licensees who have retired, failed to renew their license, relocated their practice out of the area, had their license revoked, or had their license suspended for one year or more must notify each patient seen within the previous two years and the Oregon Medical Board of the change in licensee's status and how patients may access or obtain their medical records. Notifications must be in writing and sent by regular mail to each patient's last known address within 45 days of the change in licensee's status.

(5) Licensees who have been suspended for less than one year must notify the Board within 10 days of the suspension how patients may access or obtain their medical records.

(6) A reasonable cost may be imposed for the costs incurred in complying with the patient's request for health information. These costs may include:

(a) No more than \$30 for copying 10 or fewer pages of written material, and no more than 50 cents per page for pages 11 through 50, and no more than 25 cents for each additional page;

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(b) A bonus charge of \$5 if the request for records is processed and the records are mailed by first class mail to the requester within seven business days after the date of the request;

(c) Postage costs to mail copies of the requested records;

(d) Actual costs of preparing an explanation or summary of the health information, if such information is requested by the patient; and

(e) Actual costs of reproducing films, x-rays, or other reports maintained in a non-written form.

(7) A patient may not be denied summaries or copies of his/her medical records because of inability to pay.

(8) Requests for medical records must be complied with within a reasonable amount of time not to exceed 30 days from the receipt of the request.

(9) Violation of this rule will result in a \$195 fine and may be cause for further disciplinary action by the Board.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 192.553, 192.556, 192.558, 192.563, 192.566, 677.265

Hist.: ME 7-1988, f. & cert. ef. 4-20-88; BME 1-2004, f. & cert. ef. 1-27-04; BME 18-2004, f. & cert. ef. 10-20-04; BME 17-2008, f. & cert. ef. 7-21-08; OMB 24-2011, f. & cert. ef. 10-18-11; OMB 8-2013, f. & cert. ef. 4-5-13

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**Rule Caption:** Reorganizes and updates the rules on licensure

**Adm. Order No.:** OMB 9-2013

**Filed with Sec. of State:** 4-5-2013

**Certified to be Effective:** 4-5-13

**Notice Publication Date:** 2-1-2013

**Rules Amended:** 847-020-0100, 847-020-0110, 847-020-0120, 847-020-0130, 847-020-0140, 847-020-0150, 847-020-0160, 847-020-0170, 847-020-0182, 847-020-0183, 847-020-0190

**Rules Repealed:** 847-020-0180

**Subject:** Overall, the rule amendments reorganize the rules in this division to be more concise and update the rules to reflect a simplified application process that has evolved with advancements in technology and availability of electronic documents. Specifically, the rule amendments streamline the definitions; clarify the requirements for a license after the first post-graduate year; remove the requirement for licensing staff to verify the accreditation of each medical school clerkship for international graduates; removes contradictory language about postgraduate training requirements for international graduates; removes the discussion of the Limited License Visiting Professor in favor of its primary location in OAR Chapter 847, Division 10; requires documents in a foreign language to be submitted with an official translation; removes references to a paper application form; revises the requirements for a photograph so that it may be submitted digitally; updates the name of the Practitioner Self-Query for the DataBanks; includes fingerprints within the rule on documents to be submitted for licensure; clarifies that the Board may ask for additional documents regarding information received during the processing of the application; clarifies that a Verification of Medical Education form must include dates of attendance; includes the ECFMG certificate among the documents that must be sent to the Board from the source; clarifies that license verifications are required from international licensing boards in addition to licensing boards within the United States; reorganizes the list of examinations that may be used to apply for licensure; adds an "extenuating circumstances" waiver for the requirement that the USMLE or NBOME must be passed within seven years; adds a "board certification" waiver for the requirement that the FLEX examination must be passed within four attempts; incorporates licensing examinations administered by other state boards among the examinations accepted by the Board for licensure based upon reciprocity and repeals the independent rule addressing this issue; and simplifies the discussion of the Limited License SPEX by referring to the rule describing this license status in OAR Chapter 847, Division 10.

**Rules Coordinator:** Nicole Krishnaswami—(971) 673-2667

## 847-020-0100

### Definitions

For the purpose of OAR chapter 847, division 020, the following terms are defined:

(1) "Approved school of medicine" means a school offering a full-time resident program of study in medicine or osteopathy leading to a degree of Doctor of Medicine or Doctor of Osteopathy, such program having been fully accredited or conditionally approved by the Liaison Committee on Medical Education, or its successor agency, or the American Osteopathic Association, or its successor agency, or having been otherwise determined by the Board to meet the association standards.

(2) "School of medicine" means approved schools of medicine (as defined above) and international medical and osteopathic schools.

(3) "Specialty board" means a certification board recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialties (AOA-BOS).

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.010 & 677.265

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 6-2010, f. & cert. ef. 4-26-10; OMB 9-2013, f. & cert. ef. 4-5-13

## 847-020-0110

### Application for Licensure and Personal Interview

(1) Any person who wishes to practice medicine in this state beyond the first post-graduate training year must apply for an Oregon license to practice medicine.

(2) When applying for licensure, the applicant must submit to the Board the completed application, fees, documents and letters.

(3) A person applying for licensure under these rules who has not completed the licensure process within a 12 month consecutive period must file a new application, documents, letters and pay a full filing fee as if filing for the first time.

(4) The applicant may be required to appear before the Board for a personal interview regarding information received during the processing of the application.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.100

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 4-2007, f. & cert. ef. 1-24-07; OMB 9-2013, f. & cert. ef. 4-5-13

## 847-020-0120

### Basic Requirements for Licensure of an Approved Medical School Graduate

The following requirements for licensure must be met by graduates of an approved school of medicine:

(1) Must have graduated from a school offering a full-time resident program of study in medicine or osteopathy leading to a degree of Doctor of Medicine or Doctor of Osteopathy, such program having been fully accredited or conditionally approved by the Liaison Committee of Medical Education, or the American Osteopathic Association, or having been otherwise determined by the Board to meet the association standards;

(2) Must satisfactorily complete an approved internship, residency or fellowship in the United States or Canada of at least one year in not more than one training program accredited for internship, residency or fellowship training by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, the College of Family Physicians of Canada, or the Royal College of Physicians and Surgeons of Canada;

(3) Must pass a written licensing examination as provided in ORS 677.110 and OAR 847-020-0170; and

(4) Must satisfactorily meet the requirements of ORS 677.100.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.100 & 677.110

Hist. BME 9-2001, f. & cert. ef. 7-24-01; OMB 9-2013, f. & cert. ef. 4-5-13

## 847-020-0130

### Basic Requirements for Licensure of an International Medical School Graduate

The following requirements must be met in lieu of graduation from an approved school of medicine in order to qualify under ORS 677.100:

(1) Must speak English fluently and write English legibly.

(2) Must have graduated from an international school of medicine:

(a) The medical school must be chartered in the country in which it is located and must provide a resident course of professional instruction, be accredited by an accrediting organization acceptable to the Board, or be recognized by the appropriate civil authorities of the country in which the school is located as an acceptable education program. The Board may determine that the accreditation of an international medical school is not acceptable if the Board receives documentation that the medical school has had its authorization, accreditation, certification or approval denied or removed by any state, country or territorial jurisdiction or that its graduates were refused a license by any state, country or territorial jurisdiction on the



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grounds that the school failed or fails to meet reasonable standards for medical education facilities.

(b) The graduate must have attended at least four full terms of instruction of eight months each, with all courses having been completed by physical on-site attendance in the country in which the school is chartered. The requirement for four full terms of instruction of eight months each term may be waived for any applicant for licensure who has graduated from an international school of medicine, has substantially complied with the attendance requirements provided herein, and is certified by a specialty board.

(c) Any clinical clerkships obtained in a country other than that in which the school is chartered must be satisfactorily completed.

(d) If requested, the applicant must provide the Board with documentation to substantiate that the medical school from which the applicant graduated meets the requirements in subsection (2)(a) of this rule.

(3) Must have obtained certification by the Educational Commission for Foreign Medical Graduates. This requirement may be waived if:

(a) The accredited postgraduate training was completed in Canada; or

(b) The accredited postgraduate training was completed prior to the enforcement of the ECFMG certification; or

(c) The applicant has been certified by a specialty board; or

(d) The applicant has successfully completed a Fifth Pathway training program.

(4) Must have satisfactorily completed an approved internship, residency or clinical fellowship in the United States or Canada of at least three years of progressive training in not more than two specialties in training programs accredited for internship, residency or fellowship training by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, the College of Family Physicians of Canada or the Royal College of Physicians and Surgeons of Canada.

(a) The following may be used in lieu of the three years of postgraduate training:

(A) Current certification by a specialty board; or

(B) Successful completion of four years of practice in Oregon under a Limited License, Medical Faculty, in accordance with OAR 847-020-0140(1); or

(C) Successful completion of four years of practice in another United States jurisdiction under a license substantially similar to the Limited License, Medical Faculty.

(b) If the applicant is unable to satisfy the requirement in section (4) of this rule for postgraduate training, and the applicant has been granted a dispensation by a specialty board whereby the specialty board has granted credit for postgraduate training completed abroad toward fulfillment of the requirements for admission to a future specialty board's certification examination, the Board may consider the dispensation as fulfilling that same portion of the Board's requirement for postgraduate training.

(5) Must pass a written licensure examination as provided in ORS 677.110 and OAR 847-020-0170.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.100, 677.110 & 677.265

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 8-2002, f. & cert. ef. 7-17-02; BME 10-2004(Temp), f. & cert. ef. 4-22-04 thru 10-15-04; BME 15-2004, f. & cert. ef. 7-13-04; BME 8-2005, f. & cert. ef. 7-20-05; BME 4-2006(Temp), f. & cert. ef. 2-8-06 thru 7-7-06; BME 10-2006, f. & cert. ef. 5-8-06; BME 20-2007, f. & cert. ef. 10-24-07; BME 4-2009, f. & cert. ef. 1-22-09; BME 6-2010, f. & cert. ef. 4-26-10; BME 11-2010(Temp), f. & cert. ef. 7-26-10 thru 1-10-11; BME 17-2010, f. & cert. ef. 10-25-10; OMB 9-2013, f. & cert. ef. 4-5-13

## 847-020-0140

### Limited License, Medical Faculty Qualifications

(1) Any physician who does not qualify for a medical license under any of the provisions of this chapter and who is offered by the Dean of an approved medical school in this state a full-time faculty position may, after application to and approval by the Board, be granted a Limited License, Medical Faculty to engage in the practice of medicine only to the extent that such practice is incident to and a necessary part of the applicant's duties as approved by the Board in connection with such faculty position.

(2) To qualify for a Limited License, Medical Faculty an applicant must meet all the following requirements:

(a) Furnish documentary evidence satisfactory to the Board that the applicant is a United States citizen or is legally admitted to the United States.

(b) Furnish documentary evidence satisfactory to the Board that the applicant has been licensed to practice and has practiced medicine and surgery for not less than four years in another state or country whose requirements for licensure are satisfactory to the Board, or has been engaged in the practice of medicine in the United States for at least four years in approved hospitals, or has completed a combination of such licensed practice and training.

(c) The dean of the medical school must certify in writing to the Board that the applicant has been appointed to a full-time faculty position; that a position is available; and that because the applicant has unique expertise in a specific field of medicine, the medical school considers the applicant to be a valuable member of the faculty.

(d) The head of the department in which the applicant is to be appointed must certify in writing to the Board that the applicant will be under the direction of the head of the department and will not be permitted to practice medicine unless as a necessary part of the applicant's duties as approved by the Board in subsection (1)(a) of this rule.

(e) The applicant may be required to take and pass an examination by the Board.

(3) A Limited License, Medical Faculty is valid for one year after issuance and may be renewed as frequently as needed for a total period not to exceed four years. The four years must be consecutive.

(4) Having completed four years of practice under a Limited License, Medical Faculty and successfully passed one of the examinations or combination of examinations per OAR 847-020-0170,

Stat. Auth.: ORS 677.132 & 677.265

Stats. Implemented: ORS 677.100, 677.110, 677.132 & 677.265

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 2-2002, f. & cert. ef. 1-28-02; BME 5-2002, f. & cert. ef. 4-23-02; BME 3-2006, f. & cert. ef. 2-8-06; BME 4-2007, f. & cert. ef. 1-24-07; BME 18-2008, f. & cert. ef. 7-21-08; BME 23-2008, f. & cert. ef. 10-31-08; OMB 9-2013, f. & cert. ef. 4-5-13

## 847-020-0150

### Documents and Forms to be Submitted for Licensure

The documents submitted must be legible and no larger than 8 1/2" x 11". All documents and photographs will be retained by the Board as a permanent part of the application file. If original documents are larger than 8 1/2" x 11", the copies must be reduced to the correct size with all wording and signatures clearly shown. Official translations are required for documents issued in a foreign language. The following documents are required:

(1) Application: Completed formal application provided by the Board. Required dates must include month, day and year.

(2) Birth Certificate: A copy of birth certificate.

(3) Medical School Diploma: A copy of a diploma showing graduation from an approved school of medicine or an international school of medicine.

(4) American Specialty Board Certificate or Recertification Certificate: A copy of the certificate issued by the American Specialty Board in the applicant's specialty, if applicable.

(5) Photograph: A close-up, passport quality photograph, front view, head and shoulders (not profile), with features distinct, taken within 90 days preceding the filing of the application.

(6) The results of a Practitioner Self-Query from the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank sent to the Board by the applicant.

(7) Legible fingerprints as described in 847-008-0068 for the purpose of a criminal records background check.

(8) An applicant must pass an open-book examination on the Medical Practice Act (ORS Chapter 677) and an open-book examination on the Drug Enforcement Administration's regulations governing the use of controlled substances. If an applicant fails one or both examinations three times, the applicant's application will be reviewed by the Board's Administrative Affairs Committee and the applicant must 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(s), before being given a fourth and final attempt to pass the examination(s). If the applicant does not pass the examination(s) on the fourth attempt, the applicant may be denied licensure.

(9) Any other documentation or explanatory statements as required by the Board.

Stat. Auth.: ORS 677.100 & 677.265

Stats. Implemented: ORS 677.010 & 677.265

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 3-2006, f. & cert. ef. 2-8-06; BME 15-2007, f. & cert. ef. 7-23-07; BME 20-2007, f. & cert. ef. 10-24-07; BME 6-2010, f. & cert. ef. 4-26-10; OMB 9-2013, f. & cert. ef. 4-5-13

## 847-020-0160

### Letters and Official Verifications to be Submitted for Licensure

The applicant must ensure that official documents are sent to the Board directly from:

(1) The Medical/Osteopathic School:

(a) A Dean's Letter of Recommendation must include a statement concerning the applicant's moral and ethical character and overall performance as a medical student. If the school attests that a Dean's Letter is

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unavailable or the Board determines that it is unacceptable, a copy of the transcripts may be acceptable.

(b) Verification of Medical Education form must include degree issued, date of degree, dates of attendance for each year, dates and reason for any leaves of absence or repeated years, and dates, name and location of school of medicine if a transfer student.

(2) The Fifth Pathway Hospital, if such applies: An evaluation of overall performance and specific beginning and ending dates of training.

(3) The Educational Commission for Foreign Medical Graduates: Verification of certification.

(4) The Director of Medical Education, Chairman or other official of the internship, residency and fellowship hospitals in the United States and other countries: An evaluation of overall performance, specialty and specific beginning and ending dates of training.

(5) The Director or other official for practice and employment in hospitals, clinics, etc. in the United States and foreign countries: A currently dated original letter (a copy is not acceptable), sent directly from the hospital/clinic, must include an evaluation of overall performance and specific beginning and ending dates of practice and employment, for the past five (5) years only. If the applicant has not practiced for more than two years, employment verifications will be required for the past ten (10) years. For physicians who have been or are in solo practice without hospital privileges at the time of solo practice, provide three reference letters from physicians in the local medical community who are familiar with the applicant's practice and who have known the applicant for more than six months.

(6) All health licensing boards in any jurisdiction where the applicant has ever been licensed; regardless of status, i.e., current, lapsed, never practiced there: Verification, sent directly from the boards, must show license number, date issued, examination grades if applicable and status.

(7) Official Examination Certifications: An official examination certification showing the examination score is required directly from the National Board of Medical Examiners, the National Board of Osteopathic Medical Examiners, the Medical Council of Canada, the Federation of State Medical Boards or the individual state administering the exam.

(8) The Federation of State Medical Boards: A Board Action Databank Inquiry report.

(9) Any other documentation as required by the Board, including but not limited to medical records and criminal or civil records.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.010, 677.100 & 677.265

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 8-2005, f. & cert. ef. 7-20-05; BME 15-2007, f. & cert. ef. 7-23-07; BME 18-2008, f. & cert. ef. 7-21-08; BME 6-2010, f. & cert. ef. 4-26-10; OMB 9-2013, f. & cert. ef. 4-5-13

## 847-020-0170

### Examination for Licensure

(1) The applicant must have passed one of the following examinations or combinations of examinations:

(a) United States Medical Licensing Examination (USMLE) Steps 1, 2, and 3.

(b) National Board of Osteopathic Medical Examiners (NBOME) examination or the Comprehensive Osteopathic Medical Licensing Examination (COMLEX) or any combination of their parts.

(c) Medical Council of Canada Qualifying Examination (MCCQE) Parts 1 and 2.

(d) Federation Licensing Examination (FLEX) Components 1 and 2 or FLEX Days I, II, and III.

(e) National Board of Medical Examiners (NBME) Parts I, II, and III.

(f) State licensing examination administered by a state or territory of the United States, if approved by the Board.

(g)(A) NBME Part I or USMLE Step 1; and

(B) NBME Part II or USMLE Step 2; and

(C) NBME Part III or USMLE Step 3 or FLEX Component 2.

(h) FLEX Component 1 and USMLE Step 3.

(2) The score achieved on each Step, Part, Component or state examination must equal or exceed the figure established by the entity administering the examination as a passing score.

(3) All Steps, Parts or Components listed in subsections (1)(g)-(h) must be administered prior to January 2000, except for applicants who participated in and completed a combined MD/DO/PhD program.

(4) The applicant who bases an application on passing the USMLE or the NBOME examination or the COMLEX must have done so under the following conditions:

(a) All three Steps of USMLE, or all three Levels of the NBOME examination or COMLEX or any combination, must be passed within a seven-year period which begins when the first Step or Level, either Step 1 or Step 2 or Level 1 or Level 2, is passed. An applicant who has not passed

all three Steps or Levels within the seven-year period may request an exception to the seven-year requirement if he/she:

(A) Has current certification by a specialty board as defined in 847-020-0100; or

(B) Suffered from a documented significant health condition which by its severity would necessarily cause a delay to the applicant's medical or osteopathic study; or

(C) Participated in a combined MD/DO/PhD program; or

(D) Completed continuous approved post-graduate training with the equivalent number of years to an MD/DO/PhD program; or

(E) Experienced other extenuating circumstances that do not indicate an inability to safely practice medicine as determined by the Board.

(b) The applicant must have passed USMLE Step 3 or NBOME's COMLEX Level 3 within four attempts whether for Oregon or any other state. After the third failed attempt, the applicant must have completed one additional year of postgraduate training in the United States or Canada prior to readmission to the examination. The Board must approve the additional year of training to determine whether the applicant is eligible for licensure. The applicant, after completion of the required year of training, must have passed USMLE Step 3 or COMLEX Level 3 on their fourth and final attempt. An applicant who has passed USMLE Step 3 or COMLEX Level 3, but not within the four attempts as required, may request a waiver of this requirement if he/she has current certification by a specialty board as defined in 847-020-0100.

(5) The applicant who bases an application upon passing the FLEX examination must have done so under the following conditions:

(a) The FLEX examination must have been passed within seven years of the first attempt. The applicant who has taken the FLEX examination (Day I, II, and III) administered between June 1968 and December 1984 must have taken the entire examination at one sitting. The applicant who has taken the FLEX examination (Components 1 and 2), in June 1985 or after, was not required to take both Components 1 and 2 at one sitting.

(b) The applicant may not have taken the FLEX examination more than a total of four times, whether in Oregon or other states, whether the components were taken together or separately. After the third failed attempt, the applicant must have satisfactorily completed one year of approved training in the United States or Canada prior to having taken the entire FLEX examination at one sitting on the fourth and final attempt. An applicant who has passed the FLEX examination but not within the four attempts may request a waiver of this requirement if he/she has current certification by a specialty board as defined in 847-020-0100.

(c) Only the applicant's scores on the most recently taken FLEX examination will be considered to determine eligibility.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.110, 677.120 & 677.265

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 5-2003, f. & cert. ef. 1-27-03; BME 10-2003, f. & cert. ef. 5-2-03; BME 14-2003(Temp), f. & cert. ef. 9-9-03 thru 3-1-04; BME 3-2004, f. & cert. ef. 1-27-04; BME 7-2004, f. & cert. ef. 4-22-04; BME 15-2004, f. & cert. ef. 7-13-04; BME 8-2005, f. & cert. ef. 7-20-05; BME 3-2006, f. & cert. ef. 2-8-06; BME 4-2006(Temp), f. & cert. ef. 2-8-06 thru 7-7-06; BME 10-2006, f. & cert. ef. 5-8-06; BME 20-2007, f. & cert. ef. 10-24-07; BME 18-2008, f. & cert. ef. 7-21-08; BME 6-2009(Temp), f. & cert. ef. 4-9-09 thru 10-2-09; Administrative correction 10-22-09; OMB 24-2012, f. & cert. ef. 8-3-12; OMB 9-2013, f. & cert. ef. 4-5-13

## 847-020-0182

### SPEX or COMVEX Requirements

(1) If an applicant for licensure or reactivation has not had sufficient postgraduate training or specialty board certification or recertification within the past 10 years, the applicant may be required to demonstrate clinical competency by passing the Special Purpose Examination (SPEX) or Comprehensive Osteopathic Medical Variable-Purpose Examination (COMVEX).

(2) The SPEX/COMVEX requirement may be waived if the applicant has done one or more of the following:

(a) Received a current appointment as Professor or Associate Professor at the Oregon Health and Science University or the Western University of Health Sciences College of Osteopathic Medicine of the Pacific; or

(b) Completed at least 50 hours of Board-approved continuing medical education each year for the past three years.

(3) The applicant who fails the SPEX or COMVEX three times, whether in Oregon or other states, must successfully complete one year of an accredited residency or an accredited or Board-approved clinical fellowship before retaking the SPEX or COMVEX.

(4) The applicant may be granted a Limited License, SPEX/COMVEX according to 847-010-0064.

(5) All rules, regulations and statutory requirements pertaining to the medical school graduate remain in full effect.

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Stat. Auth.: ORS 677.265  
Stats. Implemented: ORS 677.100, 677.132, 677.190 & 677.265  
Hist.: OMB 25-2012, f. & cert. ef. 8-3-12; OMB 9-2013, f. & cert. ef. 4-5-13

## 847-020-0183

### Re-Entry to Practice — SPEX or COMVEX Examination, Re-Entry Plan

If an applicant has ceased the practice of medicine for a period of 12 or more consecutive months immediately preceding the application for licensure or reactivation, the applicant may be required to demonstrate clinical competency.

(1) The applicant who has ceased the practice of medicine for a period of 12 or more consecutive months may be required to pass the Special Purpose Examination (SPEX) or Comprehensive Osteopathic Medical Variable-Purpose Examination (COMVEX). This requirement may be waived if the applicant has done one or more of the following:

(a) The applicant has received a current appointment as Professor or Associate Professor at the Oregon Health and Science University or the Western University of Health Sciences College of Osteopathic Medicine of the Pacific; or

(b) Subsequent to ceasing practice, the applicant has:

(A) Completed one year of an accredited residency, or

(B) Completed one year of an accredited or Board-approved clinical fellowship, or

(C) Been certified or recertified by a specialty board as defined in 847-020-0100, or

(D) Obtained continuing medical education to the Board's satisfaction.

(2) The applicant who has ceased the practice of medicine 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 applicant may be required to do one or more of the following:

(a) Pass the SPEX/COMVEX examination;

(b) Practice for a specified period of time under a mentor/supervising physician who will provide periodic reports to the Board;

(c) Obtain certification or re-certification by a specialty board as defined in 847-020-0100;

(d) Complete a re-entry program as determined appropriate by the Board;

(e) Complete one year of accredited postgraduate or clinical fellowship training, which must be pre-approved by the Board's Medical Director;

(f) Complete at least 50 hours of Board-approved continuing medical education each year for the past three years.

(3) The applicant who fails the SPEX or COMVEX examination three times, whether in Oregon or other states, must successfully complete one year of an accredited residency or an accredited or Board-approved clinical fellowship before retaking the SPEX or COMVEX examination.

(4) The applicant may be granted a Limited License, SPEX/COMVEX according to 847-010-0064.

(5) All of the rules, regulations and statutory requirements pertaining to the medical school graduate remain in full effect.

Stat. Auth.: ORS 677.265  
Stats. Implemented: ORS 677.100, 677.190 & 677.265  
Hist.: BME 20-2007, f. & cert. ef. 10-24-07; BME 4-2008, f. & cert. ef. 1-22-08; BME 6-2010, f. & cert. ef. 4-26-10; OMB 25-2011, f. & cert. ef. 10-18-11; OMB 9-2013, f. & cert. ef. 4-5-13

## 847-020-0190

### Denial of Licensure

An applicant may not be entitled to a license who:

(1) Has failed to pass a medical licensure examination for licensure in the State of Oregon;

(2) Has had a license revoked or suspended in this or any other state or country unless the said license has been restored or reinstated and the applicant's license is in good standing in the state or country which had revoked the same;

(3) Has been refused a license or certificate in any other state or country on any grounds other than failure in a medical licensure examination;

(4) Has been guilty of conduct similar to that which would be prohibited by or to which ORS 677.190 would apply; or

(5) Has been guilty of cheating or subverting the medical licensing examination process. Medical licensing examination means any examination given by the Board to an applicant for registration, certification or

licensure under this act. Evidence of cheating or subverting includes, but is not limited to:

(a) Copying answers from another examinee or permitting one's answers to be copied by another examinee during the examination;

(b) Having in one's possession during the examination any books, notes, written or printed materials or data of any kind, other than examination materials distributed by board staff, which could facilitate the applicant in completing the examination;

(c) Communicating with any other examinee during the administration of the examination;

(d) Removing from the examining room any examination materials;

(e) Photographing or otherwise reproducing examination materials.

Stat. Auth.: ORS 677.265  
Stats. Implemented: ORS 677.190  
Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 11-2003, f. & cert. ef. 7-15-03; OMB 9-2013, f. & cert. ef. 4-5-13

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**Rule Caption:** Addition of a public member to the EMS Committee  
**Adm. Order No.:** OMB 10-2013

**Filed with Sec. of State:** 4-5-2013

**Certified to be Effective:** 4-5-13

**Notice Publication Date:** 2-1-2013

**Rules Amended:** 847-035-0011

**Subject:** The rule amendment adds a position for a public member to the EMS Advisory Committee.

**Rules Coordinator:** Nicole Krishnaswami—(971) 673-2667

## 847-035-0011

### EMS Advisory Committee

(1) There is created an EMS Advisory Committee, consisting of six members appointed by the Oregon Medical Board. The Board must appoint two physicians, three emergency medical services providers from nominations provided from EMS agencies, organizations, and individuals, and one public member.

(a) The two physician members must be actively practicing physicians licensed under ORS Chapter 677 who are supervising physicians, medical directors, or practicing emergency medicine physicians.

(b) The three EMS members must be Oregon licensed emergency medical services providers for at least two years and have been residents of this state for at least two years. At least two of the three EMS members must be actively practicing prehospital care, and at least one of the three EMS members must be a Paramedic.

(c) Two of the six committee members must be from rural or frontier Oregon.

(d) The public member or the spouse, domestic partner, child, parent or sibling of the public member may not be employed as a health professional.

(2)(a) The term of office of a member of the committee is three years, and members may be reappointed to serve not more than two terms.

(b) Vacancies in the committee must be filled by appointment by the Board for the balance of an unexpired term, and each member must serve until a successor is appointed and qualified.

(3) The members of the advisory committee are entitled to compensation and expenses as provided for Board members in ORS 677.235.

Stat. Auth.: ORS 677.265  
Stats. Implemented: ORS 677.265 & 682.245  
Hist.: BME 12-2001, f. & cert. ef. 10-30-01; BME 18-2009, f. & cert. ef. 10-23-09; OMB 14-2012, f. & cert. ef. 4-17-12; OMB 30-2012, f. & cert. ef. 10-22-12; OMB 10-2013, f. & cert. ef. 4-5-13

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**Rule Caption:** Require all Emergency Medical (First) Responders to have signed standing orders from a medical director

**Adm. Order No.:** OMB 11-2013

**Filed with Sec. of State:** 4-5-2013

**Certified to be Effective:** 4-5-13

**Notice Publication Date:** 2-1-2013

**Rules Amended:** 847-035-0030

**Subject:** The rule amendment will require all Emergency Medical Responders (formerly First Responders) to have standing orders from an approved supervising physician (agency medical director). Therefore, the category of Emergency Medical Responders without standing orders will be eliminated by this proposed rule amendment; there will be no scope of practice that an Emergency Medical Responder can perform without standing orders. The former scope of practice

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for these Emergency Medical Responders will now be included within the scope of practice for Emergency Medical Responders with standing orders. Proposed rule amendment also makes changes to the EMT scope of practice by adding "intramuscular injection" of epinephrine and removing the subsection related to the release of chemical warfare agents from the Umatilla Army Depot.

**Rules Coordinator:** Nicole Krishnaswami—(971) 673-2667

## 847-035-0030

### Scope of Practice

(1) The Oregon Medical Board has established a scope of practice for emergency and nonemergency care for emergency medical services providers. Emergency medical services providers may provide emergency and nonemergency care in the course of providing prehospital care as an incident of the operation of ambulance and as incidents of other public or private safety duties, but is not limited to "emergency care" as defined in OAR 847-035-0001.

(2) The scope of practice for emergency medical services providers is not intended as statewide standing orders or protocols. The scope of practice is the maximum functions which may be assigned to an emergency medical services provider by a Board-approved supervising physician.

(3) Supervising physicians may not assign functions exceeding the scope of practice; however, they may limit the functions within the scope at their discretion.

(4) Standing orders for an individual emergency medical services provider may be requested by the Board or Authority and must be furnished upon request.

(5) An emergency medical services provider, including an Emergency Medical Responder, may not function without assigned standing orders issued by a Board-approved supervising physician.

(6) An emergency medical services provider, acting through standing orders, must respect the patient's wishes including life-sustaining treatments. Physician-supervised emergency medical services providers must request and honor life-sustaining treatment orders executed by a physician, nurse practitioner or physician assistant if available. A patient with life-sustaining treatment orders always requires respect, comfort and hygienic care.

(7) Whenever possible, medications should be prepared by the emergency medical services provider who will administer the medication to the patient.

(8) An Emergency Medical Responder may:

(a) Conduct primary and secondary patient examinations;

(b) Take and record vital signs;

(c) Utilize noninvasive diagnostic devices in accordance with manufacturer's recommendation;

(d) Open and maintain an airway by positioning the patient's head;

(e) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;

(f) Provide care for musculoskeletal injuries;

(g) Assist with prehospital childbirth;

(h) Complete a clear and accurate prehospital emergency care report form on all patient contacts and provide a copy of that report to the senior emergency medical services provider with the transporting ambulance;

(i) Administer medical oxygen;

(j) Maintain an open airway through the use of:

(A) A nasopharyngeal airway device;

(B) A noncuffed oropharyngeal airway device;

(C) A pharyngeal suctioning device;

(k) Operate a bag mask ventilation device with reservoir;

(l) Provide care for suspected medical emergencies, including administering liquid oral glucose for hypoglycemia;

(m) Prepare and administer aspirin by mouth for suspected myocardial infarction (MI) in patients with no known history of allergy to aspirin or recent gastrointestinal bleed;

(n) Prepare and administer epinephrine by automatic injection device for anaphylaxis; and

(o) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator, only when the Emergency Medical Responder:

(A) Has successfully completed an Authority-approved course of instruction in the use of the automatic or semi-automatic defibrillator; and

(B) Complies with the periodic requalification requirements for automatic or semi-automatic defibrillator as established by the Authority.

(9) An EMT may:

(a) Perform all procedures that an Emergency Medical Responder may perform;

(b) Ventilate with a non-invasive positive pressure delivery device;

(c) Insert a cuffed pharyngeal airway device in the practice of airway maintenance. A cuffed pharyngeal airway device is:

(A) A single lumen airway device designed for blind insertion into the esophagus providing airway protection where the cuffed tube prevents gastric contents from entering the pharyngeal space; or

(B) A multi-lumen airway device designed to function either as the single lumen device when placed in the esophagus, or by insertion into the trachea where the distal cuff creates an endotracheal seal around the ventilatory tube preventing aspiration of gastric contents.

(d) Perform tracheobronchial tube suctioning on the endotracheal intubated patient;

(e) Provide care for suspected shock;

(f) Provide care for suspected medical emergencies, including:

(A) Obtain a capillary blood specimen for blood glucose monitoring;

(B) Prepare and administer epinephrine by subcutaneous injection, intramuscular injection, or automatic injection device for anaphylaxis;

(C) Administer activated charcoal for poisonings; and

(D) Prepare and administer nebulized Albuterol sulfate treatments for known asthmatic and chronic obstructive pulmonary disease (COPD) patients suffering from suspected bronchospasm.

(g) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator;

(h) Transport stable patients with saline locks, heparin locks, foley catheters, or in-dwelling vascular devices;

(i) Assist the on-scene Advanced EMT, EMT-Intermediate, or Paramedic by:

(A) Assembling and priming IV fluid administration sets; and

(B) Opening, assembling and uncapping preloaded medication syringes and vials;

(j) Perform other emergency tasks as requested if under the direct visual supervision of a physician and then only under the order of that physician;

(k) Complete a clear and accurate prehospital emergency care report form on all patient contacts;

(l) Assist a patient with administration of sublingual nitroglycerine tablets or spray and with metered dose inhalers that have been previously prescribed by that patient's personal physician and that are in the possession of the patient at the time the EMT is summoned to assist that patient;

(m) In the event of a release of organophosphate agents, the EMT who has completed Authority-approved training may prepare and administer atropine sulfate and pralidoxime chloride by autoinjector, using protocols approved by the Authority and adopted by the supervising physician; and

(n) In the event of a declared Mass Casualty Incident (MCI) as defined in the local Mass Casualty Incident plan, monitor patients who have isotonic intravenous fluids flowing.

(10) An Advanced Emergency Medical Technician (AEMT) may:

(a) Perform all procedures that an EMT may perform;

(b) Initiate and maintain peripheral intravenous (I.V.) lines;

(c) Initiate saline or similar locks;

(d) Draw peripheral blood specimens;

(e) Initiate and maintain an intraosseous infusion in the pediatric patient;

(f) Perform tracheobronchial suctioning of an already intubated patient; and

(g) Prepare and administer the following medications under specific written protocols authorized by the supervising physician or direct orders from a licensed physician:

(A) Physiologic isotonic crystalloid solution;

(B) Anaphylaxis: epinephrine;

(C) Antidotes: naloxone hydrochloride;

(D) Antihypoglycemics:

(i) Hypertonic glucose;

(ii) Glucagon;

(E) Vasodilators: nitroglycerine;

(F) Nebulized bronchodilators:

(i) Albuterol;

(ii) Ipratropium bromide;

(G) Analgesics for acute pain: nitrous oxide.

(11) An EMT-Intermediate may:

(a) Perform all procedures that an Advanced EMT may perform;

(b) Initiate and maintain an intraosseous infusion;

(c) Prepare and administer the following medications under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician:

(A) Vasoconstrictors;

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- (i) Epinephrine;
- (ii) Vasopressin;
- (B) Antiarrhythmics:
  - (i) Atropine sulfate;
  - (ii) Lidocaine;
  - (iii) Amiodarone;
- (C) Analgesics for acute pain:
  - (i) Morphine;
  - (ii) Nalbuphine Hydrochloride;
  - (iii) Ketorolac tromethamine;
  - (iv) Fentanyl;
  - (D) Antihistamine: Diphenhydramine;
  - (E) Diuretic: Furosemide;
  - (F) Intraosseous infusion anesthetic: Lidocaine;
  - (G) Anti-Emetic: Ondansetron;

(d) Prepare and administer immunizations in the event of an outbreak or epidemic as declared by the Governor of the state of Oregon, the State Public Health Officer or a county health officer, as part of an emergency immunization program, under the agency's supervising physician's standing order;

(e) Prepare and administer immunizations for seasonal and pandemic influenza vaccinations according to the CDC Advisory Committee on Immunization Practices (ACIP), and/or the Oregon State Public Health Officer's recommended immunization guidelines as directed by the agency's supervising physician's standing order;

(f) Distribute medications at the direction of the Oregon State Public Health Officer as a component of a mass distribution effort;

(g) Prepare and administer routine or emergency immunizations and tuberculosis skin testing, as part of an EMS Agency's occupational health program, to the EMT-Intermediate's EMS agency personnel, under the supervising physician's standing order;

(h) Insert an orogastric tube;

(i) Maintain during transport any intravenous medication infusions or other procedures which were initiated in a medical facility, if clear and understandable written and verbal instructions for such maintenance have been provided by the physician, nurse practitioner or physician assistant at the sending medical facility;

(j) Perform electrocardiographic rhythm interpretation; and

(k) Perform cardiac defibrillation with a manual defibrillator.

(12) A Paramedic may:

(a) Perform all procedures that an EMT-Intermediate may perform;

(b) Initiate the following airway management techniques:

(A) Endotracheal intubation;

(B) Cricothyrotomy; and

(C) Transtracheal jet insufflation which may be used when no other mechanism is available for establishing an airway;

(c) Initiate a nasogastric tube;

(d) Provide advanced life support in the resuscitation of patients in cardiac arrest;

(e) Perform emergency cardioversion in the compromised patient;

(f) Attempt external transcutaneous pacing of bradycardia that is causing hemodynamic compromise;

(g) Perform electrocardiographic interpretation;

(h) Initiate needle thoracostomy for tension pneumothorax in a pre-hospital setting;

(i) Access indwelling catheters and implanted central IV ports for fluid and medication administration;

(j) Initiate placement of a urinary catheter for trauma patients in a pre-hospital setting who have received diuretics and where the transport time is greater than thirty minutes; and

(k) Prepare and initiate or administer any medications or blood products under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician.

Stat. Auth.: ORS 682.245

Stats. Implemented: ORS 682.245

Hist.: ME 2-1983, f. & ef. 7-21-83; ME 3-1984, f. & ef. 1-20-84; ME 12-1984, f. & ef. 8-2-84; ME 7-1985, f. & ef. 8-5-85; ME 12-1987, f. & ef. 4-28-87; ME 27-1987(Temp), f. & ef. 11-5-87; ME 5-1988, f. & ef. 1-29-88; ME 12-1988, f. & ef. 8-5-88; ME 15-1988, f. & ef. 10-20-88; ME 2-1989, f. & ef. 1-25-89; ME 15-1989, f. & ef. 9-5-89, & corrected 9-22-89; ME 6-1991, f. & ef. 7-24-91; ME 10-1993, f. & ef. 7-27-93; ME 3-1995, f. & ef. 2-1-95; ME 1-1996, f. & ef. 2-15-96; ME 3-1996, f. & ef. 7-25-96; BME 6-1998, f. & ef. 4-27-98; BME 13-1998(Temp), f. & ef. 8-6-98 thru 2-2-99; BME 14-1998, f. & ef. 10-26-98; BME 16-1998, f. & ef. 11-24-98; BME 13-1999, f. & ef. 7-23-99; BME 14-2000, f. & ef. 10-30-00; BME 11-2001, f. & ef. 10-30-01; BME 9-2002, f. & ef. 7-17-02; BME 10-2002, f. & ef. 7-22-02; BME 1-2003, f. & ef. 1-27-03; BME 12-2003, f. & ef. 7-15-03; BME 4-2004, f. & ef. 1-27-04; BME 11-2004(Temp), f. & ef. 4-22-04 thru 10-15-04; BME 12-2004(Temp), f. & ef. 6-11-04 thru 12-8-04; BME 21-2004(Temp), f. & ef. 11-15-04 thru 4-15-05; BME 2-2005, f. & ef. 1-27-05; BME 5-2005, f. & ef. 4-21-05;

BME 9-2005, f. & ef. 7-20-05; BME 18-2006, f. & ef. 7-25-06; BME 22-2006, f. & ef. 10-23-06; BME 7-2007, f. & ef. 1-24-07; BME 11-2007, f. & ef. 4-26-07; BME 24-2007, f. & ef. 10-24-07; BME 11-2008, f. & ef. 4-24-08; BME 19-2008, f. & ef. 7-21-08; BME 10-2009, f. & ef. 5-1-09; BME 13-2009, f. & ef. 7-20-09; BME 18-2009, f. & ef. 10-23-09; BME 22-2009(Temp), f. & ef. 10-23-09 thru 4-15-10; BME 5-2010, f. & ef. 1-26-10; BME 8-2010(Temp), f. & ef. 4-26-10 thru 10-15-10; BME 12-2010, f. & ef. 7-26-10; BME 18-2010, f. & ef. 10-25-10; OMB 1-2011, f. & ef. 2-11-11; OMB 5-2011, f. & ef. 4-8-11; OMB 8-2011, f. & ef. 4-25-11; OMB 15-2012, f. & ef. 4-17-12; OMB 30-2012, f. & ef. 10-22-12; OMB 11-2013, f. & ef. 4-5-13

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## Oregon Public Employees Retirement System Chapter 459

**Rule Caption:** Update rules to reflect 2013 Internal Revenue Code (IRC) compensation limitations.

**Adm. Order No.:** PERS 3-2013

**Filed with Sec. of State:** 3-29-2013

**Certified to be Effective:** 3-29-13

**Notice Publication Date:** 1-1-2013

**Rules Amended:** 459-005-0525, 459-005-0545, 459-080-0500

**Subject:** Annually, the Internal Revenue Service revises various dollar limits based on cost of living adjustments. These revisions are used throughout the PERS plan's statutes and rules, but revisions to the limits must be adopted by the legislature or PERS Board to be effective.

The IRS' revisions that are to be effective for calendar year 2013 have been announced. The rule modifications incorporate these adjustments and make non-substantive edits to update citations and effective dates. These updates are necessary to ensure PERS compliance with the IRC's limits on the amount of annual compensation allowed for determining contributions and benefits, the limits on annual benefits, and the limits on annual additions to PERS.

**Rules Coordinator:** Daniel Rivas—(503) 603-7713

### 459-005-0525

#### Ceiling on Compensation for Purposes of Contributions and Benefits

(1) The purpose of this rule is to assure compliance of the Public Employees Retirement System (PERS) with Internal Revenue Code (IRC) Section 401(a)(17) relating to the limitation on annual compensation allowable for determining contribution and benefits under ORS Chapters 238 and 238A.

(2) Definitions:

(a) "Annual compensation" means "salary," as defined in ORS 238.005 and 238.205 with respect to Chapter 238 and in 238A.005 with respect to Chapter 238A paid to the member during a calendar year or other 12-month period, as specified in this rule.

(b) "Eligible participant" means a person who first becomes a member of PERS before January 1, 1996.

(c) "Employer" means a "public employer" as defined in ORS 238.005, for the purposes of this rule as it applies to Chapter 238. For the purposes of this rule as it applies to Chapter 238A, an "employer" means a "participating public employer" as defined in 238A.005.

(d) "Noneligible participant" means a person who first becomes a member of PERS after December 31, 1995.

(e) "Participant" means an active or inactive member of PERS.

(3) For eligible participants, the limit set forth in IRC Section 401(a)(17) shall not apply for purposes of determining the amount of employee or employer contributions that may be paid into PERS, and for purposes of determining benefits due under ORS Chapters 238 and 238A. The limit on annual compensation for eligible participants shall be no less than the amount which was allowed to be taken into account for purposes of determining contributions or benefits under former ORS 237.001 to 237.315 as in effect on July 1, 1993.

(4) For noneligible participants, the annual compensation taken into account for purposes of determining contributions or benefits under ORS Chapters 238 and 238A shall be measured on a calendar year basis, and shall not exceed \$255,000 per calendar year beginning in 2013.

(a) The limitation on annual compensation will be indexed by cost-of-living adjustments in subsequent years as provided in IRC Section 401(a)(17)(B).

(b) A noneligible participant employed by two or more agencies or instrumentalities of a PERS participating employer in a calendar year, whether concurrently or consecutively, shall have all compensation paid by the employer combined for determining the allowable annual compensation under this rule.

# ADMINISTRATIVE RULES

(c) PERS participating employers shall monitor annual compensation and contributions to assure that reports and remitting are within the limits established by this rule and IRC Section 401(a)(17).

(5) For a noneligible participant, Final Average Salary under ORS 238.005 with respect to Chapter 238 and under 238A.130 with respect to Chapter 238A shall be calculated based on the amount of compensation that is allowed to be taken into account under this rule.

(6) Notwithstanding sections (4) and (5) of this rule, if the Final Average Salary as defined in ORS 238.005 with respect to Chapter 238 and as defined in 238A.130 with respect to Chapter 238A is used in computing a noneligible participant's retirement benefits, the annual compensation shall be based on compensation paid in a 12-month period beginning with the earliest calendar month used in determining the 36 months of salary paid. For each 12-month period, annual compensation shall not exceed the amount of compensation that is allowable under this rule for the calendar year in which the 12-month period begins.

(7) With respect to ORS Chapter 238, creditable service, as defined in 238.005, shall be given for each month that an active member is paid salary or wages and allowable contributions have been remitted to PERS, or would be remitted but for the annual compensation limit in IRC Section 410(a)(17). With respect to Chapter 238A, retirement credit as determined in 238A.140, shall be given for each month that an active member is paid salary or wages and allowable contributions have been remitted to PERS, or would be remitted but for the annual compensation limit in IRC Section 401(a)(17).

(8) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.630, 238.650, 238A.370 & 238A.450  
Stats. Implemented: ORS 238 & 238A

Hist.: PERS 4-1995, f. 11-14-95, cert. ef. 12-1-95; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 11-2002, f. & cert. ef. 7-17-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06; PERS 14-2008, f. & cert. ef. 11-26-08; PERS 1-2012, f. & cert. ef. 2-1-12; PERS 3-2013, f. & cert. ef. 3-29-13

## 459-005-0545

### Annual Addition Limitation

(1) Applicable Law. This administrative rule shall be construed consistently with the requirements of the Internal Revenue Code (IRC) Section 415(c) and the Treasury regulations and Internal Revenue Service rulings and other interpretations issued thereunder.

(2) Annual Addition Limitation. Except as otherwise provided in this rule, a member's annual additions to PERS for any calendar year after 2012 may not exceed \$51,000 (as adjusted under IRC Section 415(d)).

(3) Annual Additions. For purposes of this rule, the term "annual additions" has the same meaning as under IRC Section 415(c)(2).

(4) Permissive Service Credit. The following special rules shall apply with respect to purchases of permissive service credit, as defined in OAR 459-005-0540, Permissive Service Credit:

(a) If a member's after-tax contributions to purchase permissive service credit are included in the member's annual additions under section (3) of this rule, the member shall not be treated as exceeding the limitation under section (2) of this rule solely because of the inclusion of such contributions.

(b) With respect to any eligible participant, the annual addition limitation in section (2) of this rule shall not be applied to reduce the amount of permissive service credit to an amount less than the amount that could be purchased under the terms of the plan as in effect on August 5, 1997. As used in this subsection, the term "eligible participant" includes any individual who became an active member before January 1, 2000.

(5) Purchase of Service in the Armed Forces Under ORS 238.156 or 238A.150. If a member makes a payment to PERS to purchase retirement credit for service in the Armed Forces pursuant to 238.156(3)(c) or 238A.150 and the service is covered under Internal Revenue Code Section 414(u), the following special rules shall apply for purposes of applying the annual addition limitation in section (2) of this rule:

(a) The payment shall be treated as an annual addition for the calendar year to which it relates;

(b) The payment shall not be treated as an annual addition for the calendar year in which it is made; and

(c) The member shall be treated as having received the following amount of compensation for the period of service in the Armed Forces to which the payment relates:

(A) The amount of compensation the member would have received from a participating employer had the member not been in the Armed Forces; or

(B) If the amount in paragraph (A) of this subsection is not reasonably certain, the member's average compensation from the participating

employer during the 12-month period immediately preceding the period of service in the Armed Forces (or, if shorter, the period of employment immediately preceding the period of service in the Armed Forces).

(6) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.630, 238.650, 238A.370 & 238A.450

Stats. Implemented: ORS 238.005 - 238.715, 238A.370

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 11-2002, f. & cert. ef. 7-17-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05; PERS 14-2008, f. & cert. ef. 11-26-08; PERS 1-2012, f. & cert. ef. 2-1-12; PERS 3-2013, f. & cert. ef. 3-29-13

## 459-080-0500

### Limitation on Contributions

(1) Definitions. For purposes of this rule:

(a) "Annual addition" has the same meaning given the term in 26 U.S.C. 415(c)(2).

(b) "Compensation" has the same meaning given the term in 26 U.S.C. 415(c)(3)(A).

(2) Annual addition limitation. Except as otherwise provided in this rule, the annual addition to a member account for any calendar year may not exceed \$51,000 effective January 1, 2013.

(3) Payment for military service. If a payment of employee contributions for a period of military service is made under OAR 459-080-0100:

(a) The payment shall be treated as an annual addition for the calendar year(s) of military service to which it relates;

(b) The payment shall not be treated as an annual addition for the calendar year in which it is made; and

(c) For the purpose of allocating payments under this section, the member's compensation shall be the amount described in OAR 459-080-0100(3)(d).

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.370

Hist.: PERS 21-2003, f. 12-15-03 cert. ef. 1-1-04; PERS 8-2012, f. & cert. ef. 3-28-12; PERS 3-2013, f. & cert. ef. 3-29-13

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**Rule Caption:** Clarifies retirement eligibility for Police Officer and Firefighter (P&F) members of the OPSRP Pension Program.

**Adm. Order No.:** PERS 4-2013

**Filed with Sec. of State:** 3-29-2013

**Certified to be Effective:** 3-29-13

**Notice Publication Date:** 1-1-2013

**Rules Amended:** 459-075-0200

**Subject:** Under ORS 238A.160(2) and 238A.165(2), an OPSRP Pension Program member establishes eligibility for retirement as a Police Officer and Firefighter (P&F) member by working in a P&F position continuously for a period of not less than five years immediately prior to their effective date of retirement. The modifications clarify the five year continuous employment as Police Officer and Firefighter (P&F) prior to effective date of retirement and the status of a member who is employed concurrently as P&F and other than P&F. The rule modifications address two scenarios:

1) Separating from one P&F position and starting another P&F position does not restart the five year (60-month) clock for eligibility so long as the member does not have a break in retirement credit.

2) If a member works concurrently in a P&F and general service position, the five year (60-month) clock is not restarted so long as the member remains continuously employed in the P&F position.

**Rules Coordinator:** Daniel Rivas—(503) 603-7713

## 459-075-0200

### Retirement Eligibility for Police Officer and Firefighter Members

(1) For purposes of this rule:

(a) "Police officer" and "firefighter" have the same meaning given them in ORS 238A.005.

(b) "Continuously" means a period of employment during which the member accrues retirement credit in consecutive months without interruption.

(2) For the purpose of establishing eligibility for normal retirement under ORS 238A.160(2) and early retirement under 238A.165(2), an OPSRP Pension Program member will be considered to have held a position as a police officer or firefighter continuously for a period of not less than five years immediately preceding the effective date of retirement if:

# ADMINISTRATIVE RULES

(a) The member was employed in a qualifying position as a police officer or firefighter continuously for five years prior to the date of the member's termination from that employment; and

(b) The member's effective date of retirement is the first of the month following termination from that employment.

(3) A member who is concurrently employed by two or more employers in qualifying positions as a police officer or firefighter and as other than a police officer or firefighter is employed as a police officer or firefighter for purposes of this rule.

Stat. Auth.: ORS 238A.450

Stats. Implemented: 238A.160 & 238A.165

Hist.: PERS 15-2006, f. & cert. ef. 10-25-06; PERS 4-2013, f. & cert. ef. 3-29-13

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**Rule Caption:** Update rule to reflect the most recent Social Security annual compensation limitations.

**Adm. Order No.:** PERS 5-2013

**Filed with Sec. of State:** 3-29-2013

**Certified to be Effective:** 3-29-13

**Notice Publication Date:** 2-1-2013

**Rules Amended:** 459-017-0060

**Subject:** Under ORS 238.082, a Tier One or Tier Two retired member who returns to PERS-covered employment may continue to receive their retirement benefits so long as they work less than 1,040 hours in a calendar year or the number of hours the member can work and not exceed the Social Security annual compensation limits.

The Social Security Administration has announced the 2013 Social Security annual compensation limits. The new limits are \$15,120 (for retired members who have not reached full retirement age under the Social Security Act), and \$40,080 (for the calendar year in which the retired member reaches full retirement age under the Social Security Act and only for compensation for the months before reaching full retirement age).

The proposed modifications to OAR 459-017-0060 reflect the 2013 Social Security earnings limitations. The new limitations are not effective for PERS purposes until adopted by the Board.

**Rules Coordinator:** Daniel Rivas—(503) 603-7713

## 459-017-0060

### Reemployment of Retired Members

(1) For purposes of this rule, "retired member" means a member of the PERS Chapter 238 Program who is retired for service.

(2) Reemployment under ORS 238.082. A retired member may be employed under 238.082 by a participating employer without loss of retirement benefits provided:

(a) The period or periods of employment with one or more participating employers total less than 1,040 hours in a calendar year; or

(b) If the retired member is receiving retirement, survivors, or disability benefits under the federal Social Security Act, the period or periods of employment total less than 1,040 hours in a calendar year or no more than the total number of hours in a calendar year that, at the retired member's specified hourly rate of pay, limits the annual compensation of the retired member to an amount that does not exceed the following Social Security annual compensation limits:

(A) For retired members who have not reached full retirement age under the Social Security Act, the annual compensation limit is \$15,120; or

(B) For the calendar year in which the retired member reaches full retirement age under the Social Security Act and only for compensation for the months before reaching full retirement age, the annual compensation limit is \$40,080.

(3) The limitations on employment in section (2) of this rule do not apply if the retired member has reached full retirement age under the Social Security Act.

(4) The limitations on employment in section (2) of this rule do not apply if:

(a) The retired member meets the requirements of ORS 238.082(4), (5), (6), (7) or (8), and did not retire at a reduced benefit under the provisions of 238.280(1), (2), or (3);

(b) The retired member retired at a reduced benefit under ORS 238.280(1), (2) or (3), is employed in a position that meets the requirements of 238.082(4), the date of employment is more than six months after the member's effective retirement date, and the member's retirement otherwise meets the standard of a bona fide retirement;

(c) The retired member is employed by a school district or education service district as a speech-language pathologist or speech-language pathologist assistant and:

(A) The retired member did not retire at a reduced benefit under the provisions of ORS 238.280(1), (2), or (3); or

(B) If the retired member retired at a reduced benefit under the provisions of ORS 238.280(1), (2) or (3), the retired member is not so employed until more than six months after the member's effective retirement date and the member's retirement otherwise meets the standard of a bona fide retirement;

(d) The retired member meets the requirements of section 2, chapter 499, Oregon Laws 2007;

(e) The retired member is employed for service during a legislative session under ORS 238.092(2); or

(f) The retired member is on active state duty in the organized militia and meets the requirements under ORS 399.075(8).

(g) For purposes of population determinations referenced by statutes listed in this section, the latest federal decennial census shall first be operative on the first day of the second calendar year following the census year.

(h) For purposes of ORS 238.082(6), a retired member replaces an employee if the retired member:

(A) Is assigned to the position of the employee; and

(B) Performs the duties of the employee or duties that might be assigned to an employee in that position.

(5) If a retired member is reemployed subject to the limitations of ORS 238.082 and section (2) of this rule, the period or periods of employment subsequently exceed those limitations, and employment continues into the month following the date the limitations are exceeded:

(a) If the member has been retired for six or more calendar months:

(A) PERS will cancel the member's retirement.

(i) If the member is receiving a monthly service retirement allowance, the last payment to which the member is entitled is for the month in which the limitations were exceeded.

(ii) If the member is receiving installment payments under ORS 238.305(4), the last installment payment to which the member is entitled is the last payment due on or before the last day of the month in which the limitations were exceeded.

(iii) If the member received a single lump sum payment under ORS 238.305(4) or 238.315, the member is entitled to the payment provided the payment was dated on or before the last day of the month in which the limitations were exceeded.

(iv) A member who receives benefits to which he or she is not entitled must repay those benefits to PERS.

(B) The member will reestablish active membership the first of the calendar month following the month in which the limitations were exceeded.

(C) The member's account must be rebuilt in accordance with the provisions of section (7) of this rule.

(b) If the member has been retired for less than six calendar months:

(A) PERS will cancel the member's retirement effective the date the member was reemployed.

(B) All retirement benefits received by the member must be repaid to PERS in a single payment.

(C) The member will reestablish active membership effective the date the member was reemployed.

(D) The member account will be rebuilt as of the date that PERS receives the single payment. The amount in the member account must be the same as the amount in the member account at the time of the member's retirement.

(6) For purposes of determining period(s) of employment in section (2) of this rule:

(a) Hours of employment are hours on and after the retired member's effective retirement date for which the member receives wages, salary, paid leave, or other compensation.

(b) Hours of employment that are performed under the provisions of section (4) of this rule on or after the later of January 1, 2004 or the operative date of the applicable statutory provision are not counted.

(7) Reemployment under ORS 238.078(1). If a member has been retired for service for more than six calendar months and is reemployed in a qualifying position by a participating employer under the provisions of 238.078(1):

(a) PERS will cancel the member's retirement effective the date the member is reemployed.

(b) The member will reestablish active membership on the date the member is reemployed.

# ADMINISTRATIVE RULES

(c) If the member elected a benefit payment option other than a lump sum option under ORS 238.305(2) or (3), the last monthly service retirement allowance payment to which the member is entitled is for the month before the calendar month in which the member is reemployed. Upon subsequent retirement, the member may choose a different benefit payment option.

(A) The member's account will be rebuilt as required by ORS 238.078 effective the date active membership is reestablished.

(B) Amounts from the Benefits-In-Force Reserve (BIF) credited to the member's account under the provisions of paragraph (A) of this subsection will be credited with earnings at the BIF rate or the assumed rate, whichever is less, from the date of retirement to the date of active membership.

(d) If the member elected a partial lump sum option under ORS 238.305(2), the last monthly service retirement allowance payment to which the member is entitled is for the month before the calendar month in which the member is reemployed. The last lump sum or installment payment to which the member is entitled is the last payment due before the date the member is reemployed. Upon subsequent retirement, the member may not choose a different benefit payment option unless the member has repaid to PERS in a single payment an amount equal to the lump sum and installment benefits received and the earnings that would have accumulated on that amount.

(A) The member's account will be rebuilt as required by ORS 238.078 effective the date active membership is reestablished.

(B) Amounts from the BIF credited to the member's account under the provisions of paragraph (A) of this subsection, excluding any amounts attributable to repayment by the member, will be credited with earnings at the BIF rate or the assumed rate, whichever is less, from the date of retirement to the date of active membership.

(e) If the member elected the total lump sum option under ORS 238.305(3), the last lump sum or installment payment to which the member is entitled is the last payment due before the date the member is reemployed. Upon subsequent retirement, the member may not choose a different benefit payment option unless the member has repaid to PERS in a single payment an amount equal to the benefits received and the earnings that would have accumulated on that amount.

(A) If the member repays PERS as described in this subsection the member's account will be rebuilt as required by ORS 238.078 effective the date that PERS receives the single payment.

(B) If any amounts from the BIF are credited to the member's account under the provisions of paragraph (A) of this subsection, the amounts may not be credited with earnings for the period from the date of retirement to the date of active membership.

(f) If the member received a lump sum payment under ORS 238.315:

(A) If the payment was dated before the date the member is reemployed, the member is not required or permitted to repay the benefit amount. Upon subsequent retirement:

- (i) The member may choose a different benefit payment option.
- (ii) The member's retirement benefit will be calculated based on the member's periods of active membership after the member's initial effective retirement date.

(B) If the payment was dated on or after the date the member is reemployed, the member must repay the benefit amount. Upon subsequent retirement:

- (i) The member may choose a different benefit payment option.
- (ii) The member's retirement benefit will be calculated based on the member's periods of active membership before and after the member's initial effective retirement date.

(iii) The member's account will be rebuilt as described in ORS 238.078(2)

(g) A member who receives benefits to which he or she is not entitled must repay those benefits to PERS.

(8) Reemployment under ORS 238.078(2). If a member has been retired for less than six calendar months and is reemployed in a qualifying position by a participating employer under the provisions of 238.078(2):

(a) PERS will cancel the member's retirement effective the date the member is reemployed.

(b) All retirement benefits received by the member must be repaid to PERS in a single payment.

(c) The member will reestablish active membership effective the date the member is reemployed.

(d) The member account will be rebuilt as of the date that PERS receives the single payment. The amount in the member account must be

the same as the amount in the member account at the time of the member's retirement.

(e) Upon subsequent retirement, the member may choose a different benefit payment option.

(9) Upon the subsequent retirement of any member who reestablished active membership under ORS 238.078 and this rule, the retirement benefit of the member must be calculated using the actuarial equivalency factors in effect on the effective date of the subsequent retirement.

(10) The provisions of paragraphs (7)(c)(B), (7)(d)(B), and (7)(e)(B) of this rule are applicable to retired members who reestablish active membership under ORS 238.078 and this rule and whose initial effective retirement date is on or after March 1, 2006.

(11) Reporting requirement. A participating employer that employs a retired member must notify PERS in a format acceptable to PERS under which statute the retired member is employed.

(a) Upon request by PERS, a participating employer must certify to PERS that a retired member has not exceeded the number of hours allowed under ORS 238.082 and section (2) of this rule.

(b) Upon request by PERS a participating employer must provide PERS with business and employment records to substantiate the actual number of hours a retired member was employed.

(c) Participating employers must provide information requested under this section within 30 days of the date of the request.

(12) Sick leave. Accumulated unused sick leave reported by an employer to PERS upon a member's retirement, as provided in ORS 238.350, may not be made available to a retired member returning to employment under sections (2) or (7) of this rule.

(13) Subsections (4)(c) and (4)(d) of this rule are repealed effective January 2, 2016.

(14) This rule is effective January 1, 2013.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.078, 238.082, 238.092, 399.075, & 2007 OL Ch. 499 & 774  
Hist.: PERS 1-1994, f. 3-29-94, cert. ef. 4-1-94; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0182; PERS 13-1998, f. & cert. ef. 12-17-98; PERS 7-2001, f. & cert. ef. 12-7-01; PERS 18-2003(Temp), f. & cert. ef. 12-15-03 thru 5-31-04; PERS 19-2004, f. & cert. ef. 6-15-04; PERS 3-2006, f. & cert. ef. 3-1-06; PERS 18-2007, f. & cert. ef. 11-23-07; PERS 3-2009, f. & cert. ef. 4-6-09; PERS 11-2009, f. & cert. ef. 12-1-09; PERS 7-2012, f. & cert. ef. 3-28-12; PERS 5-2013, f. & cert. ef. 3-29-13

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## Oregon State Marine Board Chapter 250

**Rule Caption:** Slow-no-wake on Dexter Dam Reservoir from the Covered Bridge to the west shore.

**Adm. Order No.:** OSMB 1-2013(Temp)

**Filed with Sec. of State:** 3-18-2013

**Certified to be Effective:** 4-12-13 thru 4-27-13

**Notice Publication Date:**

**Rules Amended:** 250-020-0221

**Subject:** This rule will temporarily adopt a slow-no-wake zone on the portion of the lake from the Covered Bridge to the west shoreline for the weekend of April 12-14, 2013 and also on April 27, 2013 for scheduled rowing events.

**Rules Coordinator:** June LeTarte—(503) 378-2617

### 250-020-0221

#### Boat Operations on Certain Waters in Lane County

(1) No person shall operate a motorboat in excess of 5 MPH ("Slow-No Wake") in the following areas:

(a) Triangle Lake: Within 200 feet of a marked swimming area or a designated public launching ramp;

(b) Fern Ridge Lake:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) In the Coyote Creek Channel;

(C) Between shore and buoy line which extends southerly from the north shore to a point approximately 200 feet of the northern most Eugene Yacht Club mooring dock thence generally south and west approximately 200 feet of the docks to a point approximately 200 feet south of the Tri Pass Club mooring dock thence generally west to the southern tip of the Tri Pass Club dock as buoyed except for the buoyed corridor immediately south of the Eugene Yacht Club southernmost dock;

(D) South of the buoy line which extends easterly from a point approximately 100 yards north of the Perkins Boat Ramp to the adjacent shoreline;

(E) In the Main Long Tom River Channel.





# ADMINISTRATIVE RULES

## Oregon State Treasury Chapter 170

**Rule Caption:** Update OAR 170-040 to reflect amendments to ORS 295.001 to 295.108.

**Adm. Order No.:** OST 1-2013

**Filed with Sec. of State:** 4-2-2013

**Certified to be Effective:** 4-2-13

**Notice Publication Date:** 4-1-2013

**Rules Amended:** 170-040-0020, 170-040-0030, 170-040-0040, 170-040-0050, 170-040-0070, 170-040-0080, 170-040-0090, 170-040-0100, 170-040-0110

**Subject:** Effective January 1, 2013, ORS 295.001 to 295.108 was amended to allow for the inclusion of credit unions as qualified depositories for public funds. The changes proposed for Administrative Rule 170-040 update the language and ORS references within the rule to conform to these changes.

**Rules Coordinator:** Curtis Hartinger—(503) 378-3150

### 170-040-0020

#### Expenses of Administration Paid by Depositories

For the services, duties and activities of the Office of the State Treasurer (OST) performed under ORS Chapter 295, the OST shall charge depositories for the costs incurred by the OST based on a fixed fee plus a pro rata share of the remaining costs according to the amount of public funds deposits held by a depository. Each depository shall pay any fee amounts owed to OST by the time and in accord with the terms set forth in an invoice received from OST. If the invoice amount exceeds \$200, payment shall be made by electronic funds transfer (EFT) in the manner and to the account designated by OST in its invoice. If, for some reason, a depository is unable to make payment by EFT and chooses to remit by check, a penalty, not to exceed five (5) percent of the amount of the payment with a maximum penalty of \$50, may be assessed to the depository.

Stat. Auth.: ORS 293.525 & 295.106

Stats. Implemented: ORS 293.525 & 295.106

Hist.: OST 2-2008, f. 6-27-08, cert. ef. 7-1-08; OST 1-2009, f. & cert. ef. 4-10-09; OST 1-2013, f. & cert. ef. 4-2-13

### 170-040-0030

#### Approval of Loan Repayment Obligations Pledged by Bank Depositories

(1) Loan repayment obligations owed by a county, city, school district, port district or other public body in the State of Oregon may be pledged by a depository as collateral only after the depository has received written approval from the Office of the State Treasurer (OST). However, the OST will not accept requests for and approve such loans as collateral, unless and until written notice is provided to depositories that, from a date designated in the notice, OST will begin to accept such requests and evaluate the acceptability of such loans as collateral. In the event OST approves such loans as collateral, the loans will be valued at seventy-five percent of their outstanding principal amount for purposes of calculating whether adequate collateral has been pledged by a depository with its custodian, as required under ORS Chapter 295.

(2) After receipt of the notice described above, the depository shall submit a written request to the OST containing the following information:

- (a) The name of the payment obligor under the loan;
- (b) The original principal balance of the loan;
- (c) The current unpaid principal balance of the loan;
- (d) The maturity date for the loan;
- (e) Whether the loan may be repaid prior to maturity;
- (f) The credit rating (if applicable) of the general obligations of the obligor;
- (g) The credit enhancement (such as insurance), if any, for the loan;
- (h) Whether an event of default has ever occurred under the loan; and
- (i) Whether the obligor has defaulted with respect to the payment of principal or interest on any of its loans or similar obligations within the preceding 10 years or during the period of its existence if that is less than 10 years.

(3) The OST will permit a loan to be pledged as security only if:

- (a) The public body has not been in default with respect to the payment of principal or interest on any of its loans within the preceding 10 years or during the period of its existence if that is less than 10 years;
- (b) If rated by a rating agency, the public body's general obligations have a credit rating of AA or Aa;

(c) If the loan is credit enhanced, the provider of the credit enhancement has a credit rating of, AA or Aa;

(d) If the above referenced ratings are not available, OST determines, based on the information submitted to it, that the loan is of sufficiently high credit quality that it may be pledged as collateral; and

(e) The unpaid principal amount of the loans pledged does not exceed 30% of the depository's collateral.

Stat. Auth.:

Stats. Implemented: ORS 295.001(19)(f)

Hist.: OST 2-2008, f. 6-27-08, cert. ef. 7-1-08; OST 1-2013, f. & cert. ef. 4-2-13

### 170-040-0040

#### Approval of Bond Anticipation Notes Pledged by Depositories

(1) Bond anticipation notes issued, sold or assumed by an authority under ORS 441.560 may be pledged as collateral by a depository only after the depository has received written approval from the Office of the State Treasurer (OST). However, the OST will not accept requests for and approve such bond anticipation notes as collateral, unless and until written notice is provided to depositories that, from a date designated in the notice, OST will begin to accept such requests and evaluate the acceptability of such notes as collateral.

(2) After receipt of the notice described above, the depository shall submit a written request to the OST containing the following information:

- (a) The name of the note issuer;
- (b) The original principal balance of the note;
- (c) The current unpaid principal balance of the note;
- (d) The maturity date of the note;
- (e) Whether the note may be repaid prior to maturity;
- (f) The credit rating (if applicable) of the issuer;
- (g) The credit enhancement (such as insurance), if any, of the note;
- (h) Whether an event of default has ever occurred under the note; and
- (i) Whether the issuer has defaulted with respect to the payment of principal or interest on any of its notes or similar obligations within the preceding 10 years or during the period of its existence if that is less than 10 years.

(3) The OST will permit a note to be pledged as security only if:

- (a) The issuer has not been in default with respect to the payment of principal or interest on any of its obligations within the preceding 10 years or during the period of its existence if that is less than 10 years;
- (b) If rated by a rating agency, the issuer's general obligations have a credit rating of AA or Aa;

(c) If the note is credit enhanced, the provider of the credit enhancement has a credit rating of AA or Aa; or

(d) OST determines, based on the information submitted to it, that the note is of sufficiently high credit quality that it may be pledged as collateral.

(4) If the OST determines that there is an insufficient market in bond anticipation notes issued, sold or assumed by an authority under ORS 441.560 to provide for the efficient trading and liquidation of such bond anticipation notes, OST will value bond anticipation notes issued, sold or assumed by an authority under 441.560 at seventy-five percent of their outstanding principal amount for purposes of calculating whether adequate collateral has been pledged by a depository with its custodian, as required under ORS Chapter 295.

Stat. Auth.:

Stats. Implemented: ORS 295.001(19)(g)

Hist.: OST 2-2008, f. 6-27-08, cert. ef. 7-1-08; OST 1-2013, f. & cert. ef. 4-2-13

(5) After receipt of the notice described above, the depository shall submit a written request to the OST containing the following information:

- (a) The name of the payment obligor under the loan;
- (b) The original principal balance of the loan;
- (c) The current unpaid principal balance of the loan;
- (d) The maturity date for the loan;
- (e) Whether the loan may be repaid prior to maturity;
- (f) The credit rating (if applicable) of the general obligations of the obligor;
- (g) The credit enhancement (such as insurance), if any, for the loan;
- (h) Whether an event of default has ever occurred under the loan; and
- (i) Whether the obligor has defaulted with respect to the payment of principal or interest on any of its loans or similar obligations within the preceding 10 years or during the period of its existence if that is less than 10 years.

(6) The OST will permit a loan to be pledged as security only if:

- (a) The public body has not been in default with respect to the payment of principal or interest on any of its loans within the preceding 10 years or during the period of its existence if that is less than 10 years;
- (b) If rated by a rating agency, the public body's general obligations have a credit rating of AA or Aa;

### 170-040-0050

#### Public Officials' Notification of Depositories

Each public official shall maintain on file with the Office of the State Treasurer the name and address of each depository in which the public official deposits public funds and shall update such information at least annually or within three business days after the effective date of a change in any depository.

Stat. Auth.:

Stats. Implemented: ORS 295.006(2)(3)

Hist.: OST 2-2008, f. 6-27-08, cert. ef. 7-1-08; OST 1-2013, f. & cert. ef. 4-2-13

### 170-040-0070

#### Approval for a Depository to Hold Excess Public Funds

The Office of the State Treasurer may approve the request of a depository to hold public funds in excess of the limits provided in ORS 295.048(1)(a) through (c), only if:

(1) The depository deposits collateral valued at 100% of the amount of such excess public funds deposits; and

(2) The depository demonstrates to the satisfaction of the State Treasurer that allowing such excess deposits provides benefits to one or

# ADMINISTRATIVE RULES

more depositors, does not jeopardize public funds, and that the depository has a plan for the orderly elimination of such excess deposits within 90 days.

Stat. Auth.:  
Stats. Implemented: ORS 295.048(4)  
Hist.: OST 2-2008, f. 6-27-08, cert. ef. 7-1-08; OST 1-2013, f. & cert. ef. 4-2-13

## 170-040-0080

### Custodian Must Meet Statutory Requirements

(1) A depository may designate the Federal Home Loan Bank (“FHLB”) or any insured institution or trust company that has been approved by the State Treasurer and otherwise meets the criteria of ORS 295.001(6)(b) (an “approved institution”) only if, and so long as, the FHLB or approved institution demonstrates to the satisfaction of the State Treasurer that it complies with the duties of a custodian required under 295.001 to 295.108 (the “statutory requirements”).

(2) If the State Treasurer determines that an approved institution has failed to comply with the statutory requirements, the State Treasurer shall revoke the prior approval granted under ORS 295.001(6)(b)(C) and remove the institution from the organizations that the State Treasurer has approved to serve as custodians.

(3) If the State Treasurer determines that the FHLB or an approved institution has failed to comply with the statutory requirements, it will issue a notice to all depositories informing the depositories of the State Treasurer’s determination. After the State Treasurer has issued such notice, a depository may not use the FHLB or approved institution subject to the notice as its custodian and, as soon as practicable, shall enter into an agreement with a successor custodian and transfer all securities held by the FHLB or formerly approved institution to the successor custodian.

(4) If the State Treasurer later determines that the FHLB or an insured institution or trust company is eligible to serve as a custodian because it has demonstrated to the satisfaction of the State Treasurer that it is capable of fulfilling the statutory requirements, the State Treasurer will issue a notice informing depositories of its determination and that the FHLB or insured institution or trust company subject to the notice is eligible to serve as a custodian, provided the insured institution or trust company has also been approved by the State Treasurer under ORS 295.001(6)(b)(C).

(5) The State Treasurer will not designate an insured institution or trust company to serve as a custodian under ORS 295.001(6)(b)(C) unless it demonstrates to the satisfaction of the State Treasurer that it is capable of fulfilling the statutory requirements of a custodian.

Stat. Auth.:  
Stats. Implemented: ORS 295.001(6)  
Hist.: OST 2-2008, f. 6-27-08, cert. ef. 7-1-08; OST 1-2013, f. & cert. ef. 4-2-13

## 170-040-0090

### Weekly Reporting Requirement for Depositories at 110% Collateralization

Depositories ordered to collateralize their public funds deposits at 110% by the State Treasurer are required to submit a new Treasurer Report weekly. The weekly reporting requirement shall remain in effect until such time as the depository no longer holds public funds deposits over the FDIC limit or the State Treasurer removes the 110% collateralization requirement.

Stat. Auth.: ORS 295.018(1) & 295.061(3)  
Stats. Implemented: ORS 295  
Hist.: OST 5-2008(Temp), f. & cert. 10-2-08 thru 3-30-09; OST 6-2008, f. & cert. ef. 11-28-08; OST 1-2013, f. & cert. ef. 4-2-13

## 170-040-0100

### Reporting Requirement for Depositories with Decreased Net Worth and/or Capitalization Level

A depository that files reports with the State Treasurer according to ORS 295.061(1) is required to submit a new Treasurer Report to the State Treasurer within three business days of:

(1) The date on which the depository’s net worth is reduced by an amount greater than 10 percent of the amount shown on its most recent Treasurer Report.

(2) The date on which a depository ceases to be well capitalized and becomes adequately capitalized or undercapitalized, or ceases to be adequately capitalized and becomes undercapitalized.

Stat. Auth.: ORS 295.061(2)(a) & 295.061(2)(b)  
Stats. Implemented: ORS 295  
Hist.: OST 6-2008, f. & cert. ef. 11-28-08; OST 1-2013, f. & cert. ef. 4-2-13

## 170-040-0110

### Monthly Reporting Requirement for Depositories at Increased Collateralization Level

Depositories ordered to collateralize their public funds deposits at an increased level, but less than 110%, by the State Treasurer are required to submit a new Treasurer Report monthly. The monthly reporting requirement shall remain in effect until such time as the depository no longer holds public funds deposits over deposit insurance limits or the State Treasurer removes the increased collateralization requirement. The monthly report is in addition to the quarterly Treasurer Report that is statutorily required.

Stat. Auth.: ORS 295.018(1)(b) & 295.061(1)  
Stats. Implemented: ORS 295  
Hist.: OST 4-2009(Temp), f. & cert. ef. 10-13-09 thru 3-31-10; OST 6-2009, f. & cert. ef. 11-19-09; OST 1-2013, f. & cert. ef. 4-2-13

## Oregon University System Chapter 580

**Rule Caption:** Align rules with SB 242; delineate roles and responsibilities; clarify language; eliminate unnecessary provisions.

**Adm. Order No.:** OUS 1-2013(Temp)

**Filed with Sec. of State:** 4-10-2013

**Certified to be Effective:** 4-10-13 thru 9-30-13

**Notice Publication Date:**

**Rules Amended:** 580-060-0000, 580-060-0010, 580-060-0015, 580-060-0020, 580-060-0025, 580-060-0035, 580-060-0040, 580-060-0045, 580-060-0050, 580-060-0055

**Rules Suspended:** 580-060-0060

**Subject:** The amendments align the terminology with these rules with that within Senate Bill 242, namely referring to institutions as “public universities” and institution presidents as “university presidents.” Additionally, in accordance with the provisions of SB 242, OUS is no longer subject to the Land Conservation and Development Commission’s OAR 660-030, which mandates that university plans conform to regulations of applicable local jurisdiction. 580-060-0060 was repealed and will be made an internal management directive as it is not required to be in rule and having in policy allows for more efficient administration of future policy changes.

**Rules Coordinator:** Marcia M. Stuart—(541) 346-5749

## 580-060-0000

### Authority

These rules establish the procedures that will be followed by Public Universities of the Oregon University System to acquire, receive, hold, control, convey, sell, manage, operate, lease, lend, improve, and develop all real property of the Public Universities under the control of the Board.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 1-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-060-0010

### Comprehensive Plan Coordination

Each of the Public Universities will maintain a long-range campus development plan covering all real property under its control and management. The combined Public University plans will be known as the Oregon University System Comprehensive Plan. Institutional plans, and revisions thereof, will be approved by the President and by the Chancellor or designee. The Chancellor or designee will approve revisions to the campus boundaries.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 1-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-060-0015

### Records

Each OUS Public University will maintain the official records of all documents that affect real property under its control and management. Documents affecting real property include, but are not limited to, all instruments that acquire, transfer, sell, or alter the character of land.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 1-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

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## 580-060-0020

### Purchase of Real Property

(1) All purchases of real property will be for the present or future development of the Public University.

(2) Legal title to all real property purchased must be taken and held in the name of the State of Oregon.

(3) The President is delegated the authority to execute conveyances for the purchase of real property after the following have been performed to satisfaction of the President:

(a) Obtain at least one appraisal by a licensed and experienced real estate appraiser estimating the fair market value;

(b) Complete an environmental assessment and determine that any risk associated with the real property is reasonable;

(c) Determine that sufficient ongoing revenues are available to operate and maintain the property

(4) If the consideration for the purchase is \$5,000,000.00 or more, the President must receive the prior approval of the State Board of Higher Education or an appropriate standing committee of the Board.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 1-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-060-0025

### Gifts of Real Property

(1) Legal title to all real property gifted to a Public University must be taken and held in the name of the State of Oregon.

(2) The President is delegated the authority to execute conveyances for the gift of real property after the following have been performed to satisfaction of the President:

(a) Complete an environmental assessment and determine that any risk associated with the real property is reasonable under the circumstances;

(b) Determine that sufficient ongoing revenues are available to operate and maintain the property.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 1-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-060-0035

### Sale of Real Property

(1) The President is delegated the authority to execute conveyances for the sale of real property after the following have been performed to satisfaction of the President:

(a) Obtain at least one appraisal by a licensed and experienced real estate appraiser estimating the fair market value;

(b) Verify with the Chancellor's Office regarding whether any tax exempt financing was used to purchase or improve the property and, if any such debt remains outstanding, coordinate with the Chancellor's Office to ensure continued compliance with IRS regulations.

(2) If the consideration for the sale is \$5,000,000.00 or more, the President must receive the prior approval of the State Board of Higher Education or an appropriate standing committee of the Board.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 1-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-060-0040

### Easements

(1) The President is delegated the authority to execute easements and other nonpossessory interests in real estate.

(2) If granting an easement, the President shall first verify with the Chancellor's Office regarding whether any tax exempt financing was used to purchase or improve the property and, if any such debt remains outstanding, coordinate with the Chancellor's Office to ensure continued compliance with IRS regulations.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 1-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-060-0045

### Use of Board Property

(1) If a Public University intends to lease or license real property owned by the Board and either (a) the term of the lease or license exceeds 50 days in total or (b) the arrangement was not set at fair market value, then prior to the execution of the lease or license, the President or designee will

confer with the OUS Controller's Division to determine compliance with bond restrictions.

(2) The President or designee will obtain prior approval of the State Board of Higher Education or an appropriate standing committee of the Board for agreements permitting the construction on or renovation to Board-owned property if such improvements exceed \$5 million during the term of the agreement. To obtain approval from the State Board of Higher Education or an appropriate standing committee of the Board, the Public University must specify where funding for operations and maintenance will come from.

(3) If the Public University permits construction on or renovation to Board-owned property, the Public University must approve all plans and specifications prior to the commencement of work and obtain record drawings upon termination of the agreement or completion of the work, whichever first occurs.

(4) Public Universities normally will not make available Public University buildings and other facilities to individuals for essentially private use or to outside organizations, unless approved in Public University policy or required by law. Exceptions will be made only if the proposed use is consistent with Public University policies and missions and the individual or organization fully reimburses the Public University for all appropriate costs.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 1-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-060-0050

### Leases

(1) A President is delegated the authority to execute leases of real property.

(2) If the consideration for the lease is from \$5,000,000 to \$15,000,000 or the term of the lease is over 10 years but less than 15 years, the President must receive the prior approval of the Chancellor.

(3) If the consideration for the lease is over \$15,000,000 or the term of the lease is over 15 years, the President must receive the prior approval of the State Board of Higher Education or an appropriate standing committee of the Board.

(4) Prior to executing an amendment to a lease, the President must receive approval under subsection (2) or (3) based on the consideration or term of the amended lease.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 4-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12; Administrative correction, 5-25-12; OUS 9-2012, f. & cert. ef. 6-18-12; OUS 1-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-060-0055

### Naming Buildings

A President is authorized to name buildings. No building or structure of the Oregon University System will be named after a living person. However, the Chancellor, or designee may make exceptions to this rule if a donor contributes a substantial share of the cost of construction or if other unusually meritorious reasons exist.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 1-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-060-0060

### Board of Higher Education-Provided Housing

(1) Consistent with ORS 182.415 to 182.435, the Board will collect rent for housing provided to officers and employees. Each Institution will:

(a) Examine periodically, but not less frequently than once every five years, each rental unit's fair rental value. Fair rental value will be determined by a qualified appraiser certified under ORS 308.010 or licensed or certified under 674.310. The rental rate will be adjusted annually to reflect changes in community real estate values, if any.

(b) Collect rent for such housing based on the fair rental value, subject to any rental rate reductions authorized in subsection (2).

(c) Deposit such rental income in an appropriate Institution account.

(d) Provide no furnishings except as authorized by ORS 182.415(1).

(e) Determine whether to provide or to what extent the Institution will provide utilities and services for each housing unit.

(2) Each Institution providing housing for officers or employees may reduce the rent charged, by up to 100 percent from the fair rental value based on the following factors:

(a) Rental reduction for Institution need provided.

# ADMINISTRATIVE RULES

(A) If residence in the housing unit is a job requirement, as evidenced by contract or position description and not offered as an incentive or a fringe benefit to the resident state employee — 50 percent reduction; or

(B) If residence in the housing unit is not a job-related requirement but it is a distinct advantage to the Institution to have the officer or employee live near the job in case of an emergency or for general protection of Board property in the area — 20 percent reduction; or

(C) If residence in the housing unit is not a job requirement and the only advantage to the Institution is to reduce the chance of vandalism and deterioration to a Board-owned or controlled residence — 10 percent reduction; or

(D) If residence in the housing unit is not a job requirement nor is it for the benefit of the Institution, but is solely for the benefit of the occupant — No reduction.

(b) Rental reduction for invasion of privacy.

(A) If the housing unit or a significant part of it is used for a public office or public business or is so located that invasion of privacy by the public or by guests invited for Institution-related activities is expected or usual — 30 percent reduction; or

(B) If the public is not invited and invasion of privacy is not the usual occurrence, but the residence location or architecture plainly indicates state ownership and there is little or no restriction of public or Institution client traffic — 20 percent reduction; or

(C) Invasion of privacy is an occasional or seasonal occurrence and there is some restriction to public traffic — 10 percent reduction; or

(D) Invasion of privacy is no more than would be expected for an average privately owned residence — No reduction.

(c) Rental reduction for isolation.

(A) If the housing unit is located in an isolated area, defined as being more than 50 miles distance or 90 minutes travel by automobile from the nearest full service community, or the travel conditions are usually severe or hazardous — 20 percent reduction. A full-service community is one with a supermarket, department store, medical doctor, dentist, church, school, etc; or

(B) If the housing unit is located 30 to 50 miles distance or 60 to 90 minutes travel by automobile from the nearest full-service community or the travel conditions are seasonally severe or hazardous — 15 percent reduction; or

(C) If the housing unit is located 10 to 30 miles distance or 30 to 60 minutes travel time by automobile from the nearest full-service community, the travel conditions are only occasionally severe or hazardous — 10 percent reduction; or

(D) The housing unit is located within 10 miles and not over 30 minutes travel time by automobile from the nearest full-service community and the travel conditions are rarely severe or hazardous — No reduction.

(d) Rental reduction for unique conditions. Certain unique conditions may arise or exist in addition to those in subsections (a)–(c) above. Rent may be reduced as follows:

(A) To correct inequities between the fair rental value as determined in subsection (1) and the salary of the officer or employee occupying the residence — reduction to the extent necessary and reasonable;

(B) Because of unique conditions in the Board's title to the property (e.g., the Board's ownership is conditioned upon residence by a specified employee) — up to 100 percent of the fair rental value; and

(C) Other factors necessary for effective program management (cannot include factors reflecting only the convenience or comfort of an employee) — a reduction of up to 20 percent.

(3) At least once every five years, Institutions will prepare a report indicating the fair rental value of each housing unit, the date of the most recent appraisal, and the amount of any reductions from the fair rental value and the reasons for the reductions. This report will be available for public inspection.

Stat. Auth.: ORS 351, 182.415, 182.425 & 351.070

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; Suspended by OUS 1-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

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**Rule Caption:** Align rules with SB 242; delineate roles and responsibilities; clarify language; eliminate unnecessary provisions.

**Adm. Order No.:** OUS 2-2013(Temp)

**Filed with Sec. of State:** 4-10-2013

**Certified to be Effective:** 4-10-13 thru 9-30-13

**Notice Publication Date:**

**Rules Amended:** 580-061-0000, 580-061-0005, 580-061-0010, 580-061-0015, 580-061-0020, 580-061-0025, 580-061-0030, 580-061-

0035, 580-061-0040, 580-061-0045, 580-061-0050, 580-061-0055, 580-061-0060, 580-061-0065, 580-061-0070, 580-061-0075, 580-061-0080, 580-061-0085, 580-061-0090, 580-061-0095, 580-061-0100, 580-061-0105, 580-061-0110, 580-061-0115, 580-061-0120, 580-061-0125, 580-061-0130, 580-061-0135, 580-061-0140, 580-061-0145, 580-061-0150, 580-061-0155, 580-061-0160

**Subject:** The amendments align the terminology with these rules with that within Senate Bill 242 and recently adopted Board policies (specifically removing all references to DAS; provide exemptions to contract for insurance and legal products and services required by OUS' departure from the state insurance fund and the DOJ; and include language to align OARs with the Board policy on contracting with Historically Underrepresented Businesses); update processes to reflect changing technologies and procedures; and clarify language and eliminate unnecessary provisions.

**Rules Coordinator:** Marcia M. Stuart—(541) 346-5749

## 580-061-0000

### Code of Ethics

(1) The following Code of Ethics will apply to Oregon University System employees in relation to chapter 580, divisions 60, 61, 62, and 63. Employees will:

(a) Give first consideration to the objectives and policies of the Board, OUS, and the Public University;

(b) Strive to obtain the best value for expenditures;

(c) Fairly consider prospective Contractors insofar as state or federal statutes and Public University rules and policies require;

(d) Conduct business in an atmosphere of good faith;

(e) Demand honesty in representations made by prospective Contractors;

(f) Promote competition by encouraging the participation of Oregon businesses, emerging small and minority-owned and women-owned businesses, and Qualified Rehabilitation Facilities;

(g) Comply with the applicable provisions of ORS Chapter 244 and other applicable rules and policies on conflict of interest that may be more restrictive;

(h) Refrain from having financial interests incompatible with the impartial, objective, and effective performance of duties. Activities that may create a conflict of interest must be addressed in accordance with the procedures outlined in the Oregon University System's Internal Management Directives and other applicable rules and policies;

(i) Receive the written consent of the originator of proprietary ideas and designs before using them; and

(j) Foster fair, ethical, and legal trade practices.

(k) Execute the OUS Conflict of Interest Statement before any person may participate in the evaluation or selection of a Contractor or vendor under a Formal Procurement process.

(1) On an annual basis, sign a statement that the employee has reviewed and will comply with the OUS Code of Ethics.

(2) This code is for the Oregon University System's internal use only and creates no obligations enforceable by Contractors, Proposers, Bidders, or other parties doing business with an Public University, nor may it be used by Contractors, Proposers, Bidders, or other parties doing business with a Public University who are challenging actions taken by an Public University or its officers, employees, or agents. This code may not be the only statement on ethics applicable to an employee.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0005

### Applicable Model Public Contract Rules

The Attorney General's Model Public Contract Rules adopted by the Oregon Attorney General pursuant to ORS 279A.065 are generally inapplicable to the contracting activities of Public Universities unless specifically referenced and adopted herein.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0010

### Definitions

The following Definitions will apply to chapter 580, divisions 60, 61, 62, and 63, unless the context requires otherwise:

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(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of the Solicitation Document. Addenda will be labeled as such and posted on the OUS procurement website for access by all interested Offerors.

(2) "Award" or "Awarding" means, as the context requires, identifying the Entity with whom the Public University intends to enter into a Contract following the resolution of any protest of the selection of that Entity and the completion of all Contract negotiations.

(3) "Bid" means an offer, binding on the Bidder and submitted in response to an ITB.

(4) "Bidder" means an Entity that submits a Bid in response to an ITB.

(5) "Board" means the Oregon State Board of Higher Education.

(6) "Change Order" or "Contract Amendment" means a written order issued by a Public University to the Contractor requiring a change in the Work within the general scope of the original Contract.

(7) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Bids or Proposals.

(8) "Competitive Process" means the process of procuring goods and services and construction-related services by fair and open competition, under varying market conditions, with the intent of minimizing opportunities for favoritism and assuring that Contracts are award equitably and economically using various factors in determining such equitability and economy.

(9) "Contract" means a contract for sale or other disposal, or a purchase, lease, rental, or other acquisition, by a Public University of personal property, services, including personal or professional services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Contract" does not include grants. "Contract" may also mean a purchase order, Price Agreement, or other Contract document in addition to a Public University's Solicitation Document and the accepted portions of a Solicitation Response.

(10) "Contract Officer" means the Vice President for Finance and Administration or his or her designee at the Public University or the Vice Chancellor for Finance and Administration or his or her designee with the authority to negotiate and execute Contracts.

(11) "Contract Price" means, as the context requires, the maximum monetary obligation that a Public University either will or may incur under a Contract, including bonuses, incentives and contingency amounts, Addenda, Change Orders, or approved alternates, if the Contractor fully performs under the Contract.

(12) "Contractor" means the Entity awarded a Contract to furnish a Public University goods, services, or Work.

(13) "Days" means calendar days, including weekdays, weekends, and holidays, unless otherwise specified.

(14) "Disadvantaged Business Enterprise" means a small business concern as defined in ORS 200.005.

(15) "Disqualification or Disqualify" means the preclusion of an Entity from contracting with an agency of the State of Oregon in accordance with OAR 580-061-0160.

(16) "Electronic Solicitation Response" means a response to a Solicitation Document submitted to a Public University via the World Wide Web or some other internet protocol.

(17) "Emergency" means an unexpected, serious situation that creates a significant risk of loss, damage, interruption of service, or threat to the public health or safety that requires prompt action to remedy the condition.

(18) "Emerging Small Business" means an Emerging Small Business as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.

(19) "Entity" means a natural person capable of being legally bound, sole proprietorship, corporation, partnership, limited liability company or partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.

(20) "Grant" means:

(a) An agreement under which a Public University receives money, property, or other assistance, including, but not limited to, federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Public University and in which no substantial involvement by the grantor is anticipated in the program or activity other

than involvement associated with monitoring compliance with the Grant conditions; or

(b) An agreement under which a Public University provides money, property, or other assistance, including, but not limited to, federal assistance that is characterized as a Grant by federal law or regulations, loans, commodities, or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Public University is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions.

(c) "Grant" does not include a Public Improvement Contract or a Contract for Emergency Work.

(21) "Historically Underrepresented Business" means Minority Business Enterprises, Women Business Enterprises, and Emerging Small Businesses certified by the State of Oregon or self-certified, and firms certified federally or by another state or entity with substantially similar procedures to the State of Oregon.

(22) "Invitation to Bid" (ITB) means a Solicitation Document for the solicitation of competitive, written, signed, and Sealed Bids in which Specifications, price, and delivery (or project completion) are the predominant award criteria.

(23) "Minority Business Enterprise" means a Minority Business Enterprise as defined in ORS 200.005 and that maintains a current certification issued by the State of Oregon.

(24) "Opening" means the date, time, and place specified in the Solicitation Document for the public opening of written or electronically submitted Solicitation Responses.

(25) "Offeror" means the entity submitting a binding Solicitation Response.

(26) "OUS Retainer Program" means Contracts by which, pursuant to a Solicitation Document, multiple Contractors are authorized to provide specific materials to or perform specific services for a Public University(ties). Contractors on an OUS Retainer Program may provide goods or services on a non-exclusive and as-needed basis. OUS Retainer Programs are administered centrally by the Vice Chancellor for Finance and Administration or designee.

(27) "Owner" means the Board, in its own right or on behalf of one of its Public Universities as identified in the Solicitation Document, also known as the Oregon University System (OUS).

(28) "President" means the president of one of the Public Universities and, in the case of the Chancellor's Office, the Chancellor. Where the term "President" is used, it refers to the president of the Public University (or Chancellor) as context requires.

(29) "Personal or Professional Services" means a Contract with an Entity whose primary purpose is to acquire specialized skills, knowledge, and resources in the application of technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, consultant, broadcaster or artist (including a photographer, filmmaker, painter, weaver, or sculptor). "Personal or Professional Services" under this definition does not include architects, engineers, planners, land surveyors, appraisers, construction managers, and similar professional consultants for construction work.

(30) "Price Agreement" means a nonexclusive agreement in which the Contractor agrees to provide specific items or services to a Public University at a set price during a specified period of time.

(31) "Proposal" means a binding competitive offer submitted in response to a Request for Proposals.

(32) "Proposer" means an Entity that submits a Proposal in response to a Request for Proposals.

(33) "Public Improvement" means a project for construction, reconstruction, or major renovation on real property by or for a Public University. "Public Improvement" does not include:

(a) Projects for which no funds of a Public University are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency Work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

(34) "Public Improvement Contract" means a Contract for a Public Improvement. "Public Improvement Contract" does not include a Contract for Emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(35) "Public University" means a university under the authority of the Board, including the Chancellor's Office.

# ADMINISTRATIVE RULES

(36) "Public Work" is defined by the Bureau of Labor and Industries (BOLI) in ORS 279C.800(6).

(37) "Qualified Rehabilitation Facility" means a nonprofit activity center or rehabilitation facility authorized by the Oregon Department of Administrative Services to provide goods or services in accordance with ORS 279.835 et seq.

(38) "Request for Information (RFI)" means a Solicitation Document seeking information regarding products or services that a Public University is interested in procuring.

(39) "Request for Proposals (RFP)" means a Solicitation Document to obtain competitive Proposals to be used as a basis for making an acquisition or entering into a Contract when price will not necessarily be the predominant award criteria.

(40) "Request for Qualifications" means a Solicitation Document issued by a Public University to which interested Contractors respond in writing by describing their experience with and qualifications to provide the services described in the Solicitation Document.

(41) "Request for Quotes" means a Solicitation Document to obtain competitive quotes to be used as a basis for making an acquisition or entering into a Contract when best value will be the award criteria.

(42) "Responsible Offeror" means an Entity that demonstrates their ability to perform satisfactorily under a Contract by meeting the applicable standards of responsibility outlined in OAR 580-061-0130.

(43) "Responsive Solicitation Response" means a Solicitation Response that has substantially complied in all material respects with the criteria outlined in a Solicitation Document.

(44) "Retainer Contract" means a Contract by which, pursuant to a Solicitation Document, multiple Contractors are authorized to provide specific supplies or equipment to or perform specific services for a Public Universities. Contractors on a Retainer Contract may provide goods or services on a non-exclusive and as-needed basis.

(45) "Sealed" means a Solicitation Response to an RFP or an ITB that has not been opened by the Public University or a Solicitation Response delivered by electronic means that has not been distributed beyond the Public University personnel responsible for receiving the electronically submitted Solicitation Response.

(46) "Signed or Signature" mean any Written mark, word, or symbol that is made or adopted by an Entity with the intent to be bound and that is attached to or logically associated with a Written document to which the Entity intends to be bound.

(47) "Single Seller" means the only Contractor of a particular product or service reasonably available.

(48) "Solicitation Document" means an Invitation to Bid, Request for Proposals, Request for Qualifications, Request for Information or any other written document issued or posted on the OUS procurement website by a Public University that outlines the required Specifications necessary to submit a Bid, Proposal, or other response.

(49) "Solicitation Response" means a binding offer submitted in response to a Solicitation Document.

(50) "Specifications" means a description of the physical or functional characteristics, or of the nature of the goods or services, including any requirement for inspecting, testing, or preparing the goods or services for delivery and the quantities or qualities of the goods or services to be furnished under a Contract. Specifications generally will state the result to be obtained and may describe the method and manner of performance.

(51) "Women Business Enterprise" means a Women Business Enterprise as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.

(52) "Work" means the furnishing of all materials, equipment, labor, transportation, services, and incidentals necessary to successfully complete any individual item or the entire Contract and carrying out and completion of all duties and obligations imposed by the Contract.

(53) "Written or Writing" means letters, characters, and symbols inscribed on paper by hand, print, type, or other method of impression intended to represent or convey particular ideas or means. "Written" or "Writing," when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters, and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 5-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12; Administrative correction, 5-25-12; OUS 10-2012, f. & cert. ef. 6-18-12; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0015

### Purchasing and Contract Records

(1) Public Universities will maintain records relating to all Public University purchasing and contracting transactions in accordance with the requirements of the Secretary of State and OUS administrative rules.

(2) Documentation of all purchasing and contracting transactions will be made available for inspection by the public as outlined in applicable public records laws.

(3) Public Universities will maintain records relating to all Public University purchasing and contracting transactions that may include:

(a) An executed Contract and any amendments or Change Orders;

(b) The record of the actions used to develop the Contract;

(c) A copy of the Solicitation Document, if any;

(d) Any required findings or statement of justification for the selection of the Contractor or the procurement method used;

(e) The record of any negotiation of the Specifications, the Work, the Contract Price and related Contract terms;

(f) All information describing how the Contractor was selected, including the basis for awarding the Contract;

(g) The names of Entities and cost estimates considered.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0020

### Designation of Contract Officers

Each Public University Vice President for Finance and Administration or the Vice Chancellor for Finance and Administration will designate staff authorized to enter into Contracts and Public Improvement Contracts for the Public University.

(1) Public Universities will maintain a list identifying Contract Officers and describing the types and Contract Price of Contracts and Public Improvement Contracts they are authorized to enter into. Public Universities will provide an updated list annually to the Chancellor's Office. The Vice Chancellor for Finance and Administration may designate staff authorized to enter into Contracts and Public Improvement Contracts on behalf of all Public Universities.

(2) Contracts or Public Improvement Contracts entered into by individuals not designated as authorized Contract Officers and unauthorized procurements or expenditures that do not follow the OUS Procurement and Contracting Code will be voidable at the sole discretion of the Public University. Public Universities may take appropriate action in response to execution of Contracts or procurements contrary to this rule. Such actions include, but are not limited to, providing educational guidance, imposing disciplinary measures, and holding individuals personally liable for such Contracts or procurements.

(3) Authorized Contract Officers will be responsible for ensuring that the proper procedures are followed as outlined in chapter 580, Divisions 60, 61, 62, and 63.

(4) Unless otherwise specified in chapter 580, divisions 60, 61, 62, and 63, the Contracting Officer will perform all the duties of the Owner on behalf of the Board.

(5) The President may, by Written agreement with the President of another Public University or the Chancellor, and after notice to the Chancellor, transfer such delegation to a person at another Public University.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0025

### Policy Governing the Acquisition of Goods and Services available from Qualified Rehabilitation Facilities

Public Universities will purchase goods and services from Qualified Rehabilitation Facilities in accordance with the provisions of ORS 279.835 to 279.855 and applicable administrative rules.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0030

### Affirmative Action; General Policy

(1) The general policy of OUS Public Universities will be to expand economic opportunities for Historically Underrepresented Businesses by offering them the contracting and subcontracting opportunities available

# ADMINISTRATIVE RULES

through Public University Contracts. Notice of all Contracts over \$25,000 procured through a Competitive Process will be provided to the Advocate for Minority, Women, and Emerging Small Business, unless otherwise provided, by fully completing the information set out on the OUS procurement website. Public Universities are encouraged to unbundle contracts, when appropriate, to expand contract opportunities for Historically Underrepresented Businesses and Oregon-based businesses.

(2) OUS will not knowingly contract with or procure goods or services from any Entity that discriminates on the basis of age, disability, national origin, race, marital status, religion, sex, or sexual orientation.

(3) Offerors will certify, as part of the Solicitation Response that such Offeror has not discriminated against Historically Underrepresented Businesses in obtaining any required subcontracts.

(4) Public Universities will comply with the OUS Equity Contracting and Purchasing Policy and Data Reporting Procedures.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 5-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12; Administrative correction, 5-25-12; OUS 10-2012, f. & cert. ef. 6-18-12; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0035

### Emerging Small Business Program

(1) The Board encourages participation of Emerging Small Businesses by creating an Emerging Small Business Program. The Emerging Small Business Program is limited to businesses that meet the definition in ORS 200.005(3) and that maintain a current certification issued by the State of Oregon. When conducting procurements, Public Universities may implement the Emerging Small Business Program by methods including, but not limited to:

(a) Priority of Contract Award. In the event of a tie low Bid, when price is the sole determinative factor, give priority to a certified Emerging Small Business;

(b) Exclusive Emerging Small Business Opportunities. Public Universities have the authority to create opportunities that are only open to certified Emerging Small Businesses. When a Public University issues a Solicitation Document, the Public University may determine that it is in the university's interest to limit the opportunity to only qualified and certified Emerging Small Businesses.

(c) Evaluation Criteria. A Public University may identify in a Solicitation Document that it will award additional evaluation points based on certified Emerging Small Business status.

(2) For Construction-Related Services where price is the determinative factor, if a Responsible Emerging Small Business' Responsive Bid is within one percent of the lowest Responsible Responsive Bid, the Public University will award the Contract to the Emerging Small Business.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0040

### Sexual Harassment Policy

All Entities that wish to contract with the Public Universities will be notified on the OUS procurement website that the Board has adopted policies applicable to Contractors that prohibit sexual harassment and that the Contractor's company and employees are required to adhere to the Public University's policy prohibiting sexual harassment in their interactions with members of the Public University's community.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0045

### Insurance or Bond Requirements

All Contractors will provide and maintain insurance or bonding as may be required by the Public University. Such insurance or bonding will remain in force throughout the term of the Contract, including any extensions.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0050

### Interest on Overdue Charges

The policy of the Board is that a Public University pay any overdue account charge, in accordance with ORS 293.462, incurred by a Public

University when payment for goods and services have not been reasonably made.

(1) Overdue claims will be those that have not been paid within 45 days from the latest of the following dates: The date of the receipt of the accurate invoice, the date of the initial billing statement if no invoice is received, the date all goods have been received, or the date the claim is made certain by agreement of the parties or by operation of law. However, overdue account charges will not accrue on any purchases made by a Public University during time of civil emergency or in the event of a natural disaster that prevents the timely payment of accounts. In such instances, accounts will be paid in as timely a manner as possible.

(2) The maximum overdue charge incidental to procurement of the goods or services will be at a rate of two-thirds of one percent per month, but not more than eight percent per annum.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 293.462

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0055

### Solicitation Document Provisions

(1) Brand-Name Specification. Public Universities may specify brand names in the procurement of goods and services if that particular product or service has attributes not found in other goods and services of like kind. In addition, when specific design or performance specifications must be met for a good or service to be purchased, a Public University may specify a list of qualified goods or services by reference to the qualified goods or services of a particular contractor or potential contractor.

(2) Invitation to Bid Required Provision. If an Invitation to Bid is issued for a Contract for goods or services, the Public University will ensure that the following statement is contained in the Invitation to Bid: "Contractors will use recycled products, as defined in ORS 279A.010(1)(ii), to the maximum extent economically feasible in the performance of the Contract."

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0060

### Basis for Awarding Contracts

Public Universities will select Contractors and award Contracts based on such factors as are identified in the Solicitation Document and such other factors as are reasonable under the circumstances.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0065

### Contract Amendments (Including Change Orders and Extra Work) and Expired Contracts

An amendment for additional Work or goods that is reasonably related to the scope of Work under the original Contract, including Change Orders, extra work, field orders, or other change in the original Specifications that increases the original Contract Price or length of time, may be made with the Contractor without using a Competitive Process provided that the amendment does not materially alter such a Contract. An amendment that extends the Contract past the period set out in the Solicitation Document for anything other than completion of the Work contemplated in the original Contract as extended will require a new Competitive Process, unless approved by the Vice President for Finance and Administration or Vice Chancellor for Finance and Administration for good cause. Expired Contracts may be revived and reinstated upon the approval of the Vice President for Finance and Administration or Vice Chancellor for Finance and Administration or their designees.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0070

### Solicitation Responses are Offers

(1) Offer and Acceptance. The Solicitation Response is the Offeror's offer to enter into a Contract that will be binding upon the Offeror for thirty (30) days, unless a different time frame is specified in the Solicitation Document.

(2) The Solicitation Response will be a complete offer and fully responsive to the Solicitation Document, unless Offerors are specifically



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authorized by the Solicitation Document to take exceptions or to leave terms open to negotiation.

(3) Unless expressly authorized by the Solicitation Document, Offerors will not make their Solicitation Response contingent upon the Public University's acceptance of Specifications or contract terms that conflict with or are in addition to those in the Solicitation Document.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0075

### Facsimile and Electronic Solicitation Responses

(1) Public Universities may authorize submission of Solicitation Responses through facsimile or electronic methods.

(2) If the Solicitation Response is in response to an RFP or ITB and the Solicitation Document permits submission via facsimile or electronic means, the Public University must establish a method of receiving, identifying, recording, and preserving the "Sealed" requirement of the Formal Procurement.

(3) Solicitation Responses submitted through facsimile and electronic methods must contain Written signatures indicating intent to be bound by the offer.

(4) Public Universities may execute or open electronic submissions to verify receipt of documents prior to the Closing, but will not verify responsiveness of Solicitation Responses.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0080

### Solicitation Response Submissions

(1) Identification of Solicitation Responses. To ensure proper identification and special handling, if any, Offeror must appropriately mark its Written Solicitation Response. The Public University will not be responsible for the proper identification and handling of Solicitation Responses not submitted in the designated manner or format as required in the Solicitation Document.

(2) Receipt of Solicitation Responses. It is the Offeror's responsibility to ensure that Solicitation Responses are received by the Public University at the required delivery point, prior to the Closing as indicated in the Solicitation Document, regardless of the method used to submit or transmit the Solicitation Response.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0085

### Pre-Solicitation Response Conferences

(1) Pre-Solicitation Response conferences may be scheduled. Each pre-Solicitation Response conference will be described in the Solicitation Document as "voluntary" or "mandatory." If such a conference is designated as "mandatory," an Offeror must attend in order to submit a Solicitation Response.

(2) If the Offeror is an individual, the Offeror may authorize a representative other than himself/herself to attend the pre-Solicitation Response conference.

(3) Statements made by Public University representatives at the pre-Solicitation Response conference will not be binding unless a Written Addendum to the Solicitation Document is issued.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0090

### Offer Security

(1) The Public University may require in the Solicitation Document submission of a security. Security includes, but is not limited to, a surety bond from a surety company authorized to do business in the state of Oregon, cashier's check, certified check, or savings and loan secured check.

(2) The Solicitation Response security of all unsuccessful Offerors will be returned or released after a Contract has been executed and a performance bond provided (if such a bond is required), or after all Solicitation Responses have been rejected.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0095

### Addenda to Solicitation Document

(1) The Public University may change a Solicitation Document by Written Addenda. Public Universities will make reasonable efforts to notify potential Offerors of such Written Addenda by methods that may include, but are not limited to, publication of the Written Addenda on the OUS procurement website or requiring submission of a notice of interest by potential Offerors to receive Addenda.

(2) The Public University will issue the Written Addenda within a reasonable time prior to Closing to allow prospective Offerors to consider the Addenda in preparing their Solicitation Responses. The Public University may extend the Closing if it determines prospective Offerors need additional time to review and respond to Addenda.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0100

### Clarification of ITBs and RFPs and Requests for Change

Requests for clarification or change of the ITB or RFP must be received by the Public University in writing by the date indicated in the ITB or RFP.

(1) Such request for clarification or change will include the reasons for the clarification or change, and any proposed changes to Specifications or provisions.

(2) The Public University will consider all requests for clarification or change and, if appropriate, amend the ITB or RFP by issuing Addenda.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0105

### Pre-Closing Modifications or Withdrawal of Bids or Proposals

(1) Modifications. An Offeror may modify its Solicitation Response in Writing prior to the Closing. Any modification must include a statement that the modification amends and supersedes the prior Solicitation Response.

(2) Withdrawals. An Offeror may withdraw its Solicitation Response by Written notice, signed by an authorized representative of the Offeror, submitted to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Public University prior to the Closing. The Offeror, or authorized representative of the Offeror, may also withdraw its Solicitation Response in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Public University.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0110

### Formal Procurement receipt, Opening, and Recording of Bids and Proposals

In all Formal Procurements a Public University will comply with the following:

(1) Receipt. A Public University will electronically or mechanically time-stamp or hand-mark each Bid or Proposal and any modification upon receipt. Except as provided in OAR 580-061-0075(2) the Public University will not open the Bid or Proposal or modification, but will store it in a secure place until Opening. If the Public University inadvertently opens a Bid or Proposal or a modification prior to the Opening, the Public University will reseal and store the opened Bid or Proposal or modification until the Opening.

(2) Disclosure. Unless otherwise specified in the Solicitation Document, the name of the Entity submitting a Bid or Proposal will be the only information that may be made public until notice of the intent to Award or an Award has been issued.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

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## 580-061-0115

### Late Bids and Proposals, Late Withdrawals, and Late Modifications

Any Bid or Proposal, modification, or withdrawal received after the Closing is late. A Public University will not consider late Bids or Proposals, modifications, or withdrawals except as permitted in OAR 580-061-0120. However, Public Universities may adopt a Public University policy or procedure to accept late bids in circumstances that are determined to be in the best interests of the Public University if policy or procedure is stated in the Solicitation Document.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0120

### Mistakes

(1) Generally. To protect the integrity of the Competitive Process and to assure fair treatment of Offerors, a Public University should carefully consider whether to permit waiver, correction, or withdrawal for certain mistakes.

(2) Public University Treatment of Mistakes. A Public University will not allow an Offeror to correct or withdraw a Solicitation Response for an error in judgment. If the Public University discovers certain mistakes in a Solicitation Response after Opening, but before award of the Contract, the Public University may take the following action:

(a) A Public University, in its sole discretion, may waive or permit an Offeror to correct a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Solicitation Response or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Solicitation Responses or the correct number of other documents required by the Solicitation Document; or

(B) Sign the Solicitation Response in the designated block, provided a Signature appears elsewhere in the Solicitation Response, evidencing an intent to be bound; or

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided it is clear on the face of the Solicitation Response that the Offeror received the Addendum and intended to be bound by its terms, or the Addendum involved did not affect price, quality, or delivery.

(b) A Public University may correct a clerical error if the error is evident on the face of the Solicitation Response or other documents submitted with the Solicitation Response and the Offeror confirms the Public University's correction in Writing. A clerical error is an Offeror's error in transcribing its Solicitation Response. Examples include, but are not limited to, typographical mistakes, errors in extending unit prices, transposition errors, and arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations. In the event of a discrepancy, unit prices will prevail over extended prices.

(c) A Public University may permit an Offeror to withdraw a Solicitation Response after Closing based on one or more clerical errors in the Solicitation Response only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected under subsection (b) of this subsection;

(D) That the Offeror acted in good faith in submitting a Solicitation Response that contained the claimed error and in claiming that the alleged error in the Solicitation Response exists;

(E) That the Offeror acted without gross negligence in submitting a Solicitation Response that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Public University does not grant it permission to withdraw the Solicitation Response;

(G) That the Public University's or the public's status has not changed so significantly that withdrawal of the Solicitation Response will work a substantial hardship on the Public University or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Public University.

(d) The criteria in subsection (2)(a) of this rule will determine whether a Public University will permit an Offeror to withdraw its Solicitation Response after Closing. These criteria also will apply to the question whether a Public University will permit a Offeror to withdraw its

Solicitation Response without forfeiture of its Bid bond (or other Bid security) or without liability to the Public University based on the difference between the amount of the Offeror's Solicitation Response and the amount of the Contract actually awarded by the Public University, whether by Award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Offeror or by resort to a new solicitation.

(3) Rejection for Mistakes. The Public University will reject any Offeror in which a mistake is evident on the face of the Solicitation Response and the intended correct Solicitation Response is not evident or cannot be substantiated from documents submitted with the Solicitation Response.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0125

### Low Tie Bids

(1) Definition. Low Tie Bids are low tied Responsive Bids from Responsible Bidders that are identical in price, fitness, availability, and quality and that meet all the requirements and criteria set forth in the Solicitation Document.

(2) Award. In the event of a Low Tie Bid, the Public University will award the Contract based on the following order of precedence:

(a) An Emerging Small Business that meets the definition in ORS 200.005(3) and that maintains a current certification issued by the State of Oregon;

(b) An Entity whose principal offices or headquarters are located in Oregon;

(c) If neither subsection (a) nor (b) apply, award of the Contract will be made by drawing lots.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0130

### Rejection of Individual Solicitation Responses and Offerors

(1) A Public University may reject, in whole or in part, any Solicitation Response not in compliance with all prescribed Solicitation Response procedures, Contract provisions, and Specifications contained in the Solicitation Document or upon a Written finding by the Public University that it is in the public interest to do so.

(2) Reasons for rejection. A Public University may reject a Solicitation Response upon the Public University's findings that include, but are not limited to, the Solicitation Response:

(a) Is contingent upon the Public University's acceptance of terms and conditions that differ from the Solicitation Document; or

(b) Takes exception to the terms and conditions (including Specifications) set forth in the Solicitation Document; or

(c) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law; or

(d) Offers goods or services that fail to meet the Specifications of the Solicitation Document; or

(e) Is late; or

(f) Is not in substantial compliance with the Solicitation Document; or

(g) Is not in substantial compliance with all prescribed solicitation procedures; or

(h) Does not include the Solicitation Response security as required by the Solicitation Document; or

(i) Does not include an executed certification of non-discrimination in compliance with 580-061-00305 and compliance with Oregon tax laws.

(3) A Public University may reject an Offeror upon the Public University's findings that include, but are not limited to, the Offeror:

(a) Has not met any required mandatory prequalification;

(b) Has been disqualified pursuant to OAR 137-046-0210(3) (Disadvantaged Business Enterprise Disqualification);

(c) Has not met the requirements of the Emerging Small Business Program created in OAR 580-061-0035, if required in the Solicitation Document.

(d) That has been debarred in accordance with ORS 279B.130 or 279C.440;

(e) Has been declared ineligible by the Commissioner of Bureau of Labor and Industries under ORS 279C.860;

(f) Has within the last five years been found, in a civil, criminal, or administrative proceeding, to have committed or engaged in fraud, misrep-

# ADMINISTRATIVE RULES

resentation, price-rigging, unlawful anti-competitive conduct, or similar behavior;

(g) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Public University must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Public University may consider:

(A) If the Offeror has appropriate financial, material, equipment, facility, and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the Offeror to meet all contractual responsibilities;

(B) If the Offeror has a satisfactory record of contract performance. The Public University may consider both private and public contracts in determining responsible performance under a contract;

(C) If the Offeror has a satisfactory record of integrity. An Offeror may lack integrity if a Public University determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a state agency. A Public University may find an Offeror non-Responsible based on the lack of integrity of any person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor person);

(D) If the Offeror is qualified legally to Contract with the Public University;

(E) If the Offeror has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Public University concerning responsibility, the Public University may base the determination of responsibility upon any available information or may find the Offeror non-Responsible.

(4) Form of Business Entity. For purposes of this rule, the Public University may investigate any Entity submitting a Solicitation Response. The investigation may include the Entity's officers, directors, owners, affiliates, or any other person acquiring ownership of the Entity to determine application of this rule.

(5) Notice. If an Offeror or a Solicitation Response is rejected in accordance with this rule, the Public University will provide written notice of such rejection to the Offeror. The notice will include the grounds for rejection and a statement of the Offeror's appeal rights and applicable appeal deadlines. If an Offeror wishes to appeal the decision to reject the Offeror or Solicitation Response, the Offeror must notify the Public University, in Writing, within three Days after receipt of the notification.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0135

### Rejection of All Solicitation Responses

Rejection. A Public University may reject all Bids or Proposals when- ever the Public University finds it is in the Public University's best interest to do so.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0140

### Disposition of Solicitation Responses if Solicitation Cancelled

(1) Prior to Solicitation Response Opening. When a solicitation is cancelled prior to Opening, all Solicitation Responses received will be destroyed.

(2) After Solicitation Response Opening. When all Solicitation Responses are rejected, the Solicitation Responses received will be retained and become part of the Public University's permanent solicitation file.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0145

### Protest of Contractor Selection, Contract Award, and Protest of Solicitation Document

(1) The purpose of this rule is to require adversely affected or aggrieved Offeror on a Public University solicitation to exhaust all avenues of administrative review and relief before seeking judicial review of the Public University's selection or Award decision.

(2) Types of Protests. The following matters may be protested:

- (a) A determination of responsibility or lack thereof;
- (b) A determination of responsiveness or lack thereof;
- (c) The rejection of a Solicitation Response, unless notice of rejection has been previously provided under OAR 580-061-0130(5);
- (d) The content of a Solicitation Document;
- (e) The selection of one or more Contractors. A protest may be submitted only by an Entity that can demonstrate that it has been or is being adversely affected by a Public University decision or the content of a Solicitation Document.

(3) Delivery. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Public University within three (3) Days after the Award of a Contract or issuance of the notice of intent to Award the Contract, whichever occurs first. Protests must be clearly marked on the outside of the envelope with the title or the number of the Solicitation Response and that it is a protest to ensure that it is recognized and recorded.

(4) Content of Protest. An Offeror's protest must fully specify the grounds for the protest and include all evidence that the protestor wishes the Vice Chancellor for Finance and Administration, Public University Vice President for Finance and Administration, or designee to consider. Failure to include any ground for the protest or any evidence in support of it will constitute a final, knowing, and voluntary waiver of the right to assert such ground or evidence. A protest must include a conspicuous marking identifying the type and nature of the protest.

(5) A protest of a Solicitation Document may be made only if a term or condition of the Solicitation Document, including, but not limited to, Specifications or Contract terms violates applicable law. The Public University will (upon altering the Solicitation Document in response to a protest) promptly transmit the revised Solicitation Document to all Offerors and extend the Closing where appropriate. The Public University may choose, in its sole discretion, to close the procurement process without making an Award and begin a new procurement process.

(6) A protest of the selection of one or more Contractors requires the protestor to demonstrate, as applicable;

(a) That all higher-ranked Offerors were ineligible for selection or that the protestor would have been "next in line" to receive the Award and was eligible for selection; and

(b) That the Offeror selected was ineligible.

(c) In the case of a sole source procurement, that the Single Seller selected is not the only Contractor or consultant reasonably available to provide the personal or professional services, goods, services, Professional Consultant services as defined in OAR 580-061-0010, Construction-Related Services as defined in 580-061-0010, or combination of Professional Consultant services and Construction-Related Services.

(7) A protest of the rejection of a Solicitation Response must demonstrate that the Public University's decision was materially in error or that the Public University committed a material procedural error and that any such error, alone or in combination with other errors, was a "but for" cause of the rejection.

(8) Response. The Vice Chancellor for Finance and Administration or the Public University Vice President for Finance and Administration, or their designee, will have the authority to settle or resolve a Written protest. A protest received after the time set out in the Solicitation Document will not be considered. The Vice Chancellor for Finance and Administration, or Vice President for Finance and Administration, or designee will issue a Written final agency order of the protest in a timely manner. If the protest is upheld, in whole or in part, the Public University may, in its sole discretion, either Award the Contract to the successful protestor or cancel the procurement or solicitation. Contract Award may be made prior to issuance of the final agency order if authorized by the Vice Chancellor for Finance and Administration, Vice President for Finance and Administration, or their designee.

(9) Judicial Review. Judicial review of the Public University's decision relating to a Contract Award protest will be available pursuant to the provisions of ORS 183.480 et seq.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 7-2008(Temp), f. & cert. ef. 6-5-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0150

### Right to Inspect Plant

The Public University may, at reasonable times, inspect the part of the plant or place of business of a Contractor or any subcontractor that is related to the performance of any prospective Contract or Awarded Contract.

Stat. Auth.: ORS 351

# ADMINISTRATIVE RULES

Stats. Implemented:  
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0155

### Invitation to Bid and Request Proposal Negotiations

(1) The Public University may negotiate with the lowest-cost Bidders after determining that the Bids are Responsive and from Responsible Bidders.

(2) The Public University may, if it has given notice in the Solicitation Document, commence negotiations in accordance with sections (3) and (4) of this rule with Proposers in the competitive range. For purposes of this rule "competitive range" means the highest-ranked Proposers based on evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Solicitation Document.

(3) If the Public University chooses to enter into discussions with and receive best and final Proposals, the Public University will proceed as follows:

(a) The Public University will initiate oral or written discussions with all Proposers submitting Responsive Proposals or all Proposers in the competitive range regarding their Proposals with respect to the provisions of the Solicitation Document that the Public University identified in the Solicitation Document as the subject of discussions.

(b) The Public University may conduct discussions with each eligible Proposer necessary to fulfill the purposes of this section (3), but need not conduct the same amount of discussions with each eligible Proposer. The Public University may terminate discussions with any eligible Proposer at any time. However, the Public University will offer all eligible Proposers the same opportunity to discuss their Proposals with the Public University before the Public University notifies eligible Proposers of the date and time pursuant to subsection (d) that best and final Proposals will be due.

(c) The Public University may adjust the evaluation of a Proposal as a result of a discussion under this section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the Solicitation Document.

(d) If best and final Proposals are required, the Public University will establish a common date and time by which Proposers must submit best and final Proposals. Best and final Proposals will be submitted only once, provided, however, the Public University may make a written determination that it is in the Public University's best interest to conduct additional discussions, negotiations, or change the Public University's requirements and require another submission of best and final Proposals. The Public University will evaluate Proposals as modified.

#### (4) Negotiations.

(a) The Public University may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers.

(b) The Public University may negotiate:

(A) The statement of Work;

(B) The Contract Price as it is affected by negotiating the statement of Work; and

(C) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Solicitation Document. Accordingly, Proposers will not submit and the Public University will not accept for negotiation, any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Solicitation Document.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-061-0160

### Disqualification from Consideration for Award of Contracts

(1) A Public University may disqualify an Entity from consideration for award of Public University Contracts for the reasons listed in subsection (2) of this section after providing the Entity with notice and a reasonable opportunity to be heard.

(a) All OUS Public Universities may rely upon a disqualification of an Entity by another Public University or exclusion by the federal government or the State of Oregon. The Chancellor's Office will maintain a current roster for Entities that have been disqualified.

(b) In lieu of the disqualification process described in this rule, a Public University contracting for a Public Improvement may petition the Construction Contractors Board to disqualify an Entity from consideration

for award of the Public University's Public Improvement Contracts for the reasons listed in subsection (2) of this rule.

(2) An Entity may be disqualified from consideration for Award of a Contract for any of the following reasons:

(a) A primary employee of the Entity has been convicted of a criminal offense as an incident of obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

(b) A primary employee of the Entity has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects the person's responsibility for the Entity;

(c) A primary employee of the Entity has been convicted under state or federal antitrust statutes;

(d) A primary employee of the Entity has committed a violation of a contract provision that is regarded by a Public University or the Construction Contractors Board to be so serious as to justify disqualification. A violation may include, but is not limited to, a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the Entity may not be considered to be a basis for disqualification;

(e) The Entity does not carry workers' compensation or unemployment insurance as required by statute.

(3) A Public University will issue a Written decision to disqualify an Entity under this section. The decision will:

(a) State the reasons for the action taken; and

(b) Inform the disqualified Entity of the appeal rights of the Entity under ORS 279C.445 and 279C.450.

(4) A copy of the decision issued under subsection (3) of this section must be mailed or otherwise furnished immediately to the disqualified Entity.

(5) Appeal of Disqualification. An Entity who wishes to appeal disqualification must, within three (3) business days after receipt of notice of disqualification, notify the Public University in Writing that the Entity appeals the disqualification. Immediately upon receipt of the notice of appeal, the Public University will notify the OUS Vice Chancellor of Finance and Administration, or designee.

(6) The OUS Vice Chancellor of Finance and Administration, or designee, will conduct the appeal generally consistent with the procedures set forth in ORS 279C.450. The OUS Vice Chancellor of Finance and Administration, or designee, may share the final outcome of the appeal with all Public Universities.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

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**Rule Caption:** Align rules with SB 242; delineate roles and responsibilities; clarify language; eliminate unnecessary provisions.

**Adm. Order No.:** OUS 3-2013(Temp)

**Filed with Sec. of State:** 4-10-2013

**Certified to be Effective:** 4-10-13 thru 9-30-13

**Notice Publication Date:**

**Rules Amended:** 580-062-0010, 580-062-0015, 580-062-0020

**Subject:** The amendments align the terminology with these rules with that within Senate Bill 242 and recently adopted Board policies (specifically removing all references to DAS; provide exemptions to contract for insurance and legal products and services required by OUS' departure from the state insurance fund and the DOJ; and include language to align OARs with the Board policy on contracting with Historically Underrepresented Businesses); update processes to reflect changing technologies and procedures; and clarify language and eliminate unnecessary provisions.

**Rules Coordinator:** Marcia M. Stuart—(541) 346-5749

## 580-062-0010

### Procurement Card

The Chancellor's Office may maintain procurement card services for the benefit of the Public Universities. The Controller's Office of the Chancellor's Office will publish policies governing use of the procurement card.

Stat. Auth.: ORS 351

Stats. Implemented:

# ADMINISTRATIVE RULES

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 3-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-062-0015

### Personal/Professional Services, Goods, and Services Contract Procurement Thresholds

(1) When procuring personal or professional services, goods, or services, not including services from Professional Consultants as defined in chapter 580, division 63, Public Universities will conduct the procurement in accordance with the Direct Procurement, Informal Procurement, or Formal Procurement method, unless another method is applicable, based on the anticipated contract price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties. Multiple Contracts, purchase orders, or purchasing requisitions will not be issued separately with the intent to circumvent these rules. Public Universities may establish lower procurement thresholds for specific procurements or as a Public University policy or procedure.

(a) \$25,000 or less — Direct Procurement or other method of procurement that the Public University deems beneficial to the procurement.

(b) \$25,000.01 to \$150,000 — Informal Procurement, Formal Procurement, or other method of procurement, except the Direct Procurement method, that the Public University deems beneficial to the procurement.

(c) Greater than \$150,000 — Formal Procurement or other method of procurement, except the Direct Procurement or Informal Procurement methods, that the Public University deems beneficial to the procurement.

(2) Notwithstanding subsection (1), if the source of the funding for the procurement requires a different procurement method, the Public University may comply with the procurement method required by the funding source.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 3-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## 580-062-0020

### Methods of Procurement

Public Universities will use the following methods of procurement when procuring personal or professional services or goods and services.

(1) Direct Procurement. A process where the Public University negotiates directly with a single Entity to provide personal or professional services or goods and services.

(2) Informal Procurement. A Competitive Process where the Public University posts an advertisement of the opportunity on the OUS procurement website for a reasonable time necessary to obtain at least three (3) Solicitation Responses. The Public University may also directly contact prospective Offerors. If the notice has been posted for a reasonable time period and fewer than three Solicitation Responses have been submitted, the Public University may enter into a Contract with a Responsible Offeror based on the Specifications contained in the Solicitation Document.

(3) Formal Procurement. A Competitive Process where the Public University:

(a) Creates a Solicitation Document that contains the procurement procedures and necessary Specifications.

(b) Publishes a notice of the procurement on the OUS procurement website and, at the discretion of the Public University, in a trade periodical, newspaper of general circulation, or other historically underrepresented business-targeted periodicals, Public University website, or other medium for advertising. The notice must specify when and where the Solicitation Document may be obtained and the Closing Date/Time. The notice must be published for a duration reasonable under the circumstances for the procurement.

(c) Conducts the procurement in accordance with chapter 580, division 61, section 0000 through 0160.

(4) Emergency Procurement. The Chancellor, Vice Chancellor of Finance and Administration, President, or Vice President of Finance and Administration, or designee may declare an Emergency when such a declaration is deemed appropriate. The reasons for the declaration will be documented and will include justifications for the procedure used to select the Entity for a Contract within the scope of the Emergency declaration. After the President, Chancellor, or designee has declared an Emergency, the Public University may negotiate a Contract with any qualified Entity for services included in the scope of the Emergency. The Public University will maintain appropriate records of negotiations carried out as part of the contracting process.

(5) Retainer. Public Universities may conduct a Formal Procurement to enter into Retainer Contracts with multiple Entities to provide personal

or professional services or goods and services at contracted rates of compensation or based on pre-qualifications.

(6) Alternative Processes. Notwithstanding the foregoing procedures, the Public University Contract Officer may authorize alternative procurement methods that provide a Competitive Process to two or more Entities to contract with the Public University and meet the following objectives:

(a) Responds to innovative business and market methods; or

(b) Contributes to Public University productivity improvement and process redesign; or

(c) Results in comprehensive cost-effectiveness and productivity for the Public University.

(7) Exempt. Public Universities need not follow, regardless of value, a Competitive Process when seeking or acquiring or paying for the following goods and services:

(a) Educational services.

(b) Advertising and media services, excluding consulting services.

(c) Price-regulated goods and services, including utilities, where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

(d) Goods or services under federal contracts. When the price of goods and services has been established by a contract with an agency of the federal government pursuant to a federal contract award, Public Universities may purchase the goods and services in accordance with the federal contract. In addition, Public Universities may purchase specific equipment that is only available from one source or use specific Entities that are expressly required under the terms of the contract.

(e) Copyrighted materials. Copyrighted materials covered by this exemption may include, but are not limited to, textbooks, workbooks, curriculum kits, reference materials, software, periodicals, library books, library materials, and audio, visual, and electronic media.

(f) Investment contracts and retirement plan services, excluding consulting services.

(g) Food and food-related products.

(h) Maintenance services directly from the contractor providing the goods.

(i) Used personal property.

(j) Goods purchased for resale to outside entities.

(k) Goods or services related to intercollegiate athletic programs.

(l) Cadavers or cadaveric organs.

(m) Hotel sites for large conferences and workshops.

(n) Dues, registrations, and membership fees.

(o) Gasoline, diesel fuel, heating oil, lubricants, natural gas, electricity, and similar commodities and products and the transportation thereof.

(p) Supplies, maintenance, and services for ocean-going vessels when they are in other than home port.

(q) Repair and overhaul of goods or equipment.

(r) Goods or services purchased in foreign countries.

(s) Insurance and insurance-related contracts, not including consulting or brokerage contracts.

(t) Grants, including Grant applications and proposals.

(u) Contracts for legal services, including professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a Public University is or may become interested.

(v) Contracts entered into, issued, or established in connection with:

(A) The incurring of debt by a Public University, including but not limited to the issuance of bonds, certificates of participation, and other debt repayment obligations, and any associated Contracts, regardless of whether the obligations that the Contracts establish are general, special, or limited;

(B) The making of program loans and similar extensions or advances of funds, aid, or assistance by a Public University to a public or private body for the purpose of carrying out, promoting, or sustaining activities or programs authorized by law; or

(C) The investment of funds by a Public University as authorized by law and other financial transactions of a Public University that by their character cannot practically be established under the Competitive Process.

(D) Grant-funded projects where professional or personal service providers are named in Grant or identified in the Grant budget, unless Public University determines it is in its best interest to require a Competitive Process.

(w) Contracts for employee benefit plans as authorized by law.

(x) Services provided by those in the medical community including, but not limited to, doctors, physicians, psychologists, nurses, veterinarians, and those with specific license to administer treatments for the health and well-being of people or animals.

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(y) Artists, performers, photographers, graphic designers, website design, and speakers.

(z) Sponsorship agreements for Public University events or facilities.

(8) Sole Source. A process where the President, the Chancellor or designee has made a Written determination that due to special needs or qualifications, only a Single Seller is reasonably available to provide such personal or professional services or goods or services. Sole source procurement will be avoided except when no reasonably available alternative source exists.

(a) Each Public University will provide public notice of its determination that the person or professional services or goods or services are only available from a Single Seller. Public notice may be provided on the OUS procurement website. The public notice will describe the personal or professional services or goods or services to be acquired from the Single Seller, identify the prospective Contractor, and include the date, time and place that protests are due. The Public University shall give Entities at least seven (7) Days from the date of notice publication to protest the sole source determination.

(b) An Entity may protest the Public University's determination that the personal or professional services or goods or services are available from a Single Seller in accordance with OAR 580-061-0145.

(c) On an annual basis, Presidents, or their designees will submit a report to the Board summarizing approved sole source procurements for the Public University for the prior fiscal year. The report will be made available for public inspection.

(9) Special Entity.

(a) Public Universities may purchase goods or services, without using a Competitive Process, if purchasing from a federal, state, local governmental agency, public corporation (including, but not limited to, OHSU), or a state Qualified Rehabilitation Facility certified by the Oregon Department of Human Services or the Oregon State Procurement Office.

(b) Public Universities may participate in cooperative procurements with other contracting agencies or Entities or utilize other public contracts or cooperatively-procured contracts if it is determined, in Writing, that the solicitation and award process used to award that Contract was reasonably equivalent to the respective processes established in these rules, including notice during solicitation process that the contract resulting from the procurement may be utilized by other entities. Determinations regarding equivalency and adequacy of processes for cooperating procurements will be made by Public University Contract Officer.

(10) Special Procurement. A special procurement is an exemption from competitive procedures that the Finance and Administration Committee of the Board determines is appropriate because it: (A) Is reasonably expected to result in substantial cost savings to the Public University or to the public; or (B) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with others processes described in this rule.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 6-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12; Administrative correction, 5-25-12; OUS 11-2012, f. & cert. ef. 6-18-12; OUS 3-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13

## Oregon University System, Portland State University Chapter 577

**Rule Caption:** Amends rule to comply with recent Oregon Supreme Court ruling in PSU-AAUP v. AAUP.

**Adm. Order No.:** PSU 1-2013(Temp)

**Filed with Sec. of State:** 3-20-2013

**Certified to be Effective:** 3-20-13 thru 9-16-13

**Notice Publication Date:**

**Rules Amended:** 577-042-0010

**Subject:** The proposed amendment to Portland State University's Faculty Grievance Procedure is needed to respond to the Oregon Supreme Court decision in PSU-AAUP v. AAUP, SC S059182.

A copy of the Temporary Administrative Rules Certificate and Order for Filing, Statement of Need and Justification, and the text of the proposed rules can be found at <http://www.pdx.edu/fadm/rule-making-portland-state>.

**Rules Coordinator:** Lorraine D. Baker—(503) 725-8050

## 577-042-0010

### General Provisions

(1) At any step, a grievant has the right to be accompanied, assisted, or represented by other persons, including counsel, designated by the grievant. Except in cases of illness, absence from the country, or official leave of absence, the grievant shall be present in person when the grievance is presented and at any subsequent hearing. A grievant has the right of self-representation at any step of this grievance procedure.

(2) The parties may agree to modify the time limits prescribed in the grievance procedure. All such agreements shall be in writing and signed by the grievant and the administrator who is required to act within the time limit being modified.

(3) Failure of the grievant to take action within the time limits specified by the grievant of the decision. Failure by the accountable administrator to act within the specified time limits, including any extensions shall constitute a violation of this procedure, the complaint against which will automatically become a part of the grievance and will be treated in subsequent stages of the procedure as if it had been part of the original complaint, except that no evidence or testimony shall be required save that the administrator did not act within the time limits. Failure of the administration to communicate the decision on a grievance at any step within the time limits, including any extension thereof, shall allow the grievant to proceed to the next step.

(4) A grievant may withdraw a grievance at any time.

(5) At any time, the parties may, at their discretion, enter into confidential mediation communications pursuant to OAR 580-001-0030 and 580-022-0047 provided as follows:

(a) All parties to the mediation must agree in writing to engage in confidential mediation; and

(b) All parties must agree to suspend consideration of the grievance until such time as the mediation resolves the grievance or the mediation concludes. In no case shall the rights of the grievant to continue to pursue resolution of the grievance under this rule be limited or considered untimely if the parties have mutually agreed to confidential mediation, whether or not the grievance has been formally presented prior to confidential mediation. A grievance that has not been formally presented and that is not resolved by confidential mediation must be presented as described in OAR 577-042-0015 within 30 days of the conclusion of confidential mediation.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: PSU 1-1989(Temp), f. & cert. ef. 1-5-89; PSU 2-1989, f. & cert. ef. 2-1-89; PSU 2-2001(Temp), f. 9-27-01, cert. ef. 10-1-01 thru 1-29-02; Administrative correction 3-15-02; PSU 3-2002, f. & cert. ef. 10-22-02; PSU 1-2013(Temp), f. & cert. ef. 3-20-13 thru 9-16-13

## Public Utility Commission Chapter 860

**Rule Caption:** In the Matter of Housekeeping Changes to OAR 860-027-0015, New Construction Budget.

**Adm. Order No.:** PUC 2-2013

**Filed with Sec. of State:** 3-21-2013

**Certified to be Effective:** 3-21-13

**Notice Publication Date:** 12-1-2012

**Rules Amended:** 860-027-0015

**Subject:** The adopted rule changes reconcile OAR 860-027-0015 with changes to the statutes that were effective in 2006 as a result of the 2005 Senate Bill 600. The rule changes eliminate confusion about the applicability of the new construction budget reporting requirements by eliminating "and large telecommunications utilities" from the rule language.

**Rules Coordinator:** Diane Davis—(503) 378-4372

## 860-027-0015

### New Construction Budget

Each energy utility operating within Oregon is required to file annually on or before December 31 on forms approved by the Commission information on new construction, extensions, and additions to the utility's property.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.105 & 757.105

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 12-2002, f. & cert. ef. 3-12-02; PUC 2-2013, f. & cert. ef. 3-21-13

# ADMINISTRATIVE RULES

## Secretary of State, Elections Division Chapter 165

**Rule Caption:** Adopts Filing Deadlines for Vacancies Appearing on the May 21, 2013, Regular District Election

**Adm. Order No.:** ELECT 2-2013(Temp)

**Filed with Sec. of State:** 3-19-2013

**Certified to be Effective:** 3-19-13 thru 3-26-13

**Notice Publication Date:**

**Rules Adopted:** 165-020-2032

**Subject:** Heceta Water District, Position 4, and Hubbard Fire District, Position 3 have vacancies in office that occurred after the deadline for notifying candidates of vacancies in office, but before the 62nd day before the May 21, 2013, Regular District election. This rule provides the filing deadlines for the county to provide a public notice of district election and sets the deadline to accept candidate filings.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

### 165-020-2032

#### Filing Deadlines for Vacancies Appearing on the May 21, 2013, Regular District Election

Due to a vacancy in the Heceta Water District, Position 4 (Lane County) and the Hubbard Fire District, Position 3 (Marion County) the following deadlines apply:

(1) March 19, 2013, last date for clerk to publish notice of district election on the county's website.

(2) March 21, 2013, last date for candidates for Heceta Water District, Position 4 to file declaration of candidacy or completed nominating petition with the Lane County Clerk.

(3) March 21, 2013, last date for candidates for Hubbard Fire District, Position 3 to file declaration of candidacy or completed nominating petition with the Marion County Clerk.

(4) March 25, 2013, last date for candidates for Hubbard Fire District, Position 3 to file candidate statements for inclusion in the Marion County voters' Pamphlet.

Stat. Auth.: ORS 246.150,

Stats. Implemented: ORS 255.245

Hist.: ELECT 2-2013(Temp), f. & cert. ef. 3-19-13 thru 3-26-13

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## Travel Information Council Chapter 733

**Rule Caption:** Amend existing Procedural Rules and adopt new model rules of procedure.

**Adm. Order No.:** TIC 1-2013

**Filed with Sec. of State:** 4-15-2013

**Certified to be Effective:** 4-15-13

**Notice Publication Date:** 2-1-2013

**Rules Adopted:** 733-001-0010, 733-001-0015, 733-001-0025, 733-001-0030, 733-001-0035

**Rules Amended:** 733-001-0000, 733-001-0005

**Subject:** The Travel Information Council held a quarterly meeting on January 9, 2013. The Council proposed adopting model rules of procedure that would facilitate transparency and efficiency through public notification, adopting the Attorney Generals Model Rules, declaring an Assumed Business Name, formalizing Public Records requests, and establishing requirements of confidentiality for dispute resolution and mediation. Having received no comments from the public, the Council voted to adopt the changes at the April 10, 2013 meeting.

**Rules Coordinator:** Diane Cheyne—(503) 378-4508

### 733-001-0000

#### Notice of Proposed Rules

In accordance with ORS 183.341, to provide a reasonable opportunity for interested persons to be notified of proposed actions, prior to the adoption, amendment, or repeal of a permanent rule, the Travel Information Council shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 and in accordance with 183.335.

(2) By mailing a copy of the notice to persons on the Travel Information Council's mailing lists for specific interest areas established pursuant to ORS 183.335(8).

(3) By mailing a copy of the notice to legislators as provided in ORS 183.335(15).

(4) By mailing a copy of the notice to the following:

(a) Associated Press;

(b) Capitol Press Room; and

(c) Statesman-Journal newspaper.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.335 & 183.341

Hist: TIC 10, f. & ef. 8-19-77; TIC 1-2013, f. & cert. ef. 4-15-13

### 733-001-0005

#### Model Rules of Procedure

Pursuant to ORS 183.341, the Travel Information Council adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act as amended and effective January 1, 2008.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Travel Information Council.]

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341(2), 183.341(4) & 183.390

Hist: TIC 10, f. & ef. 8-19-77; TIC 1-2013, f. & cert. ef. 4-15-13

### 733-001-0010

#### Model Rules of Public Contracting for Construction Services

Pursuant to ORS 279A.065, the Travel Information Council adopts the Attorney General's Model Rules of General Provisions Related to Public Contracts for Construction Services in OAR chapter 137, division 49.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & 279A.065

Hist: TIC 1-2013, f. & cert. ef. 4-15-13

### 733-001-0015

#### Assumed Business Name

Pursuant to ORS 377.835(5) and 648.005, the Travel Information Council adopts the Assumed Business Name of the Oregon Travel Experience to conduct or transact business in the State of Oregon.

Stat. Auth.: ORS 377.835(5) & 648.005

Stats. Implemented: ORS 648.005

Hist: TIC 1-2013, f. & cert. ef. 4-15-13

### 733-001-0025

#### Public Records Request Requirements and Fees

All information in the custody of the Travel Information Council (Council) will be disclosed or protected from disclosure in accordance with Chapter 192 of the Oregon Revised Statutes.

(1) As used in this rule, the following definitions apply:

(a) "Non-Standard" means:

(A) Audio tapes;

(B) Video Tapes;

(C) Microfilm, and

(D) Machine readable formats such as computer hard drives, and magnetic tape.

(b) "Certified copies" means, photocopies, that on the date copied, are true and accurate copy of the original record. The Council cannot certify as to any subsequent changes or manipulation of the record.

(c) "Research" means the compilation of information:

(A) That is not readily and immediately available from a single source or a group of related sources; or

(B) That requires a search to locate the requested information.

(2) A request for photocopies, electronically distributed (email) copies and certifications of public records that are on file with the Council can be made verbally, in writing, by fax or by email.

(a) The request must:

(A) Include name and address of the person requesting the public record;

(B) Include telephone number of the person requesting the public record; and

(C) Adequately describe the record(s) requested including subject matter, approximate creation date(s) and name(s) of person(s) involved in creation.

(b) The request should:

(A) Be dated;

(B) Be signed by the person requesting the public record; and

(C) Indicate a date by which the records are being requested.

(3) The Council's Director or designee will respond to the request in a reasonable amount of time and acknowledge the request, identify an esti-

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mate of the expected cost of meeting the request, and the expected date and location at which the information will be provided. The regular discharge of duties of the Council will be neither interrupted nor interfered with because of time or effort required to respond to the request.

(4) Unless otherwise provided by statute or other administrative rule, the fees will be calculated as follows:

(a) \$0.25 per page for photocopies.

(b) Actual cost for use of material and equipment for producing copies of non-standard records.

(c) Upon request, copies of public records may also be provided on a computer disk or compact disk (CD) if the document(s) are stored in the Council's computer system. Disks will be provided at a cost of \$5.00 per disk and may contain as much information as the disk will hold. Due to the threat of computer viruses, the Council will not permit requestors to provide disks for electronic reproduction of computer records.

(d) Labor charges that include researching, locating, compiling, editing or otherwise processing information and records:

(A) No charge for the first 15 minutes of staff time.

(B) Beginning with the 16th minute, the charge per total request is \$25.00 per hour or \$6.25 per quarter-hour. A prorated fee is not available for less than a quarter-hour.

(e) The actual cost for delivery of records such as postage and courier fees.

(f) \$5.00 for each true copy certification.

(5) Electronic Records. Copies of requested electronic records may be provided in the format or manner maintained by the Council. The Director will perform all downloading, reproducing, formatting and manipulating of records.

(6) The Council may charge a fee for the cost of time spent by an attorney in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt records. Records request fees will include actual attorney fees charged to the Council related to the request. The Director will not charge a fee greater than \$25.00 under this section unless the Director first provides the requester with a written notification of the estimated amount of the fee and the requester confirms that the requester wants the Director to proceed with making the public record available.

(7) Pre-payment may be requested by the Director prior to record(s) being provided.

(8) A person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney in the same manner as a person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied.

Stat. Auth.: ORS 192.430, 192.440 & 377.835(5)

Stats. Implemented: ORS 192.410 – 192.505

Hist: TIC 1-2013, f. & cert. ef. 4-15-13

## 733-001-0030

### Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed;

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate."

#### Agreement to Participate in a Confidential Mediation

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 733-001-0030(7) and this agreement. This agreement relates to the following mediation:

(a) \_\_\_\_\_

(Identify the mediation to which this agreement applies)

(b) To the extent authorized by OAR 733-001-0030(7), mediation communications in this mediation are: (check one or more)

\_\_\_ confidential and may not be disclosed to any other person

\_\_\_ not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding

\_\_\_ not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding

(c) \_\_\_\_\_

Name of Agency

Signature of Agency's authorized representative (when agency Date is a party) or Agency employee acting as the mediator (when Agency is mediating the dispute)

(d) \_\_\_\_\_

Name of party to the mediation

Signature of party's authorized representative Date

(e) \_\_\_\_\_

Name of party to the mediation

Signature of party's authorized representative Date

(9) Exceptions to confidentiality and inadmissibility:

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding;

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law;

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily



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injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report;

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law;

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree;

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation;

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure;

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement;

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements;

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute;

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Travel Information Council Director determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law;

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under 17.095 or state or federal law requires the terms to be confidential;

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224 & 377.835(5)

Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist: TIC 1-2013, f. & cert. ef. 4-15-13

## 733-001-0035

### Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)-(j) of section (7) of this rule.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of

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the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding;

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law;

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person;

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law;

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree;

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure;

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement;

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements;

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute;

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224 & 377.835(5)  
Stats. Implemented: ORS 36.230(4)  
Hist: TIC 1-2013, f. & cert. ef. 4-15-13

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121-001-0005	12-1-2012	Repeal	1-1-2013	125-246-0360	12-1-2012	Amend	1-1-2013
121-020-0000	12-1-2012	Repeal	1-1-2013	125-246-0400	12-1-2012	Amend	1-1-2013
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121-030-0010	12-1-2012	Am. & Ren.	1-1-2013	125-246-0470	12-1-2012	Repeal	1-1-2013
121-030-0020	12-1-2012	Am. & Ren.	1-1-2013	125-246-0500	12-1-2012	Amend	1-1-2013
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121-030-0040	12-1-2012	Am. & Ren.	1-1-2013	125-246-0560	12-1-2012	Repeal	1-1-2013
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123-009-0090	1-2-2013	Amend	2-1-2013	125-247-0265	12-1-2012	Amend	1-1-2013
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123-021-0090	11-20-2012	Amend(T)	1-1-2013	125-247-0285	12-1-2012	Amend	1-1-2013
123-021-0110	11-20-2012	Amend(T)	1-1-2013	125-247-0287	12-1-2012	Amend	1-1-2013
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125-180-1200	12-17-2012	Adopt(T)	1-1-2013	125-247-0710	12-1-2012	Amend	1-1-2013
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125-180-1400	12-17-2012	Adopt(T)	1-1-2013	125-247-0731	12-1-2012	Amend	1-1-2013
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165-020-0440	11-29-2012	Adopt	1-1-2013	255-030-0026	3-1-2013	Amend	4-1-2013
165-020-2032	3-19-2013	Adopt(T)	5-1-2013	255-030-0027	3-1-2013	Amend	4-1-2013
170-040-0020	4-2-2013	Amend	5-1-2013	255-030-0032	3-1-2013	Amend	4-1-2013
170-040-0030	4-2-2013	Amend	5-1-2013	255-030-0035	3-1-2013	Amend	4-1-2013
170-040-0040	4-2-2013	Amend	5-1-2013	255-030-0040	3-1-2013	Amend	4-1-2013
170-040-0050	4-2-2013	Amend	5-1-2013	255-030-0046	3-1-2013	Adopt	4-1-2013
170-040-0070	4-2-2013	Amend	5-1-2013	255-030-0055	3-1-2013	Amend	4-1-2013
170-040-0080	4-2-2013	Amend	5-1-2013	255-062-0016	2-15-2013	Amend	3-1-2013
170-040-0090	4-2-2013	Amend	5-1-2013	259-005-0015	4-1-2013	Amend	5-1-2013
170-040-0100	4-2-2013	Amend	5-1-2013	259-008-0005	12-27-2012	Amend	2-1-2013
170-040-0110	4-2-2013	Amend	5-1-2013	259-008-0025	3-8-2013	Amend	4-1-2013
170-061-0015	12-14-2012	Amend(T)	1-1-2013	259-008-0060	12-27-2012	Amend	2-1-2013

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259-008-0065	12-27-2012	Amend	2-1-2013	291-097-0025	12-28-2012	Am. & Ren.(T)	2-1-2013
259-008-0066	12-27-2012	Amend	2-1-2013	291-097-0030	12-28-2012	Am. & Ren.(T)	2-1-2013
259-008-0070	12-14-2012	Amend(T)	1-1-2013	291-097-0031	12-28-2012	Suspend	2-1-2013
259-008-0070	1-22-2013	Amend	3-1-2013	291-097-0040	12-28-2012	Am. & Ren.(T)	2-1-2013
259-008-0070(T)	1-22-2013	Repeal	3-1-2013	291-097-0050	12-28-2012	Am. & Ren.(T)	2-1-2013
259-008-0076	12-27-2012	Amend	2-1-2013	291-097-0060	12-28-2012	Am. & Ren.(T)	2-1-2013
259-009-0005	3-26-2013	Amend	5-1-2013	291-097-0070	12-28-2012	Am. & Ren.(T)	2-1-2013
259-009-0062	3-26-2013	Amend	5-1-2013	291-097-0080	12-28-2012	Am. & Ren.(T)	2-1-2013
259-009-0070	3-26-2013	Amend	5-1-2013	291-097-0090	12-28-2012	Am. & Ren.(T)	2-1-2013
259-009-0080	3-26-2013	Amend	5-1-2013	291-097-0100	12-28-2012	Am. & Ren.(T)	2-1-2013
259-012-0005	1-24-2013	Amend	3-1-2013	291-097-0120	12-28-2012	Am. & Ren.(T)	2-1-2013
259-015-0000	1-30-2013	Repeal	3-1-2013	291-097-0130	12-28-2012	Am. & Ren.(T)	2-1-2013
259-015-0005	1-30-2013	Repeal	3-1-2013	291-097-0140	12-28-2012	Am. & Ren.(T)	2-1-2013
259-015-0010	1-30-2013	Repeal	3-1-2013	291-097-0220	12-28-2012	Adopt(T)	2-1-2013
259-020-0010	12-26-2012	Amend	2-1-2013	291-097-0225	12-28-2012	Adopt(T)	2-1-2013
259-020-0015	12-26-2012	Amend	2-1-2013	291-097-0230	12-28-2012	Adopt(T)	2-1-2013
259-020-0030	12-26-2012	Amend	2-1-2013	291-097-0235	12-28-2012	Adopt(T)	2-1-2013
259-020-0031	12-26-2012	Repeal	2-1-2013	291-097-0245	12-28-2012	Adopt(T)	2-1-2013
259-060-0010	12-24-2012	Amend	2-1-2013	291-104-0111	4-15-2013	Amend	5-1-2013
259-060-0015	12-24-2012	Amend	2-1-2013	291-130-0006	2-22-2013	Amend	4-1-2013
259-060-0600	12-26-2012	Amend	2-1-2013	291-130-0006(T)	2-22-2013	Repeal	4-1-2013
259-061-0010	1-2-2013	Amend	2-1-2013	291-130-0011	2-22-2013	Amend	4-1-2013
259-061-0015	1-2-2013	Repeal	2-1-2013	291-130-0011(T)	2-22-2013	Repeal	4-1-2013
259-061-0020	1-2-2013	Amend	2-1-2013	291-130-0016	2-22-2013	Amend	4-1-2013
259-061-0030	1-2-2013	Repeal	2-1-2013	291-130-0020	2-22-2013	Amend	4-1-2013
259-061-0050	1-2-2013	Repeal	2-1-2013	291-130-0020(T)	2-22-2013	Repeal	4-1-2013
259-061-0055	1-2-2013	Repeal	2-1-2013	291-130-0080	2-22-2013	Amend	4-1-2013
259-061-0060	1-2-2013	Repeal	2-1-2013	291-130-0080(T)	2-22-2013	Repeal	4-1-2013
259-061-0070	1-2-2013	Repeal	2-1-2013	291-207-0100	1-1-2013	Adopt	2-1-2013
259-061-0080	1-2-2013	Repeal	2-1-2013	309-011-0024	12-28-2012	Adopt	2-1-2013
259-061-0090	1-2-2013	Repeal	2-1-2013	309-011-0026	12-28-2012	Adopt	2-1-2013
259-070-0020	12-24-2012	Amend	2-1-2013	309-011-0028	12-28-2012	Adopt	2-1-2013
291-053-0010	1-17-2013	Amend	3-1-2013	309-011-0030	12-28-2012	Adopt	2-1-2013
291-053-0075	1-17-2013	Amend	3-1-2013	309-011-0032	12-28-2012	Adopt	2-1-2013
291-053-0085	1-17-2013	Amend	3-1-2013	309-011-0034	12-28-2012	Adopt	2-1-2013
291-053-0095	1-17-2013	Amend	3-1-2013	309-011-0036	12-28-2012	Adopt	2-1-2013
291-053-0105	1-17-2013	Amend	3-1-2013	309-011-0120	12-28-2012	Amend	2-1-2013
291-053-0115	1-17-2013	Amend	3-1-2013	309-011-0125	12-28-2012	Amend	2-1-2013
291-053-0125	1-17-2013	Amend	3-1-2013	309-011-0130	12-28-2012	Amend	2-1-2013
291-053-0135	1-17-2013	Amend	3-1-2013	309-011-0135	12-28-2012	Repeal	2-1-2013
291-078-0005	2-28-2013	Amend	4-1-2013	309-011-0140	12-28-2012	Repeal	2-1-2013
291-078-0005(T)	2-28-2013	Repeal	4-1-2013	309-016-0825	1-7-2013	Adopt(T)	2-1-2013
291-078-0010	2-28-2013	Amend	4-1-2013	309-032-1505	2-11-2013	Amend(T)	3-1-2013
291-078-0010(T)	2-28-2013	Repeal	4-1-2013	309-032-1510	2-11-2013	Amend(T)	3-1-2013
291-078-0020	2-28-2013	Amend	4-1-2013	309-032-1525	2-11-2013	Amend(T)	3-1-2013
291-078-0020(T)	2-28-2013	Repeal	4-1-2013	309-032-1530	2-11-2013	Amend(T)	3-1-2013
291-078-0026	2-28-2013	Adopt	4-1-2013	309-032-1535	2-11-2013	Amend(T)	3-1-2013
291-078-0026(T)	2-28-2013	Repeal	4-1-2013	309-032-1540	2-11-2013	Amend(T)	3-1-2013
291-078-0031	2-28-2013	Adopt	4-1-2013	309-090-0005	12-26-2012	Amend	2-1-2013
291-078-0031(T)	2-28-2013	Repeal	4-1-2013	309-090-0025	12-26-2012	Amend	2-1-2013
291-093-0005	4-15-2013	Amend	5-1-2013	309-112-0000	1-23-2013	Amend(T)	3-1-2013
291-097-0005	12-28-2012	Am. & Ren.(T)	2-1-2013	309-112-0005	1-23-2013	Amend(T)	3-1-2013
291-097-0010	12-28-2012	Am. & Ren.(T)	2-1-2013	309-112-0010	1-23-2013	Amend(T)	3-1-2013
291-097-0015	12-28-2012	Am. & Ren.(T)	2-1-2013	309-112-0015	1-23-2013	Amend(T)	3-1-2013
291-097-0020	12-28-2012	Am. & Ren.(T)	2-1-2013	309-112-0017	1-23-2013	Amend(T)	3-1-2013

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309-112-0020	1-23-2013	Amend(T)	3-1-2013	330-135-0045	1-1-2013	Amend	2-1-2013
309-112-0025	1-23-2013	Amend(T)	3-1-2013	330-135-0047	1-1-2013	Adopt	2-1-2013
309-112-0030	1-23-2013	Amend(T)	3-1-2013	330-135-0048	1-1-2013	Adopt	2-1-2013
309-112-0035	1-23-2013	Amend(T)	3-1-2013	330-135-0050	1-1-2013	Amend	2-1-2013
330-070-0010	1-1-2013	Amend	2-1-2013	330-135-0055	1-1-2013	Amend	2-1-2013
330-070-0013	1-1-2013	Amend	2-1-2013	331-705-0080	4-1-2013	Amend(T)	4-1-2013
330-070-0014	1-1-2013	Amend	2-1-2013	331-710-0050	4-1-2013	Amend	4-1-2013
330-070-0019	1-1-2013	Amend	2-1-2013	331-710-0080	11-19-2012	Amend(T)	1-1-2013
330-070-0020	1-1-2013	Amend	2-1-2013	331-710-0080	4-1-2013	Amend	4-1-2013
330-070-0021	1-1-2013	Amend	2-1-2013	331-710-0090	11-19-2012	Amend(T)	1-1-2013
330-070-0022	1-1-2013	Amend	2-1-2013	331-710-0090	4-1-2013	Amend	4-1-2013
330-070-0024	1-1-2013	Amend	2-1-2013	331-718-0020	11-19-2012	Amend(T)	1-1-2013
330-070-0025	1-1-2013	Amend	2-1-2013	331-718-0020	4-1-2013	Amend	4-1-2013
330-070-0026	1-1-2013	Amend	2-1-2013	331-900-0000	1-16-2013	Amend	3-1-2013
330-070-0027	1-1-2013	Amend	2-1-2013	331-900-0005	1-16-2013	Amend	3-1-2013
330-070-0029	1-1-2013	Amend	2-1-2013	331-900-0010	1-16-2013	Amend	3-1-2013
330-070-0040	1-1-2013	Amend	2-1-2013	331-900-0020	1-16-2013	Amend(T)	3-1-2013
330-070-0045	1-1-2013	Amend	2-1-2013	331-900-0020	3-15-2013	Amend	4-1-2013
330-070-0048	1-1-2013	Amend	2-1-2013	331-900-0025	1-16-2013	Amend(T)	3-1-2013
330-070-0055	1-1-2013	Amend	2-1-2013	331-900-0025	3-15-2013	Amend	4-1-2013
330-070-0059	1-1-2013	Amend	2-1-2013	331-900-0035	1-16-2013	Amend	3-1-2013
330-070-0060	1-1-2013	Amend	2-1-2013	331-900-0040	1-16-2013	Amend	3-1-2013
330-070-0062	1-1-2013	Amend	2-1-2013	331-900-0050	1-16-2013	Amend(T)	3-1-2013
330-070-0063	1-1-2013	Amend	2-1-2013	331-900-0050	3-15-2013	Amend	4-1-2013
330-070-0064	1-1-2013	Amend	2-1-2013	331-900-0055	1-16-2013	Amend(T)	3-1-2013
330-070-0070	1-1-2013	Amend	2-1-2013	331-900-0055	3-15-2013	Amend	4-1-2013
330-070-0073	1-1-2013	Amend	2-1-2013	331-900-0065	1-16-2013	Amend	3-1-2013
330-070-0089	1-1-2013	Amend	2-1-2013	331-900-0080	1-16-2013	Amend	3-1-2013
330-070-0091	1-1-2013	Amend	2-1-2013	331-900-0085	1-16-2013	Amend	3-1-2013
330-090-0140	11-16-2012	Amend(T)	1-1-2013	331-900-0090	1-16-2013	Amend	3-1-2013
330-090-0160	11-16-2012	Amend(T)	1-1-2013	331-900-0095	1-16-2013	Amend	3-1-2013
330-110-0005	12-20-2012	Amend	2-1-2013	331-900-0097	1-16-2013	Amend	3-1-2013
330-110-0010	12-20-2012	Amend	2-1-2013	331-900-0098	1-16-2013	Amend	3-1-2013
330-110-0015	12-20-2012	Amend	2-1-2013	331-900-0105	1-16-2013	Amend	3-1-2013
330-110-0016	12-20-2012	Amend	2-1-2013	331-900-0115	1-16-2013	Amend	3-1-2013
330-110-0020	12-20-2012	Repeal	2-1-2013	331-900-0120	1-16-2013	Amend	3-1-2013
330-110-0025	12-20-2012	Amend	2-1-2013	331-900-0125	1-16-2013	Amend	3-1-2013
330-110-0030	12-20-2012	Amend	2-1-2013	331-900-0130	1-16-2013	Amend	3-1-2013
330-110-0035	12-20-2012	Amend	2-1-2013	331-905-0000	1-16-2013	Amend	3-1-2013
330-110-0036	12-20-2012	Amend	2-1-2013	331-905-0000	4-1-2013	Amend(T)	5-1-2013
330-110-0040	12-20-2012	Amend	2-1-2013	331-905-0005	1-16-2013	Amend	3-1-2013
330-110-0042	12-20-2012	Amend	2-1-2013	331-905-0005	4-1-2013	Amend(T)	5-1-2013
330-110-0045	12-20-2012	Amend	2-1-2013	331-905-0010	1-16-2013	Amend	3-1-2013
330-110-0046	12-20-2012	Adopt	2-1-2013	331-905-0010	4-1-2013	Amend(T)	5-1-2013
330-110-0047	12-20-2012	Adopt	2-1-2013	331-905-0011	1-16-2013	Amend(T)	3-1-2013
330-110-0048	12-20-2012	Adopt	2-1-2013	331-905-0011	3-15-2013	Amend	4-1-2013
330-110-0050	12-20-2012	Repeal	2-1-2013	331-905-0012	1-16-2013	Amend	3-1-2013
330-110-0055	12-20-2012	Amend	2-1-2013	331-905-0013	1-16-2013	Amend(T)	3-1-2013
330-135-0010	1-1-2013	Amend	2-1-2013	331-905-0013	3-15-2013	Amend	4-1-2013
330-135-0015	1-1-2013	Amend	2-1-2013	331-905-0014	1-16-2013	Amend	3-1-2013
330-135-0018	1-1-2013	Adopt	2-1-2013	331-905-0015	1-16-2013	Amend	3-1-2013
330-135-0020	1-1-2013	Amend	2-1-2013	331-905-0025	1-16-2013	Amend	3-1-2013
330-135-0025	1-1-2013	Amend	2-1-2013	331-905-0035	1-16-2013	Amend	3-1-2013
330-135-0030	1-1-2013	Amend	2-1-2013	331-905-0040	1-16-2013	Amend	3-1-2013
330-135-0035	1-1-2013	Amend	2-1-2013	331-905-0040	4-1-2013	Amend(T)	5-1-2013
330-135-0040	1-1-2013	Amend	2-1-2013	331-905-0045	1-16-2013	Amend	3-1-2013

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331-905-0050	1-16-2013	Amend	3-1-2013	333-002-0310	2-4-2013	Adopt(T)	3-1-2013
331-905-0050	4-1-2013	Amend(T)	5-1-2013	333-002-0315	2-4-2013	Adopt(T)	3-1-2013
331-905-0052	1-16-2013	Amend	3-1-2013	333-002-0320	2-4-2013	Adopt(T)	3-1-2013
331-905-0055	1-16-2013	Amend	3-1-2013	333-002-0325	2-4-2013	Adopt(T)	3-1-2013
331-905-0058	1-16-2013	Amend	3-1-2013	333-002-0327	2-4-2013	Adopt(T)	3-1-2013
331-905-0060	1-16-2013	Amend	3-1-2013	333-002-0340	2-4-2013	Adopt(T)	3-1-2013
331-905-0070	4-1-2013	Suspend	5-1-2013	333-002-0345	2-4-2013	Adopt(T)	3-1-2013
331-905-0075	1-16-2013	Amend	3-1-2013	333-002-0350	2-4-2013	Adopt(T)	3-1-2013
331-905-0080	1-16-2013	Amend	3-1-2013	333-002-0355	2-4-2013	Adopt(T)	3-1-2013
331-905-0080	4-1-2013	Amend(T)	5-1-2013	333-002-0360	2-4-2013	Adopt(T)	3-1-2013
331-905-0085	1-16-2013	Amend	3-1-2013	333-002-0370	2-4-2013	Adopt(T)	3-1-2013
331-905-0090	1-16-2013	Amend	3-1-2013	333-002-0375	2-4-2013	Adopt(T)	3-1-2013
331-905-0095	1-16-2013	Amend	3-1-2013	333-002-0380	2-4-2013	Adopt(T)	3-1-2013
331-905-0100	1-16-2013	Amend	3-1-2013	333-004-0000	12-26-2012	Amend	2-1-2013
331-905-0105	1-16-2013	Amend	3-1-2013	333-004-0010	12-26-2012	Amend	2-1-2013
331-905-0110	1-16-2013	Amend	3-1-2013	333-004-0020	12-26-2012	Amend	2-1-2013
331-905-0115	1-16-2013	Amend	3-1-2013	333-004-0030	12-26-2012	Amend	2-1-2013
331-905-0120	1-16-2013	Amend	3-1-2013	333-004-0040	12-26-2012	Amend	2-1-2013
331-910-0010	1-16-2013	Amend	3-1-2013	333-004-0050	12-26-2012	Amend	2-1-2013
331-910-0025	1-16-2013	Amend	3-1-2013	333-004-0060	12-26-2012	Amend	2-1-2013
331-910-0035	1-16-2013	Amend	3-1-2013	333-004-0070	12-26-2012	Amend	2-1-2013
331-910-0050	1-16-2013	Amend	3-1-2013	333-004-0080	12-26-2012	Amend	2-1-2013
331-910-0060	1-16-2013	Amend	3-1-2013	333-004-0100	12-26-2012	Amend	2-1-2013
331-910-0070	1-16-2013	Amend	3-1-2013	333-004-0110	12-26-2012	Amend	2-1-2013
331-910-0080	1-16-2013	Amend	3-1-2013	333-004-0120	12-26-2012	Amend	2-1-2013
331-910-0085	1-16-2013	Amend	3-1-2013	333-004-0130	12-26-2012	Amend	2-1-2013
331-915-0000	1-16-2013	Amend	3-1-2013	333-004-0140	12-26-2012	Amend	2-1-2013
331-915-0015	1-16-2013	Amend	3-1-2013	333-004-0150	12-26-2012	Amend	2-1-2013
331-915-0020	1-16-2013	Amend	3-1-2013	333-004-0160	12-26-2012	Amend	2-1-2013
331-915-0025	1-16-2013	Amend	3-1-2013	333-004-0170	12-26-2012	Repeal	2-1-2013
331-915-0035	1-16-2013	Amend	3-1-2013	333-004-0180	12-26-2012	Repeal	2-1-2013
331-915-0050	1-16-2013	Amend	3-1-2013	333-004-0190	12-26-2012	Repeal	2-1-2013
331-915-0055	1-16-2013	Amend	3-1-2013	333-004-0200	12-26-2012	Adopt	2-1-2013
331-915-0060	1-16-2013	Amend	3-1-2013	333-004-0210	12-26-2012	Adopt	2-1-2013
331-915-0065	1-16-2013	Amend	3-1-2013	333-004-0220	12-26-2012	Adopt	2-1-2013
331-915-0070	1-16-2013	Amend	3-1-2013	333-004-0230	12-26-2012	Adopt	2-1-2013
331-915-0075	1-16-2013	Amend	3-1-2013	333-008-0090	1-1-2013	Amend	2-1-2013
331-915-0080	1-16-2013	Amend	3-1-2013	333-010-0400	2-4-2013	Adopt	3-1-2013
331-915-0085	1-16-2013	Amend	3-1-2013	333-010-0405	2-4-2013	Adopt	3-1-2013
331-920-0000	1-16-2013	Amend	3-1-2013	333-010-0410	2-4-2013	Adopt	3-1-2013
331-920-0005	1-16-2013	Amend	3-1-2013	333-010-0415	2-4-2013	Adopt	3-1-2013
331-925-0000	1-16-2013	Amend	3-1-2013	333-010-0420	2-4-2013	Adopt	3-1-2013
331-925-0005	1-16-2013	Amend	3-1-2013	333-010-0425	2-4-2013	Adopt	3-1-2013
331-925-0010	1-16-2013	Amend	3-1-2013	333-010-0430	2-4-2013	Adopt	3-1-2013
331-925-0015	1-16-2013	Amend	3-1-2013	333-010-0435	2-4-2013	Adopt	3-1-2013
331-925-0020	1-16-2013	Amend	3-1-2013	333-010-0440	2-4-2013	Adopt	3-1-2013
331-925-0025	1-16-2013	Amend	3-1-2013	333-010-0445	2-4-2013	Adopt	3-1-2013
331-925-0030	1-16-2013	Amend	3-1-2013	333-010-0450	2-4-2013	Adopt	3-1-2013
331-925-0035	1-16-2013	Amend	3-1-2013	333-010-0455	2-4-2013	Adopt	3-1-2013
331-925-0040	1-16-2013	Amend	3-1-2013	333-010-0460	2-4-2013	Adopt	3-1-2013
331-925-0050	1-16-2013	Amend	3-1-2013	333-010-0465	2-4-2013	Adopt	3-1-2013
331-950-0010	1-16-2013	Amend	3-1-2013	333-010-0470	2-4-2013	Adopt	3-1-2013
331-950-0020	1-16-2013	Amend	3-1-2013	333-012-0260	2-4-2013	Repeal	3-1-2013
331-950-0040	1-16-2013	Amend	3-1-2013	333-012-0262	2-4-2013	Repeal	3-1-2013
333-002-0300	2-4-2013	Adopt(T)	3-1-2013	333-012-0264	2-4-2013	Repeal	3-1-2013
333-002-0305	2-4-2013	Adopt(T)	3-1-2013	333-012-0265	2-4-2013	Repeal	3-1-2013



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333-012-0266	2-4-2013	Repeal	3-1-2013	333-052-0065	12-20-2012	Amend	2-1-2013
333-012-0267	2-4-2013	Repeal	3-1-2013	333-052-0070	12-20-2012	Amend	2-1-2013
333-012-0268	2-4-2013	Repeal	3-1-2013	333-052-0080	12-20-2012	Amend	2-1-2013
333-012-0269	2-4-2013	Repeal	3-1-2013	333-052-0090	12-20-2012	Amend	2-1-2013
333-012-0270	2-4-2013	Repeal	3-1-2013	333-052-0100	12-20-2012	Amend	2-1-2013
333-012-0280	2-4-2013	Am. & Ren.	3-1-2013	333-052-0120	12-20-2012	Amend	2-1-2013
333-012-0290	2-4-2013	Am. & Ren.	3-1-2013	333-052-0130	12-20-2012	Amend	2-1-2013
333-012-0300	2-4-2013	Renumber	3-1-2013	333-061-0025	1-25-2013	Amend	3-1-2013
333-012-0310	2-4-2013	Renumber	3-1-2013	333-061-0030	1-25-2013	Amend	3-1-2013
333-012-0320	2-4-2013	Renumber	3-1-2013	333-061-0032	1-25-2013	Amend	3-1-2013
333-012-0330	2-4-2013	Renumber	3-1-2013	333-061-0034	1-25-2013	Amend	3-1-2013
333-012-0340	2-4-2013	Am. & Ren.	3-1-2013	333-061-0036	1-25-2013	Amend	3-1-2013
333-012-0350	2-4-2013	Renumber	3-1-2013	333-061-0040	1-25-2013	Amend	3-1-2013
333-012-0360	2-4-2013	Renumber	3-1-2013	333-061-0042	1-25-2013	Amend	3-1-2013
333-012-0370	2-4-2013	Renumber	3-1-2013	333-061-0043	1-25-2013	Amend	3-1-2013
333-012-0380	2-4-2013	Renumber	3-1-2013	333-061-0045	1-25-2013	Amend	3-1-2013
333-012-0390	2-4-2013	Renumber	3-1-2013	333-061-0050	1-25-2013	Amend	3-1-2013
333-012-0400	2-4-2013	Am. & Ren.	3-1-2013	333-061-0058	1-25-2013	Repeal	3-1-2013
333-022-0200	2-4-2013	Adopt	3-1-2013	333-061-0065	1-25-2013	Amend	3-1-2013
333-022-0205	2-4-2013	Adopt	3-1-2013	333-061-0070	1-25-2013	Amend	3-1-2013
333-022-0210	2-4-2013	Adopt	3-1-2013	333-061-0071	1-25-2013	Amend	3-1-2013
333-022-0300	2-4-2013	Adopt	3-1-2013	333-061-0072	1-25-2013	Amend	3-1-2013
333-022-0305	2-4-2013	Adopt	3-1-2013	333-061-0073	1-25-2013	Amend	3-1-2013
333-022-0310	2-4-2013	Adopt	3-1-2013	333-061-0074	1-25-2013	Amend	3-1-2013
333-022-0315	2-4-2013	Adopt	3-1-2013	333-061-0077	1-25-2013	Amend	3-1-2013
333-030-0015	1-25-2013	Amend	3-1-2013	333-061-0087	1-25-2013	Amend	3-1-2013
333-030-0020	1-25-2013	Amend	3-1-2013	333-061-0090	1-25-2013	Amend	3-1-2013
333-030-0025	1-25-2013	Amend	3-1-2013	333-061-0098	1-25-2013	Amend	3-1-2013
333-030-0030	1-25-2013	Amend	3-1-2013	333-061-0220	1-25-2013	Amend	3-1-2013
333-030-0035	1-25-2013	Amend	3-1-2013	333-061-0225	1-25-2013	Amend	3-1-2013
333-030-0040	1-25-2013	Amend	3-1-2013	333-061-0228	1-25-2013	Amend	3-1-2013
333-030-0045	1-25-2013	Repeal	3-1-2013	333-061-0235	1-25-2013	Amend	3-1-2013
333-030-0050	1-25-2013	Amend	3-1-2013	333-061-0245	1-25-2013	Amend	3-1-2013
333-030-0055	1-25-2013	Amend	3-1-2013	333-061-0250	1-25-2013	Amend	3-1-2013
333-030-0060	1-25-2013	Amend	3-1-2013	333-061-0335	1-25-2013	Amend	3-1-2013
333-030-0065	1-25-2013	Amend	3-1-2013	333-100-0005	1-29-2013	Amend	3-1-2013
333-030-0070	1-25-2013	Amend	3-1-2013	333-102-0115	1-29-2013	Amend	3-1-2013
333-030-0075	1-25-2013	Amend	3-1-2013	333-102-0203	1-29-2013	Amend	3-1-2013
333-030-0080	1-25-2013	Amend	3-1-2013	333-102-0250	1-29-2013	Amend	3-1-2013
333-030-0085	1-25-2013	Amend	3-1-2013	333-102-0285	1-29-2013	Amend	3-1-2013
333-030-0090	1-25-2013	Amend	3-1-2013	333-102-0340	1-29-2013	Amend	3-1-2013
333-030-0095	1-25-2013	Amend	3-1-2013	333-106-0045	1-29-2013	Amend	3-1-2013
333-030-0100	1-25-2013	Amend	3-1-2013	333-106-0101	1-29-2013	Amend	3-1-2013
333-030-0103	1-25-2013	Amend	3-1-2013	333-106-0305	1-29-2013	Amend	3-1-2013
333-030-0105	1-25-2013	Amend	3-1-2013	333-106-0315	1-29-2013	Amend	3-1-2013
333-030-0110	1-25-2013	Amend	3-1-2013	333-106-0325	1-29-2013	Amend	3-1-2013
333-030-0115	1-25-2013	Amend	3-1-2013	333-106-0370	1-29-2013	Amend	3-1-2013
333-030-0120	1-25-2013	Amend	3-1-2013	333-106-0720	1-29-2013	Amend	3-1-2013
333-030-0125	1-25-2013	Amend	3-1-2013	333-116-0040	1-29-2013	Amend	3-1-2013
333-030-0130	1-25-2013	Amend	3-1-2013	333-116-0050	1-29-2013	Amend	3-1-2013
333-052-0030	12-20-2012	Amend	2-1-2013	333-116-0090	1-29-2013	Amend	3-1-2013
333-052-0040	12-20-2012	Amend	2-1-2013	333-116-0405	1-29-2013	Repeal	3-1-2013
333-052-0043	12-20-2012	Adopt	2-1-2013	333-116-0640	1-29-2013	Amend	3-1-2013
333-052-0044	12-20-2012	Adopt	2-1-2013	333-116-0660	1-29-2013	Amend	3-1-2013
333-052-0050	12-20-2012	Amend	2-1-2013	333-116-0670	1-29-2013	Amend	3-1-2013
333-052-0060	12-20-2012	Amend	2-1-2013	333-116-0680	1-29-2013	Amend	3-1-2013

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333-116-0687	1-29-2013	Amend	3-1-2013	333-255-0070	1-25-2013	Amend	3-1-2013
333-116-0690	1-29-2013	Amend	3-1-2013	333-255-0071	1-25-2013	Amend	3-1-2013
333-116-0700	1-29-2013	Amend	3-1-2013	333-255-0072	1-25-2013	Amend	3-1-2013
333-116-0715	1-29-2013	Amend	3-1-2013	333-255-0073	1-25-2013	Amend	3-1-2013
333-116-0720	1-29-2013	Amend	3-1-2013	333-255-0079	1-25-2013	Amend	3-1-2013
333-116-0740	1-29-2013	Amend	3-1-2013	333-255-0080	1-25-2013	Amend	3-1-2013
333-116-0880	1-29-2013	Amend	3-1-2013	333-255-0081	1-25-2013	Amend	3-1-2013
333-116-0905	1-29-2013	Amend	3-1-2013	333-255-0082	1-25-2013	Amend	3-1-2013
333-118-0150	1-29-2013	Amend	3-1-2013	333-255-0090	1-25-2013	Amend	3-1-2013
333-119-0040	1-29-2013	Amend	3-1-2013	333-255-0091	1-25-2013	Amend	3-1-2013
333-119-0041	1-29-2013	Adopt	3-1-2013	333-255-0092	1-25-2013	Amend	3-1-2013
333-119-0080	1-29-2013	Amend	3-1-2013	333-255-0093	1-25-2013	Amend	3-1-2013
333-120-0630	1-29-2013	Amend	3-1-2013	333-265-0000	1-25-2013	Amend	3-1-2013
333-120-0730	1-29-2013	Amend	3-1-2013	333-265-0010	1-25-2013	Amend	3-1-2013
333-123-0005	1-29-2013	Amend	3-1-2013	333-265-0011	1-25-2013	Adopt	3-1-2013
333-123-0055	1-29-2013	Adopt	3-1-2013	333-265-0014	1-25-2013	Amend	3-1-2013
333-123-0060	1-29-2013	Adopt	3-1-2013	333-265-0015	1-25-2013	Amend	3-1-2013
333-123-0065	1-29-2013	Adopt	3-1-2013	333-265-0023	1-25-2013	Amend	3-1-2013
333-123-0070	1-29-2013	Adopt	3-1-2013	333-265-0024	1-25-2013	Adopt	3-1-2013
333-123-0075	1-29-2013	Adopt	3-1-2013	333-265-0025	1-25-2013	Amend	3-1-2013
333-123-0080	1-29-2013	Adopt	3-1-2013	333-265-0050	1-25-2013	Amend	3-1-2013
333-123-0085	1-29-2013	Adopt	3-1-2013	333-265-0060	1-25-2013	Amend	3-1-2013
333-123-0090	1-29-2013	Adopt	3-1-2013	333-265-0085	1-25-2013	Amend	3-1-2013
333-123-0095	1-29-2013	Adopt	3-1-2013	333-265-0105	1-25-2013	Amend	3-1-2013
333-123-0100	1-29-2013	Adopt	3-1-2013	333-265-0110	1-25-2013	Amend	3-1-2013
333-123-0105	1-29-2013	Adopt	3-1-2013	333-265-0160	1-25-2013	Amend	3-1-2013
333-123-0110	1-29-2013	Adopt	3-1-2013	333-265-0190	1-25-2013	Repeal	3-1-2013
333-123-0115	1-29-2013	Adopt	3-1-2013	333-500-0005	1-1-2013	Amend	2-1-2013
333-200-0010	1-1-2013	Amend	2-1-2013	333-500-0010	1-1-2013	Amend	2-1-2013
333-200-0020	1-1-2013	Amend	2-1-2013	333-500-0031	1-1-2013	Amend	2-1-2013
333-200-0080	1-1-2013	Amend	2-1-2013	333-500-0032	1-1-2013	Amend	2-1-2013
333-200-0090	1-1-2013	Amend	2-1-2013	333-500-0038	1-1-2013	Amend	2-1-2013
333-250-0010	1-25-2013	Amend	3-1-2013	333-505-0001	1-1-2013	Amend	2-1-2013
333-250-0020	1-25-2013	Amend	3-1-2013	333-505-0005	1-1-2013	Amend	2-1-2013
333-250-0030	1-25-2013	Amend	3-1-2013	333-505-0007	1-1-2013	Amend	2-1-2013
333-250-0031	1-25-2013	Adopt	3-1-2013	333-505-0010	1-1-2013	Amend	2-1-2013
333-250-0040	1-25-2013	Amend	3-1-2013	333-505-0030	1-1-2013	Amend	2-1-2013
333-250-0041	1-25-2013	Amend	3-1-2013	333-505-0033	1-1-2013	Amend	2-1-2013
333-250-0042	1-25-2013	Amend	3-1-2013	333-505-0050	1-1-2013	Amend	2-1-2013
333-250-0043	1-25-2013	Amend	3-1-2013	333-505-0060	1-1-2013	Amend	2-1-2013
333-250-0044	1-25-2013	Amend	3-1-2013	333-505-0080	1-1-2013	Amend	2-1-2013
333-250-0045	1-25-2013	Amend	3-1-2013	333-510-0020	1-1-2013	Amend	2-1-2013
333-250-0047	1-25-2013	Amend	3-1-2013	333-510-0040	1-1-2013	Amend	2-1-2013
333-250-0048	1-25-2013	Amend	3-1-2013	333-520-0035	1-1-2013	Amend	2-1-2013
333-250-0050	1-25-2013	Amend	3-1-2013	333-520-0050	1-1-2013	Amend	2-1-2013
333-250-0060	1-25-2013	Amend	3-1-2013	333-520-0060	1-1-2013	Amend	2-1-2013
333-250-0070	1-25-2013	Amend	3-1-2013	333-520-0070	1-1-2013	Amend	2-1-2013
333-250-0080	1-25-2013	Amend	3-1-2013	333-525-0010	1-1-2013	Repeal	2-1-2013
333-250-0100	1-25-2013	Amend	3-1-2013	334-001-0060	1-1-2013	Amend	1-1-2013
333-255-0000	1-25-2013	Amend	3-1-2013	334-010-0027	1-1-2013	Amend	1-1-2013
333-255-0010	1-25-2013	Amend	3-1-2013	334-010-0029	1-1-2013	Amend	1-1-2013
333-255-0020	1-25-2013	Amend	3-1-2013	334-010-0046	1-1-2013	Amend	1-1-2013
333-255-0030	1-25-2013	Amend	3-1-2013	334-040-0010	1-1-2013	Amend	1-1-2013
333-255-0040	1-25-2013	Amend	3-1-2013	335-005-0010	12-14-2012	Amend	1-1-2013
333-255-0050	1-25-2013	Amend	3-1-2013	335-005-0020	5-1-2013	Amend	5-1-2013

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335-060-0005	5-1-2013	Amend	5-1-2013	340-054-0035	12-14-2012	Repeal	1-1-2013
335-060-0006	12-14-2012	Adopt	1-1-2013	340-054-0036	12-14-2012	Adopt	1-1-2013
335-060-0006	5-1-2013	Amend	5-1-2013	340-054-0055	12-14-2012	Repeal	1-1-2013
335-060-0007	12-14-2012	Adopt	1-1-2013	340-054-0056	12-14-2012	Adopt	1-1-2013
335-060-0007	5-1-2013	Amend	5-1-2013	340-054-0060	12-14-2012	Amend	1-1-2013
335-060-0010	5-1-2013	Amend	5-1-2013	340-054-0065	12-14-2012	Amend	1-1-2013
335-070-0010	5-1-2013	Repeal	5-1-2013	340-054-0085	12-14-2012	Repeal	1-1-2013
335-070-0020	5-1-2013	Amend	5-1-2013	340-054-0087	12-14-2012	Repeal	1-1-2013
335-070-0030	5-1-2013	Repeal	5-1-2013	340-054-0090	12-14-2012	Repeal	1-1-2013
335-070-0040	5-1-2013	Amend	5-1-2013	340-054-0093	12-14-2012	Repeal	1-1-2013
335-070-0050	5-1-2013	Amend	5-1-2013	340-054-0095	12-14-2012	Repeal	1-1-2013
335-070-0055	5-1-2013	Repeal	5-1-2013	340-054-0097	12-14-2012	Repeal	1-1-2013
335-070-0060	5-1-2013	Repeal	5-1-2013	340-054-0098	12-14-2012	Repeal	1-1-2013
335-070-0065	5-1-2013	Repeal	5-1-2013	340-054-0100	12-14-2012	Amend	1-1-2013
335-070-0070	5-1-2013	Repeal	5-1-2013	340-054-0102	12-14-2012	Amend	1-1-2013
335-070-0075	5-1-2013	Repeal	5-1-2013	340-054-0104	12-14-2012	Amend	1-1-2013
335-070-0080	5-1-2013	Amend	5-1-2013	340-054-0106	12-14-2012	Amend	1-1-2013
335-070-0085	5-1-2013	Repeal	5-1-2013	340-054-0108	12-14-2012	Amend	1-1-2013
335-080-0005	12-14-2012	Amend	1-1-2013	340-200-0020	3-27-2013	Amend	5-1-2013
335-080-0005	5-1-2013	Amend	5-1-2013	340-200-0040	12-10-2012	Amend	1-1-2013
335-080-0010	12-14-2012	Amend	1-1-2013	340-200-0040	12-11-2012	Amend	1-1-2013
335-080-0010	5-1-2013	Amend	5-1-2013	340-200-0040	3-27-2013	Amend	5-1-2013
335-080-0015	12-14-2012	Amend	1-1-2013	340-204-0010	12-11-2012	Amend	1-1-2013
335-080-0015	5-1-2013	Amend	5-1-2013	340-210-0100	3-27-2013	Amend	5-1-2013
335-080-0025	12-14-2012	Amend	1-1-2013	340-216-0020	3-27-2013	Amend	5-1-2013
335-080-0025	5-1-2013	Amend	5-1-2013	340-216-0060	3-27-2013	Amend	5-1-2013
335-095-0030	12-14-2012	Amend	1-1-2013	340-216-0062	3-27-2013	Amend	5-1-2013
335-095-0030	5-1-2013	Amend	5-1-2013	340-216-0064	3-27-2013	Amend	5-1-2013
335-095-0040	12-14-2012	Amend	1-1-2013	340-216-0066	3-27-2013	Amend	5-1-2013
335-095-0050	12-14-2012	Amend	1-1-2013	340-216-0068	3-27-2013	Adopt	5-1-2013
337-010-0030	7-1-2013	Amend	5-1-2013	340-220-0030	12-11-2012	Amend	1-1-2013
340-048-0055	1-16-2013	Amend	3-1-2013	340-220-0040	12-11-2012	Amend	1-1-2013
340-048-0055	3-25-2013	Amend(T)	5-1-2013	340-220-0050	12-11-2012	Amend	1-1-2013
340-049-0010	3-1-2013	Amend	3-1-2013	340-225-0090	12-11-2012	Amend	1-1-2013
340-049-0015	3-1-2013	Amend	3-1-2013	340-228-0602	3-27-2013	Amend	5-1-2013
340-049-0020	3-1-2013	Amend	3-1-2013	340-228-0606	3-27-2013	Amend	5-1-2013
340-049-0025	3-1-2013	Amend	3-1-2013	340-228-0609	3-27-2013	Amend	5-1-2013
340-049-0030	3-1-2013	Amend	3-1-2013	340-228-0611	3-27-2013	Repeal	5-1-2013
340-049-0035	3-1-2013	Amend	3-1-2013	340-228-0613	3-27-2013	Repeal	5-1-2013
340-049-0040	3-1-2013	Amend	3-1-2013	340-228-0615	3-27-2013	Repeal	5-1-2013
340-049-0055	3-1-2013	Amend	3-1-2013	340-228-0617	3-27-2013	Repeal	5-1-2013
340-049-0060	3-1-2013	Amend	3-1-2013	340-228-0619	3-27-2013	Repeal	5-1-2013
340-049-0065	3-1-2013	Amend	3-1-2013	340-228-0621	3-27-2013	Repeal	5-1-2013
340-049-0085	3-1-2013	Amend	3-1-2013	340-228-0623	3-27-2013	Repeal	5-1-2013
340-054-0005	12-14-2012	Amend	1-1-2013	340-228-0625	3-27-2013	Repeal	5-1-2013
340-054-0010	12-14-2012	Amend	1-1-2013	340-228-0627	3-27-2013	Repeal	5-1-2013
340-054-0011	12-14-2012	Adopt	1-1-2013	340-228-0629	3-27-2013	Repeal	5-1-2013
340-054-0015	12-14-2012	Amend	1-1-2013	340-228-0631	3-27-2013	Repeal	5-1-2013
340-054-0020	12-14-2012	Repeal	1-1-2013	340-228-0633	3-27-2013	Repeal	5-1-2013
340-054-0021	12-14-2012	Repeal	1-1-2013	340-228-0635	3-27-2013	Amend	5-1-2013
340-054-0022	12-14-2012	Amend	1-1-2013	340-228-0637	3-27-2013	Amend	5-1-2013
340-054-0023	12-14-2012	Repeal	1-1-2013	340-232-0085	3-27-2013	Amend	5-1-2013
340-054-0024	12-14-2012	Repeal	1-1-2013	340-238-0040	3-27-2013	Amend	5-1-2013
340-054-0025	12-14-2012	Amend	1-1-2013	340-238-0060	3-27-2013	Amend	5-1-2013
340-054-0026	12-14-2012	Adopt	1-1-2013	340-240-0010	12-11-2012	Amend	1-1-2013

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340-240-0500	12-11-2012	Adopt	1-1-2013	340-264-0175	12-11-2012	Adopt	1-1-2013
340-240-0510	12-11-2012	Adopt	1-1-2013	345-029-0060	1-28-2013	Amend	3-1-2013
340-240-0520	12-11-2012	Adopt	1-1-2013	345-060-0004	1-28-2013	Amend	3-1-2013
340-240-0530	12-11-2012	Adopt	1-1-2013	345-060-0007	1-28-2013	Amend	3-1-2013
340-240-0540	12-11-2012	Adopt	1-1-2013	345-060-0025	1-28-2013	Amend	3-1-2013
340-240-0550	12-11-2012	Adopt	1-1-2013	407-007-0210	2-5-2013	Amend(T)	3-1-2013
340-240-0560	12-11-2012	Adopt	1-1-2013	407-007-0290	2-5-2013	Amend(T)	3-1-2013
340-240-0570	12-11-2012	Adopt	1-1-2013	409-021-0130	2-1-2013	Amend	3-1-2013
340-240-0580	12-11-2012	Adopt	1-1-2013	409-025-0160	2-1-2013	Amend	3-1-2013
340-240-0610	12-11-2012	Adopt	1-1-2013	409-035-0020	2-1-2013	Amend	3-1-2013
340-240-0620	12-11-2012	Adopt	1-1-2013	409-055-0030	4-1-2013	Amend	5-1-2013
340-240-0630	12-11-2012	Adopt	1-1-2013	409-055-0030(T)	4-1-2013	Repeal	5-1-2013
340-244-0030	3-27-2013	Amend	5-1-2013	409-060-0100	2-1-2013	Adopt	3-1-2013
340-244-0210	3-27-2013	Amend	5-1-2013	409-060-0110	2-1-2013	Adopt	3-1-2013
340-244-0220	3-27-2013	Amend	5-1-2013	409-060-0120	2-1-2013	Adopt	3-1-2013
340-244-0230	3-27-2013	Repeal	5-1-2013	409-060-0130	2-1-2013	Adopt	3-1-2013
340-244-0234	3-27-2013	Amend	5-1-2013	409-060-0140	2-1-2013	Adopt	3-1-2013
340-244-0238	3-27-2013	Amend	5-1-2013	409-060-0150	2-1-2013	Adopt	3-1-2013
340-244-0239	3-27-2013	Adopt	5-1-2013	410-050-0861	4-1-2013	Amend(T)	5-1-2013
340-244-0240	3-27-2013	Amend	5-1-2013	410-120-0006	12-1-2012	Amend(T)	1-1-2013
340-244-0242	3-27-2013	Amend	5-1-2013	410-120-0006	1-1-2013	Amend	2-1-2013
340-244-0244	3-27-2013	Amend	5-1-2013	410-120-0006	1-1-2013	Amend(T)	2-1-2013
340-244-0246	3-27-2013	Amend	5-1-2013	410-120-0006	1-8-2013	Amend(T)	2-1-2013
340-244-0248	3-27-2013	Amend	5-1-2013	410-120-0006	1-30-2013	Amend(T)	3-1-2013
340-244-0250	3-27-2013	Amend	5-1-2013	410-120-0006	2-20-2013	Amend(T)	4-1-2013
340-253-0000	12-11-2012	Adopt	1-1-2013	410-120-0006	3-1-2013	Amend(T)	4-1-2013
340-253-0040	12-11-2012	Adopt	1-1-2013	410-120-0006	4-1-2013	Amend	5-1-2013
340-253-0060	12-11-2012	Adopt	1-1-2013	410-120-0006	4-10-2013	Amend	5-1-2013
340-253-0100	12-11-2012	Adopt	1-1-2013	410-120-0006(T)	12-1-2012	Suspend	1-1-2013
340-253-0200	12-11-2012	Adopt	1-1-2013	410-120-0006(T)	1-1-2013	Repeal	2-1-2013
340-253-0250	12-11-2012	Adopt	1-1-2013	410-120-0006(T)	1-1-2013	Suspend	2-1-2013
340-253-0310	12-11-2012	Adopt	1-1-2013	410-120-0006(T)	1-8-2013	Suspend	2-1-2013
340-253-0320	12-11-2012	Adopt	1-1-2013	410-120-0006(T)	1-30-2013	Suspend	3-1-2013
340-253-0330	12-11-2012	Adopt	1-1-2013	410-120-0006(T)	2-20-2013	Suspend	4-1-2013
340-253-0340	12-11-2012	Adopt	1-1-2013	410-120-0006(T)	3-1-2013	Suspend	4-1-2013
340-253-0400	12-11-2012	Adopt	1-1-2013	410-120-1210	1-1-2013	Amend(T)	2-1-2013
340-253-0450	12-11-2012	Adopt	1-1-2013	410-120-1340	3-29-2013	Amend(T)	5-1-2013
340-253-0500	12-11-2012	Adopt	1-1-2013	410-121-0030	1-1-2013	Amend	2-1-2013
340-253-0600	12-11-2012	Adopt	1-1-2013	410-121-0030	2-21-2013	Amend(T)	4-1-2013
340-253-0630	12-11-2012	Adopt	1-1-2013	410-121-0030(T)	1-1-2013	Repeal	2-1-2013
340-253-0650	12-11-2012	Adopt	1-1-2013	410-121-0033	1-1-2013	Amend	2-1-2013
340-253-1000	12-11-2012	Adopt	1-1-2013	410-121-0033(T)	1-1-2013	Repeal	2-1-2013
340-253-1010	12-11-2012	Adopt	1-1-2013	410-121-0040	1-1-2013	Amend	2-1-2013
340-253-1020	12-11-2012	Adopt	1-1-2013	410-121-0040	2-21-2013	Amend(T)	4-1-2013
340-253-1030	12-11-2012	Adopt	1-1-2013	410-121-0040(T)	1-1-2013	Repeal	2-1-2013
340-253-3000	12-11-2012	Adopt	1-1-2013	410-121-0100	1-1-2013	Amend	2-1-2013
340-253-3010	12-11-2012	Adopt	1-1-2013	410-121-0100(T)	1-1-2013	Repeal	2-1-2013
340-253-3020	12-11-2012	Adopt	1-1-2013	410-121-0111	1-1-2013	Adopt	2-1-2013
340-253-3030	12-11-2012	Adopt	1-1-2013	410-121-0111(T)	1-1-2013	Repeal	2-1-2013
340-253-3040	12-11-2012	Adopt	1-1-2013	410-121-0190	12-28-2012	Amend(T)	2-1-2013
340-253-3050	12-11-2012	Adopt	1-1-2013	410-122-0186	12-27-2012	Amend	2-1-2013
340-262-1000	12-11-2012	Adopt	1-1-2013	410-122-0325	12-27-2012	Amend	2-1-2013
340-264-0040	12-11-2012	Amend	1-1-2013	410-123-1060	4-1-2013	Amend	5-1-2013
340-264-0078	12-11-2012	Amend	1-1-2013	410-123-1160	4-1-2013	Amend	5-1-2013
340-264-0080	12-11-2012	Amend	1-1-2013	410-123-1200	4-1-2013	Amend	5-1-2013

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410-123-1240	4-1-2013	Amend	5-1-2013	411-048-0130	4-15-2013	Repeal	5-1-2013
410-123-1260	4-1-2013	Amend	5-1-2013	411-048-0150	4-15-2013	Adopt	5-1-2013
410-123-1490	4-1-2013	Amend	5-1-2013	411-048-0160	4-15-2013	Adopt	5-1-2013
410-123-1620	4-1-2013	Amend	5-1-2013	411-048-0170	4-15-2013	Adopt	5-1-2013
410-130-0005	3-29-2013	Adopt(T)	5-1-2013	411-048-0180	4-15-2013	Adopt	5-1-2013
410-130-0180	12-28-2012	Amend(T)	2-1-2013	411-048-0190	4-15-2013	Adopt	5-1-2013
410-130-0240	12-28-2012	Amend(T)	2-1-2013	411-048-0200	4-15-2013	Adopt	5-1-2013
410-130-0255	3-29-2013	Amend(T)	5-1-2013	411-048-0210	4-15-2013	Adopt	5-1-2013
410-141-0262	3-1-2013	Amend(T)	4-1-2013	411-048-0220	4-15-2013	Adopt	5-1-2013
410-141-0262	4-10-2013	Amend(T)	5-1-2013	411-048-0230	4-15-2013	Adopt	5-1-2013
410-141-0520	3-21-2013	Amend	5-1-2013	411-048-0240	4-15-2013	Adopt	5-1-2013
410-141-3060	1-1-2013	Amend(T)	2-1-2013	411-048-0250	4-15-2013	Adopt	5-1-2013
410-141-3060	2-7-2013	Amend(T)	3-1-2013	411-070-0005	3-1-2013	Amend	4-1-2013
410-141-3060(T)	2-7-2013	Suspend	3-1-2013	411-070-0005(T)	3-1-2013	Repeal	4-1-2013
410-141-3160	1-4-2013	Amend(T)	2-1-2013	411-070-0091	3-1-2013	Amend	4-1-2013
410-141-3262	3-1-2013	Amend(T)	4-1-2013	411-070-0091(T)	3-1-2013	Repeal	4-1-2013
410-141-3262	4-10-2013	Amend(T)	5-1-2013	411-070-0470	1-1-2013	Amend(T)	2-1-2013
410-142-0020	5-1-2013	Amend(T)	5-1-2013	411-070-0470	5-1-2013	Amend	5-1-2013
410-142-0290	5-1-2013	Amend(T)	5-1-2013	411-070-0470(T)	5-1-2013	Repeal	5-1-2013
410-147-0360	3-1-2013	Amend(T)	4-1-2013	411-320-0175	4-2-2013	Amend	5-1-2013
410-147-0400	1-1-2013	Amend(T)	2-1-2013	411-330-0020	1-4-2013	Amend	2-1-2013
410-147-0400	3-1-2013	Amend(T)	4-1-2013	411-330-0020(T)	1-4-2013	Repeal	2-1-2013
410-147-0400(T)	3-1-2013	Suspend	4-1-2013	411-330-0065	1-4-2013	Adopt	2-1-2013
411-001-0500	4-2-2013	Adopt	5-1-2013	411-330-0065(T)	1-4-2013	Repeal	2-1-2013
411-001-0500(T)	4-2-2013	Repeal	5-1-2013	411-340-0020	4-1-2013	Amend(T)	5-1-2013
411-001-0510	4-2-2013	Adopt	5-1-2013	411-360-0090	4-1-2013	Amend(T)	5-1-2013
411-001-0520	4-2-2013	Adopt	5-1-2013	413-020-0236	1-15-2013	Amend	2-1-2013
411-020-0002	11-28-2012	Amend	1-1-2013	413-020-0245	1-15-2013	Amend	2-1-2013
411-020-0002(T)	11-28-2012	Repeal	1-1-2013	413-030-0000	1-15-2013	Amend	2-1-2013
411-020-0030	11-28-2012	Amend	1-1-2013	413-030-0003	1-15-2013	Amend	2-1-2013
411-020-0030(T)	11-28-2012	Repeal	1-1-2013	413-030-0006	1-15-2013	Amend	2-1-2013
411-020-0085	11-28-2012	Amend	1-1-2013	413-030-0009	1-15-2013	Amend	2-1-2013
411-020-0085(T)	11-28-2012	Repeal	1-1-2013	413-030-0013	1-15-2013	Amend	2-1-2013
411-020-0123	11-28-2012	Adopt	1-1-2013	413-030-0016	1-15-2013	Amend	2-1-2013
411-020-0123(T)	11-28-2012	Repeal	1-1-2013	413-030-0019	1-15-2013	Amend	2-1-2013
411-020-0126	11-28-2012	Adopt	1-1-2013	413-030-0023	1-15-2013	Amend	2-1-2013
411-020-0126(T)	11-28-2012	Repeal	1-1-2013	413-030-0026	1-15-2013	Amend	2-1-2013
411-030-0080	3-26-2013	Amend	5-1-2013	413-030-0030	1-15-2013	Amend	2-1-2013
411-030-0080(T)	3-26-2013	Repeal	5-1-2013	413-030-0405	1-15-2013	Amend	2-1-2013
411-031-0020	3-26-2013	Amend	5-1-2013	413-030-0410	1-15-2013	Amend	2-1-2013
411-031-0020(T)	3-26-2013	Repeal	5-1-2013	413-030-0445	1-15-2013	Amend	2-1-2013
411-031-0030	3-26-2013	Amend	5-1-2013	413-030-0449	1-15-2013	Amend	2-1-2013
411-031-0040	3-26-2013	Amend	5-1-2013	413-030-0454	1-15-2013	Amend	2-1-2013
411-031-0040(T)	3-26-2013	Repeal	5-1-2013	413-030-0456	1-15-2013	Adopt	2-1-2013
411-031-0050	3-26-2013	Amend	5-1-2013	413-040-0005	1-15-2013	Amend	2-1-2013
411-048-0000	4-15-2013	Repeal	5-1-2013	413-040-0006	1-15-2013	Amend	2-1-2013
411-048-0010	4-15-2013	Repeal	5-1-2013	413-040-0008	1-15-2013	Amend	2-1-2013
411-048-0020	4-15-2013	Repeal	5-1-2013	413-040-0009	1-15-2013	Amend	2-1-2013
411-048-0030	4-15-2013	Repeal	5-1-2013	413-040-0010	1-15-2013	Amend	2-1-2013
411-048-0040	4-15-2013	Repeal	5-1-2013	413-040-0011	1-15-2013	Amend	2-1-2013
411-048-0050	4-15-2013	Repeal	5-1-2013	413-040-0013	1-15-2013	Amend	2-1-2013
411-048-0060	4-15-2013	Repeal	5-1-2013	413-040-0016	1-15-2013	Amend	2-1-2013
411-048-0070	4-15-2013	Repeal	5-1-2013	413-040-0017	1-15-2013	Amend	2-1-2013
411-048-0080	4-15-2013	Repeal	5-1-2013	413-040-0024	1-15-2013	Amend	2-1-2013
411-048-0100	4-15-2013	Repeal	5-1-2013	413-040-0032	1-15-2013	Amend	2-1-2013

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413-040-0215	1-15-2013	Amend	2-1-2013	436-001-0246	12-28-2012	Amend	1-1-2013
413-040-0240	1-15-2013	Amend	2-1-2013	436-001-0300	12-28-2012	Repeal	1-1-2013
413-040-0270	1-15-2013	Amend	2-1-2013	436-001-0410	12-28-2012	Amend	1-1-2013
413-040-0290	1-15-2013	Amend	2-1-2013	436-001-0420	12-28-2012	Amend	1-1-2013
413-040-0300	1-15-2013	Amend	2-1-2013	436-001-0430	12-28-2012	Amend	1-1-2013
413-070-0524	1-15-2013	Amend	2-1-2013	436-009-0004	4-1-2013	Amend	4-1-2013
413-070-0536	1-15-2013	Amend	2-1-2013	436-009-0010	4-1-2013	Amend	4-1-2013
413-070-0551	1-15-2013	Amend	2-1-2013	436-009-0020	4-1-2013	Amend	4-1-2013
413-070-0552	1-15-2013	Amend	2-1-2013	436-009-0025	4-1-2013	Amend	4-1-2013
413-070-0556	1-15-2013	Amend	2-1-2013	436-009-0030	4-1-2013	Amend	4-1-2013
413-070-0565	1-15-2013	Amend	2-1-2013	436-009-0050	4-1-2013	Amend	4-1-2013
413-070-0620	1-15-2013	Amend	2-1-2013	436-009-0070	4-1-2013	Amend	4-1-2013
413-070-0625	1-15-2013	Amend	2-1-2013	436-009-0110	4-1-2013	Amend	4-1-2013
413-070-0630	1-15-2013	Amend	2-1-2013	436-009-0135	4-1-2013	Amend	4-1-2013
413-070-0640	1-15-2013	Amend	2-1-2013	436-009-0175	4-1-2013	Amend	4-1-2013
413-080-0040	1-15-2013	Amend	2-1-2013	436-009-0177	4-1-2013	Amend	4-1-2013
413-080-0050	1-15-2013	Amend	2-1-2013	436-009-0180	4-1-2013	Amend	4-1-2013
413-080-0052	1-15-2013	Amend	2-1-2013	436-009-0207	4-1-2013	Amend	4-1-2013
413-080-0054	1-15-2013	Adopt	2-1-2013	436-009-0260	4-1-2013	Amend	4-1-2013
413-080-0055	1-15-2013	Amend	2-1-2013	436-009-0290	4-1-2013	Amend	4-1-2013
413-080-0059	1-15-2013	Amend	2-1-2013	436-010-0210	4-1-2013	Amend	4-1-2013
413-080-0063	1-15-2013	Repeal	2-1-2013	436-010-0230	4-1-2013	Amend	4-1-2013
413-080-0067	1-15-2013	Amend	2-1-2013	436-010-0265	4-1-2013	Amend	4-1-2013
413-120-0860	1-15-2013	Amend	2-1-2013	436-010-0330	4-1-2013	Amend	4-1-2013
415-012-0000	1-14-2013	Amend(T)	2-1-2013	436-015-0008	4-1-2013	Amend	4-1-2013
415-012-0010	1-14-2013	Amend(T)	2-1-2013	436-015-0080	4-1-2013	Amend	4-1-2013
415-012-0020	1-14-2013	Amend(T)	2-1-2013	436-015-0110	4-1-2013	Amend	4-1-2013
415-012-0030	1-14-2013	Amend(T)	2-1-2013	436-035-0002	1-1-2013	Amend	1-1-2013
415-020-0053	1-14-2013	Amend(T)	2-1-2013	436-035-0003	1-1-2013	Amend	1-1-2013
415-050-0000	2-4-2013	Amend(T)	3-1-2013	436-035-0005	1-1-2013	Amend	1-1-2013
415-050-0005	2-4-2013	Amend(T)	3-1-2013	436-035-0007	1-1-2013	Amend	1-1-2013
415-050-0015	2-4-2013	Amend(T)	3-1-2013	436-035-0008	1-1-2013	Amend	1-1-2013
415-050-0025	2-4-2013	Amend(T)	3-1-2013	436-035-0009	1-1-2013	Amend	1-1-2013
415-050-0035	2-4-2013	Amend(T)	3-1-2013	436-035-0011	1-1-2013	Amend	1-1-2013
415-050-0040	2-4-2013	Amend(T)	3-1-2013	436-035-0012	1-1-2013	Amend	1-1-2013
415-050-0045	2-4-2013	Amend(T)	3-1-2013	436-035-0017	1-1-2013	Amend	1-1-2013
415-050-0050	2-4-2013	Amend(T)	3-1-2013	436-035-0018	1-1-2013	Amend	1-1-2013
415-050-0055	2-4-2013	Amend(T)	3-1-2013	436-035-0030	1-1-2013	Amend	1-1-2013
415-050-0060	2-4-2013	Amend(T)	3-1-2013	436-035-0040	1-1-2013	Amend	1-1-2013
415-050-0065	2-4-2013	Amend(T)	3-1-2013	436-035-0110	1-1-2013	Amend	1-1-2013
415-050-0070	2-4-2013	Amend(T)	3-1-2013	436-035-0230	1-1-2013	Amend	1-1-2013
415-050-0075	2-4-2013	Amend(T)	3-1-2013	436-035-0235	1-1-2013	Amend	1-1-2013
415-050-0090	2-4-2013	Amend(T)	3-1-2013	436-035-0255	1-1-2013	Amend	1-1-2013
416-465-0000	2-25-2013	Repeal	4-1-2013	436-035-0260	1-1-2013	Amend	1-1-2013
416-465-0010	2-25-2013	Repeal	4-1-2013	436-035-0265	1-1-2013	Amend	1-1-2013
416-465-0020	2-25-2013	Repeal	4-1-2013	436-035-0340	1-1-2013	Amend	1-1-2013
416-465-0030	2-25-2013	Repeal	4-1-2013	436-035-0350	1-1-2013	Amend	1-1-2013
416-465-0040	2-25-2013	Repeal	4-1-2013	436-035-0370	1-1-2013	Amend	1-1-2013
436-001-0003	12-28-2012	Amend	1-1-2013	436-035-0380	1-1-2013	Amend	1-1-2013
436-001-0004	12-28-2012	Amend	1-1-2013	436-035-0385	1-1-2013	Amend	1-1-2013
436-001-0005	12-28-2012	Amend	1-1-2013	436-035-0390	1-1-2013	Amend	1-1-2013
436-001-0009	12-28-2012	Amend	1-1-2013	436-035-0395	1-1-2013	Amend	1-1-2013
436-001-0019	12-28-2012	Amend	1-1-2013	436-035-0400	1-1-2013	Amend	1-1-2013
436-001-0023	12-28-2012	Amend	1-1-2013	436-035-0410	1-1-2013	Amend	1-1-2013
436-001-0170	12-28-2012	Amend	1-1-2013	436-035-0420	1-1-2013	Amend	1-1-2013

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436-035-0440	1-1-2013	Amend	1-1-2013	442-005-0130	1-1-2013	Amend	2-1-2013
436-035-0450	1-1-2013	Amend	1-1-2013	442-005-0140	1-1-2013	Amend	2-1-2013
436-035-0500	1-1-2013	Amend	1-1-2013	442-005-0150	1-1-2013	Amend	2-1-2013
436-050-0003	1-23-2013	Amend(T)	3-1-2013	442-005-0160	1-1-2013	Amend	2-1-2013
436-050-0175	1-1-2013	Amend	1-1-2013	442-005-0170	1-1-2013	Amend	2-1-2013
436-050-0300	1-23-2013	Amend(T)	3-1-2013	442-005-0180	1-1-2013	Amend	2-1-2013
436-070-0002	4-1-2013	Amend	1-1-2013	442-005-0190	1-1-2013	Amend	2-1-2013
436-070-0003	4-1-2013	Amend	1-1-2013	442-005-0200	1-1-2013	Amend	2-1-2013
436-070-0010	4-1-2013	Amend	1-1-2013	442-005-0210	1-1-2013	Amend	2-1-2013
436-105-0003	7-1-2013	Amend	5-1-2013	442-005-0220	1-1-2013	Amend	2-1-2013
436-105-0520	7-1-2013	Amend	5-1-2013	442-005-0230	1-1-2013	Amend	2-1-2013
437-002-0005	12-14-2012	Amend	1-1-2013	442-005-0235	1-1-2013	Adopt	2-1-2013
437-002-0020	4-1-2013	Amend	3-1-2013	442-005-0240	1-1-2013	Amend	2-1-2013
437-002-0023	4-1-2013	Adopt	3-1-2013	442-005-0260	1-1-2013	Amend	2-1-2013
437-002-0120	12-14-2012	Amend	1-1-2013	442-005-0270	1-1-2013	Amend	2-1-2013
437-002-0134	4-1-2013	Amend	3-1-2013	442-005-0280	1-1-2013	Amend	2-1-2013
437-002-0240	12-14-2012	Amend	1-1-2013	442-005-0290	1-1-2013	Amend	2-1-2013
437-003-0001	12-14-2012	Amend	1-1-2013	442-005-0300	1-1-2013	Amend	2-1-2013
437-003-0001	2-14-2013	Amend	3-1-2013	442-005-0310	1-1-2013	Amend	2-1-2013
437-003-0001	4-1-2013	Amend	3-1-2013	442-005-0320	1-1-2013	Amend	2-1-2013
437-003-0128	4-1-2013	Repeal	3-1-2013	442-005-0330	1-1-2013	Amend	2-1-2013
437-003-0134	4-1-2013	Adopt	3-1-2013	442-005-0340	1-1-2013	Amend	2-1-2013
437-005-0001	12-14-2012	Amend	1-1-2013	442-005-0350	1-1-2013	Repeal	2-1-2013
437-005-0002	12-14-2012	Amend	1-1-2013	442-010-0010	1-1-2013	Amend	2-1-2013
437-005-0003	12-14-2012	Amend	1-1-2013	442-010-0020	1-1-2013	Amend	2-1-2013
438-005-0015	4-1-2013	Amend	3-1-2013	442-010-0030	1-1-2013	Amend	2-1-2013
438-009-0005	4-1-2013	Amend	3-1-2013	442-010-0040	1-1-2013	Amend	2-1-2013
438-009-0020	4-1-2013	Amend	3-1-2013	442-010-0050	1-1-2013	Amend	2-1-2013
438-011-0010	4-1-2013	Amend	3-1-2013	442-010-0055	1-1-2013	Amend	2-1-2013
438-011-0045	4-1-2013	Amend	3-1-2013	442-010-0060	1-1-2013	Amend	2-1-2013
438-012-0001	4-1-2013	Amend	3-1-2013	442-010-0070	1-1-2013	Amend	2-1-2013
438-012-0020	4-1-2013	Amend	3-1-2013	442-010-0075	1-1-2013	Amend	2-1-2013
438-012-0031	4-1-2013	Amend	3-1-2013	442-010-0080	1-1-2013	Amend	2-1-2013
438-012-0035	4-1-2013	Amend	3-1-2013	442-010-0085	1-1-2013	Amend	2-1-2013
438-012-0036	4-1-2013	Amend	3-1-2013	442-010-0090	1-1-2013	Amend	2-1-2013
438-012-0050	4-1-2013	Amend	3-1-2013	442-010-0100	1-1-2013	Amend	2-1-2013
438-012-0060	4-1-2013	Amend	3-1-2013	442-010-0110	1-1-2013	Repeal	2-1-2013
438-012-0062	4-1-2013	Amend	3-1-2013	442-010-0120	1-1-2013	Amend	2-1-2013
438-016-0005	4-1-2013	Amend	3-1-2013	442-010-0140	1-1-2013	Amend	2-1-2013
438-019-0010	4-1-2013	Amend	3-1-2013	442-010-0150	1-1-2013	Amend	2-1-2013
438-020-0010	4-1-2013	Amend	3-1-2013	442-010-0160	1-1-2013	Amend	2-1-2013
438-022-0005	4-1-2013	Amend	3-1-2013	442-010-0170	1-1-2013	Amend	2-1-2013
441-505-3090	1-23-2013	Adopt	3-1-2013	442-010-0180	1-1-2013	Amend	2-1-2013
441-505-3090(T)	1-23-2013	Repeal	3-1-2013	442-010-0190	1-1-2013	Amend	2-1-2013
441-710-0270	2-1-2013	Amend(T)	2-1-2013	442-010-0210	1-1-2013	Amend	2-1-2013
442-005-0000	1-1-2013	Amend	2-1-2013	442-010-0215	1-1-2013	Amend	2-1-2013
442-005-0010	1-1-2013	Amend	2-1-2013	442-010-0220	1-1-2013	Amend	2-1-2013
442-005-0020	1-1-2013	Amend	2-1-2013	442-010-0230	1-1-2013	Amend	2-1-2013
442-005-0030	1-1-2013	Amend	2-1-2013	442-010-0240	1-1-2013	Amend	2-1-2013
442-005-0040	1-1-2013	Amend	2-1-2013	442-010-0260	1-1-2013	Amend	2-1-2013
442-005-0050	1-1-2013	Amend	2-1-2013	442-010-0270	1-1-2013	Amend	2-1-2013
442-005-0070	1-1-2013	Amend	2-1-2013	442-010-0280	1-1-2013	Repeal	2-1-2013
442-005-0080	1-1-2013	Amend	2-1-2013	459-005-0040	1-25-2013	Amend	3-1-2013
442-005-0090	1-1-2013	Amend	2-1-2013	459-005-0400	12-5-2012	Adopt	1-1-2013
442-005-0100	1-1-2013	Amend	2-1-2013	459-005-0525	3-29-2013	Amend	5-1-2013

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459-009-0200	1-25-2013	Amend	3-1-2013	461-155-0270	1-8-2013	Amend(T)	2-1-2013
459-017-0060	3-29-2013	Amend	5-1-2013	461-155-0270	4-1-2013	Amend	5-1-2013
459-035-0001	12-5-2012	Amend	1-1-2013	461-155-0270(T)	1-8-2013	Suspend	2-1-2013
459-035-0200	12-5-2012	Repeal	1-1-2013	461-155-0270(T)	4-1-2013	Repeal	5-1-2013
459-035-0220	12-5-2012	Repeal	1-1-2013	461-155-0290	3-1-2013	Amend	4-1-2013
459-075-0200	3-29-2013	Amend	5-1-2013	461-155-0291	3-1-2013	Amend	4-1-2013
459-080-0500	3-29-2013	Amend	5-1-2013	461-155-0295	3-1-2013	Amend	4-1-2013
461-001-0015	4-1-2013	Amend	5-1-2013	461-155-0300	1-1-2013	Amend(T)	2-1-2013
461-025-0300	4-1-2013	Amend	5-1-2013	461-155-0300	4-1-2013	Amend	5-1-2013
461-025-0300(T)	4-1-2013	Repeal	5-1-2013	461-155-0300(T)	4-1-2013	Repeal	5-1-2013
461-025-0301	4-1-2013	Adopt	5-1-2013	461-155-0575	4-1-2013	Amend	5-1-2013
461-025-0301(T)	4-1-2013	Repeal	5-1-2013	461-155-0575(T)	4-1-2013	Repeal	5-1-2013
461-110-0430	4-10-2013	Amend(T)	5-1-2013	461-160-0010	4-10-2013	Amend(T)	5-1-2013
461-115-0016	1-1-2013	Amend	2-1-2013	461-160-0015	1-1-2013	Amend	2-1-2013
461-115-0016(T)	1-1-2013	Repeal	2-1-2013	461-160-0015	1-1-2013	Amend(T)	2-1-2013
461-115-0430	1-1-2013	Amend	2-1-2013	461-160-0015	4-1-2013	Amend	5-1-2013
461-120-0340	12-29-2012	Amend	2-1-2013	461-160-0015(T)	4-1-2013	Repeal	5-1-2013
461-120-0340	4-1-2013	Amend	5-1-2013	461-160-0030	4-1-2013	Amend	5-1-2013
461-125-0050	4-1-2013	Amend	5-1-2013	461-160-0055	1-1-2013	Amend	2-1-2013
461-125-0830	1-1-2013	Amend(T)	2-1-2013	461-160-0055	4-1-2013	Amend	5-1-2013
461-125-0830	4-1-2013	Amend	5-1-2013	461-160-0055(T)	1-1-2013	Repeal	2-1-2013
461-125-0830(T)	4-1-2013	Repeal	5-1-2013	461-160-0193	4-1-2013	Amend	5-1-2013
461-130-0310	1-1-2013	Amend(T)	2-1-2013	461-160-0410	4-1-2013	Amend	5-1-2013
461-130-0310	4-1-2013	Amend	5-1-2013	461-160-0415	4-1-2013	Amend	5-1-2013
461-130-0310(T)	4-1-2013	Repeal	5-1-2013	461-160-0420	4-1-2013	Amend	5-1-2013
461-130-0330	1-1-2013	Amend	2-1-2013	461-160-0430	4-1-2013	Amend	5-1-2013
461-130-0335	1-1-2013	Amend	2-1-2013	461-160-0580	1-1-2013	Amend	2-1-2013
461-135-0089	1-1-2013	Amend	2-1-2013	461-160-0620	1-1-2013	Amend	2-1-2013
461-135-0400	1-1-2013	Amend(T)	2-1-2013	461-165-0010	2-6-2013	Amend	3-1-2013
461-135-0407	1-1-2013	Adopt	2-1-2013	461-165-0060	1-1-2013	Amend	2-1-2013
461-135-0407(T)	1-1-2013	Repeal	2-1-2013	461-165-0160	4-1-2013	Amend	5-1-2013
461-135-0780	1-1-2013	Amend(T)	2-1-2013	461-165-0180	4-1-2013	Amend	5-1-2013
461-135-0780	4-1-2013	Amend	5-1-2013	461-165-0190	4-1-2013	Repeal	5-1-2013
461-135-0780(T)	4-1-2013	Repeal	5-1-2013	461-180-0070	4-1-2013	Amend	5-1-2013
461-135-1102	12-1-2012	Amend(T)	1-1-2013	461-180-0100	1-1-2013	Amend	2-1-2013
461-135-1102	4-1-2013	Amend	5-1-2013	461-190-0211	1-1-2013	Amend(T)	2-1-2013
461-135-1102(T)	4-1-2013	Repeal	5-1-2013	461-190-0211	1-23-2013	Amend(T)	3-1-2013
461-145-0080	12-29-2012	Amend	2-1-2013	461-190-0211	4-1-2013	Amend	5-1-2013
461-145-0220	1-1-2013	Amend(T)	2-1-2013	461-190-0211(T)	1-1-2013	Suspend	2-1-2013
461-145-0220	4-1-2013	Amend	5-1-2013	461-190-0211(T)	1-23-2013	Suspend	3-1-2013
461-145-0220(T)	4-1-2013	Repeal	5-1-2013	461-190-0211(T)	4-1-2013	Repeal	5-1-2013
461-145-0260	1-1-2013	Amend	2-1-2013	461-195-0501	3-25-2013	Amend(T)	5-1-2013
461-145-0260	1-1-2013	Amend(T)	2-1-2013	461-195-0541	3-25-2013	Amend(T)	5-1-2013
461-145-0260	4-1-2013	Amend	5-1-2013	461-195-0601	3-25-2013	Amend(T)	5-1-2013
461-145-0260(T)	1-1-2013	Repeal	2-1-2013	461-195-0621	3-25-2013	Amend(T)	5-1-2013
461-145-0260(T)	4-1-2013	Repeal	5-1-2013	462-130-0010	12-31-2012	Amend	2-1-2013
461-145-0580	1-1-2013	Amend	2-1-2013	571-004-0020	3-4-2013	Amend	4-1-2013
461-145-0580(T)	1-1-2013	Repeal	2-1-2013	571-004-0025	3-4-2013	Amend	4-1-2013
461-155-0150	1-1-2013	Amend(T)	2-1-2013	571-004-0030	3-4-2013	Amend	4-1-2013
461-155-0180	1-30-2013	Amend	3-1-2013	571-004-0037	3-4-2013	Adopt	4-1-2013
461-155-0180	2-1-2013	Amend(T)	3-1-2013	571-004-0050	3-4-2013	Amend	4-1-2013
461-155-0235	1-30-2013	Amend	3-1-2013	571-004-0055	3-4-2013	Amend	4-1-2013
461-155-0250	1-1-2013	Amend(T)	2-1-2013	571-060-0005	3-6-2013	Amend	4-1-2013
461-155-0250	4-1-2013	Amend	5-1-2013	574-050-0005	1-28-2013	Amend	3-1-2013
461-155-0250(T)	4-1-2013	Repeal	5-1-2013	576-005-0035	3-1-2013	Repeal	4-1-2013



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576-005-0040	3-1-2013	Repeal	4-1-2013	580-060-0055	4-10-2013	Amend(T)	5-1-2013
576-010-0000	1-1-2013	Amend	2-1-2013	580-060-0060	4-10-2013	Suspend	5-1-2013
576-026-0005	1-1-2013	Repeal	2-1-2013	580-061-0000	4-10-2013	Amend(T)	5-1-2013
576-026-0010	1-1-2013	Repeal	2-1-2013	580-061-0005	4-10-2013	Amend(T)	5-1-2013
576-050-0015	1-1-2013	Amend	2-1-2013	580-061-0010	4-10-2013	Amend(T)	5-1-2013
576-055-0000	1-16-2013	Adopt	3-1-2013	580-061-0015	4-10-2013	Amend(T)	5-1-2013
576-055-0010	1-16-2013	Adopt	3-1-2013	580-061-0020	4-10-2013	Amend(T)	5-1-2013
576-055-0020	1-16-2013	Adopt	3-1-2013	580-061-0025	4-10-2013	Amend(T)	5-1-2013
576-055-0030	1-16-2013	Adopt	3-1-2013	580-061-0030	4-10-2013	Amend(T)	5-1-2013
576-055-0040	1-16-2013	Adopt	3-1-2013	580-061-0035	4-10-2013	Amend(T)	5-1-2013
576-055-0050	1-16-2013	Adopt	3-1-2013	580-061-0040	4-10-2013	Amend(T)	5-1-2013
576-055-0060	1-16-2013	Adopt	3-1-2013	580-061-0045	4-10-2013	Amend(T)	5-1-2013
576-055-0070	1-16-2013	Adopt	3-1-2013	580-061-0050	4-10-2013	Amend(T)	5-1-2013
576-055-0080	1-16-2013	Adopt	3-1-2013	580-061-0055	4-10-2013	Amend(T)	5-1-2013
576-055-0090	1-16-2013	Adopt	3-1-2013	580-061-0060	4-10-2013	Amend(T)	5-1-2013
576-055-0100	1-16-2013	Adopt	3-1-2013	580-061-0065	4-10-2013	Amend(T)	5-1-2013
576-055-0110	1-16-2013	Adopt	3-1-2013	580-061-0070	4-10-2013	Amend(T)	5-1-2013
576-055-0120	1-16-2013	Adopt	3-1-2013	580-061-0075	4-10-2013	Amend(T)	5-1-2013
576-055-0130	1-16-2013	Adopt	3-1-2013	580-061-0080	4-10-2013	Amend(T)	5-1-2013
576-055-0140	1-16-2013	Adopt	3-1-2013	580-061-0085	4-10-2013	Amend(T)	5-1-2013
576-055-0150	1-16-2013	Adopt	3-1-2013	580-061-0090	4-10-2013	Amend(T)	5-1-2013
576-055-0160	1-16-2013	Adopt	3-1-2013	580-061-0095	4-10-2013	Amend(T)	5-1-2013
576-056-0000	1-1-2013	Adopt	2-1-2013	580-061-0100	4-10-2013	Amend(T)	5-1-2013
576-056-0010	1-1-2013	Adopt	2-1-2013	580-061-0105	4-10-2013	Amend(T)	5-1-2013
576-056-0020	1-1-2013	Adopt	2-1-2013	580-061-0110	4-10-2013	Amend(T)	5-1-2013
576-056-0030	1-1-2013	Adopt	2-1-2013	580-061-0115	4-10-2013	Amend(T)	5-1-2013
576-056-0040	1-1-2013	Adopt	2-1-2013	580-061-0120	4-10-2013	Amend(T)	5-1-2013
576-056-0050	1-1-2013	Adopt	2-1-2013	580-061-0125	4-10-2013	Amend(T)	5-1-2013
576-056-0060	1-1-2013	Adopt	2-1-2013	580-061-0130	4-10-2013	Amend(T)	5-1-2013
576-056-0070	1-1-2013	Adopt	2-1-2013	580-061-0135	4-10-2013	Amend(T)	5-1-2013
576-056-0080	1-1-2013	Adopt	2-1-2013	580-061-0140	4-10-2013	Amend(T)	5-1-2013
576-056-0090	1-1-2013	Adopt	2-1-2013	580-061-0145	4-10-2013	Amend(T)	5-1-2013
576-056-0100	1-1-2013	Adopt	2-1-2013	580-061-0150	4-10-2013	Amend(T)	5-1-2013
576-056-0110	1-1-2013	Adopt	2-1-2013	580-061-0155	4-10-2013	Amend(T)	5-1-2013
576-056-0120	1-1-2013	Adopt	2-1-2013	580-061-0160	4-10-2013	Amend(T)	5-1-2013
576-056-0130	1-1-2013	Adopt	2-1-2013	580-062-0010	4-10-2013	Amend(T)	5-1-2013
577-042-0010	3-20-2013	Amend(T)	5-1-2013	580-062-0015	4-10-2013	Amend(T)	5-1-2013
579-070-0005	12-20-2012	Amend	2-1-2013	580-062-0020	4-10-2013	Amend(T)	5-1-2013
579-070-0005	2-22-2013	Amend	4-1-2013	581-001-0016	1-15-2013	Adopt	2-1-2013
579-070-0010	2-22-2013	Amend	4-1-2013	581-002-0090	1-15-2013	Adopt	2-1-2013
579-070-0015	2-22-2013	Amend	4-1-2013	581-015-2030	4-9-2013	Amend(T)	5-1-2013
579-070-0030	2-22-2013	Amend	4-1-2013	581-015-2110	1-17-2013	Amend	3-1-2013
579-070-0035	2-22-2013	Amend	4-1-2013	581-021-0500	1-17-2013	Amend	3-1-2013
579-070-0041	2-22-2013	Amend	4-1-2013	581-021-0500(T)	1-17-2013	Repeal	3-1-2013
579-070-0042	2-22-2013	Amend	4-1-2013	581-022-1065	1-15-2013	Repeal	2-1-2013
579-070-0043	2-22-2013	Amend	4-1-2013	581-022-1440	4-10-2013	Amend	5-1-2013
579-070-0045	2-22-2013	Amend	4-1-2013	581-022-1670	2-20-2013	Amend	4-1-2013
580-060-0000	4-10-2013	Amend(T)	5-1-2013	581-022-2130	4-5-2013	Adopt	5-1-2013
580-060-0010	4-10-2013	Amend(T)	5-1-2013	581-045-0003	1-15-2013	Amend	2-1-2013
580-060-0015	4-10-2013	Amend(T)	5-1-2013	581-045-0586	1-17-2013	Amend	3-1-2013
580-060-0020	4-10-2013	Amend(T)	5-1-2013	581-045-0586(T)	1-17-2013	Repeal	3-1-2013
580-060-0025	4-10-2013	Amend(T)	5-1-2013	584-005-0005	2-14-2013	Amend	3-1-2013
580-060-0035	4-10-2013	Amend(T)	5-1-2013	584-018-0205	2-14-2013	Amend	3-1-2013
580-060-0040	4-10-2013	Amend(T)	5-1-2013	584-018-0220	11-19-2012	Adopt	1-1-2013
580-060-0045	4-10-2013	Amend(T)	5-1-2013	584-018-0305	2-14-2013	Amend	3-1-2013
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584-052-0031	11-19-2012	Repeal	1-1-2013	603-051-0855	3-1-2013	Amend	4-1-2013
584-052-0032	11-19-2012	Repeal	1-1-2013	603-051-0856	3-1-2013	Amend	4-1-2013
584-052-0033	11-19-2012	Repeal	1-1-2013	603-051-0857	3-1-2013	Amend	4-1-2013
584-066-0015	2-14-2013	Adopt	3-1-2013	603-051-0858	3-1-2013	Amend	4-1-2013
584-070-0411	2-14-2013	Amend	3-1-2013	603-051-0859	3-1-2013	Amend	4-1-2013
584-080-0031	11-19-2012	Amend	1-1-2013	603-052-0075	3-1-2013	Amend	4-1-2013
584-090-0115	11-19-2012	Amend	1-1-2013	603-052-0114	3-1-2013	Amend	4-1-2013
584-100-0016	2-14-2013	Amend	3-1-2013	603-052-0116	3-1-2013	Amend	4-1-2013
584-100-0038	11-19-2012	Amend	1-1-2013	603-052-0127	3-1-2013	Amend	4-1-2013
584-100-0038	2-14-2013	Amend	3-1-2013	603-052-0129	3-1-2013	Amend	4-1-2013
584-100-0091	11-19-2012	Amend	1-1-2013	603-052-0850	2-6-2013	Repeal	3-1-2013
584-100-0096	11-19-2012	Amend	1-1-2013	603-052-0852	2-6-2013	Repeal	3-1-2013
584-100-0101	2-14-2013	Amend	3-1-2013	603-052-0860	2-6-2013	Amend	3-1-2013
584-100-0106	2-14-2013	Amend	3-1-2013	603-052-0861	2-6-2013	Adopt	3-1-2013
585-001-0007	12-17-2012	Adopt	2-1-2013	603-052-0862	2-6-2013	Adopt	3-1-2013
585-001-0009	12-17-2012	Adopt	2-1-2013	603-052-0870	2-6-2013	Amend	3-1-2013
589-002-0100	12-26-2012	Amend	2-1-2013	603-052-0880	2-6-2013	Amend	3-1-2013
589-002-0110	12-26-2012	Adopt	2-1-2013	603-052-0882	2-6-2013	Adopt	3-1-2013
589-002-0120	12-26-2012	Adopt	2-1-2013	603-052-0884	2-6-2013	Adopt	3-1-2013
589-002-0130	12-26-2012	Adopt	2-1-2013	603-052-0886	2-6-2013	Adopt	3-1-2013
589-007-0700	12-26-2012	Amend	2-1-2013	603-052-0888	2-6-2013	Adopt	3-1-2013
603-013-0905	2-7-2013	Adopt	3-1-2013	603-052-0901	2-6-2013	Adopt	3-1-2013
603-013-0910	2-7-2013	Adopt	3-1-2013	603-052-0921	2-6-2013	Adopt	3-1-2013
603-013-0920	2-7-2013	Adopt	3-1-2013	603-052-1080	12-3-2012	Adopt	1-1-2013
603-013-0932	2-7-2013	Adopt	3-1-2013	603-052-1090	12-3-2012	Adopt	1-1-2013
603-017-0900	2-7-2013	Adopt	3-1-2013	603-052-1200	3-1-2013	Amend	4-1-2013
603-017-0910	2-7-2013	Adopt	3-1-2013	603-052-1206	12-12-2012	Adopt	1-1-2013
603-017-0920	2-7-2013	Adopt	3-1-2013	603-052-1209	12-12-2012	Adopt	1-1-2013
603-017-0930	2-7-2013	Adopt	3-1-2013	603-052-1211	12-12-2012	Adopt	1-1-2013
603-021-0900	2-7-2013	Adopt	3-1-2013	603-052-1230	3-1-2013	Amend	4-1-2013
603-021-0910	2-7-2013	Adopt	3-1-2013	603-052-1320	3-1-2013	Amend	4-1-2013
603-021-0920	2-7-2013	Adopt	3-1-2013	603-100-0900	2-7-2013	Adopt	3-1-2013
603-021-0930	2-7-2013	Adopt	3-1-2013	603-100-0910	2-7-2013	Adopt	3-1-2013
603-022-0900	2-7-2013	Adopt	3-1-2013	603-100-0920	2-7-2013	Adopt	3-1-2013
603-022-0910	2-7-2013	Adopt	3-1-2013	603-100-0930	2-7-2013	Adopt	3-1-2013
603-022-0920	2-7-2013	Adopt	3-1-2013	632-010-0004	3-21-2013	Amend	5-1-2013
603-022-0930	2-7-2013	Adopt	3-1-2013	632-010-0006	3-21-2013	Repeal	5-1-2013
603-024-0900	2-7-2013	Adopt	3-1-2013	632-010-0008	3-21-2013	Amend	5-1-2013
603-024-0910	2-7-2013	Adopt	3-1-2013	632-010-0010	3-21-2013	Amend	5-1-2013
603-024-0920	2-7-2013	Adopt	3-1-2013	632-010-0011	3-21-2013	Amend	5-1-2013
603-024-0930	2-7-2013	Adopt	3-1-2013	632-010-0012	3-21-2013	Amend	5-1-2013
603-025-0030	1-1-2013	Amend	2-1-2013	632-010-0014	3-21-2013	Amend	5-1-2013
603-025-0900	2-7-2013	Adopt	3-1-2013	632-010-0015	3-21-2013	Amend	5-1-2013
603-025-0910	2-7-2013	Adopt	3-1-2013	632-010-0016	3-21-2013	Amend	5-1-2013
603-025-0920	2-7-2013	Adopt	3-1-2013	632-010-0017	3-21-2013	Amend	5-1-2013
603-025-0930	2-7-2013	Adopt	3-1-2013	632-010-0018	3-21-2013	Amend	5-1-2013
603-028-0900	2-7-2013	Adopt	3-1-2013	632-010-0020	3-21-2013	Amend	5-1-2013
603-028-0910	2-7-2013	Adopt	3-1-2013	632-010-0128	3-21-2013	Amend	5-1-2013
603-028-0920	2-7-2013	Adopt	3-1-2013	632-010-0130	3-21-2013	Amend	5-1-2013
603-028-0930	2-7-2013	Adopt	3-1-2013	632-010-0132	3-21-2013	Amend	5-1-2013
603-047-0010	12-21-2012	Adopt	2-1-2013	632-010-0134	3-21-2013	Amend	5-1-2013
603-047-0100	12-21-2012	Adopt	2-1-2013	632-010-0136	3-21-2013	Amend	5-1-2013
603-047-0200	12-21-2012	Adopt	2-1-2013	632-010-0138	3-21-2013	Amend	5-1-2013
603-047-0300	12-21-2012	Adopt	2-1-2013	632-010-0140	3-21-2013	Amend	5-1-2013
603-047-0400	12-21-2012	Adopt	2-1-2013	632-010-0142	3-21-2013	Amend	5-1-2013

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632-010-0146	3-21-2013	Amend	5-1-2013	632-020-0031	3-21-2013	Amend	5-1-2013
632-010-0148	3-21-2013	Amend	5-1-2013	632-020-0032	3-21-2013	Adopt	5-1-2013
632-010-0150	3-21-2013	Amend	5-1-2013	632-020-0035	3-21-2013	Amend	5-1-2013
632-010-0151	3-21-2013	Amend	5-1-2013	632-020-0040	3-21-2013	Amend	5-1-2013
632-010-0152	3-21-2013	Amend	5-1-2013	632-020-0045	3-21-2013	Repeal	5-1-2013
632-010-0154	3-21-2013	Amend	5-1-2013	632-020-0055	3-21-2013	Repeal	5-1-2013
632-010-0156	3-21-2013	Amend	5-1-2013	632-020-0060	3-21-2013	Amend	5-1-2013
632-010-0157	3-21-2013	Amend	5-1-2013	632-020-0065	3-21-2013	Amend	5-1-2013
632-010-0159	3-21-2013	Amend	5-1-2013	632-020-0070	3-21-2013	Amend	5-1-2013
632-010-0161	3-21-2013	Amend	5-1-2013	632-020-0090	3-21-2013	Amend	5-1-2013
632-010-0162	3-21-2013	Amend	5-1-2013	632-020-0095	3-21-2013	Amend	5-1-2013
632-010-0163	3-21-2013	Amend	5-1-2013	632-020-0100	3-21-2013	Amend	5-1-2013
632-010-0164	3-21-2013	Amend	5-1-2013	632-020-0105	3-21-2013	Amend	5-1-2013
632-010-0165	3-21-2013	Amend	5-1-2013	632-020-0110	3-21-2013	Amend	5-1-2013
632-010-0166	3-21-2013	Amend	5-1-2013	632-020-0115	3-21-2013	Amend	5-1-2013
632-010-0167	3-21-2013	Amend	5-1-2013	632-020-0117	3-21-2013	Amend	5-1-2013
632-010-0168	3-21-2013	Amend	5-1-2013	632-020-0125	3-21-2013	Amend	5-1-2013
632-010-0169	3-21-2013	Repeal	5-1-2013	632-020-0130	3-21-2013	Amend	5-1-2013
632-010-0170	3-21-2013	Amend	5-1-2013	632-020-0135	3-21-2013	Amend	5-1-2013
632-010-0172	3-21-2013	Amend	5-1-2013	632-020-0138	3-21-2013	Amend	5-1-2013
632-010-0174	3-21-2013	Amend	5-1-2013	632-020-0140	3-21-2013	Amend	5-1-2013
632-010-0176	3-21-2013	Amend	5-1-2013	632-020-0145	3-21-2013	Amend	5-1-2013
632-010-0178	3-21-2013	Amend	5-1-2013	632-020-0150	3-21-2013	Amend	5-1-2013
632-010-0182	3-21-2013	Amend	5-1-2013	632-020-0154	3-21-2013	Amend	5-1-2013
632-010-0184	3-21-2013	Amend	5-1-2013	632-020-0155	3-21-2013	Amend	5-1-2013
632-010-0186	3-21-2013	Amend	5-1-2013	632-020-0156	3-21-2013	Amend	5-1-2013
632-010-0188	3-21-2013	Amend	5-1-2013	632-020-0157	3-21-2013	Amend	5-1-2013
632-010-0190	3-21-2013	Amend	5-1-2013	632-020-0159	3-21-2013	Amend	5-1-2013
632-010-0192	3-21-2013	Amend	5-1-2013	632-020-0160	3-21-2013	Repeal	5-1-2013
632-010-0194	3-21-2013	Amend	5-1-2013	632-020-0170	3-21-2013	Amend	5-1-2013
632-010-0196	3-21-2013	Amend	5-1-2013	632-020-0175	3-21-2013	Amend	5-1-2013
632-010-0198	3-21-2013	Amend	5-1-2013	632-020-0180	3-21-2013	Amend	5-1-2013
632-010-0205	3-21-2013	Amend	5-1-2013	635-004-0220	1-1-2013	Amend	2-1-2013
632-010-0210	3-21-2013	Amend	5-1-2013	635-004-0275	1-3-2013	Amend	2-1-2013
632-010-0220	3-21-2013	Amend	5-1-2013	635-004-0310	1-1-2013	Amend	2-1-2013
632-010-0225	3-21-2013	Amend	5-1-2013	635-004-0350	1-1-2013	Amend	2-1-2013
632-010-0230	3-21-2013	Amend	5-1-2013	635-004-0355	1-1-2013	Amend	2-1-2013
632-010-0235	3-21-2013	Amend	5-1-2013	635-004-0465	1-1-2013	Amend	2-1-2013
632-015-0005	3-21-2013	Amend	5-1-2013	635-005-0410	1-1-2013	Amend	2-1-2013
632-015-0010	3-21-2013	Amend	5-1-2013	635-005-0465	12-12-2012	Amend(T)	1-1-2013
632-015-0015	3-21-2013	Amend	5-1-2013	635-005-0465(T)	12-12-2012	Suspend	1-1-2013
632-015-0020	3-21-2013	Amend	5-1-2013	635-005-0480	1-1-2013	Amend	2-1-2013
632-015-0025	3-21-2013	Amend	5-1-2013	635-005-0585	1-1-2013	Amend	2-1-2013
632-015-0030	3-21-2013	Amend	5-1-2013	635-005-0740	1-1-2013	Amend	2-1-2013
632-015-0035	3-21-2013	Amend	5-1-2013	635-005-0800	1-1-2013	Amend	2-1-2013
632-015-0040	3-21-2013	Amend	5-1-2013	635-006-0001	1-1-2013	Amend	2-1-2013
632-015-0045	3-21-2013	Amend	5-1-2013	635-006-0200	1-1-2013	Amend	2-1-2013
632-015-0050	3-21-2013	Amend	5-1-2013	635-006-0210	1-1-2013	Amend	2-1-2013
632-015-0055	3-21-2013	Amend	5-1-2013	635-006-0211	1-1-2013	Amend	2-1-2013
632-015-0060	3-21-2013	Amend	5-1-2013	635-006-0215	1-1-2013	Amend	2-1-2013
632-020-0005	3-21-2013	Amend	5-1-2013	635-006-0232	1-14-2013	Amend	2-1-2013
632-020-0010	3-21-2013	Amend	5-1-2013	635-008-0175	1-1-2013	Amend	2-1-2013
632-020-0015	3-21-2013	Amend	5-1-2013	635-011-0100	1-1-2013	Amend	2-1-2013
632-020-0025	3-21-2013	Amend	5-1-2013	635-011-0102	1-1-2013	Amend	2-1-2013
632-020-0028	3-21-2013	Adopt	5-1-2013	635-013-0003	1-1-2013	Amend	2-1-2013

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635-014-0080	1-1-2013	Amend	2-1-2013	635-042-0145	3-13-2013	Amend(T)	4-1-2013
635-014-0090	1-1-2013	Amend	2-1-2013	635-042-0145(T)	3-13-2013	Suspend	4-1-2013
635-014-0090	4-1-2013	Amend(T)	5-1-2013	635-042-0160	2-11-2013	Amend(T)	3-1-2013
635-016-0080	1-1-2013	Amend	2-1-2013	635-042-0160	3-21-2013	Amend(T)	5-1-2013
635-016-0090	1-1-2013	Amend	2-1-2013	635-042-0160(T)	3-21-2013	Suspend	5-1-2013
635-016-0090	1-1-2013	Amend(T)	2-1-2013	635-042-0170	2-11-2013	Amend(T)	3-1-2013
635-016-0090	4-1-2013	Amend(T)	5-1-2013	635-042-0180	2-11-2013	Amend(T)	3-1-2013
635-016-0090(T)	4-1-2013	Suspend	5-1-2013	635-042-0180	3-21-2013	Amend(T)	5-1-2013
635-017-0080	1-1-2013	Amend	2-1-2013	635-042-0180(T)	3-21-2013	Suspend	5-1-2013
635-017-0090	1-1-2013	Amend	2-1-2013	635-045-0000	1-1-2013	Amend	2-1-2013
635-017-0095	1-1-2013	Amend	2-1-2013	635-045-0002	1-1-2013	Amend	2-1-2013
635-017-0095	2-14-2013	Amend(T)	3-1-2013	635-053-0035	1-23-2013	Amend(T)	3-1-2013
635-017-0095	2-28-2013	Amend(T)	4-1-2013	635-056-0050	12-18-2012	Amend	2-1-2013
635-017-0095	4-1-2013	Amend(T)	5-1-2013	635-056-0075	12-18-2012	Amend	2-1-2013
635-017-0095(T)	4-1-2013	Suspend	5-1-2013	635-060-0005	1-23-2013	Amend	3-1-2013
635-018-0080	1-1-2013	Amend	2-1-2013	635-060-0040	3-11-2013	Amend(T)	4-1-2013
635-018-0090	1-1-2013	Amend	2-1-2013	635-065-0001	1-1-2013	Amend	2-1-2013
635-018-0090	4-15-2013	Amend(T)	4-1-2013	635-065-0011	1-1-2013	Adopt	2-1-2013
635-019-0080	1-1-2013	Amend	2-1-2013	635-065-0011	2-7-2013	Amend	3-1-2013
635-019-0090	1-1-2013	Amend	2-1-2013	635-065-0015	1-1-2013	Amend	2-1-2013
635-019-0090	1-1-2013	Amend(T)	2-1-2013	635-065-0090	1-1-2013	Amend	2-1-2013
635-021-0080	1-1-2013	Amend	2-1-2013	635-065-0401	1-1-2013	Amend	2-1-2013
635-021-0090	1-1-2013	Amend	2-1-2013	635-065-0625	1-1-2013	Amend	2-1-2013
635-023-0080	1-1-2013	Amend	2-1-2013	635-065-0735	1-1-2013	Amend	2-1-2013
635-023-0090	1-1-2013	Amend	2-1-2013	635-065-0740	1-1-2013	Amend	2-1-2013
635-023-0095	1-1-2013	Amend	2-1-2013	635-065-0760	1-1-2013	Amend	2-1-2013
635-023-0095	1-1-2013	Amend(T)	2-1-2013	635-065-0765	2-1-2013	Amend	2-1-2013
635-023-0095	2-28-2013	Amend(T)	3-1-2013	635-065-0765	2-7-2013	Amend	3-1-2013
635-023-0095	4-1-2013	Amend(T)	5-1-2013	635-065-0765(T)	2-7-2013	Repeal	3-1-2013
635-023-0095(T)	2-28-2013	Suspend	3-1-2013	635-066-0000	1-1-2013	Amend	2-1-2013
635-023-0095(T)	4-1-2013	Suspend	5-1-2013	635-066-0010	1-1-2013	Amend	2-1-2013
635-023-0125	1-1-2013	Amend	2-1-2013	635-066-0020	1-1-2013	Amend	2-1-2013
635-023-0125	2-28-2013	Amend(T)	3-1-2013	635-067-0000	1-1-2013	Amend	2-1-2013
635-023-0125	4-5-2013	Amend(T)	5-1-2013	635-067-0004	1-1-2013	Amend	2-1-2013
635-023-0125(T)	4-5-2013	Suspend	5-1-2013	635-068-0000	3-1-2013	Amend	3-1-2013
635-023-0128	1-1-2013	Amend	2-1-2013	635-069-0000	2-1-2013	Amend	2-1-2013
635-023-0130	1-1-2013	Amend	2-1-2013	635-070-0000	4-1-2013	Amend	4-1-2013
635-023-0134	1-1-2013	Amend	2-1-2013	635-070-0020	2-7-2013	Amend	3-1-2013
635-039-0080	1-3-2013	Amend	2-1-2013	635-071-0000	4-1-2013	Amend	4-1-2013
635-039-0080	5-1-2013	Amend(T)	5-1-2013	635-072-0000	1-1-2013	Amend	2-1-2013
635-039-0090	1-1-2013	Amend	2-1-2013	635-073-0000	2-1-2013	Amend	2-1-2013
635-039-0090	1-1-2013	Amend(T)	2-1-2013	635-073-0065	2-1-2013	Amend	2-1-2013
635-039-0090	4-1-2013	Amend(T)	5-1-2013	635-073-0070	2-1-2013	Amend	2-1-2013
635-039-0090(T)	4-1-2013	Suspend	5-1-2013	635-075-0005	3-11-2013	Amend(T)	4-1-2013
635-041-0020	1-1-2013	Amend	2-1-2013	635-078-0011	1-1-2013	Amend	2-1-2013
635-041-0045	2-1-2013	Amend(T)	3-1-2013	635-095-0125	12-31-2012	Amend(T)	2-1-2013
635-041-0045	3-6-2013	Amend(T)	4-1-2013	635-500-6650	1-14-2013	Adopt	2-1-2013
635-041-0045(T)	3-6-2013	Suspend	4-1-2013	635-500-6700	1-1-2013	Adopt	2-1-2013
635-041-0065	2-1-2013	Amend(T)	3-1-2013	635-500-6705	1-1-2013	Adopt	2-1-2013
635-041-0065	2-27-2013	Amend(T)	4-1-2013	635-500-6710	1-1-2013	Adopt	2-1-2013
635-041-0065	3-6-2013	Amend(T)	4-1-2013	635-500-6715	1-1-2013	Adopt	2-1-2013
635-041-0065(T)	2-27-2013	Suspend	4-1-2013	635-500-6720	1-1-2013	Adopt	2-1-2013
635-041-0065(T)	3-6-2013	Suspend	4-1-2013	635-500-6725	1-1-2013	Adopt	2-1-2013
635-042-0022	4-9-2013	Amend(T)	5-1-2013	635-500-6730	1-1-2013	Adopt	2-1-2013
635-042-0135	1-31-2013	Amend(T)	3-1-2013	635-500-6735	1-1-2013	Adopt	2-1-2013

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635-500-6745	1-1-2013	Adopt	2-1-2013	695-045-0110	1-30-2013	Repeal	3-1-2013
635-500-6750	1-1-2013	Adopt	2-1-2013	695-045-0120	1-30-2013	Repeal	3-1-2013
635-500-6755	1-1-2013	Adopt	2-1-2013	695-045-0130	1-30-2013	Repeal	3-1-2013
635-500-6760	1-1-2013	Adopt	2-1-2013	695-045-0140	1-30-2013	Repeal	3-1-2013
635-500-6765	1-1-2013	Adopt	2-1-2013	695-045-0150	1-30-2013	Repeal	3-1-2013
660-006-0005	2-1-2013	Amend	3-1-2013	695-045-0160	1-30-2013	Adopt	3-1-2013
660-006-0025	2-1-2013	Amend	3-1-2013	695-045-0165	1-30-2013	Adopt	3-1-2013
660-024-0040	12-10-2012	Amend	1-1-2013	695-045-0170	1-30-2013	Adopt	3-1-2013
660-024-0045	12-10-2012	Adopt	1-1-2013	695-045-0175	1-30-2013	Adopt	3-1-2013
660-033-0130	1-29-2013	Amend	3-1-2013	695-045-0180	1-30-2013	Adopt	3-1-2013
660-044-0000	1-1-2013	Amend	1-1-2013	695-045-0185	1-30-2013	Adopt	3-1-2013
660-044-0005	1-1-2013	Amend	1-1-2013	695-045-0190	1-30-2013	Adopt	3-1-2013
660-044-0040	1-1-2013	Adopt	1-1-2013	695-045-0195	1-30-2013	Adopt	3-1-2013
660-044-0045	1-1-2013	Adopt	1-1-2013	695-045-0200	1-30-2013	Adopt	3-1-2013
660-044-0050	1-1-2013	Adopt	1-1-2013	695-045-0205	1-30-2013	Adopt	3-1-2013
660-044-0055	1-1-2013	Adopt	1-1-2013	695-045-0210	1-30-2013	Adopt	3-1-2013
660-044-0060	1-1-2013	Adopt	1-1-2013	695-045-0215	1-30-2013	Adopt	3-1-2013
690-501-0005	12-12-2012	Amend	1-1-2013	733-001-0000	4-15-2013	Amend	5-1-2013
690-501-0010	12-12-2012	Amend	1-1-2013	733-001-0005	4-15-2013	Amend	5-1-2013
690-501-0020	12-12-2012	Repeal	1-1-2013	733-001-0010	4-15-2013	Adopt	5-1-2013
690-501-0030	12-12-2012	Amend	1-1-2013	733-001-0015	4-15-2013	Adopt	5-1-2013
690-515-0000	12-12-2012	Amend	1-1-2013	733-001-0025	4-15-2013	Adopt	5-1-2013
690-515-0010	12-12-2012	Amend	1-1-2013	733-001-0030	4-15-2013	Adopt	5-1-2013
690-515-0020	12-12-2012	Amend	1-1-2013	733-001-0035	4-15-2013	Adopt	5-1-2013
690-515-0030	12-12-2012	Amend	1-1-2013	734-010-0220	11-21-2012	Amend	1-1-2013
690-515-0040	12-12-2012	Amend	1-1-2013	734-010-0290	11-21-2012	Amend	1-1-2013
690-515-0050	12-12-2012	Amend	1-1-2013	734-010-0300	11-21-2012	Amend	1-1-2013
690-515-0060	12-12-2012	Amend	1-1-2013	734-010-0310	11-21-2012	Repeal	1-1-2013
690-516-0005	12-12-2012	Amend	1-1-2013	734-010-0320	11-21-2012	Amend	1-1-2013
690-516-0010	12-12-2012	Amend	1-1-2013	734-010-0330	11-21-2012	Amend	1-1-2013
690-516-0020	12-12-2012	Repeal	1-1-2013	734-010-0340	11-21-2012	Amend	1-1-2013
690-516-0030	12-12-2012	Amend	1-1-2013	734-010-0350	11-21-2012	Amend	1-1-2013
690-517-0000	12-12-2012	Amend	1-1-2013	734-010-0370	11-21-2012	Repeal	1-1-2013
690-517-0020	12-12-2012	Amend	1-1-2013	734-010-0380	11-21-2012	Amend	1-1-2013
690-517-0030	12-12-2012	Amend	1-1-2013	734-030-0005	3-1-2013	Amend	3-1-2013
690-517-0040	12-12-2012	Amend	1-1-2013	734-030-0010	3-1-2013	Amend	3-1-2013
690-517-0050	12-12-2012	Repeal	1-1-2013	734-030-0015	3-1-2013	Amend	3-1-2013
690-518-0010	12-12-2012	Amend	1-1-2013	734-030-0016	3-1-2013	Adopt	3-1-2013
690-518-0030	12-12-2012	Amend	1-1-2013	734-059-0100	11-20-2012	Amend	1-1-2013
690-518-0040	12-12-2012	Repeal	1-1-2013	734-073-0090	12-21-2012	Repeal	2-1-2013
690-518-0050	12-12-2012	Amend	1-1-2013	735-001-0050	3-22-2013	Amend	5-1-2013
695-045-0010	1-30-2013	Amend	3-1-2013	735-001-0062	1-1-2013	Adopt	2-1-2013
695-045-0020	1-30-2013	Amend	3-1-2013	735-012-0000	11-19-2012	Amend	1-1-2013
695-045-0025	1-30-2013	Repeal	3-1-2013	735-012-0000(T)	11-19-2012	Repeal	1-1-2013
695-045-0030	1-30-2013	Repeal	3-1-2013	735-062-0080	2-1-2013	Amend	3-1-2013
695-045-0035	1-30-2013	Repeal	3-1-2013	735-064-0005	3-22-2013	Amend	5-1-2013
695-045-0040	1-30-2013	Repeal	3-1-2013	735-064-0020	3-22-2013	Amend	5-1-2013
695-045-0045	1-30-2013	Repeal	3-1-2013	735-064-0060	3-22-2013	Amend	5-1-2013
695-045-0050	1-30-2013	Repeal	3-1-2013	735-064-0100	3-22-2013	Amend	5-1-2013
695-045-0055	1-30-2013	Repeal	3-1-2013	735-064-0110	3-22-2013	Amend	5-1-2013
695-045-0060	1-30-2013	Repeal	3-1-2013	735-070-0006	11-19-2012	Adopt	1-1-2013
695-045-0065	1-30-2013	Repeal	3-1-2013	736-010-0060	11-16-2012	Amend	1-1-2013
695-045-0070	1-30-2013	Repeal	3-1-2013	736-015-0006	11-16-2012	Amend	1-1-2013
695-045-0080	1-30-2013	Repeal	3-1-2013	736-015-0015	11-16-2012	Amend	1-1-2013
695-045-0090	1-30-2013	Repeal	3-1-2013	736-018-0045	12-31-2012	Amend	1-1-2013

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736-021-0020	2-1-2013	Amend	2-1-2013	800-001-0020	2-1-2013	Amend	2-1-2013
736-021-0030	2-1-2013	Amend	2-1-2013	800-010-0020	2-1-2013	Amend	2-1-2013
736-021-0040	2-1-2013	Amend	2-1-2013	800-010-0030	2-1-2013	Amend	2-1-2013
736-021-0050	2-1-2013	Amend	2-1-2013	800-015-0010	2-1-2013	Amend	2-1-2013
736-021-0060	2-1-2013	Amend	2-1-2013	800-020-0015	2-1-2013	Amend	2-1-2013
736-021-0065	2-1-2013	Adopt	2-1-2013	800-020-0030	2-1-2013	Amend	2-1-2013
736-021-0070	2-1-2013	Amend	2-1-2013	800-020-0035	2-1-2013	Amend	2-1-2013
736-021-0080	2-1-2013	Amend	2-1-2013	800-030-0025	2-1-2013	Amend	2-1-2013
736-021-0090	2-1-2013	Amend	2-1-2013	801-001-0035	1-8-2013	Amend	2-1-2013
736-021-0100	2-1-2013	Amend	2-1-2013	804-010-0000	11-21-2012	Amend	1-1-2013
736-021-0110	2-1-2013	Repeal	2-1-2013	804-010-0000(T)	11-21-2012	Repeal	1-1-2013
736-021-0120	2-1-2013	Amend	2-1-2013	804-020-0001	11-21-2012	Amend	1-1-2013
736-021-0130	2-1-2013	Amend	2-1-2013	804-020-0001(T)	11-21-2012	Repeal	1-1-2013
736-021-0140	2-1-2013	Amend	2-1-2013	804-020-0003	11-21-2012	Amend	1-1-2013
736-021-0150	2-1-2013	Amend	2-1-2013	804-020-0003(T)	11-21-2012	Repeal	1-1-2013
736-021-0160	2-1-2013	Amend	2-1-2013	804-020-0010	11-21-2012	Amend	1-1-2013
736-045-0006	12-13-2012	Adopt	1-1-2013	804-020-0010(T)	11-21-2012	Repeal	1-1-2013
736-045-0011	12-13-2012	Adopt	1-1-2013	804-020-0015	11-21-2012	Amend	1-1-2013
736-045-0100	12-13-2012	Adopt	1-1-2013	804-020-0015(T)	11-21-2012	Repeal	1-1-2013
736-045-0200	12-13-2012	Adopt	1-1-2013	804-020-0030	11-21-2012	Amend	1-1-2013
736-045-0300	12-13-2012	Adopt	1-1-2013	804-020-0030(T)	11-21-2012	Repeal	1-1-2013
736-045-0305	12-13-2012	Adopt	1-1-2013	804-020-0040	11-21-2012	Amend	1-1-2013
736-045-0310	12-13-2012	Adopt	1-1-2013	804-020-0040(T)	11-21-2012	Repeal	1-1-2013
736-045-0320	12-13-2012	Adopt	1-1-2013	804-020-0045	11-21-2012	Amend	1-1-2013
736-045-0330	12-13-2012	Adopt	1-1-2013	804-020-0045(T)	11-21-2012	Repeal	1-1-2013
736-045-0340	12-13-2012	Adopt	1-1-2013	804-020-0065	11-21-2012	Amend	1-1-2013
736-045-0400	12-13-2012	Adopt	1-1-2013	804-020-0065(T)	11-21-2012	Repeal	1-1-2013
736-045-0405	12-13-2012	Adopt	1-1-2013	804-040-0000	11-21-2012	Amend	1-1-2013
736-045-0410	12-13-2012	Adopt	1-1-2013	804-040-0000(T)	11-21-2012	Repeal	1-1-2013
736-045-0412	12-13-2012	Adopt	1-1-2013	806-001-0003	7-1-2013	Amend	5-1-2013
736-045-0414	12-13-2012	Adopt	1-1-2013	806-010-0090	12-31-2012	Amend	2-1-2013
736-045-0416	12-13-2012	Adopt	1-1-2013	806-010-0105	2-12-2013	Amend	3-1-2013
736-045-0418	12-13-2012	Adopt	1-1-2013	808-002-0020	12-4-2012	Amend	1-1-2013
736-045-0420	12-13-2012	Adopt	1-1-2013	808-002-0755	2-1-2013	Adopt	3-1-2013
736-045-0422	12-13-2012	Adopt	1-1-2013	808-005-0020	12-4-2012	Amend	1-1-2013
736-045-0424	12-13-2012	Adopt	1-1-2013	808-040-0025	12-4-2012	Amend	1-1-2013
736-045-0426	12-13-2012	Adopt	1-1-2013	808-040-0050	12-4-2012	Amend	1-1-2013
736-045-0428	12-13-2012	Adopt	1-1-2013	808-040-0060	12-4-2012	Amend	1-1-2013
736-045-0430	12-13-2012	Adopt	1-1-2013	809-001-0000	12-21-2012	Amend	1-1-2013
736-045-0432	12-13-2012	Adopt	1-1-2013	809-001-0020	12-21-2012	Repeal	1-1-2013
736-045-0434	12-13-2012	Adopt	1-1-2013	809-001-0025	12-21-2012	Repeal	1-1-2013
736-045-0436	12-13-2012	Adopt	1-1-2013	809-001-0030	12-21-2012	Repeal	1-1-2013
736-045-0438	12-13-2012	Adopt	1-1-2013	809-010-0025	12-21-2012	Amend	1-1-2013
736-045-0440	12-13-2012	Adopt	1-1-2013	809-020-0030	12-21-2012	Amend	1-1-2013
736-045-0442	12-13-2012	Adopt	1-1-2013	809-055-0000	12-21-2012	Amend	1-1-2013
736-045-0444	12-13-2012	Adopt	1-1-2013	811-015-0080	11-28-2012	Adopt	1-1-2013
736-045-0446	12-13-2012	Adopt	1-1-2013	813-004-0001	3-28-2013	Adopt	5-1-2013
736-045-0448	12-13-2012	Adopt	1-1-2013	813-004-0001(T)	3-28-2013	Repeal	5-1-2013
736-045-0500	12-13-2012	Adopt	1-1-2013	813-004-0002	3-28-2013	Adopt	5-1-2013
736-045-0505	12-13-2012	Adopt	1-1-2013	813-004-0002(T)	3-28-2013	Repeal	5-1-2013
740-060-0030	1-18-2013	Amend(T)	3-1-2013	813-004-0200	1-4-2013	Adopt	2-1-2013
740-060-0040	1-18-2013	Amend(T)	3-1-2013	813-004-0210	1-4-2013	Adopt	2-1-2013
740-060-0080	1-18-2013	Amend(T)	3-1-2013	813-004-0220	1-4-2013	Adopt	2-1-2013
740-200-0010	1-17-2013	Amend	3-1-2013	813-004-0230	1-4-2013	Adopt	2-1-2013
740-200-0020	1-17-2013	Amend	3-1-2013	813-004-0240	1-4-2013	Adopt	2-1-2013

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813-004-0260	1-4-2013	Adopt	2-1-2013	837-085-0080	2-1-2013	Amend	3-1-2013
813-004-0270	1-4-2013	Adopt	2-1-2013	839-009-0335	11-21-2012	Amend	1-1-2013
813-004-0280	1-4-2013	Adopt	2-1-2013	839-009-0390	11-21-2012	Amend	1-1-2013
813-004-0290	1-4-2013	Adopt	2-1-2013	839-009-0410	11-21-2012	Amend	1-1-2013
813-004-0300	1-4-2013	Adopt	2-1-2013	839-025-0700	1-1-2013	Amend	2-1-2013
813-004-0310	1-4-2013	Adopt	2-1-2013	839-025-0700	3-25-2013	Amend	5-1-2013
813-007-0005	3-21-2013	Amend(T)	5-1-2013	845-006-0345	4-1-2013	Amend	4-1-2013
813-007-0040	3-21-2013	Amend(T)	5-1-2013	845-006-0347	4-1-2013	Amend	4-1-2013
813-250-0000	12-6-2012	Amend(T)	1-1-2013	845-015-0170	1-1-2013	Amend	2-1-2013
813-250-0010	12-6-2012	Suspend	1-1-2013	847-005-0005	4-5-2013	Amend	5-1-2013
813-250-0020	12-6-2012	Amend(T)	1-1-2013	847-005-0005(T)	4-5-2013	Repeal	5-1-2013
813-250-0030	12-6-2012	Amend(T)	1-1-2013	847-008-0040	1-11-2013	Amend(T)	2-1-2013
813-250-0040	12-6-2012	Amend(T)	1-1-2013	847-008-0040	4-5-2013	Amend	5-1-2013
813-250-0050	12-6-2012	Suspend	1-1-2013	847-008-0040(T)	4-5-2013	Repeal	5-1-2013
820-001-0025	3-13-2013	Adopt	4-1-2013	847-008-0065	1-11-2013	Amend	2-1-2013
820-010-0200	3-13-2013	Amend	4-1-2013	847-012-0000	4-5-2013	Amend	5-1-2013
820-010-0204	3-13-2013	Amend	4-1-2013	847-020-0100	4-5-2013	Amend	5-1-2013
820-010-0205	3-13-2013	Amend	4-1-2013	847-020-0110	4-5-2013	Amend	5-1-2013
820-010-0206	3-13-2013	Amend	4-1-2013	847-020-0120	4-5-2013	Amend	5-1-2013
820-010-0207	3-13-2013	Amend	4-1-2013	847-020-0130	4-5-2013	Amend	5-1-2013
820-010-0208	3-13-2013	Amend	4-1-2013	847-020-0140	4-5-2013	Amend	5-1-2013
820-010-0212	3-13-2013	Amend	4-1-2013	847-020-0150	4-5-2013	Amend	5-1-2013
820-010-0213	3-13-2013	Amend	4-1-2013	847-020-0155	4-5-2013	Am. & Ren.	5-1-2013
820-010-0214	3-13-2013	Amend	4-1-2013	847-020-0160	4-5-2013	Amend	5-1-2013
820-010-0215	3-13-2013	Amend	4-1-2013	847-020-0170	4-5-2013	Amend	5-1-2013
820-010-0225	3-13-2013	Amend	4-1-2013	847-020-0180	4-5-2013	Repeal	5-1-2013
820-010-0226	3-13-2013	Amend	4-1-2013	847-020-0182	4-5-2013	Amend	5-1-2013
820-010-0415	3-13-2013	Amend	4-1-2013	847-020-0183	4-5-2013	Amend	5-1-2013
820-010-0425	3-13-2013	Amend	4-1-2013	847-020-0190	4-5-2013	Amend	5-1-2013
820-010-0427	3-13-2013	Amend	4-1-2013	847-035-0011	4-5-2013	Amend	5-1-2013
820-010-0480	3-13-2013	Amend	4-1-2013	847-035-0030	4-5-2013	Amend	5-1-2013
820-010-0520	3-13-2013	Amend	4-1-2013	847-050-0027	1-11-2013	Amend	2-1-2013
820-010-0635	3-13-2013	Amend	4-1-2013	847-050-0041	1-11-2013	Amend	2-1-2013
820-010-0720	3-13-2013	Amend	4-1-2013	847-050-0041(T)	1-11-2013	Repeal	2-1-2013
820-015-0026	3-13-2013	Amend	4-1-2013	847-050-0065	1-11-2013	Amend	2-1-2013
820-020-0040	3-13-2013	Amend	4-1-2013	847-050-0065(T)	1-11-2013	Repeal	2-1-2013
820-050-0001	3-18-2013	Adopt(T)	5-1-2013	848-005-0020	1-1-2013	Amend(T)	1-1-2013
820-050-0010	3-13-2013	Adopt	4-1-2013	850-001-0015	4-12-2013	Amend	5-1-2013
830-001-0000	3-29-2013	Amend	5-1-2013	850-030-0035	4-12-2013	Amend	5-1-2013
830-020-0030	3-29-2013	Amend	5-1-2013	850-035-0230	4-12-2013	Amend	5-1-2013
830-020-0040	3-29-2013	Amend	5-1-2013	851-050-0000	4-1-2013	Amend	4-1-2013
830-030-0000	3-29-2013	Amend	5-1-2013	851-050-0000(T)	4-1-2013	Repeal	4-1-2013
830-030-0070	3-29-2013	Amend	5-1-2013	851-050-0009	4-1-2013	Amend	4-1-2013
830-030-0100	3-29-2013	Amend	5-1-2013	851-050-0009(T)	4-1-2013	Repeal	4-1-2013
830-040-0005	3-29-2013	Amend	5-1-2013	851-052-0040	4-1-2013	Amend	4-1-2013
830-040-0050	3-29-2013	Amend	5-1-2013	851-052-0040(T)	4-1-2013	Repeal	4-1-2013
833-020-0051	2-1-2013	Amend	2-1-2013	851-054-0060	4-1-2013	Amend	4-1-2013
833-020-0081	2-1-2013	Amend	2-1-2013	851-054-0060(T)	4-1-2013	Repeal	4-1-2013
833-030-0041	2-1-2013	Amend	2-1-2013	851-054-0100	4-1-2013	Amend	4-1-2013
833-040-0041	2-1-2013	Amend	2-1-2013	851-054-0100(T)	4-1-2013	Repeal	4-1-2013
836-011-0000	2-6-2013	Amend	3-1-2013	851-062-0100	4-1-2013	Amend	4-1-2013
836-031-0765	2-6-2013	Amend	3-1-2013	851-070-0005	4-1-2013	Amend	4-1-2013
836-053-1404	12-20-2012	Amend(T)	2-1-2013	851-070-0030	4-1-2013	Amend	4-1-2013
836-053-1405	12-20-2012	Amend(T)	2-1-2013	851-070-0040	4-1-2013	Amend	4-1-2013
837-085-0040	2-1-2013	Amend	3-1-2013	851-070-0050	4-1-2013	Amend	4-1-2013

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851-070-0100	4-1-2013	Amend	4-1-2013	855-041-0007	12-17-2012	Repeal	2-1-2013
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852-001-0002	1-3-2013	Amend	2-1-2013	855-041-0015	12-17-2012	Am. & Ren.	2-1-2013
852-005-0005	1-3-2013	Amend	2-1-2013	855-041-0016	12-17-2012	Renumber	2-1-2013
852-005-0015	1-3-2013	Amend	2-1-2013	855-041-0017	12-17-2012	Renumber	2-1-2013
852-005-0030	1-3-2013	Amend	2-1-2013	855-041-0020	12-17-2012	Renumber	2-1-2013
852-005-0040	1-3-2013	Repeal	2-1-2013	855-041-0025	12-17-2012	Renumber	2-1-2013
852-010-0005	1-3-2013	Amend	2-1-2013	855-041-0026	12-17-2012	Am. & Ren.	2-1-2013
852-010-0015	1-3-2013	Amend	2-1-2013	855-041-0030	12-17-2012	Repeal	2-1-2013
852-010-0020	1-3-2013	Amend	2-1-2013	855-041-0035	12-17-2012	Am. & Ren.	2-1-2013
852-010-0022	1-3-2013	Amend	2-1-2013	855-041-0036	12-17-2012	Renumber	2-1-2013
852-010-0023	1-3-2013	Amend	2-1-2013	855-041-0037	12-17-2012	Renumber	2-1-2013
852-010-0030	1-3-2013	Amend	2-1-2013	855-041-0040	12-17-2012	Renumber	2-1-2013
852-010-0035	1-3-2013	Amend	2-1-2013	855-041-0055	12-17-2012	Renumber	2-1-2013
852-010-0051	1-3-2013	Amend	2-1-2013	855-041-0056	12-17-2012	Renumber	2-1-2013
852-010-0080	1-3-2013	Amend	2-1-2013	855-041-0057	12-17-2012	Renumber	2-1-2013
852-020-0029	1-3-2013	Amend	2-1-2013	855-041-0060	12-17-2012	Am. & Ren.	2-1-2013
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852-020-0035	1-3-2013	Amend	2-1-2013	855-041-0060	12-17-2012	Am. & Ren.	2-1-2013
852-020-0045	1-3-2013	Amend	2-1-2013	855-041-0061	12-17-2012	Renumber	2-1-2013
852-020-0050	1-3-2013	Amend	2-1-2013	855-041-0065	12-17-2012	Am. & Ren.	2-1-2013
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852-020-0070	1-3-2013	Amend	2-1-2013	855-041-0065	12-17-2012	Am. & Ren.	2-1-2013
852-050-0001	1-3-2013	Amend	2-1-2013	855-041-0065	12-17-2012	Am. & Ren.	2-1-2013
852-050-0005	1-3-2013	Amend	2-1-2013	855-041-0075	12-17-2012	Renumber	2-1-2013
852-050-0006	1-3-2013	Amend	2-1-2013	855-041-0080	12-17-2012	Renumber	2-1-2013
852-050-0012	1-3-2013	Amend	2-1-2013	855-041-0086	12-17-2012	Renumber	2-1-2013
852-050-0013	1-3-2013	Amend	2-1-2013	855-041-0095	12-17-2012	Renumber	2-1-2013
852-050-0014	1-3-2013	Amend	2-1-2013	855-041-0103	12-17-2012	Renumber	2-1-2013
852-050-0016	1-3-2013	Amend	2-1-2013	855-041-0135	12-17-2012	Am. & Ren.	2-1-2013
852-050-0018	1-3-2013	Amend	2-1-2013	855-041-0140	12-17-2012	Renumber	2-1-2013
852-050-0021	1-3-2013	Amend	2-1-2013	855-041-0145	12-17-2012	Am. & Ren.	2-1-2013
852-050-0022	1-3-2013	Adopt	2-1-2013	855-041-0160	12-17-2012	Am. & Ren.	2-1-2013
852-050-0025	1-3-2013	Amend	2-1-2013	855-041-0162	12-17-2012	Am. & Ren.	2-1-2013
852-060-0025	1-3-2013	Amend	2-1-2013	855-041-0164	12-17-2012	Renumber	2-1-2013
852-060-0027	1-3-2013	Amend	2-1-2013	855-041-0165	12-17-2012	Am. & Ren.	2-1-2013
852-060-0060	1-3-2013	Amend	2-1-2013	855-041-0170	12-17-2012	Renumber	2-1-2013
852-060-0065	1-3-2013	Amend	2-1-2013	855-041-0173	12-17-2012	Renumber	2-1-2013
852-060-0070	1-3-2013	Amend	2-1-2013	855-041-0175	12-17-2012	Renumber	2-1-2013
852-070-0005	1-3-2013	Amend	2-1-2013	855-041-0177	12-17-2012	Renumber	2-1-2013
852-070-0010	1-3-2013	Amend	2-1-2013	855-041-0300	12-17-2012	Renumber	2-1-2013
852-070-0016	1-3-2013	Amend	2-1-2013	855-041-0350	12-17-2012	Renumber	2-1-2013
852-070-0020	1-3-2013	Amend	2-1-2013	855-041-0355	12-17-2012	Renumber	2-1-2013
852-070-0025	1-3-2013	Amend	2-1-2013	855-041-0360	12-17-2012	Am. & Ren.	2-1-2013
852-070-0030	1-3-2013	Amend	2-1-2013	855-041-0365	12-17-2012	Renumber	2-1-2013
852-070-0035	1-3-2013	Amend	2-1-2013	855-041-0600	12-17-2012	Renumber	2-1-2013
852-070-0040	1-3-2013	Repeal	2-1-2013	855-041-0610	12-17-2012	Renumber	2-1-2013
852-070-0045	1-3-2013	Amend	2-1-2013	855-041-0620	12-17-2012	Am. & Ren.	2-1-2013
852-070-0050	1-3-2013	Repeal	2-1-2013	855-041-0645	12-17-2012	Renumber	2-1-2013
852-070-0055	1-3-2013	Amend	2-1-2013	855-041-6410	12-21-2012	Amend	2-1-2013
852-070-0060	1-3-2013	Am. & Ren.	2-1-2013	855-060-0004	3-7-2013	Amend(T)	4-1-2013
852-080-0020	1-3-2013	Amend	2-1-2013	855-065-0005	12-13-2012	Amend	1-1-2013
852-080-0025	1-3-2013	Amend	2-1-2013	855-110-0005	4-5-2013	Amend(T)	5-1-2013
852-080-0030	1-3-2013	Amend	2-1-2013	855-110-0007	12-13-2012	Amend	1-1-2013
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855-041-0005	12-17-2012	Am. & Ren.	2-1-2013	858-010-0010	2-5-2013	Amend	3-1-2013



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858-010-0015	2-5-2013	Amend	3-1-2013	877-001-0020	1-1-2013	Amend	1-1-2013
858-010-0015(T)	2-5-2013	Repeal	3-1-2013	877-001-0025	1-1-2013	Amend	1-1-2013
858-010-0016	11-20-2012	Amend(T)	1-1-2013	877-001-0028	1-1-2013	Adopt	1-1-2013
858-010-0016	2-5-2013	Amend	3-1-2013	877-020-0008	1-1-2013	Amend	1-1-2013
858-010-0016(T)	2-5-2013	Repeal	3-1-2013	877-020-0010	1-1-2013	Amend	1-1-2013
858-010-0017	11-20-2012	Amend(T)	1-1-2013	877-020-0055	1-1-2013	Amend	1-1-2013
858-010-0017	2-5-2013	Amend	3-1-2013	877-020-0057	1-1-2013	Amend	1-1-2013
858-010-0017(T)	11-20-2012	Suspend	1-1-2013	877-025-0006	1-1-2013	Amend	1-1-2013
858-010-0017(T)	2-5-2013	Repeal	3-1-2013	877-025-0011	1-1-2013	Amend	1-1-2013
858-010-0030	2-5-2013	Amend	3-1-2013	877-025-0016	1-1-2013	Repeal	1-1-2013
858-010-0030(T)	2-5-2013	Repeal	3-1-2013	877-030-0025	1-1-2013	Amend	1-1-2013
858-010-0050	11-19-2012	Amend	1-1-2013	877-030-0040	1-1-2013	Amend	1-1-2013
858-020-0025	2-5-2013	Amend	3-1-2013	877-040-0055	1-1-2013	Repeal	1-1-2013
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859-070-0015	3-1-2013	Amend(T)	4-1-2013	918-030-0100	4-1-2013	Amend	5-1-2013
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863-020-0000	2-1-2013	Amend	2-1-2013	918-030-0125	4-1-2013	Amend	5-1-2013
863-020-0005	2-1-2013	Amend	2-1-2013	918-030-0130	12-22-2012	Amend(T)	2-1-2013
863-020-0007	2-1-2013	Amend	2-1-2013	918-030-0130	4-1-2013	Amend	5-1-2013
863-020-0008	2-1-2013	Repeal	2-1-2013	918-030-0135	12-22-2012	Amend(T)	2-1-2013
863-020-0010	2-1-2013	Amend	2-1-2013	918-030-0135	4-1-2013	Amend	5-1-2013
863-020-0015	2-1-2013	Amend	2-1-2013	918-098-1000	2-2-2013	Amend(T)	3-1-2013
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863-020-0025	2-1-2013	Amend	2-1-2013	918-098-1530(T)	1-1-2013	Repeal	2-1-2013
863-020-0030	2-1-2013	Amend	2-1-2013	918-098-1550	1-1-2013	Amend	2-1-2013
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863-020-0040	2-1-2013	Amend	2-1-2013	918-100-0125	3-1-2013	Adopt(T)	4-1-2013
863-020-0045	2-1-2013	Amend	2-1-2013	918-305-0100	5-1-2013	Amend	5-1-2013
863-020-0050	2-1-2013	Amend	2-1-2013	918-305-0105	1-1-2013	Amend(T)	1-1-2013
863-020-0055	2-1-2013	Amend	2-1-2013	918-305-0105	5-1-2013	Amend	5-1-2013
863-020-0060	2-1-2013	Amend	2-1-2013	918-305-0105(T)	1-1-2013	Suspend	1-1-2013
863-020-0065	2-1-2013	Amend	2-1-2013	918-305-0105(T)	5-1-2013	Repeal	5-1-2013
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863-022-0015	2-1-2013	Amend	2-1-2013	945-020-0010	12-13-2012	Adopt	1-1-2013
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863-022-0030	2-1-2013	Amend	2-1-2013	945-030-0030	3-18-2013	Adopt	5-1-2013
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863-022-0050	2-1-2013	Amend	2-1-2013	966-100-0100	1-2-2013	Adopt	2-1-2013
863-022-0052	2-1-2013	Adopt	2-1-2013	966-100-0200	1-2-2013	Adopt	2-1-2013
863-022-0055	2-1-2013	Amend	2-1-2013	966-100-0300	1-2-2013	Adopt	2-1-2013
863-022-0060	2-1-2013	Amend	2-1-2013	966-100-0400	1-2-2013	Adopt	2-1-2013
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